

(2000) 11 DEL CK 0047

In the Delhi High Court

Case No : C.W. No. 2617 and C.M. No. 4055 of 2000

Mrs. Amrit Surjit Singh and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 481

Citation : AIR 2001 Delhi 110 : (2000) 57 DRJ 681 : (2001) 4 RCR(Civil) 345

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : A.K. Bakshi, for the Appellant; Inderjeet Saroop, (for No. 1), Anil Grover, for MCD, Aditya Madan and Atul Kumar, (for No. 6) and Jagmohan Sabharwal and S.K. Sabharwal, (for Nos. 8 to 10), for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—Rule.

2. This writ petition under Article 226 of Constitution of India has been filed by the petitioner praying for a writ of Mandamus, inter-alia, on the following prayers.

(1) Take penal action against erring respondents in accordance with Section 29.1 of the Building Bye-laws of Delhi Municipal corporation Act, 1957.

(2) Declare, as illegal and unsafe, the new building at F-10. Jangpura Extension. New Delhi.

(3) Arrange comparable alternate accommodation for the petitioners and their family members till a new building is constructed at F-11, Jangpura Extension, by the petitioners.

(4) Grant compensation to petitioners, of an amount of Rs. 40 lakhs or more, depending on the market rate, for reconstruction of a new building at F-11, Jangpura Extension, New Delhi.

3. Notice was issued in this petition and return has been filed by the respondents 8 to 10 as well as by respondent/ MCD. It has been contended by learned counsel for the petitioner that the construction of the building of respondents 8 to 10 at plot No. F-10, Jangpura Extension has caused damage to the property of the petitioners.

4. It has also been contended by counsel for the petitioners that petitioners be compensated for the damages caused to their structure on account of negligence on the part of Municipal Corporation of Delhi as well as Police who has connived with the illegal construction raised by the respondents. He has further contended that the affidavit filed by MCD is not proper as it has not specified as to what are the unauthorised constructions and deviations committed by the respondents 8 to 10. He has further contended that the photographs filed by MCD do not reflect the true demolitions as the same have been done to hoodwink the Court and it amounts to cosmetic demolition.

5. Mr. Bakshi, learned counsel for the petitioners has also contended that the authority of Municipal Corporation of Delhi is duty bound to place all relevant material on record with regard to the property in question and in his support has cited National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . He has further contended that the petitioners are entitled to damages and in his support has cited The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others,

6. On the other hand, counsel for the MCD has placed on record the photographs and the status Report. Status Report has been filed by Mr. Balwinder Singh, working as Asstt. Engineer (Bldg.) Central Zone, MCD. Respondent/ MCD has taken the stand that respondent No. 8 has deviated from the Sanction Building Plan and the same has been booked and at second stage the demolition order was also passed by MCD & MCD has also demolished the third floor by puncturing the same on 11-9-2000. Photographs filed by MCD are on record which corroborate the contents of Status Report. In support of the Status Report an affidavit has also been filed by Mr. Rakesh Kumar, Asstt. Engineer, Central Zone, MCD who is at present In-charge of the zone where the premises are situated.

7. Mr. Grover, learned counsel for the respondent/MCD has contended that the unauthorised construction, as held out by respondent No. 8, has been booked and demolished.

8. As a matter of fact, under Article 226 of Constitution of India when a petitioner approaches this Court for seeking a Writ of Mandamus, first he has to establish his legal right in his favor and all such petitioners must come to Court with clean hands. Extraordinary writ jurisdiction under Article 226 of the Constitution of India is not meant to settle personal scores. During the hearing it was pointed out by counsel appearing for respondents 8 to 10 that certain eviction proceedings were filed by the petitioners against their tenant in the year

1994. Respondents have filed photocopy of the Eviction petition in which in paragraph 18 of the said petition it has been mentioned in the following terms :--

"The premises in question were constructed about forty years ago. The premises require massive repairs and have become unsafe for human habitation. The petitioner can not carry out the repairs without premises in question being evicted. There are leakages in the building and the structures are deteriorating rapidly. The respondent is, Therefore, liable to be evicted from the premises u/s 14(1)(e) of Delhi Rent Control Act."

9. On the photocopy of the petition signatures of petitioners are clearly visible. The said petition was filed on 25-11-1994, contents of statements made in an Eviction petition are to be verified. Petitioners have verified the contents of the petition. From the perusal of the photocopy which has been filed by respondents 8 to 10, under the clause Verification the petitioners have verified the contents of the petition. Although it has been contended before me by learned counsel for the petitioners that this petition was filed on the wrong advice of earlier counsel. In these proceedings I am not concerned about the eviction petition filed by the petitioners. This court is only concerned as to when the petitioners have made a statement in the year 1994 that their building was unsafe for human habitation, it was deteriorating at a fast speed, how construction of a building at the adjacent plot by respondents 8 to 10 could be instrumental in affecting the safety of the structure of the petitioners. Not only this, this court all the more is concerned that no such averment as made in the eviction petition was made in the writ petition by the petitioners that this kind of statement has been made although on wrong advice tendered by counsel in the year 1994.

10. In the counter affidavit filed on behalf of respondents 8 to 10 it has been stated by respondents that there are two independent adjacent walls supporting the two properties separately. There was no common load bearing wall. Load of the petitioners construction is on their own wall in their own premises and the load of the respondents building is on the wall falling in the respondents property. It has further been alleged in the counter affidavit that the petitioners have been harassing the answering respondents by lodging false and fabulous reports with police, MCD and other authorities. It has also been mentioned that the respondents had not touched the wall/property of the petitioners. It has further been averred in the counter affidavit that the property of the petitioners was in bad shape for the last more than ten to twelve years and their tenants had also been complaining about it for a long time. They have also filed a copy of the letter sent by one of the tenants on record to the same effect. Inspire of these averments except a bald assertion made in the rejoinder that there was a common load bearing wall prior to the construction of respondents building no Site plan has been filed substantiating their claim by the petitioners. In any event of the matter it is inconceivable that two different plots of land will have one common load bearing wall.

11. Judging from any angle it seems that the motive of the petitioners in this

petition is not to get the unauthorised construction demolished or rectified but to demand a pond of flesh on account of construction made by the respondents. The authorities cited by learned counsel for the petitioners is of no help. In the given circumstances if court comes to the finding while exercising jurisdiction under Article 226 of Constitution of India that any person or authority has committed certain acts by which the petitioners have suffered then there is no inherent bar on the jurisdiction of the Court to award damages or compensation. But in a case where the petition has been filed with the sole motive of harassing a neighbour or for extortion of money but not to get unauthorised construction rectified and there is suppression of material facts which amounts to an abuse of process of law. The present petition is one such petition.