

Delhi High Court

Municipal Corporation Of Delhi vs M/S Holistic Farms Pvt. Ltd. on 5 May, 2010

Author: Madan B. Lokur

* HIGH COURT OF DELHI : NEW DELHI

+ LPA No. 268/2003

Judgment reserved on: April 16, 2010

% Judgment delivered on: May 05, 2010

Municipal Corporation of Delhi
Through its Commissioner
Town Hall
Chandni Chowk
Delhi.

...Appellant
Through Ms. Madhu Tewatia with Ms. Sidhi
Arora, Advocates.

Versus

M/s Holistic Farms Pvt. Ltd.
4, Pamposh Enclave,
New Delhi - 110 048.

...Respondent

Through Mr. Nageshwar Pandey with Mr. Anup Kumar Sinha, Advocates.

Coram:

HON'BLE THE ACTING CHIEF JUSTICE HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported Yes in the Digest?

MADAN B. LOKUR, ACJ The Municipal Corporation of Delhi (the Corporation) is aggrieved by an order dated 23rd October, 2002 passed by a learned Single Judge in WP (C) No. 7697/2000. According to the Corporation, the learned Single Judge erred in directing release of the building plans of the Respondent even though they were not in conformity with the building bye-laws. We agree with the Corporation that the building plans were sanctioned conditionally and the crucial date when the building plans were considered, the building bye-laws relied upon were not operative. Therefore, the Corporation had no option but to reject the building plans submitted by the Respondent.

2. At the outset, we may state that the view canvassed by the Corporation in the writ petition before the learned Single Judge is quite different from the view placed before the learned Single Judge in the review petition and also before us. We have proceeded on the basis of the view canvassed before the learned Single Judge in the review petition and also before us.

The facts:

3. The Respondent is the owner of a plot measuring 1.029 hectares in village Rajokari, Tehsil Vasant Vihar, New Delhi. The building bye-laws applicable to the area were published by a notification dated 23rd June, 1983. The Master Plan for Delhi was later amended by a notification dated 23rd July, 1998 by virtue of which the maximum coverage and height of dwelling units for farm houses such as that of the Respondent was increased. However, and this is important, the building bye-laws were not correspondingly changed or modified in respect of farm houses, which is what we are concerned with. Learned counsel for the Corporation submitted, in the alternative, that the legal position remains the same even if the building bye-laws were modified or deemed to have been modified.

4. In order to take advantage of the increase offered, the Respondent submitted an application to the Corporation on or about 17th April, 2000 for constructing a dwelling unit on its plot as per the norms laid down in the Master Plan for Delhi (as amended on 23rd July, 1998). The application contained all the requisite information and documents and was duly processed by the Corporation. According to the Respondent, the site was inspected, the title of the Respondent was verified and thereafter the building plans were sanctioned on 23 rd May, 2000. The sanction required the Respondent to obtain a No Objection Certificate from the Land Acquisition Department and deposit the levy on account of a change in the floor area ratio.

5. It will be noticed from the above that the "sanction" of the building plans on 23rd May, 2000 was conditional on the Respondent obtaining a No Objection Certificate as well as depositing the necessary charges.

6. A No Objection Certificate was applied for by the Respondent and it was issued by the Additional District Magistrate (Land Acquisition) on 19th June, 2000 and on the same day the Respondent says that he deposited the levy.

The notifications and cause of action:

7. On 7th June, 2000 the Ministry of Urban Development of the Government of India published two notifications being S.O. 557(E) and S.O. 558(E). These notifications were issued before the No Objection Certificate was obtained by the Respondent on 19 th June, 2000 but after the conditional sanction of building plans on 23 rd May, 2000.

8. In the first notification being S.O. 557(E) dated 7th June, 2000 the Ministry of Urban Development (Delhi Division) stated that the building bye-laws stand modified to the extent mentioned in paragraphs 1 to 3 of the annexure to the notification dated 23 rd July, 1998. What we

are concerned with is paragraph 4 of the annexure to the notification dated 23rd July, 1998. This paragraph concerns itself with the size, ground coverage, floor area ratio, height etc. of a farm house. Significantly, the building bye-laws were not modified to incorporate paragraph 4 of the annexure to the notification dated 23 rd July, 1998. The Corporation has placed heavy reliance on this fact. We are not reproducing the contents of the notification dated 23 rd July, 1998 or paragraph 4 of the annexure thereto, since their relevance is limited only to the extent mentioned above.

