(2019) 09 DEL CK 0544

In the Delhi High Court

Case No : Civil Writ Petition No. 10301 Of 2019

Arvind Chopra APPELLANT

Vs

South Delhi Municipal Corporation RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 142(2A), 338, 347B

Citation : (2019) 09 DEL CK 0544

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Sanjiv Sen, Naresh Gupta, Sayan Ray, Sovmo Palit, Sumit Chander, Dhanesh Relan, Arindam Dey

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. This is a writ petition filed under Article 226 of the Constitution of India seeking appropriate Writ/direction to quash the impugned notice dated 19.06.2019 and the impugned order dated 30.08.2019 passed by the respondent.

2. It is the case of the petitioner that the property No.77/35-B. Punjabi Bagh West, New Delhi was purchased by Mr.Harbans Lal Sehgal in 1962. In 1973 the property in question was sold in portions to different parties. In 1974 MCD sanctioned the building plan of construction in the main house building in the portion of Dr.Rajrani and construction of garage block in the portion of Shri P.G.Ghai. It is pleaded that on 9.6.1983 Assessment and Collection department of MCD allowed the sub-division of the plot bearing No.77/35-B, Punjabi Bagh West. Accordingly the property was subdivided into 77/35-B, admeasuring 1311.11sq.yards and. 77/35-B/1 admeasuring 911.11 sq.yards. The petitioner purchased property No.77/35- B measuring 1311 sq.yards on 5.8.2004. The said property was mutated in the name of the petitioner on 31.08.2004. It was booked for unauthorised construction in 2005. Subsequently the petitioner is said

to have taken steps for regularisation/compounding. The regularisation plan submitted by the petitioner was approved in 2007.

3. On 19.6.2019 a Show Cause Notice was issued which essentially seeks to state that the issue of Sub-Division of the plot has not been informed to MCD and no permission has been taken from MCD. Other allegations are also there.

4. I have heard learned senior counsel for the petitioner. Learned senior counsel for the petitioner has raised the grievance that the impugned Show Cause Notice has been issued almost 36 years after permission of Sub-Division was granted and 12 years after regularisation of the unauthorised construction was granted. He further states that in undue haste the respondents have issued a Show Cause Notice and passed an order which cannot be said to be a speaking order inasmuch as it merely reproduces the contents of the Show Cause Notice. He further states that despite a request for hearing and for seeking copies of relevant documents, no hearing was granted. Copies of relevant documents were also not provided.

5. Learned counsel for the respondent states that the impugned order passed by the respondent dated 30.08.2019 has been passed under section 338 of the DMC Act, 1957 and is an appealable order. Hence, this writ petition would not lie.

6. It is no doubt true that the aforesaid order dated 30.08.2019 is an appealable order. However, the facts of the case do show that the respondent has acted in undue haste. The property in question has been sub-divided in 1973. The contention of the petitioner is that building plans for different portions were also sanctioned thereafter in 1974 or thereabout. On these facts, in my opinion, the respondents were obliged to comply with the principles of natural justice. The facts of the case warrant that a hearing ought to have been given to the petitioner. It is pertinent to provide an opportunity of hearing by the competent authority.

7. Reference in this regard may be had to the judgment of the Supreme Court in the case of Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-I and Anr., (2008) 14 SCC 151 where the Supreme Court held as follows: -

"19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in

addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied.

The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha [(1970) 2 SCC 458])."

8. In this context, reference may also be had to the judgment of the Supreme Court in the case of Kranti Associates Private Ltd. and Anr. vs. Masood Ahmed Khan & Ors., (2010) 9 SCC 496 where the Supreme Court held as follows:-

"25. Referring to the decision of this Court in Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625] wherein it was observed that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, the principles of natural justice are required to be followed and in such an event, although no express provision is laid down in this behalf, compliance with the principles of natural justice would be implicit, the learned Judges held that by virtue of an order under Section 142(2-A) of the Act, the assessee suffers civil consequences and the order passed would be prejudicial to him and, therefore, principles of natural justice must be held to be implicit. The Court has further observed that if the assessee was put to notice, he could show that the nature of accounts is not such which would require appointment of special auditors. He could further show that what the assessing officer considers to be complex is, in fact, not so. It was also open to him to show that the same would not be in the interest of the Revenue."

9. As the impugned order has been passed without compliance of the principles of natural justice, the same is liable to be set aside. I order accordingly. The said order dated 30.08.2019 is quashed.

10. Let the respondents give a hearing to the petitioner on 10.10.2019 at 4:00 PM before the concerned Deputy Commissioner, West Zone, SDMC. The concerned Deputy Commissioner is requested to pass a detailed speaking order giving appropriate reasons for the conclusion to be reached. In case the petitioner is aggrieved by any order passed by the Deputy Commissioner, liberty is granted to the petitioner to file an appropriate appeal under Section 347B of The Delhi Municipal Corporation Act, 1957. In the course of hearing petitioner is free to seek any clarification regarding the allegations made in the Show Cause Notice.

11. The present order is being passed in the peculiar facts and circumstances of the case. It is also passed without prejudice to the rights and contentions of the parties. All issues are left open. The learned Deputy Commissioner is free to pass

a speaking order, as per law, uninfluenced by any of observations made by this court.

12. Petition stands disposed of. All pending applications, if any, also stand disposed of.

13. A copy of this order be given dasti under signatures of the Court Master to learned counsel for the parties.