
(2002) 10 DEL CK 0111
In the Delhi High Court
Case No : CW No. 7697 of 2000

Holistic Farms P. Ltd.

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 11A(2), 333, 337
International Airport Authority of India Employees (Conduct, Discipline and Appeal)
Regulations, 1987 — Section 38(2)

Citation : (2002) 101 DLT 125

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : B.R. Narang, for the Appellant; Anurag Yadav, for Shiv Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The writ petition has been filed by the petitioner raising the question of law as to whether the amended bye-laws would apply to the petitioner even though the plan submitted by the petitioner had been sanctioned prior to the amendment.

2. The petitioner company is the owner of a plot of land measuring 1.029 Hectares situated at village Rajokri, Tehsil Vasant Vihar, New Delhi. The building bye-laws including in relation to dwelling in farm houses were published by a notification dated 23.6.1983. The Master Plan was published vide notification dated 1.8.90 and the norms for coverage and height of dwelling unit in respect of the farm houses were modified. Subsequently a committee was set up under the Chairmanship of Professor V.K. Malhotra to suggest modifications to the building bye-laws and the committee submitted its report which was followed up by notification dated 23.7.98 modifying Master Plan. In terms of the modifications the maximum coverage was increased. It is stated in the petition that since in terms of Clause 27.5 of the building bye-laws the maximum coverage for

dwelling units in farm houses was to be in accordance with the relevant provisions/clauses of the Master Plan, the amendment to the Master Plan vide notification dated 27.7.98 stood incorporated in the building bye-laws. A press release was also issued on 27.11.98.

3. The petitioner company on 17.4.2000 submitted an application to the respondent for erection of a dwelling unit on the farm land as per the norms applicable. The application is stated to have enclosed the relevant document. On 24.4.2000 the respondent corporation desired the petitioner to obtain a NOC from the Land Acquisition Department and also to deposit the levy on account of the FAR though it is stated that the deposit of levy was liable to be accepted only after the issuance of the NOC. The site of the petitioner is stated to have been inspected on 27.4.2000 and the file was forwarded by the Town Planning Department on 14.5.2000 to the Revenue Department for purpose of ascertaining the title of the property for additional levy on account of FAR. After due consideration the plans are stated to have been sanctioned by the respondent corporation on 23.5.2000 and on the same day respondent corporation sought a no-objection from ADM(LA). It is stated that the sanctioned plans were to be released to the petitioner company after the issuance of the NOC from the ADM(LA) and after deposit of levy for additional FAR. The NOC was issued by the ADM(LA) on 19.6.2000 and on the same day the petitioner company deposited the levy.

4. On 7.6.2000 a notification was published modifying the building bye-laws reducing the area to what was applicable prior to the amendment on 23.7.1998. The petitioner, however, requested for release of the sanctioned plan in view of the fact that all plans released between 23.7.1998 and 7.6.2000 enjoyed the enhanced area and such persons were not asked by the respondent corporation to adopt the revised norms reducing the area. The petitioner company wanted the same principle to be applied to it since the only reason for non-deposit of the levy by the petitioner was the delay in issuance of the NOC by the ADM(LA).

5. The petitioner company, however, received a letter dated 3.7.2000 from the respondent corporation calling upon the petitioner company to submit fresh plans as per the new notification and as per norms prior to 23.7.98. The petitioner company responded to the same and objected to it and requested release of the sanctioned plan. This was not agreed to by the respondent corporation. The petitioner has thus filed the present writ petition seeking quashing of the notice dated 3.7.2000 and 18.10.2000 requiring them to submit fresh plans and for directions to the respondent corporation to release the duly sanctioned plan.

6. Learned counsel for the petitioner contended that the plans of the petitioner company had to be dealt with the accordance with the norms prevalent at the time when the plan was sanctioned and the subsequent notification reverting back to the original position prior to the notification dated 23.7.1998 would have no application to the case of the petitioner. It was thus contended that the notification dated 7.6.2000 can have only prospective application and that but for

the delay on the part of the ADM(LA) in issuing the NOC the additional levy would have been deposited and in that event the plans would have already been released with the result that there would have been no consequence for the petitioner arising out of the notification dated 7.6.2000.

7. Learned counsel for the petitioner further contended that no reason was really given for non-release of the sanctioned plans and as per the Section 337 of the Delhi Municipal Corporation Act, 1957 (for short the Act) the Commissioner is required to communicate the refusal of the sanctioned plan within a period of 60 days from the date of submission of the application which was admittedly not communicated within the said time since the application was submitted on 17.4.2000. The sixty days" period expired on 16.6.2000.

8. Lastly the learned counsel for the petitioner contended that the notice dated 3.7.2000 issued by the respondent corporation u/s 333 of the said Act and seeking fresh submissions of plans cannot be a valid notice in view of the fact that notification dated 7.6.2000 sought to modify the bye-laws and publish the public notice for modification of the Master Plan. However, in pursuance of the public notice the notification was published only on 7.8.2000 modifying the norms for farm houses to what was existing prior to 23.7.1998.

