



2023:DHC:8880



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on: 12th December, 2023***

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**W.P.(C) 4734/2016
SATPAL VENAİK**

..... Petitioner

Through: Ms. Samvartika Pathak & Mr. Nitin
Kumar, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION RespondentThrough: Ms. Mansi Gupta, Standing Counsel
for MCD.**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****J U D G M E N T**

1. By way of this petition under Articles 226 and 227 of the Constitution, the petitioner assails an order of the respondent – Municipal Corporation of Delhi ["MCD"] dated 10.09.2008¹, by which it revoked a building plan sanctioned in favour of the petitioner. He also challenges a judgment dated 11.12.2015, by which the learned District and Sessions Judge (North), Rohini Courts, affirmed a judgment of the Appellate Tribunal for Municipal Corporation of Delhi [hereinafter, "ATMCD"] dated 20.05.2013, dismissing the petitioner's appeal against the impugned revocation order.

2. The petitioner claims to be the owner of property bearing No. 566, *Dr. Mukherjee Nagar, Delhi* [hereinafter, "the subject property"], under a conveyance deed executed on 16.10.2000. A two and a half storey building was constructed on the subject property prior to the year 1990. According to

¹ Wrongly stated in the prayer clause as 09.09.2008.

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the petitioner, the second floor of the property was subject matter of an agreement to sell dated 12.07.1997, between the petitioner and one Mr. Rajinder Kumar Khurana, who was put in possession of the property and raised an illegal construction thereupon. The petitioner commenced some repair work in the premises in the year 2006. However, on the complaint of Mr. Khurana, MCD sealed a part of the ground floor of the property on 31.08.2006 and a part of the first floor on 11.09.2006.

3. The petitioner's appeals against these orders were disposed of by the ATMCD on 14.12.2006, setting aside the sealing orders on the ground that they were not preceded by show cause notices.

4. MCD again sealed the ground floor of the premises on 12.01.2007, which was challenged before the ATMCD. During the pendency of the appeal against the said sealing order, MCD issued a demolition order dated 21.05.2007, leading to a second appeal before the Tribunal. The petitioner claims to have made an application for regularization before MCD under the "*Self Assessment Scheme*" on 24.03.2008, after payment of requisite compounding fee. He undertook to demolish any non-compoundable unauthorized construction by an undertaking dated 25.03.2008, and to pay the shortfall in compounding fee by an undertaking dated 22.04.2008. The petitioner asserts that he demolished the non-compoundable unauthorized construction and informed MCD of the same on 26.06.2008. The appeals were disposed of on 28.05.2008 in view of the regularization.

5. The genesis of the present petition, however, lies in a notice dated 20.08.2008, issued by MCD revoking the regularization plan. MCD referred to an earlier notice dated 07.07.2008, in which the petitioner was directed to restore a staircase within the premises in a manner which does not affect

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access to the second floor. In view of the petitioner's failure to comply, by notice dated 20.08.2008, MCD gave him a further time of 7 days to do so, failing which the regularization plan would be revoked and further punitive measures taken.

6. The petitioner responded to the aforesaid notice *vide* letter dated 29.08.2008, denying prior receipt of the notice dated 07.07.2008, and alleging *mala fides* on part of the concerned officials. The petitioner contended that the existing construction was in consonance with the sanctioned plan, as regularized, and that the additional construction had already been demolished. He further stated as follows:-

"12. That I, the undersigned further take opportunity to bring to your kind notice That I am being made a scape goat and terrorized at the instance of Mr. Rajinder Kumar as the two small steps situated on the municipal land for entering the property which had already been existing at the site and had been built by the undersigned long back in the same manner as almost all the owners of the houses adjoining to the house of the undersigned as well as in almost whole of the colony of Dr. Mukherjee Nagar, Delhi, have been constructed but still only the undersigned has been singled out for demolition of two steps on the MCD land and similar steps of none of the other houses in whole of Mukherjee Nagar, Delhi, have been demolished till date. This clearly means that the undersigned is being forced by your goodself taking undue advantage of the powers vested in you by law and/or by illegal exercise of the powers vested in you by law to yield to the illegal and uncalled for demand of Mr. Rajinder Kumar."²

7. MCD thereafter issued the impugned revocation order dated 10.09.2008, stating that a staircase constructed from the ground floor to the first floor was located in the front setback of the property, which was not permitted. It was also mentioned that, in the regularization plan submitted by the petitioner, the existence of steps outside the boundary of the plot were

² Emphasis in original.



not shown, which would, in any event, amount to an encroachment on public land. Having found a misrepresentation by virtue of non-disclosures in the regularization plan, and non-compliance with the direction to demolish the same, the regularization was revoked.

