

(1991) 10 DEL CK 0011

In the Delhi High Court

G.R. Ambwani and Others

APPELLANT

Vs

Anand Mohan and Sons etc.

RESPONDENT

Date of Decision : 22-10-1991

Acts Referred:

Citation : (1991) 45 DLT 574

Hon'ble Judges : S.N. Sapra, J

Bench : Single Bench

Advocate : J.M. Sabarwal, R. Sabharwal, R.P. Sharma and S.K. Luthra, for the Appellant;

Judgement

S.N. Sapra, J.

(1) By the present revision petition, petitioners seek to challenge the impugned order dated September 4, 1990, of the learned trial Court, whereby, it has been held that petitioners have prima facie, committed willfull disobedience of the judgment dated February 18, 1989, of the appellate Court, and have rendered themselves liable for civil contempt, under Sections 10, 11 and 12 of the Contempt of Court Act, 1971. By the same order, all the petitioners, were ordered to be summoned for appearance before the Court.

(2) For better appreciation of the contentions, raised in the case, it will be useful to refer to, in brief, the facts and circumstances of the case.

(3) Property No. 1, Ram Kishore Road, Delhi, hereinafter called, the property in question, was previously known, as Woodland Hotel Building. By virtue of an award dated December 20, 1920, made by Mr. Justice Sir Abdul Rehman, the estate of Ram Chand's family was partitioned, amongst other properties. The property in question fell to the share of lala Brij Vallabh and his uncle lala Munshi Lal. In the year 1925. Lala Brij Vallabh expired, leaving behind Shri Brij Mohan and Shri Anand Mohan. his sons and Smt. Vidya Wati. The property, which had fallen to the share of lala Munshi Lal and Brij Vallabh, by virtue of the award, was again pairtitioned, by a deed dated March 8, 1945. The property in question fell

to the share of Shri Brij Mohan and Shri Anand Mohan, sons of late Lala Brij Vallabh. Smt. Vidya Wati did not claim any share in the estate, except maintenance.

(4) Shri Brij Mohan and Shri Anand Mohan, again sub divided between themselves, the property in question, by means of an award, which was made a Rule of the Court, in suit No. 347 of 1969, on January 8, 1970, in the High Court of Delhi.

(5) It appears that the property was again sold in 1958, in favor of lala Ram Saran Dass, who had further sold it to M/s Bishambar Dayal Badri Parshad. It is not necessary to refer to these facts, as the same are not relevant,

(6) Municipal Corporation of Delhi served upon Shri Anand Mohan and sons, (HUF) a notice, thereby, alleging that unauthorised construction had been set up. A suit for permanent injunction was filed in the year 1956, thereby, pleading that no unauthorised construction had been raised. The suit was decreed on December 24, 1959.

(7) THEREAFTER. Shri Anand Mohan and sons (HUF), respondent no. 1 herein, submitted building plans for construction of the superstructure, on the portion, which had come to his share, by virtue of the partition. The plans were finally rejected on December 5, 1984, on seven grounds. According to respondent No. 1. four conditions were complied with. Aggrieved by the decision of the Corporation, respondent no. 1 filed a suit for declaration and permanent injunction.

(8) Municipal Corporation of Delhi, filed the written statement. On the pleadings of the parties, following issues were framed :

1. Whether the suit of the plaintiff is barred by virtue of Section 336 " of the Dmc Act? 2. Whether the rejection of the plan for addition/alteration of the ^ building is legal and within jurisdiction ? 3. Relief. On February 2-2-1986, following additional issues were also framed : 1. Whether the suit is barred by time ? 2. Whether the suit of plaintiff is barred by virtue of Section 332 to 336 of the Dmc Act and whether the suit is bad for non compliance of the provisions of Dmc Act and the building Byelaws made there under?

(9) Shri S K. Kaushik, the learned Sub Judge, decreed the suit of plain tiff.

(10) Municipal Corporation of Delhi preferred an appeal before the District Judge, Delhi.

