

(1998) 11 DEL CK 0070
In the Delhi High Court
Case No : S. No. 1635 of 1987

Manohar Lal Chatrath and Another

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 01-11-1998

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 347
Specific Relief Act, 1963 — Section 41

Citation : (1999) 77 DLT 5 : (1999) 48 DRJ 510 : (1999) RLR 163

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Ms. Neelam Rathore, for the Appellant; Mr. Raman Duggal, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this order, I propose to decide the following preliminary issue framed on 27.4.1998:

Whether the suit is maintainable and whether the plaint is liable to be rejected as the plaintiffs are provided with an adequate and equally efficacious alternate remedy under the provisions of Section 343 and 347 of the Delhi Municipal Corporation Act.

2. To appreciate the merits of the controversy, it will be necessary to give brief narration of the material facts. The plaintiffs have filed the suit for a permanent injunction restraining the defendants from demolishing and/or sealing the whole or any portion of the property bearing Nos.1142-1145, Gali Nos. 9 and 10, Abdul Rehman Street, Karol Bagh, New Delhi on the allegations that the defendant's threatened action for demolishing and/or sealing a portion of the building in question is vocative of the principles of natural justice inasmuch as no pre-decisional notice was served on the plaintiffs.

3. The defendant resisted the suit contending that after obtaining sanction of the plan, the plaintiffs constructed the building in question. On inspection, it was

found that certain portion of the building was constructed beyond the sanctioned plan. However, these deviations from the sanctioned plan were compounded under the building bye-laws on payment of requisite compounding fee. Thereafter, the plaintiff raised further unauthorised construction in the building as a result whereof the show cause Notice No. 86387 dated 21st July, 1987 was served on the plaintiffs. Despite service of the notice, the plaintiffs did not stop the unauthorised construction. Resultantly, the demolition order dated 3rd August, 1987 was issued and served on the plaintiffs. It was averred in the written statement that inasmuch as no appeal u/s 343 of the Delhi Municipal Corporation Act (hereinafter referred to as the "Act") was filed against the demolition order, the suit is barred u/s 347-E of the Act and further the suit is also bad for want of a notice under Sections 477/478 of the Act.

4. At the outset I must make it clear that neither the show cause notice dated 21st July, 1987 nor the demolition order dated 3.8.1987 has been produced before the Court. Learned Counsel for the plaintiffs contended that since no pre decisional notice was served on the plaintiffs before issuing the alleged demolition order, the threatened action of demolition of the building in question is vocative of the principles of natural justice and so the present suit is maintainable. Strong reliance was placed on the decision of the Supreme Court in Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, .

5. For the erection of the new building or of re-construction of any building, the procedure is prescribed under Chapter XVI of the Act. Section 331 defines the expression "to erect a building". Section 332 provides that "no person shall erect or commence to erect any building or execute any of the works specified in Section 234 except with the previous sanction of the Commissioner". Section 343(1) empowers the Commissioner to issue order of demolition of the offending erection work of any building covered by the Act. Section 343 of the Act reads as under :

343. "Order of demolition and stoppage of building and works in certain cases and appeal.

(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in Section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons Therefore has been delivered to that person), as may be, specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed , the Commissioner may by the same order or by a separate order, whether made at the time of issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under Sub-section (1) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under sub-Section (2) against an order of demolition the Appellate Tribunal, may, subject to the provisions of Sub-section (3) of Section 347 stay the enforcement of the order on such terms, if any, and for such period, as it may think fit.

Provided that where the erection of any building or execution of any work has not been completed at the time of making of the order of demolition, or order staying the enforcement of the order of the demolition shall be made by the Appellate Tribunal unless security, sufficient in the opinion of the said Tribunal has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(4) No Court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this Section.

(5) Subject to an order made by the Administrator on appeal u/s 347D, every order by the Appellate Tribunal in Appeal under this Section, and subject to the orders of the Administrator and the Appellate Tribunal on appeal the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under Sub-section (1) or where an order of demolition made by the Commissioner under that Sub-section has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal, and by the Administrator in a case where an appeal has been preferred against the order of the Appellate Tribunal the person against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any fixed by the Appellate Tribunal or the Administrator on appeal and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work to which

the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

Section 344 empowers the Commissioner to stop the construction of the building where the erection of such building or execution of any work has been commenced or is being carried on either without sanction or contrary to sanction so granted. u/s 345A, the discretion is with the Commissioner to make an order directing the sealing of such offending erection or work or the premises before or after making an order of demolition u/s 343. An appeal has been provided under Sub-section (2) of Section 343 of the Act against the order of demolition. A further appeal has been provided u/s 347D to the Administrator against the order on the Appellate Tribunal. Section 347-E bars jurisdiction of Courts to entertain any suit or other proceedings in respect of any order or notice expellable u/s 343 or Section 347-B. Section 347-E is as under:

347-E. "Bar of jurisdiction of Courts

(1) After the commencement of Section 7 of Delhi Municipal Corporation (Amendment) Act, 1984, no Court shall entertain any suit, application or other proceedings in respect of any order or notice appealable u/s 343 or Section 347B and no such order or notice shall be called in question otherwise than by preferring an appeal under those Sections.

