

Harbans Lal Khanna & Ors Plaintiff ... vs South Delhi Municipal Corporation" ... on 28 June, 2022

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 9630/2022

HARBANS LAL KHANNA & ORS PLAINTIFF

Through: Mr. Rajat Aneja & Mr. Ri
Advocates.

versus

M.C.D

..... RE

Through: Mr. Mukesh Gupta, Standi
with Mr. Mayank Ahuja, A

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 28.06.2022

1. Writ Petition under Articles 226 and 227 of the Constitution of India has been filed for issuing appropriate directions for restraining the respondent MCD from taking coercive action, either by way of demolition or otherwise in respect of the property bearing no. A-152, Shankar Garden, New Delhi-110018 comprising of the First Floor, Second floor and the Third Floor till the disposal of the Appeal bearing no. 248/2022 titled "Harbans Lal Khanna and others Vs. South Delhi Municipal Corporation", pending before the Appellate Tribunal, Municipal Corporation of Delhi, Tis Hazari Courts, Delhi.

2. The present petition has been filed since the Appellate Tribunal, MCD is not available on account of the summer vacations and urgent orders are required in this matter.

3. It is stated that the respondent-MCD which is an instrumentality of State has failed to discharge its statutory duties and obligations and has started demolition suddenly in the morning of 27.06.2022 on the basis of an Order dated 25.04.2022 revoking the Regularization Plan of the property in question.

4. It is asserted that the regularization in respect of the unauthorized construction on the Third Floor of the property in question was allowed vide order dated 01.02.2022. However, the

respondent revoked the Regularization Plan vide Order dated 25.04.2022 on the premise that while seeking regularization of the said property, the petitioners concealed the factum of the pending suit for partition bearing no. C.S. no. 185/2019, titled " Durga Dass Khanna Vs. Harbans Lal Khanna and others" pending before the Court of Learned Additional District Judge, Dwarka Courts, Delhi for the first floor of the said property. It is stated that even if allegations made by the petitioner in the said suit are taken to be true, even then the petitioner no. 1- Harbans Lal Khanna remains the co-owner to the to the extent of 1/5th Share in respect of the First Floor and there is no dispute whatsoever in respect of the other floors of the property. The ground floor and the first floor of the property have already been regularized vide File no. 963/B/WZ/07 way back on 26.11.2007 by depositing a sum of Rs. 45,488/- towards the regularization charges with the respondent and the same has never been challenged by the respondent before any Authority. The respondent has illegally passed the Order of Revocation dated 25.04.2022 on the basis of the alleged dispute with regard to the legal status of the First Floor of the property in question.

5. The petitioner No. 3- Jai Khanna is residing on the Third Floor of the property in question, which is owned by his father, i.e. petitioner no. 1 who has been paying the property tax and electricity bill qua the petitioner No. 3- Jai Khanna's occupation. The respondent has initiated demolition proceedings qua Third Floor on the premise that the Third Floor is lying vacant, which is against the law.

6. It is further submitted that taking advantage of the Appellate Tribunal not presiding due to ongoing summer vacations, the respondent has proceeded to start the demolition in the property in question despite the pendency of the appeal bearing no. 248 of 2022 titled " Harbans Lal Khanna and others Vs. South Delhi Municipal Corporation" under Section 347-b (1)(h) of DMC Act, 1957 challenging the Order of Revocation of the Regularization Plan.

7. It is further submitted that the Appeal was taken up for hearing on 10.05.2022 and thereafter, the notice was issued to respondent to file the Status Report. The Status Report was filed by the respondent on 01.06.2022, and the matter is now fixed for 26.07.2022 for final hearing.

8. It is further submitted that the petitioner had pressed for stay application under Section 151 CPC as the threat of demolition of the said property in question was looming large, which is pending consideration. The learned Appellate Tribunal had verbally apprised that since no Notice for demolition has been issued, the appeal would be heard finally on the adjourned date.

9. It is claimed that the MCD could not have proceeded with demolition without giving any Notice or passing a formal demolition order. A prayer is therefore made that the respondent may be restrained from taking any coercive action either by way of demolition or otherwise, in respect of the property in question till the disposal of the appeal by the learned Appellate Tribunal, MCD.

