

(2007) 12 DEL CK 0207

In the Delhi High Court

Case No : Writ Petition (C) 8926 of 2007

Krishan Lal and Others

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 317, 318, 322

Citation : (2008) 100 DRJ 726

Hon'ble Judges : Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Jayant Bhushan, Sarwa Nitter, Amit Gupta and Gautam Narayan, for the Appellant; J.M.Sabharwal Anoop Bagai, S.K. Sabharwal and Geetanjali Chaurasia, for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioners have filed the present writ petition seeking issue of a writ against the respondents/Municipal Corporation of Delhi from demolition of chajjas/balconies and projections on public road/streets. Our attention is drawn to the notice dated 26th November, 2007 issued by the Municipal Corporation of Delhi to the owners/occupiers of various buildings requesting them to remove unauthorized projections and encroachments on public land within three days falling which the said projections shall be removed/demolished by the said Corporation.

2. Learned Senior Counsel for the petitioners has relied upon Sections 317 and 318 of the Delhi Municipal Corporation Act, 1957 and has submitted that mere issuance of notice is not sufficient and in view of Section 317 of the aforesaid Act, projections on public land cannot be regarded as unauthorized. He also relies upon a pamphlet issued by the Municipal Corporation of Delhi, wherein our attention is drawn to column Nos. 33 and 35 under the heading "Completion Certificate". Learned senior counsel for the petitioners also referred to a decision of a Single Bench of this Court in Chandni Chowk Sarv Vyapar Mandal (Regd.)

Vs. Municipal Corporation of Delhi, .

3. Mr. J.M. Sabharwal, Sr. Adv. for the MCD on the contrary submits that no prior permission u/s 318 of MCD Act was obtained for construction of the projections. He also submits that the provisions of Section 317 of the Act are clear and expressly envisage issue of notice for removal of projections that exists on public land. Nothing else is required. He further states that in the present case, individual notices were issued to all persons who are owners/occupiers of buildings which have projections encroaching upon public road/streets. He has drawn our attention to Section 322 of the Act. He states that projections are not compoundable under the New Building Bye-Laws of 1983 and as such the petitioners are not entitled to any relief. With reference to the pamphlet relied upon by the petitioners, it is stated that the pamphlet was issued on 14th April, 1979 and is not applicable after the enactment of the New Building Bye-Laws in 1983.

4. We have gone through the records and considered the contentions raised. Decision in the case of Chandni Chowk Sarv Vyapar Mandal (supra) was rendered in light of the public notice, which was issued. In the said case, individual notices were not issued and, Therefore, the Court found that there was non-compliance of Section 317 of the Act. In these circumstances, the Court observed that there was some merit in the grievance raised by the petitioners therein.

5. In the present case, it is admitted that individual notices have been issued to the owners/occupiers of building having projections on public roads/streets. We also find that as per Appendix "Q" of the Building Bye-Laws, 1983, projections on public land are not permitted and have been categorized as non-compoundable. On being questioned, learned Counsel for the petitioners admitted that no prior permission u/s 318 of the Act was obtained by the petitioners in any of the cases. We may also note the stand of the Municipal Corporation of Delhi that they are universally and uniformly following the policy of not allowing any projections on public land though this is disputed by the learned Counsel for the petitioners.

6. Be that as it may, we have already passed an order on 10th October, 2007 in W.P.(C) No. 877/2001, wherein we had directed as under:

If demolition is carried out on a particular road, the unauthorised projections, encroachments etc. shall be removed in respect of all properties similarly situated on that road.

7. We had further observed that if any applications for regularization are pending, the same shall be considered and decided expeditiously without delay by the respondents/Corporation.

8. Learned Counsel for the petitioners has submitted that reply to the notice u/s 317 of the Act was furnished and given to the respondent/Corporation but the same was not accepted and taken on record. He submits that the petitioners are

entitled to regularization in terms of Section 317 of the Act and the respondent/ Corporation should not have refused to accept the written reply submitted by the petitioners. Mr.Sabharwal, Sr. Adv. however, submits that if any reply or compounding application is received, the same shall be considered in the light of the observations made by this Court in order dated 10th October, 2007. We leave it open to the petitioners to send their replies to the notice dated 26th November, 2007 and raise all pleas including the contention in terms of Section 317 of the Act. Reply/application, if any, sent by the petitioners will be disposed of expeditiously by the respondent/Corporation in accordance with law preferably within a period of one week to ensure that there is compliance of the orders passed by this Court and the provisions of the Act are properly enforced. However, we are not expressing any opinion whether Section 322 of the Act is applicable.

9. With the above observations and in terms of the above order, the present writ petition is disposed of.