9. Learned counsel for the petitioner has relied upon the judgment of learned Single Judge of this Court in T.A. Laxmanan Vs. I.A.A.I. and Another, to contend that where there is a requirement of publication in official gazette in any regulation, the same cannot come into force till such time as it is published. It was held that regulations could be applicable only when they had been published in the official gazette. It was observed as under:-

"15. Thus the Regulations which are to be made by the IAAI are to be notified in the Official Gazette by the Central Government. Sub-section (2) of this Act is in negative terms and unambiguously stipulates that no Regulation made by the authority under the Act shall have effect until it has been approved by the Central Government and published in the Official Gazette. Therefore, before the Regulations made by the authority are made effective two pre-conditions are to be satisfied, namely (a) these regulations have to be approved by the Central Government, and (b) they have to be published in the Official Gazette (ref. Rajeshwar Singh v. Union of India and Ors., reported in 39 (1989) DLT 9 : 1989 (3) DI 230 and Pyare Lal Sharma v. Managing Director and Ors., reported in JT 1989 (3) SC 1330. In the instant case there is no dispute that although the Regulations were framed and approved by the Board on 31st March, 1980, they were notified and published in the Official Gazette on 7th January, 1987. Therefore, as per the provision of Section 38(2) the aforesaid Regulations could not come into effect before 7th January, 1987. It is these Regulations, namely, IAAI Employees (Conduct, Discipline and Appeal) Regulations which enumerates the misconducts and the petitioner was charged with these misconducts as stated in these Regulations. However, the charge-sheet is dated 30th July, 1986 and the charges leveled against the petitioner relate to the period 1985-1986

which is prior to the date when these Regulations came into force. Obviously the petitioner could not be charged under these Regulations which had not come into force at that time.

16. The respondents admit that the petitioner was charged and the enquiry proceeded with under the aforesaid Regulations. I am not convinced with the arguments of the respondent that the petitioner could be charged under the Regulations, although not notified, but they had been applied uniformly. How the Regulations could be applied at all when they had not become effective for want of approval by the Central Government and when they were not notified/published in the Official Gazette. Once the manner of enforcing the Regulations is stated in the Section 38(2) of the Act itself, the aforesaid act of applying these Regulations uniformly to all employees would not come to the rescue of the respondents."

10. A short counter affidavit was filed by the respondent corporation in opposition to the writ petition. The only defense raised in the counter affidavit is that in view of the subsequent modification in terms whereof the norms were once again reverted back to what was prevalent prior to the notification dated 23.7.1998, the petitioner's plans had to be as per the said norms and not the norms prevalent in pursuance to the notification dated 23.7.1998. It is admitted that the construction norms of the farm houses were notified by the Ministry of Urban Development Vide notification dated 7.8.2000 and since the petitioner failed to submit fresh plans and sought sanctions as per the notification dated 23.7.1998 which was not in force, the plans submitted by the petitioner were rejected

11. A reference has also been made to the fact that a clarification was sought by the respondent corporation from the Ministry of Urban Development in respect of such cases where the building plans were sanctioned but not released pending completion of certain formalities. The letter dated 7.9.200 refers to three such cases pending for release of sanctioned plan where the applicants had completed all requisite formalities and compliances. The Ministry issued a letter dated 15.9.2000, though not in reference to the said letter dated 7.9.2000 but on the same subject, since there were even earlier clarifications sought. It was clarified that in the cases where the building plans could not be released due to certain compliances on the part of the applicants and since construction is to carried out after release of plan, the applicants could not suffer the losses on account of the construction made and hence all such cases would be covered by the revised norms for farm houses as notified vide notification dated 7.8.2000. The respondent corporation was asked to advise such applicants to resubmit their compliances based on the revised norms of 7.8.2000.

12. I have considered the submissions advanced of learned counsel for the parties.

13. There can be no dispute about the fact that subsequent notification of

7.6.2000 would have prospective effect. If plans had been released and construction started on the basis of the norms in pursuance to the modification vide notification dated 23.7.1998 then it cannot be expected that the person would stop the construction in between and change the Plans as per the once again revised norms. In fact it should make no difference whether the constructions was or was not started since the plan would be valid for its period of validity. The question of applying the once again revised norms as per the original norms would arise only if a person fails to construct within the stipulated period of time.

14. It is relevant to note that in the writ petition specific allegation has been made in para 19 for plans which had been released between 23.7.1998 and 7.6.2000. The same enjoyed enhanced area and no action was taken by the MCD to adopt the revised norms. There is no denial to this averment made in the counter affidavit. It is also not disputed that the plans of the petitioner company were sanctioned on 23.5.2000 and the formalities were completed but for there being some delay on the part of the ADM(LA) in issuing the NOC which was also subsequently issued and the amounts deposited in pursuance thereto. This is occurred on 19.6.2000. The petitioner cannot thus be discriminated and treated differently from the persons whose plans were released prior to 7.6.2000.

