

Nitin Sehgal Vs Municipal Corporation of Delhi

Court: Delhi High Court

Date of Decision: March 18, 2011

Acts Referred: Delhi Municipal Corporation Act, 1957 â€” Section 345A

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Geeta Luthra and Abhishek Agrawal and Sanjeev Sahay, for the Appellant; Ajay Arora, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

This writ petition has been filed claiming the following reliefs:

(a) Issue writ of mandamus or any other writ, order or direction of like nature restraining the Respondent, its agents, assignees and anyone acting

on their behalf from creating any interference /obstruction in carrying out the business /commercial activities from the property bearing No. 4/8,

Lower Ground Floor, West Patel Nagar, New Delhi-110 008.

(b) Pass such order or further orders that this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case.

2. This Court while issuing notice of the petition directed that the Respondent MCD will not take any action against the property of the Petitioner

and the said order continues to be in force till now.

3. It was the contention of the counsel for the Respondent MCD on the very first day when the present petition came up for hearing that the

present petition is not maintainable in view of the judgment dated 7th December, 2007 in W.P.(C) No. 9112/2007 titled Sh. Nitin Sehgal v. MCD

earlier preferred by the Petitioner.

4. When this writ petition was listed before this Court on 18th April, 2009, the Petitioner sought adjournment on the ground that review had been

filed of the judgment dated 7th December, 2007 (supra). A perusal of the order sheet shows that thereafter adjournments were sought by the

Petitioner from time to time on the ground of the said review of the judgment dated 7th December, 2007 pending.

5. The matter came up before this Court on 15th December, 2010 when again the counsel for the Petitioner sought an adjournment on the ground

of pendency of the review petition. Finding that the Petitioner was enjoying an interim order in this proceeding and that there was no interim order

in the review petition on the basis whereof this petition was being kept alive, this Court asked the counsel for the Petitioner to argue the matter.

6. The counsel for the Petitioner had then contended that the matter having been adjourned earlier on the ground of pendency of the review

petition, arguments could not be heard. This contention was negatived but on the request of the counsel for the Petitioner that he was not prepared

with the arguments, the matter adjourned.

7. The counsel for the Petitioner was heard on 28th January, 2011.

8. The present petition concerns only the user to which the portion of the property No. 4/8, West Patel Nagar, New Delhi in possession of the

Petitioner can be put. The said portion is described by the Petitioner himself as the Lower Ground Floor. However, the Petitioner pleads that his

portion is indeed the ground floor and in the locality in which the property is situated, commercial user of ground floor is permitted. Averring that

the Respondent MCD is not permitting commercial user, this petition has been filed for the reliefs aforesaid.

9. W.P.(C) No. 9112/2007 (supra) was filed by the Petitioner for the relief that the said lower ground floor be treated as the ground floor. In the

judgment / order dated 7th December, 2007 (supra) dismissing the said writ petition it is recorded that it is an admitted position that the

Respondent MCD had permitted / sanctioned the basement, ground, first and second floors in the property; that the Petitioner and the builder had

opted to assign the nomenclature of a Lower Ground Floor to the basement; that the said nomenclature would be of no consequence and the

lowest floor of the property would remain the basement. It was further held that admittedly two and a half feet of the said Lower Ground Floor is

below the ground floor and thus cannot be a part of the ground floor. It was further held that the Petitioner had intentionally violated the

undertaking given and the order passed by this Court in an earlier writ petition being W.P.(C) No. 5886/2000. Accordingly, the writ petition was

dismissed with costs of `30,000/- on the Petitioner.

10. In view of the aforesaid position emerging, it was enquired from the counsels whether there was any demolition order also with respect to the

said property. The counsel for the Respondent MCD stated that not only order for demolition but also for sealing on account of unauthorized

construction in the property has been passed. On further enquiry as to why the same have not been implemented, he responded that the same have

not been implemented owing to the interim order in the present petition.