9. The notification S.O. 557(E) notified all concerned that the building plans to be sanctioned in accordance with the amended building bye-laws (as amended by paragraphs 1 to 3 of the annexure to the notification dated 23rd July, 1998) would be subject to the provisions of the layout plans / service plans already sanctioned, and no such layout / service plans would be amended till arrangements for the provision of augmented municipal services such as water, power, sewerage etc have been made. It is important to note that there is no mention of the sanction of building plans in terms of paragraph 4 of the annexure to the notification dated 23 rd July, 1998 simply because the building bye-laws were not modified to incorporate the changes brought about by the said paragraph 4. This notification S.O. 557(E) dated 7th June, 2000 reads as follows:

"S.O. 557 (E) - In exercise of the powers conferred by Section 349A of the Delhi Municipal Corporation Act, 1957 and Section 260 of the New Delhi Municipal Council Act, 1994, the Unified Building Bye-Laws, 1983 stand modified to the extent as indicated in paras 1 to 3 of the Annexure to this Ministry's Notification of even number dated 23rd July, 1998 as required under Section 483 of the DMC Act and Section 388 of the NDMC Act. The building plans to be sanctioned in accordance with the amended bye- laws would be subject to provisions of the layout plans and service plans already sanctioned, and no such layout/service plans would be amended till arrangements for provision of augmented municipal services such as water, power, sewerage, road widening, circulation, parking, parks (green areas), etc. have been made. No plot- housing can be converted into group-housing."

(emphasis given)

10. By the second notification [S.O. 558(E) dated 7th June, 2000], a modification was proposed to the Master Plan for Delhi to the effect that the planning/development control norms for farm houses would revert to those existing prior to the notification dated 23 rd July, 1998. Objections were invited to the proposed modification, and the deletion of paragraph 4 of the notification dated 23rd July, 1998 from the Master Plan for Delhi. The notification S.O. 558(E) dated 7th June, 2000 reads as follows:

"S.O.558(E) - The following amendments / modifications which the Central Government propose to make in the Master Plan for Delhi 2001 are hereby published for public information. Any person having any objection or suggestion may send the same in writing to the Under Secretary, Delhi Division, Ministry of Urban Development, Nirman Bhawan, New Delhi 110 011, within a period of 30 days from the date of this Notice. The person making the objection or suggestion should also

give his name and address.

Modification:

The Planning / Development Control norms for Farm Houses will be the same as existing prior to the Notification dated July 23, 1998. Para 4 of the said Notification dated 23.7.1998 would stand deleted."

11. Immediately on the issuance of the above notifications, on 8th June, 2000 the Ministry of Urban Affairs & Employment informed all concerned, including the Commissioner of the Corporation, that as required by Section 483 of the Delhi Municipal Corporation Act, 1957, the Unified Building Bye-laws of 1983 stand modified to the extent as indicated. It was clarified that the planning / development control norms for farm houses in terms of the notification dated 23 rd July, 1998 stand suspended with effect from 7th June, 2000. In other words, the position as obtaining prior to 23rd July, 1998 would alone be operative and therefore any building plans submitted for examination and approval should be considered only in the light of the pre-23rd July, 1998 norms. The communication dated 8th June, 2000 reads as follows:

"MOST IMMEDIATE No. K-12016/5/79-DDIA/VA/IB Government of India Ministry of Urban Affairs & Employment (Department of Urban Development) Nirman Bhavan, New Delhi Dated: 8th June, 2000

1. The Chief Secretary, Govt. of NCT of Delhi.
2. The Vice-Chairman, DDA.
3. The Chairperson, NDMC.
4. The Commissioner, MCD.
5. The Land & Development Officer, Land & Development Office.

Subject: - Modification in the Unified
Building Bye-laws, 1983.

Sir,

I am directed to state that the Unified

Building Bye-laws, 1983 stand modified to the extent as indicated in this Ministry's Notification of even No. dated 07.06.2000 as required under Section 483 of the DMC Act, 1957 and Section 388 of the NDMC Act, 1994 (copy enclosed).

2. It may be noted that para 4 of the Annexure of this Ministry's Notification dated 23.7.98 which pertains to the planning / development control norms for Farm

Houses stands suspended with effect from 07.06.2000. The position as obtaining before the notification of 23rd July, 1998 will alone be operative. Any building plans submitted before the local body for examination and approval will be considered in the light of the pre-23.7.98 norms. You are also requested to ensure that a complete list of farm houses along with the area sanctioned and area constructed is sent to the Ministry urgently.

3. The DDA and the local bodies are, therefore, requested to take further action in the matter accordingly.

Yours faithfully, Sd/-

(V.K. Mishra) Under Secretary to the Govt. of India Encl: As above." (emphasis supplied)

12. Effectively, therefore, the position on the ground was that:

Though the Master Plan for Delhi was amended by the notification dated 23rd July, 1998 there was no corresponding amendment in the building bye-laws with regard to farm houses.

