**(2003) 02 DEL CK 0093**

**In the Delhi High Court**

**Case No :** CM (M) No''s. 521, 522 and 525 of 2002

Mahender Kumar Nigam APPELLANT

Vs

Municipal Corpn. of Delhi RESPONDENT

**Date of Decision :** 27-02-2003

**Acts Referred:**
Delhi Development Act, 1957 — Section 31A
Delhi Municipal Corporation Act, 1957 — Section 345A

**Citation :** (2005) 120 DLT 404

**Hon'ble Judges :** S.N. Kapoor, J

**Bench :** Single Bench

**Advocate :** Prag Chawla, for the Appellant; Madhu Tewatia, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.N. Kapoor, J.—Heard learned Counsel for the parties.

The case of the petitioner in these three CM (M) petitions is that an appeal was filed against the impugned order of demolition. Operation of the order of demolition was stayed. But thereafter the appeal was dismissed in default. An application for restoration of that appeal has been moved, but that could not be decided for the reason that the Presiding Officer of the Appellate Tribunal had handed over and his successor had not taken over. Since the Presiding Officer had not been appointed, the petitioner did not find any other option but to approach this Court.

2. It is submitted that the property bearing No. 1301 to 1318 known as RB Sultan Singh Building situated at Kashmere Gate, Delhi was owned by M/s. Chavanrishi International Ltd. Later on the property was purchased by four private companies. It was reconstructed after evicting the tenants. The tenants agreed to vacate to enable the owners to reconstruct the property. Building plans were duly got sanctioned. After completion of the entire work the portion earmarked for the tenants/occupants were handed over to the respective tenants

to run their business. It is admitted that the construction was raised for a residential building. However, it is admitted inasmuch as the portion of the property earmarked for commercial user as such the petitioner and other co-owners had to allow the old tenants to use their respective portions for commercial user. Some payments have also been made for conversion and regularisation of misuse and Rs. 1,04,000/- was deposited in that connection. All of a sudden the property in dispute was sealed by the officials of the MCD on 26th April, 2001 on the basis of the sealing orders dated 5th May, 1999 and 11th February, 2000. Thereafter, the petitioner came to know about existence of demolition notice.

3. Three different statutory appeals were filed against the three demolition orders. It is prayed that in absence of the Appellate Tribunal this Court should restore the appeals pending before the learned Tribunal and the appeals be contested on merits and in alternative the respondent-MCD should be restrained from demolishing the property in dispute.

4. The respondent-MCD is contesting this petition inter alias on the ground of gross suppression of facts about massive unauthorised construction of a grave magnitude by constructing 250 unauthorised shops in a residential building. It is submitted that the building plan for the residential building with 33% coverage on the ground, first and second floors was sanctioned on 16th July, 1988 and 3rd November, 1998 and a completion certificate was granted on 1st February, 1999 with respect to the aforesaid residential building. But thereafter the petitioners/ owners indulging in massive unauthorised construction constructed additional portion and converted the entire property into a commercial complex consisting of about 250 shops. There was complete/ cent per cent coverage and infringement of front, rear and side set-backs. This material fact has been totally withheld and concealed from the Court. The unauthorised construction was noticed and notices dated 5th April, 1999, 20th January, 2000 and 14th February, 2000 were issued in the name of the petitioner.

Thereafter, action u/s 345-A of the DMC Act was also initiated. The property was sealed on 26th April, 2001. In appeal no relief was granted for de-sealing of the property by the learned Appellate Tribunal. CM(M) was filed concealing the factum of unauthorised construction of approximately 250 shops and by making it appear that matter was a case of simple misuser, de-sealing orders were obtained on 22nd June, 2001. An application for modification of the said order was filed on 22nd June, 2001. The order of de-sealing was kept in abeyance pending decision of the appeal before the Appellate Tribunal. The owner of the property has also tampered with the seal on 6th July, 2001, which was put back on 6th July, 2001 itself. In terms of the orders of the Appellate Tribunal the property was ordered to be de-sealed and it was de-sealed thereafter by detailed speaking order. The property was ordered to be sealed again on 15th October, 2001 considering the massive unauthorised construction of commercial nature. All these facts were withheld.

 

5. It is also contended that the petitioners have carved out hundreds of shops and sold out the same much before the completion certificate could be imagined. The respondent-MCD have filed number of deeds executed in January, 1998 to various persons and filed the sale deeds.

6. An additional affidavit was filed by the petitioner but that does not say anything about the sale deeds referred to in the additional affidavit filed by the respondent dated 13th January, 2003 and kept quite. In rejoinder, there is no specific denial about the sanctioning of the plan covering the entire area for residential purpose. But it is not in dispute that the residential building has been converted into commercial one.

7. It is apparent that the petitioner has suppressed several facts, including the fact of sale of different portions exceeding the coverage nearly to 100%, converting the entire residential building into a commercial one; and selling its various portions. Besides, one Rajesh Jain, who was present in Court, stated that Mahender Nigam had sold a portion of 9 x 12 ft. on the ground floor to him. There is no bathroom or kitchen in the said area and the area is entirely covered. He resides in Rohini, Sector 3. He did not live in this small portion of 9 x 12 ft. He was living in a plot of 103 sq. metres. The entire building was of 1500 to 1600 yards. There is no courtyard in the disputed premises. There is only 8 ft. wide passage. From one of the photographs it appears that what Rajesh Jain stated may be correct, for there is an iron bar small opening towards the sky in one of the passages. The petitioner has failed to file the photographs of the entire building to show the existing construction. In such circumstances, I do not think that the petitioner can be granted any relief. A blanket injunction order cannot be given without knowing the existing construction, its nature indicating that substantially it still exists in accordance with the sanction plan.

8. It was also contended that a Full Bench of this Court decided that the Commissioner could not exercise its power of sealing of property for misuse of premises u/s 345A of the DMC Act and Section 31A of the Delhi Development Act.

9. On the other hand it is submitted that the operation of the said judgment has been stayed when along with this appeal a connected appeal was also filed in D. Bhowmick and Ors. v. Delhi Development Authority and Ors., Civil Appeal No. 5413/2002. This fact has not been refuted. Since operation of the said judgment in D. Bhowmick and Ors. v. Delhi Development Authority and Ors. (supra) is stayed, I do not think that the judgment of Bajaj Departmental Stores, D. Bhowmick and Others, Ms. Devender Kaur and Others and D.S. Marketing Private Limited Vs. M.C.D. and Others, , would be of any help. In any case, since the petitioner appears to have suppressed material facts, undertaken massive unauthorised construction by virtually duping the purchaser like Rajesh Jain, the petitioner is not entitled to be shown any indulgence.

The petitions are accordingly dismissed. Stay stands vacated.

A copy of this order be placed on the files of CM(M) Nos. 522/2002 and

 

525/2002.

 