15. The notification was issued on 7.6.2000 modifying unified building bye-laws, 1983 to the extent indicated in the notification dated 23.7.1998 and that the building plans were to be sanctioned in accordance with the amended bye-laws subject to the provisions of lay out plans and service plans already sanctioned. The said notification also made a public notice about the modification to be carried out in the notification dated 23.7.1998 by deleting para 4 and calling upon the persons to make any objections or suggestions to the same. The said public notice is as under:-

"PUBLIC NOTICE

New Delhi, the 7th June, 2000

S.O. 558 (E). - The following amendments/modifications which the Central Government propose to make in the Master Plan for Delhi 2001 are hereby published for public information. Any person having any objection or suggestion may send the same in writing to the Under Secretary, Delhi Division, Ministry of Urban Development, Nirman Bhawan, New Delhi 110 011, within a period of 30 days from the date of this Notice. The person making the objection or suggestion should also give his name and address.

Modification:

The Planning/Development Control norms for Farm Houses will be the same existing prior to the Notification dated July 23, 1998. Para 4 of the said Notification dated 23.7.1998 would stand deleted.

(No. K-12016/5/79-DDIA/VA/IB(Pt.))

R S GUSAIN, Under Secy."

16. This notification was only subsequently followed by the notification dated 7.8.2000 which is as under:-

MINISTRY OF URBAN DEVELOPMENT AND POVERTY ALLEVIATION

(DELHI DIVISION)

NOTIFICATION

New Delhi, the 7th August, 2000

S.O. 738(E). - Whereas there are certain modifications which the Central Government propose to make in the Master Plan for Delhi-2001 regarding the planning/development control norms for Farm Houses.

2. Whereas Public Notice dated 7.6.2000 was issued by this Ministry inviting objections/suggestions with respect to the proposed modifications in the MPD-2001.

3. Whereas such notice was also issued in the newspapers dated 14.7.2000.

4. Whereas 732 objections/suggestions were received with regard to the proposed modification and whereas the Central Government have, after carefully considered all aspects of the matter, decided to modify the Master Plan for Delhi-2001.

5. Now, Therefore, in exercise of the powers conferred by Sub-section (2) of Section 11-A of the said Act, the Central Government hereby make the following modification in the said Master Plan for Delhi 2001 with effect from the date of publication of this Notification in the Gazette of India.

Modifications:

FARM HOUSES (135)

On page 164(RHS) of the Gazette of India dated 1.8.1990 and subsequently modified vide Notification dated 23.7.1988, the Planning/Development Control norms for Farm Houses will be the same as existing prior to the Notification dated July 23, 1998.

(No. K-12016/5/79-DDIA/VA/IB(Pt.)

Dr. Nivedita P Haran Jt. Secy."

17. The aforesaid facts would show that this modification really came into effect on 7.8.2000 and this position has not even been disputed by the respondents. The stand as set out in the counter affidavit is that it is this notification which would apply to the case of the petitioner.

18. The plans were submitted by the petitioner company on 17.4.2000 and the sixty days" period would expire on 16.6.2000. There is thus force in the

submission of learned counsel for the petitioner that when the letter dated 3.7.2000 was issued u/s 333 of the said Act, there was no occasion for application of the modified norms since the notification in respect to the same was issued only subsequently on 7.8.2000. Once there is a requirement of notification to be issued it is only on issuance of such notification that the relevant bye-laws or regulation or amendment to Master Plan would come into force as has also been held in the case of T A Laxmanan's case (supra). It is also relevant to note that no refusal was communicated within 60 days of the plans being submitted which period expired on 16.6.2000.

19. There is also force in submission of the learned counsel for the petitioner that since the plans were approved on 23.5.2000 and the necessary formalities completed before the amendment except the NOC from ADM(LA), the petitioner cannot be penalised for the delay. It is stated in the petition that the said NOC was sought on 23.5.2000 itself which is apparent from the Annexure "F". The said letter also stated that since all building applications are time barred and have to be disposed of within a period of 60 days no-objection should be expedited so that the building case does not time barred. However, it is only on 19.6.2000 that the said NOC was issued (Annexure H) and the levy amount was deposited on the same date. The petitioner thus cannot be penalised for the same.

20. The clarification sought by the MCD was replied to by the Ministry of Urban Development on 15.9.2000. The said clarification refers to the fact that in case building plans could not be released due to certain compliance on the part of the applicants and that since construction is to be carried out after release of the sanctioned plan, the applicants could not suffer on account of the construction made. However, in the present case the applicant will suffer as a consequence of the requirement of the revised norms now sought to be implemented. Not only this there was no compliance to be made on the part of the petitioner company and only NOC was awaited from the ADM(LA).

21. In view of the aforesaid position I am of the considered view that non-release of the sanctioned plans of the petitioner as per the norms prevalent at the relevant stage of time cannot be sustained and the requirement sought for from the petitioner vide notice dated 3.7.2000 and 18.10.2000 requiring them to submit fresh plans are hereby quashed. It is directed that the plans of the petitioner should be sanctioned in accordance with the norms prevalent as notified on 23.7.1998 and the sanctioned plans of the petitioner company be released within a period of one month from today. Needless to say that the time period for construction in terms of the sanctioned plan would commence only on release of the sanctioned plan.

22. The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.