



2024:DHC:7071-DB



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

+ LPA 910/2024, CM APPL. 52446/2024, CM APPL. 52447/2024,
CM APPL. 52448/2024, CM APPL. 52449/2024

ROHIT CHAUHANAppellant
Through: Mr. Parveen Kumar, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI & ANR.Respondents

Through: Mr. Manu Chaturvedi, Standing
Counsel for MCD.

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Date of Decision: 09th September, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present appeal has been filed under Clause X of the Letters Patent Act, 1866, seeking prayers to quash impugned judgement dated 28th August, 2024, passed by the learned Single Judge of this Court dismissing the underlying writ petition bearing W.P.(C) 11844/2024 titled as "*Sh Rohit Chauhan versus Municipal Corporation of Delhi & Anr.*" and also to

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declare the circular dated 21st July, 2014, issued by respondent-MCD, prohibiting sub-division of plot *w.e.f.* 08th February, 2007 as *ultra vires* the Constitution of India, 1950, with a further prayer to quash the impugned notice dated 01st July, 2024, issued under Section 338 of Delhi Municipal Corporation Act, 1957(for short “*DMC Act*”), seeking to revoke the sanction of Building Plan no. 10079074 dated 20th October, 2020.

2. It is the case of the appellant that in January 2020, he claims to have become the owner of the property admeasuring 105 sq.yds. bearing Property No. 79 (front side), Rajpura, Gurmandi, Delhi-110007 (hereinafter referred to as “*the subject property*”) *vide* the gift deed dated 13th January, 2020 from his father. Subsequently, the appellant claims to have applied for and got the building plan sanctioned on 20th October, 2020, under SARAL SCHEME *qua* entire 105 sq. Yds. under him by complying with all the rules, regulations and Bye-laws notified under DMC Act, 1957.

3. Mr. Praveen Kumar, learned counsel for the Appellant states that the Deputy Commissioner of the respondent-MCD, in collusion with one extortionist and land grabber namely, Mr. Dinesh Kumar, had issued a show cause notice dated 01st July, 2024, under Section 338 of DMC Act, for revocation of building plan of the subject property sanctioned by the respondent-MCD. He states that in the show cause notice, it is falsely alleged that the appellant had got the building plan sanctioned by playing fraud and misrepresenting the facts. He states that a suitable reply dated 19th July, 2024 was submitted by the appellant. He further submits that on 05th August, 2024, the appellant attended the personal hearing before the



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Competent Authority whereby he was served with the impugned circular dated 21st July, 2014 (hereinafter referred to as “*impugned internal circular*”), and was asked to produce the documents to show compliance of the said circular. He states that it is at that stage, the appellant was made aware, for the first time, that the division of plot after 08th February, 2007, is barred under the said impugned circular. He states that the proceedings under the said show cause notice are pending adjudication before the competent authority.

4. He states that under the garb of Gazette Notification dated 17th January, 2011, issued by DDA(hereinafter referred to as “*DDA Regulations, 2011*”), the respondent-MCD had further issued an internal circular dated 21st July, 2014, prohibiting the sub-division of plot *w.e.f.* 08th February, 2007. He states that the internal circular dated 21st July, 2014 having not been notified in the Gazette, has no force of law. He states that the said internal circular being devoid of any legal sanctity, violates the mandate under Article 13 of the Constitution of India. By referring to Clause 3(a) of Article 13 of the Constitution, he submits that a circular issued internally by a department, ostensibly for its own consumption, cannot be deemed to be “*law*” as defined in the said clause. On that premise, he states that the said circular on that account be declared as unconstitutional.

5. He also assails the impugned circular on the premise that the same violates the provisions of the Transfer of Property Act, 1872, the Hindu Succession Act, 2006, and Article 300A of the Constitution of India. He



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states that by mere internal circular, the legitimacy whereof, is doubtful, substantive rights accruing to the appellant on account of the aforesaid substantive laws, cannot be eroded or done away with. He states that the impugned circular, apart from the aforesaid question on the legitimacy, is also hit by the Doctrine of *lex non cogit ad impossibilia*.

