



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 22 November 2023**
Judgment pronounced on : 13 December 2023

+ **CONT.CAS(C) 474/2018**

VIREN SINGH

..... Petitioner

Through: **Mr. Rakesh K. Khanna, Mr.
Aditya Archiya and Ms. Sakshi
Sharma, Advs.**

versus

MADHUP VYASF & ORS.

..... Respondents

Through: **Ms. Puja Kalra, Adv. for MCD
with Mr. Jain, A.E.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The present petition under Section 11 read with section 12 of the Contempt of Courts Act, 1971¹, is filed by the petitioner, alleging that the respondent officials of the erstwhile North Delhi Municipal Corporation, since renamed Municipal Corporation of Delhi² have committed the contempt of the order/directions dated 30.11.2017 passed by this Court in the writ petition W.P. (C) 7821/2017 and subsequent directions contained in the order dated 26.02.2018 in CONT. CAS (C) 138/2018.

¹ CC Act

² MCD



FACTUAL BACKGROUND:

2. Shorn of unnecessary details, the petitioner acquired ownership title of terrace/roof rights of the suit property from his sister, who was the owner with terrace/roof rights of the second floor of this property. She sought sanction of the building plan for 3rd floor on this property and the same was declined by the respondent vide communication dated 19.07.2017 on the ground that floor-wise sanction/regularisation could not be approved. The same was challenged in the writ petition W.P. (C) 7821/2017, wherein while relying upon **Harish Bajaj and Anr. v. North Delhi Municipal Corporation**³, vide order dated 30.11.2017, the following directions were passed: -

“In view of the foregoing, communication dated 19.07.2017 is set aside and quashed and the writ petition is disposed off with a direction to the respondent to process the application of the applicant for sanction of the building plans, within four weeks from today. It is made clear that the application would be processed in consonance with the prevalent building bye-laws and MPD-2021, but, for the insistence of NOC of the co-owner. Petition and the pending applications stand disposed off accordingly.”

3. Aggrieved by non-compliance of order dated 30.11.2017 on the part of the officials of respondent, the petitioner filed contempt petition being CONT. CAS (C) 138/2018 wherein learned counsel for respondent submitted that the application of the petitioner for sanction of building plan was under consideration and decision of the same would be conveyed to the petitioner. This Court disposed of the matter giving the following directions vide order dated 26.02.2018: -

³ 2017 SCC OnLine Del 2459.



“...Ms. Puja Kalra, learned counsel appearing for the respondents on the advance notice states, the application of the applicant for sanction of building plans is under consideration and the decision and communication thereof shall be taken /sent to the petitioner within three weeks/one week from today.

Noting and binding the respondents to the statement made by their counsel, the contempt petition is closed. If the petitioner is still aggrieved by any in action on the part of the respondents, liberty is granted to the petitioner to revive this contempt petition.”

4. Eventually, the respondent MCD vide communication⁴ dated 25.04.2018 has rejected the application of petitioner for sanction of construction on the 3rd floor of the subject property inter alia stating that their decision is based upon consideration and scrutiny of the application in consonance with prevalent building bye-laws and MPD 2021, on the grounds enlisted as follows: -

- “1. No sanction building plan of the existing construction has been submitted.
2. There is no structural stability certificate available on records as such to prove that the entire structure from ground to second and proposed third floor would be safe/stable structurally post construction of the third floor.
3. As per plan, there is infringement of front set back at GF, FF and SF which is not permissible.
4. The site has been inspected and it is found that there are projection on public land in the side lane at GF, FF and SF which is not permissible.
5. Existing construction at Third Floor has not been mentioned, in the proposal.”

5. It is the case of the petitioner that on receiving the aforesaid order dated 25.04.2018, she submitted point-wise reply vide letter dated 08/09.05.2018 wherein she made a representation as under:-

⁴ D/AE(B)/KBZ/2018/642



“(1) Firstly the sanction building plan for the existing construction is available in the record of the respondent Corporation [North Delhi Municipal Corporation (NDMC)], as it was submitted by the original owner of the building B-165, Naraina Vihar, Mrs. Manjit Chawla at the time of seeking the permission/approval of the construction of the building in the year 2006 and further for seeking regularization of the building the year 2007

(2) Secondly the structural stability certificate is also available with the NDMC, as it was submitted by the original owner Mrs. Manjit Chawla at the time of seeking permission for the construction/regularization of the building

As far as, the applicant is concerned, structural stability certificate had already been submitted. In any case, another structural stability certificate dated 02.05.2018 is enclosed (in original)

(3) Thirdly the applicant has nothing to do with the infringements of front set -back at GF, FF and SF, as it has not been done by the applicant. It is also mentioned that the NDMC has already initiated action vide their notice dated 06.09.2017 for the infringements against the sanctioned building plan (70/B/KBZ/2006 DA DATED 01.09.2006) However, NDMC is aware that the original owner Mrs. Manjit Chawla had paid/deposited an amount of Rs.89,500/- vide receipt no. 489060 dated 07.09.2007 for the regularization of the infringements, if any (copy enclosed).