Alternatively, even if the building bye-laws were correspondingly amended, their amendment stood "suspended" by the notifications dated 7th June, 2000 read with the letter dated 8 th June, 2000 issued by the Ministry of Urban Affairs and Employment.

On the basis of the notification dated 23rd July, 1998 the Respondent applied for sanction of building plans (well before 7th June, 2000) with an increased coverage and height for a farm house.

The Respondent was granted a conditional sanction for its building plans on 23rd May, 2000 in terms of the notification dated 23rd July, 1998 [though not in terms of the building bye- laws which were either not correspondingly amended or were suspended in respect of farm houses].

Before the Respondent could fulfill the conditions laid down on 23rd May, 2000 the notifications dated 7th June, 2000 were issued. Effectively, therefore, the building plans of the Respondent could not be processed except in accordance with the pre 23 rd July, 1998 building bye-laws.

13. As noted above, it is after these developments that on 19th June, 2000 a No Objection Certificate was issued to the Respondent by the Additional District Magistrate (Land Acquisition) and the charges deposited by the Respondent. According to the Respondent the No Objection Certificate relates back to the sanction dated 23 rd May, 2000 while according to the Corporation, the No

Objection Certificate is meaningless, since the conditional sanction was null and void or inoperative since the corresponding building bye-laws for farm houses were either not amended or if they were amended, then they stood suspended in view of the two notifications dated 7th June, 2000.

14. On 3rd July, 2000 the Respondent was asked to submit fresh building plans in terms of the two notifications dated 7th June, 2000 read with the letter dated 8th June, 2000 issued by the Ministry of Urban Affairs and Employment. A reminder was sent to the Respondent on 18th October, 2000 to the same effect. In the meanwhile, on 7th August, 2000 the Ministry of Urban Affairs and Employment notified the amendments to Master Plan for Delhi as proposed on 7th June, 2000 after considering all the objections received.

15. Aggrieved by these events, including the requirement of submitting fresh building plans, the Respondent filed a writ petition in this Court which was allowed by the learned Single Judge. It was held that the building plans of the Respondent were sanctioned on 23rd May, 2000 but they were unreasonably not released and so the Respondent was entitled to construct his dwelling unit in accordance with those plans.

16. The view canvassed by the Corporation before the learned Single Judge was that in view of the notification dated 7th August, 2000 reverting the Master Plan for Delhi to the pre-23rd July, 1998 position, the application of the Respondent for sanction of building plans stood rejected. The learned Single Judge was of the opinion that since the building plans were sanctioned on 23rd May, 2000 and all the conditions were met by the Respondent on 19th June, 2000 there was no reason for the Corporation to withhold release of the building plans more particularly since the notification dated 7th August, 2000 issued by the Ministry of Urban Affairs and Employment came much after the conditions were met by the Respondent for sanction of the building plans.

Submissions and discussion:

17. Before us, the contention of learned counsel for the Corporation is two-fold: Firstly, that in fact the building bye-laws were not amended to bring them in consonance with the Master Plan for Delhi as amended on 23rd July, 1998. For this, reliance is placed on notification S.O. No.557(E) which clearly mentions that the building bye-laws stand modified to the extent mentioned in paragraphs 1 to 3 of the annexure to the notification dated 23rd July, 1998. There is no mention of an amendment to the building bye-laws in terms of paragraph 4 of the annexure to the notification dated 23rd July, 1998. As mentioned above, we are concerned with paragraph 4 of the annexure to the notification since that deals with farm houses. The contention of learned counsel for the Corporation was that since the building bye-laws were not amended, there was no question of the building plans being sanctioned in accordance with paragraph 4 of the annexure to the notification dated 23rd July, 1998. Secondly, that in any case, by the two notifications dated 7th June, 2000 read with the letter of the Ministry of Urban Affairs and Employment dated 8th June, 2000 there was a brake or suspension on further sanction of building plans in respect of farm houses, such as the one that we are concerned with. Thereafter, the pre 23rd July, 1998 building bye-laws became applicable by virtue of the notification dated 7th August, 2000 once again modifying the Master Plan for Delhi.

18. We may also take note of Section 337 of the Delhi Municipal Corporation Act, 1957 (the DMC Act) which reads as follows:

"337. When building or work may be proceeded with. - (1) Where within a period of sixty days, or in cases falling under clause (b) of section 331 within a period of thirty days, after the receipts of any notice under section 333 or section 334 or of the further information, if any, required under section 335 the Commissioner does not refuse to sanction the building or work or upon refusal, does not communicate the refusal to the person who has given the notice, the Commissioner shall be deemed to have accorded sanction to the building or work and the person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:

Provided that if it appears to the Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Commissioner may withhold sanction of the building or work for such period not exceeding three months as he deems fit and the period of sixty days or as the case may be, the period of thirty days specified in this sub- section shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.