6. He also states that once the appellant has been granted the approval/sanction of the building plan on 10th October, 2020, under the SARAL Scheme *qua* the entire 105 sq. yds., after due compliance with all the rules and regulations, the respondent-MCD could not have proceeded to issue Show Cause Notice seeking revocation of such sanctioned plans predicated on the impugned internal circular which was not in public domain.

7. He states that the learned Single Judge while dismissing the underlying writ petition grossly overlooked the fact that the challenge to the *vires* of the impugned internal circular could have only been laid before a Constitutional Court under Article 226 of the Constitution. On that basis, he states that the reasoning of the learned Single Judge dismissing the writ petition predicated on the pendency of the proceedings before the Competent Authority is erroneous and flawed. He states that the impugned judgement be set aside and the matter remanded to the learned Single Judge to decide the constitutional validity of the said impugned circular.

8. By referring to the DDA Regulations, 2011, particularly to clause (iii) of Regulation 3, he states that the language suggests that there is no prohibition of subdivision even beyond the cut-off date of 08th February, 2007. He states that if an individual fulfils the conditions prescribed in



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Clause (iii) of Regulation 3, the said sub-division is permissible. He further states that since the appellant had fulfilled all the conditions prescribed in the said clause, the sanction of his building plan is well within the regulations and cannot be revoked. Premised on this interpretation, he states that the recognition of the sub-division of plots in the Village Abadi areas etc. which occurred prior to 08th February, 2007, is automatic. On that purported logic, he further states that post 08th February, 2007, an individual only had to fulfil the conditions prescribed under clause (iii) of Regulation 3 for recognition of subdivision.

9. He states that both on facts and on law, the learned Single Judge has committed an error in dismissing the writ petition.

10. *Per Contra*, Mr. Manu Chaturvedi, learned Standing counsel for the respondent-MCD, vehemently contends that the learned counsel for the appellant has neither been able to point out nor able to show or place on record any material to demonstrate that the said cut-off date as mentioned, suffers from the vice of unconstitutionality. He further submits that the said cut-off date enumerated in the DDA Regulations, 2011, is in consonance with the one stipulated in the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, which is neither questioned nor challenged by the appellant.

11. In the same breath he states that the show cause notice so issued to the appellant is premised upon the Gazette Notification dated 17th January, 2011 and not on the said internal impugned circular of the Respondent-MCD. In furtherance thereof, he submits that even the MCD Circular does



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not lay down anything other than or contrary to and is only a reiteration of the Regulations issued by the DDA for consideration of such subdivision of plots vide the said notification. Failing to challenge the said DDA Regulations, 2011, in the first place, he submits that the appellant cannot be permitted to challenge the impugned circular herein.

12. He further submits that, even on merits, though the building plan was sanctioned under the SARAL scheme, but later on, the respondent MCD has while carrying out inspection and finding certain irregularities, sought for the documentary evidence from the appellant in support of compliance of the said DDA Regulations. He further submits that not being satisfied, the appellant herein was issued the Show Cause Notice dated 01st July, 2024 under Section 338 of the DMC Act. He states that, in any case, the appellant is entitled to represent his case and file all the relevant documents thereto in the proceedings pending before the Competent Authority.

13. This Court has heard the arguments of Mr. Praveen Kumar learned counsel for the appellant and Mr. Manu Chaturvedi, learned Standing Counsel for the respondent MCD, closely examined the records of the case, particularly the Gazette Notification dated 17th January, 2011, promulgating the said DDA Regulations.

14. The fundamental flaw in the case and submissions of the appellant is that though the appellant has assailed the constitutionality of the impugned internal circular dated 21st July, 2014 of the respondent-MCD, yet has not raised any challenge to the *vires* of the DDA Regulations dated 17th January, 2011 notified by the DDA on this subject. There is no doubt that



the impugned internal circular is entirely based upon the said DDA Regulations, 2011, particularly, Regulation 3, sub-regulation (iii). To appreciate the issue, it would be appropriate to extract Regulation 3 of the said DDA Regulations, 2011 hereunder:

“3. BUILDING REGULATIONS

Building Plans in Special Area, Unauthorized Regularized Colonies and Village abadis Rural/Urban will be considered only for the plots which form part of approved / notified Layout Plan of the Area by the Competent Authority. The Area in respect of which there is no *approved Layout Plan shall be governed by the provisions of the Master Plan / Zonal Development Plan. This shall be the responsibility of the residents/ RWA to prepare layout plan and get it approved from the local body. All existing exemptions with respect to sanctioning of building plans in the village abadis will cease to exist from the date of notification of these regulations.

