

(2001) 02 DEL CK 0028

In the Delhi High Court

Case No : CW. No. 1360 and CM. 2043/99

Jitender Kumar

APPELLANT

Vs

The Secretary, Ministry of Urban Development and Others

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Citation : AIR 2001 Delhi 373 : (2001) 91 DLT 362

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. A.K. Kohli, for the Appellant; Mr. Vikas Mehta Mr. R.K. Sharma, for the Respondent

Judgement

Manmohan Sarin,J

Rule.

With the consent of the parties writ petition is taken up for disposal.

1. Petitioner has filed this writ petition aggrieved by the L & Do, declining consent to the petitioner for converting a window into a door opening. This case has a chequered history. Petitioner had earlier filed a suit for permanent injunction, seeking a restraint on the MCD from interfering with the petitioner's right to convert the window into a door opening and put up an iron shutter among other relief. This suit was dismissed. Petitioner went in appeal. This suit was partly allowed by the Additional District Judge, permitting the petitioner to put a shutter on the window opening. Petitioner had preferred a Regular Second Appeal against the said appellate order, which appeal was also dismissed as withdrawn. The petitioner was given liberty, to approach the L & DO for grant of permission under the lease for conversion of the window into a door opening.

2. Learned counsel for the petitioner asserted before me that he would like to rely on the Municipal Bye-laws to urge that there was no prohibition on the window opening being converted into a door opening. For this purpose, he

wished to take me through the Bye-laws. It is not necessary to go into this exercise for the purposes of disposal of the present writ petitioner. The L & DO has declined consent on the ground that it would interfere with architectural facade. It would be worthwhile to reproduce para 4 of the preliminary reply affidavit filed on behalf of respondent Nos.1 and 2.

"In reply to para 4 the writ petition, it is submitted that the site in question has been inspected by CPWD on Shop no.414 and all corner shops facing wall clad in red sand stone having stone chajjas, stone jali, corbelling etc., a facade made in a style of Architecture which is derived from our Architectural Heritage of the PG Market, it has further been reported that the following steps needed to be taken:-

- i) All hoarding/signboards/posters put on the stone wall should be removed.
- ii) All goods stacked by shopkeepers against the stone wall should be removed.
- iii) All cars parked along with wall should be removed. Preferably the street should be pedestrainised.
- iv) Certain shops in the market have constructed 1st floor in an unauthorised manner. These unauthorised structures should be demolished.

A copy of the report is annexed as Annexure.

None of the corner shops, have made an opening on the south facing road. It has, Therefore, been advised not to give permission to make an opening in the wall on the south facing road as it will disfigure the Architectural facade of the shopping complex. In view of the aforesaid submission, permission to make an opening in the wall on the south of the shop cannot be given under the terms of the lease deed."

3. From the foregoing, it would be seen that the L & DO had declined permission for alterations and additions for reasons, recorded above. Learned counsel for the petitioner submitted before me that there have been certain violations by others. This does not give the petitioner right under Article 14 of the Constitution of India to seek the same.

4. The rejection of permission by L & DO is on account of germane reasons, as disclosed above. The said reason for rejection cannot be labelled as arbitrary or extraneous. No ground is made out for interference in the exercise of jurisdiction under Article 226 of the Constitution of India.

5. The writ petition is dismissed.