(2) Notwithstanding anything contained in Sub-section (1), every suit, application or other proceeding pending in any Court immediately before the commencement of Section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, in respect of any order or notice appealable u/s 343 or Section 347B, shall continue to be dealt with and disposed of by that Court as if the said Section had not been brought into force."

6. In the case of Shiv Kumar Chadha (supra), their Lordships of the Supreme Court, while considering the bar of Sub-sections (4) and (5) of section 343 and Section 347-E, laid down the following principles:

"(i) The Courts should not ordinarily entertain a suit in connection with the proceedings initiated for demolition, by the Commissioner, in terms of Section 343(1) of the Corporation Act. The Court should direct the person aggrieved to pursue a remedy before the Appellate Tribunal and then before the Administrator in accordance with the provisions of the said Act.

(ii) The Court should entertain a suit questioning the validity of an order passed u/s 343 of the Act, only if the Court is of prima facie opinion that the order is nullity in the eyes of law because of any "jurisdictional error" in exercise of the power by the Commissioner or that the order is outside the Act

7. It is well settled that the jurisdiction of a Court primarily, depends upon the allegations made in the plaint and it is the cause of action which determines the jurisdiction of a Court. In AIR 1949 78 (Privy Council) , it was also held that the term "cause of action" means every which will be necessary for the plaintiff to

prove if traversed in order to support of his right to the judgment. It is worth mentioning that it is undisputed that after obtaining sanction, some unauthorised construction was carried out by the plaintiffs which was subsequently compounded in accordance with the building bye laws and thereafter a completion certificate was issued in favor of the plaintiffs. It was stated in para No. 12 of the plaint that after obtaining the completion certificate, the plaintiffs spent huge amount towards interior decoration and for carrying out other wood works etc. in the building. On the contrary, it was stated in the written statement that after obtaining the completion certificate, the plaintiffs carried out further unauthorised construction in the building as a result whereof demolition proceedings were initiated against them and after service of the show cause notice dated 21st July, 1987, the demolition order dated 3.8.1987 was passed against them. At this stage it would be useful to refer to the following averments made in para No. 16 of the plaint, which is as under:

16. "Assuming though not admitting that there has been any new and/or unauthorised construction made, it is submitted that without issuing any show cause notice and without affording the plaintiffs an opportunity of being heard, no order of demolition and/or sealing of the premises/ property or any part thereof, could be passed by the defendant Corporation. The building cannot be demolished and/or sealed and /or essential amenities withheld at the whim and fancy of the defendant. To the knowledge of the plaintiffs, there has been no order passed by any Competent Authority either directing demolition or sealing of the property in question. Demolition has to be carried out strictly under the authority of law. It seems that the employees of the defendant Corporation are trying to achieve their ulterior motive by threatening demolition/sealing of the property."

8. Thus according to the plaintiff, no demolition order was passed for demolition of the alleged unauthorised construction in the building. It was pleaded in the written statement that the demolition order dated 31.8.1988 was served on the plaintiffs. Even after filing of the written statement, the plaintiffs did not care to challenge the said order by incorporating suitable amendments in the plaint. That being so, the present suit does not fall within the category of "the suit questioning the validity of an order passed u/s 343 of the Act. It is well known in the city of Delhi that unauthorised constructions are regularly put up; when caught out, a suit or writ is filed raising a plea that no notice was issued or served before passing the demolition order and stay orders are obtained with an intention to while away the time. In the case of Shiv Kumar Chadha (supra), it was observed by their Lordships that they are conscious of the fact that persons who make unauthorised constructions by contravening and violating the building bye-laws for regulations often run to Courts with pleas mentioned above, specially that no notice was issued or served on them, before the Corporation has ordered demolition of the construction." I, Therefore, find and hold that the present suit is barred u/s 347-E of the Act.

9. That apart, it is undisputed that an adequate alternative remedy by way of appeal under the provisions of the Act was available to the plaintiffs. The plaintiffs have filed the present suit for a permanent injunction restraining the defendants from demolishing and/or sealing the offending portion of the building. Section 41(H) of the Specific Relief Act lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding except in cases of breach of trust. Thus, the present suit for injection is also barred u/s 41(H) of the Specific Relief Act.

10. For the foregoing reasons, the plaint is rejected under Order 7, Rule 11(d) of the Code of Civil Procedure. The plaintiffs may pursue the remedy before the Appellate Tribunal in accordance with the provisions of the Act, if advised to do so. plaintiffs shall pay the costs of the defendant.