(4) Fourthly the applicant has nothing to do with the alleged projections, if any, on the public land in the side lane of GF/FF /SF. However submitted earlier the original owner Mrs. Manjit Chawla has already paid/deposited an amount of Rs.89,500/- for the regularization for the regularization charges of the building in the year 2007. Further it is mentioned that the inspection of the building has neither been done with prior notice of the applicant nor the applicant was present during inspection.

(5) Fifthly the building map/proposal showing the existing/propose construction at the third floor is enclosed (in original).”

6. Aggrieved that there was no response to her representation by the respondents, by filing the instant petition the petitioner is seeking action against the respondent No.1 Sh. Madhup Vyas who was then the Commissioner, NDMC/ MCD as also respondent No.2 Sh. Nitin



Promod, Deputy Commissioner, MCD, besides the Superintendent Engineering & Assistant Engineer of the MCD.

7. On notice, the respondents stated that the petitioner should have sought redressal under Section 347B (f) of Delhi Municipal Corporation Act, 1957⁵ since the only remedy is to file statutory appeal with the Appellate Tribunal against the impugned order dated 25.04.2018. In the same vein, it is stated that the impugned letter of rejection by respondent MCD cannot be said to be in wilful violation of orders dated 30.11.2017 and 26.02.2018, and if the petitioner wishes to contest the merits of such communication, the same cannot be done by filing a contempt petition. The respondents argue that the petitioner is misleading this Court by pressing the claim that the court vide order dated 30.11.2017 directed for sanction of the proposed 3rd floor on the subject property when in contrast the direction was to process the application by petitioner in consonance with building bye-laws and MPD 2021. Since the same has been complied with, the respondent is not in contempt.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

8. Sh. Rakesh Khanna, learned Senior Counsel for the petitioner firstly pointed out that the despite directions of this Court dated 31.01.2023, directing the NDMC/MCD to submit relevant MCD bye-laws pursuant to which sanction for floor wise construction has not been accorded, has not been complied with. Alluding to order dated 30.11.2017, it was urged that the plea of the respondent MCD that floor wise sanction could not be granted was categorically discarded



and in as much as this Court not only did away with the grant of NOC from the other co-owners of the building but also held that different parameters for grant of sanction should be applied in respect of each floor of the building. It was urged that there are vested horizontal rights in favour of the petitioner to seek sanction for constructions of her floor and the respondent officials are unlawfully linking the issue of permissible construction by conjointly reading the parameters with respect of the entire building which is an occupation of different co-owners and over which the petitioner has no control.

9. At the cost of the repetition, it was urged that the petitioner should resort to filing an appeal under Section 347B (f)(o) of the DMC Act and the learned counsel for the respondent submitted that they have already filed two status reports on the record in the form of affidavit dated 04.07.2018 as also dated 22.05.2023 along with photographs. It is reiterated that building plan for addition/alteration had been sanctioned vide File No.70/B/KBZ/2006/75 dated 01.09.2006 for construction of ground floor, 1st floor and 2nd floor over a plot area of 122.15 sqm with permissible ground coverage and FAR @ 66.66% and 200% respectively, which is in accordance with permissible coverage as per the MPD 2021 and for the reasons stated in the letter dated 25.04.2018, sanction cannot be accorded.

ANALYSIS AND DECISION:

10. Having given my thoughtful consideration to the submissions made by learned counsels for the parties and on perusal of the record, this Court is unable to be persuaded that the officials of the respondent

⁵ DMC Act



MCD are not in contempt or that they have exercised their powers bonafidely in passing the impugned order dated 25.04.2018.

11. The CC Act envisages a civil contempt which should demonstrate a wilful disobedience of a decision of the Court. The discretion given to the court is to be exercised for maintenance of the dignity of the court and majesty of law. Avoiding a long academic discussion, in the cited case of **Dr. U.N. Bora, Ex. Chief Executive Officer & Ors. v. Assam Roller Flour Mills Association & Anr.**⁶, after examining a plethora of case law on the subject, it was stated that: -

“Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. **“Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom.** It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. **The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part.** Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

{bold letters emphasized}

⁶ (2022) 1 SCC 101



12. It is also well ordained in contempt jurisprudence that the Court has to consider the direction issued in the judgment or order. In the instant matter, based on the decision in the case **Harish Bajaj (supra)**, which judgment elaborated on the subject law, there were categorical directions that the representation of the petitioner shall be considered as per the law. The ratio of the cited case was unequivocal that floor-wise sanction is permissible in law. There was no ambiguity in the directions passed.