11. A reading of the present writ petition shows that the same is only concerning the use to which the portion of the property in possession of the

Petitioner can be put and not concerning the demolition action or sealing action if any intended against the property. The interim relief claimed in

C.M. No. 6528/2008 is also to restrain the MCD from obstructing the Petitioner in carrying out commercial activities from the said portion. This

Court while granting interim relief of restraining the Respondent MCD from taking any action could not be deemed to have restrained the

Respondent MCD from implementing demolition and sealing orders which are not subject matter of and not challenged in this petition. The

concerned officials of Respondent MCD have shown laxity, bordering on collusion with Petitioner in, in the garb of interim order in this petition, not

implementing the demolition / sealing order.

12. The counsel for the Respondent MCD then contended that the Petitioner has filed the present petition mischievously after having lost finally

with respect to the challenge to the action against the unauthorized construction and to the sealing action against the property. It was argued that

the present petition is an abuse of the process of this Court.

13. The counsel for the Petitioner denied that there is any demolition or sealing order. However, I find that the Respondent MCD along with its

counter affidavit, and to which rejoinder has been filed by the Petitioner, has at page 10 thereof filed an order dated 28th September, 2000 u/s

345-A of the Delhi Municipal Corporation Act, 1957 of sealing of the said property. It is also found that notices for demolition action with respect

to the property are also annexed to this counter affidavit. In the counter affidavit also it is mentioned that demolition order was passed with respect

to the property. In fact photocopy of the file of the Respondent MCD regarding the demolition action with respect to the property is also annexed

to the counter affidavit.

14. Upon the same being put to the counsel for the Petitioner, he stated that the said orders have already been implemented and thus do not

survive today. The counsel for the Respondent MCD controverts and states that the orders of demolition were only partly implemented and before

the remaining part could be implemented, the Petitioner embroiled the Respondent MCD in litigations and owing where to the orders could not be

implemented.

15. In view of the aforesaid position, it was felt on 28th January, 2011 that before this Court considers the question of user, first there has to be a

lawful building in existence. Further hearing of the petition on the aspect of user was as such deferred with the clarifications that the interim order in

the present petition would not come in the way of the Respondent MCD taking action in pursuance to the demolition and sealing order if any in

existence and in force with respect to the property. Liberty was also granted to the Petitioner to if so deems necessary make any challenge to the

said demolition orders.

16. The Petitioner preferred intra Court appeal being LPA No. 161/2011 against the order dated 28th January, 2011. The Division Bench

disposed of the same with the direction to this Bench to dispose of the writ petition in entirety and directed status quo to be maintained till then.

17. The senior counsel for the Petitioner and the counsel for the Respondent have again been heard.

18. The counsel for the Respondent MCD has stated that MCD has no objection to the commercial user and for which purpose alone the present

writ petition has been filed. It is however contended that since the construction itself is illegal, the question of allowing commercial user does not

arise.

19. The senior counsel for the Petitioner has sought to urge that Respondent MCD has played fraud in the earlier proceedings with respect to

unauthorized construction. However, the present petition being not concerned with the unauthorized construction, and the matter relating to

unauthorized construction having attained finality in the earlier proceedings aforesaid, the said question cannot be gone into in this petition. Suffice,

it is to state that inspite of opportunity given, the Petitioner has not been able to obtain any stay qua demolition of unauthorized construction in any

proceeding pertaining thereto. On the contrary, this writ petition pertaining merely to the issue of user, is being used to save the unauthorized

construction in the property. Such conduct can be nothing but an abuse of the process of the Court.

20. Though the senior counsel for the Petitioner during the hearing did not cite any judgment but has after the hearing handed over copy of the

judgment in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and has also handed over a synopsis of

arguments. Such practice also has to be deprecated. The judgments sought to be relied upon ought to be cited during the hearing. Be that as it

may, I have considered the said judgment and the synopsis of submissions. I reiterate that since the present petition is only qua user and not qua

the unauthorized construction, the arguments in that regard cannot be entertained.

21. The Petitioner, by abusing the process of this Court, having saved the unauthorized construction, while dismissing this petition, the Respondent

MCD is again directed to implement the orders of demolition / sealing, if any, with respect to the unauthorized construction in the property

forthwith. I refrain from imposing any costs.