

(2020) 10 DEL CK 0091

In the Delhi High Court

Case No : Letter Patent Appeal No. 301 Of 2020

Atma Ram Properties

APPELLANT

Vs

NDMC & Ors

RESPONDENT

Date of Decision : 14-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0091

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : J.P.Sengh, Amit Sethi, Naveen Sharma, Tushar Sannu, Ankita Bhadouriya, Kirti Uppal, Aastha Dhawan

Final Decision : Disposed Of

Judgement

D.N.Patel, CJ

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 25876/2020 (exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

LPA 301/2020 & CM APPL.25875/2020 (interim stay)

1. This appeal has been preferred by the original respondent No.3 in W.P.(C) 13839/2019. This appellant (original respondent No.3) is aggrieved by an order dated 1st October, 2020 (Annexure -1 to the memo of this LPA) passed by the learned Single Judge in CM APPL.24548/2020. The main writ petition being W.P.(C) No.13839/2019 and CM APPL. 24548/2020 are still pending.

2. The prayers in the writ petition read as under:

"a. Issue a writ of Certiorari or any other appropriate writ, order or direction thereby quashing the order/letters issued by Respondent no.2 dated 18.12.2019

& 14.02.2019.

b. Issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondent Council to allow the application dated 27.09.2017/28.04.2017 of the Petitioner for carrying out repair/renovation at Property No.5, Scindia House, Connaught Place, New Delhi, the same being in accordance with bye-law 2.14 of the Unified Building Bye Laws, 2016.

c. Award costs to the Petitioner; and

d. Pass any other or further order(s) which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the Petitioners."

3. It further appears from the facts of the case that the original petitioner, who is allegedly a tenant of the premises in question, had preferred an application dated 28th April, 2017 to the New Delhi Municipal Council ("NDMC") seeking therein permission to the following effect:-

"The undersigned wants to carry out following Repairs / Renovation works at above mentioned Premises under Section 2.14 of UBBL 2016.

1. Plastering, Pop and patch repairs.
2. Flooring and Re-flooring.
3. Replacing fallen bricks, stones etc.
4. White Washing, Painting etc.
5. Re-roofing or renewal of roof.
6. Erection or re-erection of Internal Partitions.

The application along with all the necessary documents/Papers/Drawings are being enclosed for your kind consideration please."

4. It further appears from the facts of the case that thereafter, one more application was preferred seeking repairs/ renovation for the following repairs, against which permission dated 27th August, 2020 was granted from Heritage Conservation Committee:-

"i) Restoration & Refurbishment of the built fabric to included conservation/ plastering, cladding and patch repairs.

ii) Re-flooring at Ground floor and Mezzanine Floor.

iii) White washing and Painting as per standards NDMC norms in white.

iv) Water proofing on the Terrace.

v) Erection or re-erection of temporary wooden glass and gypsum board partitions.

- vi) Repair of plaster and painting of interior walls and ceiling in white.
- vii) Column design would be retained but repaired.
- viii) Railing to be retained but painted.
- ix) Installation of light weight false ceiling.
- x) Replacement of Old Sanitary Pipes.
- xi) Opening and Closing windows, Ventilators and Doors opening within the Owner's plot in line with approved NDMC drawing.
- xii) Repair of fallen bricks, stones, pillars, beams etc.
- xiii) Installation of signage on façade. Restoration of façade with compatible materials to ensure Heritage looks of the property are maintained.
- xiv) Painting of exterior facade of building as per standards NDMC norms in white.
- xv) Plumbing."

5. It appears that there are allegations and counter allegations with regard to the permissibility and validity of the application moved by the original petitioner, being tenant of the premises in question, which is denied by the original petitioner.

6. Moreover, it appears from the facts of the case that though tenant has preferred the writ petition being W.P.(C) 13839/2019, the owner of the premises in question was initially not joined as party respondent. Subsequently the owner, who is the present appellant, was impleaded as party Respondent No.3 in W.P.(C) 13839/2019.

7. Meanwhile, the impugned order dated 1st October, 2020 was passed by the learned Single Judge in two applications filed by the owner of the premises in question, who is the appellant before us. The appellant was impleaded as party-respondent No.3 in the writ petition by virtue of the order in CM APPL.4263/2020 (preferred for clarification of order dated 22nd January, 2020). CM APPL.24548/2020 was preferred for stay of permission granted to the tenant (original petitioner) to carry out repair/renovation work in the premises in question. In the stay application, the learned Single Judge issued notice and directed NDMC to examine the matter, particularly with regard to grant of permission to a person who is not the owner of the premises, and file a reply to the application. The matter has been next fixed for hearing on 10th November, 2020.

8. Now, the impugned order dated 1st October, 2020 is being challenged in this LPA by the original respondent No.3 of the writ petition, who is aggrieved by the fact that the learned Single Judge did not grant any ad-interim order in its favour while issuing notice in CM APPL. 24548/2020.

9. It appears from the facts of the case that there are allegations and counter allegations about the ownership of the premises in question and about the nature of repairs and renovations to be done by the alleged tenant. Be that as it may, looking into the facts and circumstances of the case, it appears that the property in question is narrated as Grade-II Heritage Property and, therefore, the permission for repairs/renovation ought to be sought from Heritage Conservation Committee. The application has to be preferred through the municipal council, which in the present case is New Delhi Municipal Council, and therefore it has been directed by the learned Single Judge in paragraph 11 of the impugned order as under:-

"11. The NDMC shall examine the matter, and specifically address the issue raised in the application apropos permission being granted to a person who is not the owner, and file its reply within two weeks."

(emphasis supplied)

10. In view of the aforesaid observations of the learned Single Judge and the directions given to decide the matter in accordance with law after giving adequate opportunity of being heard to the original petitioner as well as to the present appellant (respondent No.3 in the writ petition), all the contentions about the ownership and tenancy, etc. are left open. Instead of deciding all these issues in the present LPA, which arises out of an ad interim order, while the application for stay and the writ petition itself remain pending, it would be appropriate if these issues are decided by the competent authorities in accordance with law. It is made clear that none of the issues raised by the appellant (original respondent No.3) has been finalised by this Court. Heritage Conservation Committee and New Delhi Municipal Council will decide the issue of repair/renovation of the property in question in accordance with law, rules, regulations and Government policies applicable to the facts of the case and on the basis of the evidences on record as early as possible and practicable.

11. If the issue has already been decided after the order of the learned Single Judge dated 1st October, 2020, the same will be pointed out to the present appellant so that the present appellant may challenge the same in accordance with law.

12. Meanwhile, as the validity of the permission granted in favour of the original petitioner is itself in question and is being examined by the concerned authorities, we direct that status quo with regard to the repair/renovations shall be maintained by the original petitioner of the writ petition as well as by the present appellant (original respondent No.3) till Heritage Conservation Committee decides the issues as directed by the learned Single Judge vide order dated 1st October, 2020.

13. Now at this stage, learned counsel appearing for the respondent No.3 in this LPA, who is the original petitioner, upon instructions from the original petitioner, submitted that he seeks to withdraw W.P.(C) 13839/2019 as according to them,

the writ petition has become infructuous.

14. We, therefore, direct the present respondent No.3, who is original petitioner in W.P.(C) No.13839/2019, to prefer an application before the learned Single Judge for withdrawal of the writ petition, which will be decided by the learned Single Judge in accordance with law.

15. With these observations this LPA stands disposed of.