(2) Where a building or work is sanctioned or is deemed to have been sanctioned by the Commissioner under sub-section (1), the person who has given the notice shall be bound to erect the building or execute the work in accordance with such sanction but not so as to contravene any of the provisions of this Act or any other law or of any bye-law made thereunder.

(3) If the person or anyone lawfully claiming under him does not commence the erection of the building or the execution of the work within one year of the date on which the building or work is sanctioned or is deemed to have been sanctioned, he shall have to give notice under section 333 or, as the case may be, under section 334 for fresh sanction of the building or the work and the provisions of this section shall apply in relation to such notice as they apply in relation to the original notice.

(4) Before commencing the erection of a building or execution of a work within the period specified in sub-section (3), the person concerned shall give notice to the Commissioner of the proposed date of the commencement of the erection of the building or the execution of the work:

Provided that if the commencement does not take place within seven days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf."

19. A perusal of sub-section (1) of the aforesaid Section shows that it concerns itself with the grant or deemed grant or refusal of sanction for the construction of a building. Sub-section (2) deals with a situation where the building or work is sanctioned (or is deemed to have been sanctioned) then the person desirous of making the construction shall be bound to do so in accordance with the sanction. These two sub-sections are really not relevant so far as we are concerned. Sub-section (3) deals with a situation where a person has not commenced construction of the building within one year of the sanction. In that event, the applicant must apply for a fresh sanction. Sub-section (4) stipulates that a person intending to make a construction shall notify the proposed date of commencement of construction.

20. As far as the present case is concerned, the admitted position is that the Respondent did not begin the construction [sub-section (3)] nor did the Respondent give any notice for commencement of construction at any time [sub-section (4)] after the conditional sanction granted on 23rd May, 2000. Therefore, even if it is assumed that the Respondent had been sanctioned the building plans, the effect thereof got nullified with the passage of time because the Respondent neither gave any notice of commencement of construction nor commenced the construction within the time prescribed. The Respondent cannot, therefore, claim any benefit of the conditional sanction.

21. That apart, the more important question required to be answered is whether the Respondent was in fact sanctioned the building plans on 23rd May, 2000 as claimed and what is the applicable law. In our opinion, the Respondent was only accorded conditional approval to the building plans. This cannot be equated with the grant of a sanction. The conditions imposed on the Respondent were to obtain a No Objection Certificate from the Additional District Magistrate (Land Acquisition) and to deposit the levy in accordance with the floor area ratio. Until the conditions were met, it cannot be said that the conditional approval fructified into a sanction.

22. That apart, the building plans were not in conformity with the building bye-laws. It is true that the Master Plan for Delhi was amended on 23rd July, 1998 but no corresponding change was made in the building bye-laws. Therefore, even if the building plans submitted by the Respondent conformed to the Master Plan for Delhi, yet they also needed to be in accord with the building bye-laws - which they were not. It is nobody's case that the amendment in the Master Plan for Delhi as per paragraph 4 of the annexure to the notification dated 23 rd July, 1998 was incorporated in the building bye-laws. In the absence of any incorporation, the Respondent cannot seek to take advantage of the relaxed norms mentioned in paragraph 4 of the annexure to the notification dated 23rd July, 1998. Therefore, the first submission made on behalf of the Corporation must be accepted and it must be held that even the conditional sanction given on 23 rd May, 2000 to the building plans submitted by the Respondent was erroneous because that conditional sanction was based on the relaxed norms given in paragraph 4 of the annexure to the notification dated 23 rd July, 1998 but those relaxed norms were not incorporated in the relevant building bye-laws.