13. Viewed from the said legal compass, *ex facie*, the reasons advanced by the officials of the respondent in their rejection letter dated 25.04.2018 are wrong and false, and evidently scant regard has been accorded to the directions of the Court. Merely because an efficacious remedy would be available in the form of an appeal under the DMC Act, the jurisdiction of this Court under the CC Act, would not cease. In the case of **Maruti Udyog Ltd. v. Mahinder C. Mehta & Ors.**⁷, it was held that irrespective of whether or not a decree is executable, the question to be considered by this Court in determining whether a case for contempt has been made out was, whether, the conduct of the contemnor was such as would make a fit case for awarding punishment for contempt of court.

14. In the instant matter, the respondent officials manifestly committed mischief, which is exemplified not only from their letter dated 25.04.2018, but also from the tone and tenor of the two status reports-cum-affidavits dated 04.07.2018 and 22.05.2023, which

⁷ (2007) 13 SCC 220



ostensibly amounts to throwing challenge to the merits of the order dated 30.11.2017. The respondents have not cared even to respond to letter dated 08/09.05.2018 and the manner in which the representation of the petitioner has been dealt with, leaves much to be desired as it is but obvious that they have in their possession the documents which were referred in their rejection letter dated 25.04.2018. Neither did they bother to call upon the petitioner to submit such documents afresh nor was she afforded a hearing.

15. To my mind, it is too late in a day to canvass the point that a remedy lies under Section 347B (f) of the DMC Act. This Court is not oblivious of the ground situation as to rampant unauthorized construction allowed by the official of the MCD under their very noses and ill motivated selective applications of laws thereby harassing and tormenting innocent people. The petitioner is one such lady who wants to raise construction as per law and her legitimate expectations have been dealt with a death blow. The respondents officials are expected to discharge their duties in a manner which inspires confidence of the people. The manner in which the impugned rejection letter dated 25.04.2018 is couched demonstrates complete lack of sincerity, honesty and fairness. There is no case law brought to the notice of this court that floor-wise sanction is not permissible in Delhi. In light of the above, their status reports-cum-affidavits dated 04.07.2018 and 22.05.2023 which seek to re-agitate the issues settled vide order dated 30.11.2017 must be discarded in *toto*.

16. Learned counsel for the respondents in her submissions has



relied upon decisions in **Abhendra Kumar Jain v. B.K. Gupta**⁸ and **Jhareswar Prasad & Anr. v. Tarak Nath Ganguly & Ors.**⁹, so as to buttress the point that there has been no contumacious or wilful disobedience on the part of the officials of the MCD and also to put weight to the plea that the Court cannot, in the guise of jurisdiction, grant substantive relief not covered by the order/judgment, which is subject matter of contempt proceedings.

17. I am afraid that both the cited cases are clearly distinguishable on the facts for the reasons stated above. At the cost of repetition, there is a clear attempt by the respondent officials to go beyond the order dated 30.11.2017 and they have not cared to give effect in letter and spirit to the directions passed by this Court.

18. Therefore, I have no hesitation in holding that the respondent officials have brazenly and audaciously not complied with the letter and spirit of the directions passed by this Court dated 30.11.2017. Five long years have gone by and the respondent officials force the petitioner *back to square one*. Leaving aside the two years of COVID-19 Pandemic period, the respondents have unreasonably delayed the entire decision making process. This Court finds the respondents guilty of committing contempt of the directions of this Court.

19. Hence, notice be issued to the respondent official to show cause as to why they should not be punished for committing the contempt of the directions of the Court dated 30.11.2017. They are directed to appear before this Court on 16.01.2024 for a hearing.

⁸ 108(2003) DLT 734

⁹ (2002) 5 SCC 352



20. In the interregnum, the respondents are directed to review the order dated 25.04.2023 and consider the reply of the petitioner dated 08/09.05.2018, and pass a reasoned order after affording her, or her authorised representative an effective hearing. This whole exercise be conducted on or before the next date of hearing, for which a status-cum-compliance report be filed on or before the next date of hearing.

21. Copy of this order be given *dasti* under the signatures of the Court Master to the learned counsel for the respondent officials for necessary compliance.

22. Re-notify on 16.01.2024.

DHARMESH SHARMA, J.

DECEMBER 13, 2023

Sadique/sp