(11) SHRIV.S.AGGARWAL, the learned Additional District Judge. Delhi, vide judgment dated February 18, 1989. accepted the appeal of Municipal Corporation, on the ground, that the suit, filed by plaintiff, was barred by limitation. However, the learned Additional District Judge, upheld the findings of the trial Court on all other issues.

(12) Thereafter, respondent no. 1 herein, submitted the building plans to

Municipal Corporation of Delhi, for carrying out alterations/additions, at the aforesaid property, in consonance with the judgment of the Court. These building plans were submitted on March 23, 1989 Municipal Corporation of Delhi, vide letter dated April 24, 1989, raised 17 objections thereto. Respondent no. 1 herein, has filed reply to all the objections, which have been reproduced in the application, for initiating contempt proceedings against the officials of the MCD. Aggrieved by the decision of the Municipal Corporation of Delhi, in avoiding to comply with the judgment of the Court, respondent no. I herein, filed an application, under Sections 10, 11 and 12 of the Contempt of Court Act, 1971, for initiating contempt proceedings against certain officials of Municipal Corporation of Delhi.

(13) The persons, named in the application for contempt, filed their reply.

(14) Vide the impugned order, the learned trial Court held that prima facie. Shri G.K. Ambani, Municipal Engineer, petitioner no. I herein, Shri R.C. Chopra and Shri P.K. Khanna, Superintending Engineer and Executive Engineer, petitioners No. 2 and 3 herein, have committed willful disobedience of the judgment dated February 18, 1989, of Shri V S. Aggarwal, Additional District Judge, Delhi.

(15) When, originally the building plans were submitted to Municipal Corporation of Delhi, for sanction, certain objections were raised against the building plans. Aggrieved by the same, respondent no. 1, plaintiff in suit, filed a suit for declaration with consequential relief of permanent injunction, against Municipal Corporation of Delhi. Suit of plaintiff was decreed by the trial Court, after rejecting all the contentions, urged by the Municipal Corporation of Delhi. In appeal, the suit was dismissed, as being time barred. But, the learned First Appellate Court upheld the findings of the trial Court of all other issues.

(16) In my view, petitioner, while dealing with the building plans of respondent no. 1 .after the disposal of the appeal, were under the Impression, may be on account of some legal advice, that, as the suit of the plaintiff had been dismissed, so, they were not bound by the other findings, given by the two Courts. No doubt, in reply to the application, filed by plaintiff for contempt, they raised several objections, but at the same time, it cannot be said that there was any willful disobedience on their part. This aspect has not been considered by the trial Court, while holding that petitioners, prima facie, disobeyed the orders of the appellate Court. In my view, the trial Court ought .to have issued certain directions to the Municipal Corporation of Delhi, to re-consider the building plans, in the light of the findings, given by the two Courts. For this reason. I accept the revision petition and set aside the impugned order, with the following directions.

(17) From the record, it appears that the building plans, originally submitted by the owner, to the Corporation, had been rejected mainly on the grounds that a clear title in land and its single entity, prior to the formation of Mco, was not established; that the applicant was not entitled to claim benefit of Resolution No. 802 dated October, 28, 1964, of the Standing Committee and the proposal

required, approval of lay-out plan, under the provisions of Sections 312 and 313 of the Delhi Municipal Corporation Act, before the plans could be sanctioned. These plans were rejected on September 27, 1982. Respondent no. 1) herein preferred an appeal and, the order of rejection thereof, was conveyed to them by letter dated December 15, 1984. Aggrieved by this rejection, suit for declaration and permanent injunction was filed. The learned Additional District Judge, Delhi, vide his judgment dated February 18, 1989, concluded as under:

"I have not the least hesitation in returning the findings and approving" that of the trial Court that property at No. 1, Ram Kishore Road, Civil Lines, Delhi was inherited by Anand Mohan and Brij Mohan in equal shares in 1925. The Respondent/plaintiff in the face of the aforesaid judgment has the locus standi to file the suit."