23. Even if it is deemed that the building bye-laws were suitably amended on the amendment of the Master Plan for Delhi, the legal position would not change to the advantage of the Respondent. The reason for this is that before the No Objection Certificate could be obtained, the Ministry of Urban Affairs and Employment (Delhi Division) issued the notifications S.O. 557(E) and S.O. 558(E) both

dated 7th June, 2000 and the letter dated 8 th June, 2000 suspending the final sanction of the building plans, except in accordance with the norms that existed prior to 23rd July, 1998. There is no challenge raised by the Respondent to notification S.O. 557(E) and S.O. 558(E) both dated 7th June, 2000 or to the letter dated 8th June, 2000. In view of the following decisions of the Supreme Court, it must be held that no right had either accrued or vested in the Respondent to have the plans submitted by it approved in accordance with the increased coverage and height as they existed prior to 7th June, 2000. In fact, no right had at all accrued to the Respondent to have the building plans sanctioned in its favour in accordance with the 23rd July, 1998 notification, particularly after 7th June, 2000. At best, it can be argued that the only right that accrued or even vested in the Respondent was for consideration of its building plans in accordance with the extant building bye-laws. In other words, the application submitted by the Respondent could be sanctioned only in accordance with the building bye-laws as they stood on the date of consideration and not otherwise. That consideration took place only after 19th June, 2000 that is after the conditions imposed on 23 rd May, 2000 were met by the Respondent. However, in the meanwhile, the two notifications dated 7th June, 2000 and the letter dated 8 th June, 2000 were issued.

24. In *State of West Bengal v. Terra Firma Investment & Trading Pvt. Ltd.*, (1995) 1 SCC 125, the Supreme Court quoted with approval the following passage from *Usman Gani J. Khatri v. Cantonment Board*, (1992) 3 SCC 455 with regard to the legal right in respect of sanctioned plans. The passage is apposite to the facts of this case and reads as follows:

"In any case the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30.4.1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit."

25. Relying upon *Usman Gani J. Khatri*, the Supreme Court held in *New Delhi Municipal Council and others v. Tanvi Trading and Credit Private Limited and others*, (2008) 8 SCC 765 as follows (in paragraph 39 of the Report): -

"It is well settled that the law for approval of the building plan would be the date on which the approval is granted and not the date on which the plans are submitted."

26. The same view was expressed by the Supreme Court in *Howrah Municipal Corporation and others v. Ganges Rope Co. Ltd. and others*, (2004) 1 SCC 663.

27. Similarly in *Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood and others*, (2007) 11 SCC 40, the Supreme Court held in paragraph 36 of the judgment as follows:

"36. It is now well settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer *res integra*."

28. Reference may also be made to the decision in *Union of India v. Indian Charge Chrome*, (1999) 7 SCC 314. It is said in paragraph 39 of the Report as follows:

"39. In *Union of India v. Indian Charge Chrome*, (1999) 7 SCC 314 yet again this Court emphasised: (SCC p. 327, para 17) "17. ...The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration."

Conclusion:

29. On the basis of the above facts and the decisions referred to, it is quite clear to us that

(a) The building bye-laws were not amended to be in conformity with the Master Plan for Delhi as amended on 23rd July, 1998.

(b) Even if the building bye-laws were deemed to be amended, their operation was suspended on 7th June, 2000 by virtue of the two notifications issued by the Ministry of Urban Affairs and Employment and the letter dated 8th June, 2000.

(c) In any event, the building plans of the Respondent were conditionally sanctioned on 23rd May, 2000.

(d) Though the Respondent met the conditions for release of the building plans on 19th June, 2000 they could not be released in view of the two notifications dated 7th June, 2000 and the letter dated 8th June, 2000.

(e) The law applicable on the date of sanction of the building plans is important. When the building plans of the Respondent were considered on 19th June, 2000 or thereafter, the relaxed norms for farm houses were no longer applicable (assuming they were deemed to be applicable). Consequently, the Corporation had no option but to reject the building plans of the Respondent.

(f) No right had accrued to the Respondent to proceed on the basis of the conditional sanction granted to the building plans submitted. In the absence of any unconditional sanction of building plans, the question of granting permission to the Respondent to make the construction did not arise and, indeed, even the Respondent did not ask for any such permission in terms of Section 337 of the DMC Act.

(g) The Corporation was right in law in asking the Respondent to submit fresh building plans in accordance with the extant building bye-laws.

30. Under the circumstances, we are not in agreement with the learned Single Judge and we hold that the Respondent had only a conditional sanction for its building plans on 23rd May, 2000. The conditions were met by the Respondent only on 19 th June, 2000 that is, after a halt on the application of the amended norms and therefore no right vested in the Respondent to have its building plans sanctioned on the presumption that the notification S.O. 557(E) and S.O. 558(E) both dated 7th June, 2000 did not apply. The Corporation was right in requiring the Respondent to submit fresh building plans in terms of their letters dated 3rd July, 2000 and 18th October, 2000 read with the notifications dated 7th June, 2000 and the letter dated 8th June, 2000.

31. The appeal is allowed and the writ petition is dismissed. No costs.

(MADAN B. LOKUR)
ACTING CHIEF JUSTICE

MAY 05, 2010
dk/ncg

(MUKTA GUPTA)
JUDGE