10. Issue Notice. Notice accepted by the learned counsel for the respondent.

11. Learned counsel for the petitioner has submitted that the regularization of the ground floor and the first floor was finalized way back in the year 2007 which was never under challenge. The

regularization plan is essentially in respect of the Third Floor which was allowed and accepted vide Order dated 01.02.2022. The sanctioned plan of the entire property had to be submitted for regularization of the Third Floor since it is one property. It is further submitted that the ground floor of the property was sold to the third person while the second floor was willed to petitioners no. 2 and 3 who are sons of petitioner No. 1, by the father of petitioner no.1

12. The brother of the petitioner No. 1 who was irked by bequeathing of the first floor in the property to petitioner Nos. 2 and 3, and in connivance with the owner of the ground floor, made a complaint to the MCD for revocation of the regularization plan.

13. Learned counsel for the petitioner has submitted that there was no mis-declaration in the Form submitted for regularization of the plan of the property in question. The petitioner No. 1 had indicated that there was no litigation pending in respect of the property in question since the subject matter for regularization, was the Third Floor for which there is no litigation and the petitioner No. 1 is the owner about which, there is no dispute. The brother of the petitioner has filed a partition suit in respect of the first floor challenging the Will executed by the father of the petitioner No. 1 in favour of his two sons- petitioner Nos. 2 and 3. Technically, there is no litigation pending in respect of the Third Floor. There was no mis- declaration and therefore, the Revocation Order dated 25.04.2022 is illegal and has been challenged by way of an Appeal before Appellate Tribunal, MCD. The Status Report had been called from the respondent and since there was no Show Cause Notice or Demolition Order had been made; the application for interim stay is still pending before the Tribunal. It is submitted that there is no Demolition Order ever served upon the petitioner and the alleged act of the respondent to demolish the Third Floor is illegal. It is further submitted that on account of the summer vacations the Appellate Tribunal is not in session, thereby compelling the petitioner to approach this Court for interim protection by way of the present writ petition.

14. Learned counsel for the respondent has argued that though a Regularization Plan was sanctioned vide order dated 01.02.2022, but because the petitioner had failed to disclose about the pending litigation in respect of the First Floor of the property in question, the regularization plan was revoked vide order dated 25.04.2022. The Show Cause Notice and Demolition Order has already been made and the demolition was sought to be carried out in accordance with the law.

15. The learned counsel for the respondent on being specifically questioned, submitted that all the relevant information in regard to the demolition is in the requisite file which has already been submitted before the Appellate Tribunal, MCD. He has submitted that since Appellate Tribunal, MCD has already seized of the matter and has not granted any interim protection to the petitioner despite hearing the matter on three dates, no relief is made out in favour of the petitioner.

16. Submissions heard.

17. The petitioner has challenged the revocation of Regularization Plan by way of an Appeal before the Appellate Tribunal, MCD which is admittedly pending and is fixed for final hearing on 26.07.2022. According to the petitioner, no Show Cause Notice or Demolition Order has been made till date despite which the officials of the respondent had come to the premises for carrying out the

demolition on 27.06.2022. The respondent had submitted a Status Report dated 01.06.2022 before the Appellate Tribunal, MCD wherein it has been stated that since Regularization Plan has been revoked by the orders of the Competent Authority, the construction has been booked by the department vide file no. EE(B)-I/WZ/UC/21/355 dated 04.10.2021 that is unauthorized construction of the Third Floor, which is being treated as unauthorized and accordingly action against the unauthorized construction shall be taken as per the provisions of DMC Act.

18. While learned counsel on behalf of the respondent had asserted that Show Cause Notice and Demolition Orders have been duly made in this case, this fact is seriously disputed by the petitioner. There is no mention whatsoever in the Status Report either of the Show Cause Notice or of the Demolition Order. Rather a reference has been made to the order dated 04.10.2021 when the property was allegedly booked for unauthorized construction. The Order dated 04.10.2021 is prior to the sanction plan or the revocation of the regularization plan. The learned counsel for the petitioner has rightly stated that no demolition can be carried out without first serving a Notice upon the petitioner.

19. In the present circumstances, considering that the Appellate Tribunal, MCD is not sitting on account of the summer vacations and no Show Cause Notice or Demolition Order has been placed on record or mentioned in the Status Report, interim protection is granted to the petitioner and respondents are restrained from carrying out any demolition till 07.07.2022. The petitioner is at liberty to seek the protection or to press his application for stay which may be considered by the learned Appellate Tribunal, MCD as per the law.

20. Nothing stated herein is an expression on the merits of the case and the Appellate Tribunal, MCD shall be at liberty to decide the same uninfluenced by any observations made in this order.

21. The petition is accordingly disposed of.

NEENA BANSAL KRISHNA, J (VACATION JUDGE) JUNE 28, 2022/PA