8. The petitioner's appeal against the aforesaid order was dismissed by ATMCD on 20.05.2013. The ATMCD recorded that the petitioner had submitted an affidavit of undertaking dated 25.03.2008, alongwith his regularization application, in which he had undertaken to demolish certain non-compoundable constructions shown in yellow in the plan. The ATMCD noticed the contents of a joint inspection report, which had been filed in contempt proceedings instituted by the petitioner, and had not been objected to by the petitioner. The inspection report found that a projection of 0.91 meters in the rear of the property was required to be demolished as part of the regularization plan, but was not, in fact, demolished. It also found discrepancy with regard to two toilets in the rear portion of the first floor of the property, that the staircase at the ground floor had been shifted from its original location leading to lack of structural safety, and an abnormally high riser of 60 centimeters at the first step of the staircase. The inspection report also stated that construction on the second floor of the subject premises was not mentioned in the regularization application and that the non-compoundable deviations had not been fully demolished in accordance with the petitioner's undertakings. Based upon the inspection report, the ATMCD found that the two bathrooms constructed on the first floor were partially constructed on non-compoundable projections, contrary to the picture presented in the regularization plan submitted by the petitioner, and were, therefore, also required to be demolished. The ATMCD also noticed that the

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staircase going to the first floor of the property, as shown in the sanctioned plan, was actually inside the boundary line but, in fact, started outside the boundary on municipal land. In view of these deviations, the ATMCD found material misrepresentation in the regularization plan, and no infirmity in revocation thereof by MCD.

9. The petitioner carried the matter in appeal before the learned District and Sessions Judge, who dismissed the appeal *vide* judgment dated 11.12.2015. The learned District and Sessions Judge found that the staircase constructed from the ground floor to the first floor was in the front set back, which was impermissible in law, and that the petitioner had not only admitted the violations of the building bye laws at the time of submission of the regularization plan, but also failed to submit a valid and truthful regularization plan. He had also failed to demolish the non-compoundable portion of the property despite his undertakings to do so.

10. In the writ petition, the petitioner contended that he has not made any addition/alteration in the property since the submission of the regularization plan on 28.05.2008, and that the aforesaid actions have been taken at the instance of Mr. Rajinder Kumar Khurana, specifically stating that the sanction or regularization of the building plan was granted by MCD after inspecting the property at site [ground x of the writ petition].

11. Although the petitioner has adopted the doubtful practice of filing a writ petition under Articles 226 and 227 of the Constitution, challenging both the revocation order and the judgment of the learned District and Sessions Judge, I have heard learned counsel for the parties on merits, particularly in the light of long pendency of the petition, and the fact that no issue was raised by learned counsel for the parties in this regard.

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12. MCD's jurisdiction to revoke a sanctioned plan flows from Section 338 of the Delhi Municipal Corporation Act, 1957 [hereinafter, "the Act"], which reads as follows:-

"338. Sanction accorded under misrepresentation- If at any time after the sanction of any building or work has been accorded, the Commissioner is satisfied that such sanction was accorded in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information further under sections 333, 334 and 335, he may by order in writing cancel for reasons to be recorded such sanction and any building or work commenced, erected or done shall be deemed to have commenced, erected or done without such sanction:

Provided that before making any such order the Commissioner shall give reasonable opportunity to the person affected as to why such order should not be made."

13. In the present case, this jurisdiction has been exercised on a finding of material misrepresentation in the regularization plan, which have been identified as follows:-

- A. Non-disclosure of steps on public land, outside the boundary of the plot [which has since been demolished by MCD],
- B. Non-disclosure of a high riser on the first step,
- C. Failure to demolish non-compoundable deviation, which the petitioner had undertaken to demolish within two months of regularization, and
- D. Non-compliance with the building bye-laws as the staircase from the lower floor to the top floor were not independent.

