

(2012) 01 DEL CK 0172

In the Delhi High Court

Case No : Writ Petition (C) No. 83 of 2012 and C.M. No. 186 of 2012

Nand Kishore and Others

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0172

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Upamanyu Hazarika with Mr. Jayant Mohan and Mr. Nitin Loud, for the Appellant; Suparna Srivastava, for MCD, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioners praying inter alia for quashing and setting aside the order dated 30.12.2011 passed by the Deputy Commissioner, Land & Estate Department, MCD, whereunder they have been called upon to immediately vacate the subject land situated at Pushpa Market, Lajpat Nagar, Delhi, and to handover peaceful possession thereof to the respondent/MCD within a period of three days from the date of issuance of the aforesaid order, with a further warning issued to them that in case they fail to do so, the respondent/MCD shall retrieve the said piece of land from them.

2. On the last date of hearing, counsel for the respondents/MCD had drawn the attention of this Court to an order passed by a Division Bench of this Court in an earlier round of litigation between the petitioners and the respondent/MCD in two connected appeals, registered as LPAs No.171-172/2010 entitled "Nand Kishore & Ors. vs. Municipal Corporation of Delhi & Ors." disposing of the appeals vide order dated 07.07.2010 on the following terms:-

12. In view of the aforesaid analysis, while declining to interfere with the order of the learned Single Judge, we clarify that the show cause shall be treated as a show cause for all purposes and it should be taken as a proposed action to be

taken by the MCD and the appellants would be at liberty to file their explanation on all aspects including the aspect that they had constructed the building by spending considerable sum of money which comes within the realm of equity. The reply to the show cause be filed within a period of eight weeks from today by putting forth all possible grounds and the competent authority of the Corporation shall take a decision after affording an opportunity of hearing to all the appellants or their authorized representatives, as conceded to by Mr. Phoolka, within a period of four months. We are sure that the MCD authorities shall keep in view the principles of objectivity, equity, fairness and transparency. If the appellants ask for any document, as agreed to by Mr. Phoolka, the same shall be provided to the appellants or their authorized representatives to substantiate their claim before the corporation. As a further protective measure, it is directed that in case the appellants are aggrieved by the order passed by the corporation, they can challenge the same before the superior forum and, therefore, the corporation shall not give effect to the order, if any, which is adverse to the appellants, for a period of four months from the date of its pronouncement.

3. Learned Senior Advocate appearing for the petitioners states that despite the aforesaid protective measures put in place by the Division Bench, whereunder the respondent/MCD was directed to ensure that in case any adverse order was to be passed against the appellants, petitioners herein, the same would not be given effect for a period of four months from the date of its pronouncement, respondent/MCD instead, by virtue of the impugned order, has given less than three days to the petitioners to handover vacant and peaceful possession of the land in question.

4. Counsel for the respondent/MCD states that she has obtained instructions from the department to the effect that the Department shall carry out an inspection of the area in question within a period of four weeks and a report shall be prepared in that regard, whereafter, in case the respondent/MCD proposes to take any action in respect of the subject land, notice to show cause shall be issued to the petitioners, and they shall be granted an opportunity of personal hearing. Thereafter, appropriate decision shall be taken by the competent authority of the respondent/MCD as per law.

5. In view of the aforesaid statement made by the counsel for the respondent/MCD, the present writ petition is disposed of, while setting aside the impugned order dated 30.12.2011. It is directed that the decision that may be taken by the competent authority of the respondent/MCD after granting a hearing to the petitioners, shall be intimated to them at their addresses as given in the memo of parties. It is further directed that in case the order that may be passed by the competent authority of the respondent/MCD is adverse to the petitioners, the same shall not be given effect for a period of three weeks from the date of passing thereof. Further, if the said order is adverse to the petitioners and they are aggrieved therefrom, they shall be entitled to seek their remedies as per law.

6. The petition is disposed of, along with the pending application.

A copy of this order be given dasti to the counsel for the respondent/MCD.