(18) Thus, the two Courts upheld that plaintiff (in suit), was the owner of the property in question and had a right, to file the suit.

(19) The Trial Court, as well as, the First Appellate Court, also discussed the question, with regard to application of Resolution No. 802, to plaintiff. It was held that the resolution was binding upon the Corporation and, the building plans, submitted by plaintiff, ought to have been sanctioned by the Corporation. The First Appellate Court thus held :

"It would be total travesty of facts to reject the plans under the provisions which do not apply more so in the facts of the present case. On the contrary, I hardly do emphasise be rein that admittedly in many other similarly situated properties were there and the plans as such were approved. They included property No. A-F (old) Para Vi (New) Ata-Ur-Rehman Lane. This was admitted by Shri R.K. Jain. DW2, witness of the appellant. There was thus, no ground to reject the case of the respondent altogether on different view point and discriminate between different persons. The conduct in this regard of the appellant obviously is not something to be approved of."

(20) Thirdly, the plans were rejected by the Corporation, on the ground, that the proposal, required approval of lay-out plans, under Sections 312 and 313 of the Dmc Act. This question was also dealt with In detail by the learned Appellate Court and it was held :

"The present case in basically dealing with construction of the property and it would be covered by Chapter Xvi of the Dmc Act consisting of "Building Regulations" and, Therefore, I have no hesitation in holding that Sections 312 and 313 of the Act do not come into play in the facts of the present case. The respondent had also rejected the plan in accordance with the provisions of sections 332 to 335 of Delhi Municipal Corporation Act and the Bye-laws made there under."

In other words, a clear finding was given that there was no division of the plot, involved and that lay-out plan was not required to be approved, under Sections

312 and 313 of the Act.

(21) In short, both the Courts below held that Sections 312 and 313 of the-DMC Act, 1957, did not apply; resolution No. 802 dated October 28, 1964 applied; M.C.D. had acted upon the said Resolution and approved building plans of plot No. 8 (old) part 6 Ata-Ur-Rehman Lane. Civil Lines, Delhi; plot No. 4415, ward No. Xiii, Pahari Dhiraj, Delhi and that of plot No. 1/877, East Park Road, Delhi;; that respondent no. I was also the owner of the plot in question and that Municipal Corporation of Delhi should have approved the building plan of respondent no. I and not have laid stress on limitation u/s 478, when appeal to Bpc on deposit of requisite appeal fee had been in practice for several years more particularly when M.C.D. is a statutory body and must treat citizens with an equality.

(22) In my view, it was not open to the Corporation or its officials to raise the aforesaid objections, after the judgment of the First Appellate Court. In other words, it was not open to the Corporation to reject the building plans on the aforesaid grounds as, these questions were already determined by judicial pronouncement. It was clearly held that Sections 312 and 313 were not applicable as, there was no sub-division of plot.

(23) In fact, the Corporation being a statutory body, was left with no option but to sanction the building plans. The officials of the Corporation, ought to have respected the decision. But, instead of doing so, not only the previous objections were again raised, but many other objections were also raised. The objections raised by the Corporation, were held by the Court, as not tenable. In my view, the Corporation was not entitled to reject the plans, after the aforesaid findings were given.

(24) While re-considering the building plans of respondent no. 1 (plaintiff in suit), the M.C.D. and the authority concerned are to take into consideration the judgment, finding and decree dated February 18, 1989. But, by considering the decree, the Corporation/its officials, cannot ignore the findings of the Courts, as mentioned above.

(25) To remove all doubts, I am of the view, that it is not now open to the M.C.D. and its officials to reject the building plans of respondent no. 1 herein.

(26) I accordingly direct the Municipal Corporation of Delhi, to re-consider the building plans, (as originally submitted by respondent no.-1) for sanction. The M.C.D. and the concerned authorities shall take the decision, in the light of my findings and observation, given above, within two months. No order as to costs.