14. While applying for regularization, the petitioner had filed two undertakings before the MCD, which have been placed on record. In an undertaking dated 25.03.2008, the petitioner stated that some part of the construction raised by him [shown in yellow on the plan filed by him] was in excess of the notification of the Government of India. He undertook to



demolish that portion within sixty days from the date of regularization, failing which MCD was free to take demolition action. He also undertook that in case of any willful misrepresentation in his regularization plan, MCD would be free to take action. In the second undertaking dated 22.04.2008 also, the petitioner undertook that MCD would be free to take action in accordance with law in the event any willful misrepresentation is made by him. These undertakings were in consonance with Section 338 of the Act.

15. Viewed from this perspective, I am of the view that there is no infirmity in the impugned revocation order passed by MCD and in the consequent dismissal of the petitioner's challenge thereto by the ATMCD and the learned District and Sessions Judge. The joint inspection report, relied upon by the ATMCD, remained unchallenged and formed the basis for determining the undisputed factual position that the petitioner failed to comply with his undertaking to demolish the non-compoundable deviations within sixty days of regularization, in the form of the projection at the rear of the building and the staircase which forms an encroachment on municipal land.

16. The fact that the staircase had been built on municipal land is evident from the reply dated 29.08.2008 sent by the petitioner himself, to the show cause notice dated 20.08.2008. In the writ petition, the petitioner has sought to justify this on the ground that the building bye laws required the plinth level of the building to be at a height of at least 45 centimetres from the ground level. From the judgment of the ATMCD and learned District and Sessions Judge, this contention does not appear to have been taken earlier. In any event, I am of the view that it cannot justify an encroachment into municipal land, as the steps could have been constructed within the

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boundary of the petitioner's property.

17. The ATMCD has found that the regularization plan submitted by the petitioner did not reveal the correct position of the staircase, the height of the first riser and the construction on the second floor. The uncontested inspection report also reveals that the bathrooms on the first floor of the property were, in fact, on projections into municipal land, contrary to the regularization plan and that the front staircase was in the front setback area.

18. These factual assertions are not susceptible of adjudication in these writ proceedings. In the present case, they are not just the assertions of MCD, but have been found to be justified at two levels of appeal. The petitioner invites the writ Court to enter a third round of factual adjudication, which is beyond the scope of these proceedings. Despite the directions given in the order of this Court dated 18.09.2023, copies of the appeal filed by the petitioner before the ATMCD and District and Sessions Judge have not been placed on record by the petitioner.

19. The petitioner has also taken a contention that the action of MCD was motivated by *mala fides*, at the behest of Mr. Rajinder Kumar Khurana, to whom he had sold the second floor of the property and with whom he had an existing dispute. While it appears from the record that the impugned action of MCD was initiated upon a complaint of Mr. Khurana, that by itself does not entitle the petitioner to equitable relief in writ proceedings. The petitioner has been unable to show any actionable error in the orders passed by MCD.

20. Although learned counsel for the petitioner has cited certain judgments on general legal propositions in the written submissions filed by him on 22.09.2023, these judgments were not relied upon in the course of



arguments. They concern compliance with the principles of natural justice, arbitrariness, malice and statutory compliance. None of these aspects take the petitioner's case much further in view of the factual position recorded above. Only one judgment cited therein deals with municipal regulations- *Friends Colony Development Committee v. State of Orissa*³. The judgment itself emphasises planned urban development, on the basis of which legislative enactments, rules and regulations are framed. Restriction on private interests of individual property owners have been held to be justified. It has specifically been held that regularisation of deviations from sanctioned construction by way of compounding is an exception to the general principle behind the imposition of regulations. In the present case, we are concerned with a case of regularization of deviations which, in line with the said judgment cited by the petitioner himself, must be strictly confined to the extent permissible in law.

21. For the aforesaid reasons, I am of the view that there is no merit in the petitioner's challenge to the revocation order of MCD dated 10.09.2008, or to the orders of ATMCD and learned District and Sessions Judge dismissing his appeals. The writ petition is, therefore, dismissed.

PRATEEK JALAN, J

DECEMBER 12, 2023

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³ (2004) 8 SCC 733.