

## Asha Rani Garg and Others Vs MCD and Another

**Court:** Delhi High Court

**Date of Decision:** May 18, 2012

**Acts Referred:** Delhi Municipal Corporation Act, 1957 & Section 348

**Hon'ble Judges:** Hima Kohli, J

**Bench:** Single Bench

**Advocate:** Akhil Mittal and Mr. Mayank Bansal, for Mr. Rajiv Gupta/petitioner No. 2, for the Appellant; Saroj Bidawat, Advocate for R-1, for the Respondent

### Judgement

Hima Kohli, J.

The present petition was originally filed by Smt. Asha Rani Garg, praying inter alia for quashing the order dated 18.2.2012

passed by the respondent No. 1/MCD u/s 348 of the Delhi Municipal Corporation Act, 1957 calling upon the owners/occupiers of premises

bearing No. BM-2(East), Shalimar Bagh, Delhi, to demolish the building on the ground that the same was in a dangerous condition and was

dangerous to the residents of the area. On 28.2.2012 at the stage of admission, counsel for the petitioner was directed to implead the co-owners

of the subject premises, namely, Mr. Rajiv Gupta, the owner of the ground floor and Mr. Rakesh Kumar Gupta, the owner of the first floor. An

amended memo of parties was also directed to be filed by the petitioner, whereafter, notices were directed to be issued to them.

2. Instead of imploding the aforesaid two persons as co-respondents, an amended memo of parties has been filed by the counsel for the petitioner

impleading Mr. Rajiv Gupta as petitioner No. 2 and Mr. Rakesh Kumar Gupta as petitioner No. 3.

3. Mr. Mayank Bansal, Advocate appears for Mr. Rajiv Gupta and states that his client is a tenant on the ground floor and he had never agreed to

be impleaded as a co-petitioner in the present proceedings and that Ms. Shalini Gupta is the owner of the ground floor of the subject premises and

the petitioner No. 1 is well aware of the said fact but he has intentionally not impleaded her as a co-respondent.

4. Counsel for the petitioner No. 1 is directed to amend the memo of parties by impleading Mr. Rajiv Gupta and Ms. Shalini Gupta as co-

respondents. Needful shall be done within one week.

5. On the last date of hearing, learned counsel for the respondent No. 1/MCD who had appeared on advance copy, had stated that the two

impugned notices, both dated 18.2.2012 were issued by the MCD to the petitioner and the remaining co-owners/occupiers in view of a complaint

received by the local police and forwarded to the respondent/MCD, informing the Department that the subject premises was in a dangerous

condition and the roof of the ground floor was sagging due to the weight of the transmission towers that had been installed by the petitioner on the

roof of the third floor. Learned counsel had further stated that merely because the petitioner had dismantled the transmission towers in question few

days ago, could not be a ground to accept his submission that the structural strength of the building had not been adversely affected due to the

installation of the two towers.

6. In view of the aforesaid submission made by the learned counsel for the respondent No. 1/MCD, it was deemed appropriate to direct the MCD

to depute an Architect to carry out an inspection of the subject premises and assess its structural stability and file a report. Simultaneously, the

petitioner was also directed to file an affidavit as to whether proper permissions had been obtained by him from the competent authorities before

the installation of the transmission towers on the terrace of the third floor of the subject premises and if so, relevant documents in support of the

same were to be enclosed with the affidavit.

7. Now, two affidavits have been filed by the respondent No. 1/MCD. The first one is filed by the Executive Engineer(Civil), MCD wherein, it is

stated that after passing of the order dated 18.2.2012 calling upon the owners/occupiers of the subject premises to demolish the building in view of

its dangerous condition, on 23.2.2012, the petitioner had submitted a report enclosing the structural stability analysis to the Department and the

same was perused, but it was noticed that no precise calculations regarding the load bearing capacity in respect of each floor, had been furnished

with the said report. It is further averred that in order to ascertain the structural safety of the building, the Department had hired the services of a

Structural Engineer who submitted a report to the effect that the front portion of the building is structurally unsafe due to excessive

pressure/loading, as a result of which there is deflection in the beam of the front wall at ground floor, which is beyond the permissible limits. The

floor wise plan of the building has been enclosed with the report of the Structural Engineer, who has recommended erection of a proper support of

permanent nature in the front wall of the drawing room and the staircase at all floor levels.

8. In view of the aforesaid report received by the MCD, a letter dated 4.5.2012 has been issued by the Department to all the occupants of the

building for carrying out the strengthening of the building as recommended by the Structural Engineer within 20 days from the date of issuance of

the aforesaid letter. Copies of the letters dated 4.5.2012 and 9.5.2012 issued by the MCD are enclosed with the affidavit.

9. Another affidavit has been filed by the Executive Engineer(Building-), Rohini Zone, MCD wherein, it is stated that the entire sealing action of the

mobile tower installed on the third floor of the subject premises was done after following the due process of law and subsequently, MCD had

temporary de-sealed the same to enable the petitioner to remove the tower which has since been removed.

10. The petitioner as also Mr. Rajiv Gupta, tenant on the ground floor of the subject premises assure the Court that they shall take immediate

remedial measures to restore the structural strength of the building if the time for doing so is extended.

11. It is deemed appropriate to grant a period of two months to the owners/occupiers of the subject premises to enable them to undertake

necessary remedial measures to restore the structural strength of the building. As the owner of the ground floor of the subject premises is not

before the Court, MCD is directed to issue another notice to Ms. Shalini Gupta for which purpose, learned counsel for Mr. Rajiv Gupta shall

furnish her address, to the counsel for the respondent No. 1/MCD. Respondent No. 1/MCD shall also forward the bill raised on it by the

Structural Engineer to Smt. Asha Rani Garg, who shall deposit the said amount with the MCD within a period of one week from the date of receipt

of such a bill, failing which the said amount shall be treated as arrears of land revenue to be recovered accordingly. It is further directed that the

respondent No. 1/MCD shall not take any coercive steps against the owners/occupiers of the subject premises, for a period of two months from

today to enable them to take remedial measures. However, in case no steps are taken by the owners/occupiers to restore the structural strength of

the subject premises within the extended time, the respondent No. 1/MCD shall be at liberty to take further action in terms of its notice dated

18.2.2012.

The petition is disposed, alongwith the pending applications, while leaving the parties to bear their own costs.