i) No. of Dwelling Units (DUs.), FAR, height of building, basement and other conditions shall be as per MPD-2021 norms for residential plotted development. However full Ground Coverage will be permissible and Setbacks will not be insisted upon. (Refer para 4.4.3 A of MPD-2021)

ii) At the time of submission of application for sanctioning of the Building Plans, the ownership documents and other affidavits etc. shall be in conformity with the BBL / to the satisfaction of the Local Body. (Refer compendium separately prepared by MCD)

iii) In Village abadis, Special Areas and Unauthorized Regularized Colonies, Sub-Division that have taken place upto 08.02.2007 may be recognised provided that if there are more than one building in one residential plot, the sum of the built up area and ground coverage of all such buildings, shall not exceed the built up area and ground coverage permissible in the undivided plot.

This is subject to the condition that :

- **The area of sub-division is not less than the minimum area (32 sqm.) prescribed in MPD-2021.**
- **Should have access from the public road/street.**



- *Documentary evidence of sub-division existing upto 08.02.2007 is submitted with the application for sanctioning of layout plans and building plans to the local body.”*

(Emphasis Supplied)

15. A plain reading of the aforesaid regulation clearly stipulates the conditions which are to be fulfilled for the purpose of recognition of the sub-division of plots which have occurred upto the cut-off date, i.e., 8th February, 2007. Another way of looking at it is that in case any sub-division of plot occurs after the cut off date, i.e., 8th February 2007, no recognition of such sub-division of plot is permissible.

16. It is admitted by the appellant that he had applied for sanction of the building plan apropos his plot under the SARAL Scheme which too was accorded by the Competent Authority. It was only after the inspection was conducted by the respondent-MCD that certain irregularities and alleged sub-division came to its notice. Consequent thereto, the show cause notice dated 01st July, 2024, was issued asking the appellant to answer as to why the sanctioned building plan be not revoked in view of its impugned internal circular.

17. The appellant himself is relying upon the Notification dated 17th January, 2011, of the DDA bringing into force the Regulations in respect of recognition of the sub-division of plots etc. According to the appellant, the sub-division of his plot is squarely covered by Regulation 3(iii) on the assertion that he fulfils all the conditions prescribed therein. The appellant also asserted that there is no embargo upon the sub-division of plots post



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2007, subject to fulfilment of the conditions prescribed. His specific argument being that what has now been prescribed by the Regulations was automatic prior to the cut-off date, that is, 8th February, 2007.

18. The aforesaid submission is flawed. As held above, there is no embargo for recognition of sub-division of plots, if the same occurred prior to the cut-off date, provided the pre-conditions stipulated in Regulation 3(iii) are fulfilled. In case, the conditions are not fulfilled or satisfied, no recognition of such sub-division is permissible. That is the plain meaning of Regulation 3 (iii) of the Regulations dated 17th January, 2011. Thus, in case the appellant does not fulfil such conditions, it cannot be submitted that the sanction of building plans is proper. This issue, initiated under the show cause notice, is stated to be pending before the Competent Authority and thus, it is considered appropriate not to record a finding in that regard, lest it affects the rights and contentions of the parties.

19. So far as the challenge to the constitutionality of the impugned internal circular is concerned, this Court has not found any ground to infer any such vice. After examining the Regulation 3 (iii) of the DDA Regulations, 2011, and the impugned internal circular, we are of the considered opinion that the impugned internal circular only reiterates what is already notified under the Gazette Notification dated 17th January, 2011 and is neither a separate notification nor an independent standalone document, *vires* whereof need to be tested. Moreover, admittedly, the appellant has not challenged the *vires* of the Regulations dated 17th January, 2011 which are the principal provisions on recognition of sub-



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division of plots. In the absence thereof, this Court on that score too, does not find any reason, much less any valid or cogent reason, to entertain the present appeal.

20. In view thereof, the present appeal along with pending applications is dismissed, however, without any order as to costs.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 09, 2024/rl

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