
(2012) 09 DEL CK 0408
In the Delhi High Court
Case No : LPA No. 210 of 2009

New Delhi Municipal Council	Vs	APPELLANT
Sh. Dan Singh Bawa and Others		RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0408

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Madhu Tewatia, for the Appellant; Sachin Datta with Ms. Gayatri Verma, for UOI, Mr. Rajive Sawhney with Mr. Vineet Jhanji, for R-1 and Ms. Nandini Sahni, for the Applicant DCM Ltd., for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 06.11.2008 of the learned Single Judge in CM No. 11628/2007 in W.P.(C) No. 355/1974. Vide the said order, the learned Single Judge has directed the appellant NDMC to examine whether the respondents/owners have complied with the conditions imposed on them from time to time and if so, to revalidate and release sanctioned building plans, with FAR of 400. The matter concerns the sanction of plans for construction on plot of land admeasuring 1.192 acres bearing No. 14, Barakhamba Road, New Delhi.

2. At the outset, it may be stated that prior to February 1974 the FAR available for construction on the said plot of land was 400. In February, 1974, the FAR was reduced to 250 and with effect from 01.08.1990 to 150.

3. The matter has a chequered history and it is best to deal with the facts in a systematic tabular fashion.

Sl. No.

Date

Particulars

01.

06.12.1969

Building plans for sanction were submitted to the NDMC but rejected for want of permission from the Central Government.

02.

1970

The building plans were re-submitted for sanction.

03.

23.02.1970

NDMC vide Resolution No. 79/16 approved the plans (with FAR of 400) subject to compliance of certain conditions.

04.

13.03.1970

Such conditional sanction was communicated to the respondents/owners and they were advised to submit revised plans incorporating the changes suggested and whereafter certain cost to be paid would be computed.

05.

1970

The respondents/owners treated the letter aforesaid as sanction and commenced construction and got the electricity load sanctioned.

06.

26.06.1970

NDMC rejected the plans for non compliance of the conditions contained in the letter dated 13.03.1970.

07.

29.06.1970

Rejection is communicated to the respondents/owners.

08.

08.07.1970

Respondents/owners contended that the conditions had been complied with and represented for release of the sanctioned plans.

09.

23.07.1971

The NDMC again approves the building plans (with FAR of 400 because of earlier conditional sanction) subject to certain conditions and giving of undertakings by the respondents.

10.

31.07.1971

Such conditional sanction was communicated to the respondents/owners. However sanctioned plans still not released

11

1971

The construction on the plot of land continues.

12

28.06.1973

The respondents/owners applied for revalidation of the plans, since validity of earlier conditional sanction was for two years only.

13

19.12.1973

NDMC informs the respondents/owners that since the sanction was conditional and the plans had not been released, the building activity commenced without the sanctioned plans being released, was unauthorized and illegal and at the sole risk and cost of the respondents.

14

1973-74

The construction continues.

15

1974

Respondents/owners filed W.P.(C) No. 355/1974 (from which this appeal arises) impugning the stand of the NDMC that the construction already undertaken was illegal.

4. The aforesaid writ petition being W.P.(C) No. 355/1974 was disposed of vide judgment dated 24.03.2005 observing/finding/holding:

(i) that the sanction on 23.07.1971 was subject to five corrections to be carried

out by the respondents/owners and four undertakings to be furnished by the respondents; till the five corrections were carried out, there could be no sanction; the sanction was thus conditional and for which reason the building plans bearing the endorsement of sanction were not released;

(ii) that though vide interim order dated 14th May, 1974 in the writ petition the respondents/owners were permitted to continue with the construction but the construction was not completed even within two years therefrom i.e. the period of validity of sanctioned plans;

(iii) sanction, even of 23rd July, 1971 being conditional, till the conditions were fulfilled, there was no sanction and/or the sanction was inoperative; it is the endorsement on the plan, certifying it to be sanctioned, which imparts identity to a plan as sanctioned and which plans were never issued;

(iv) the respondents/owners themselves had treated the sanction as conditional and acquiesced that conditions imposed could be imposed;

(v) when the FAR was reduced to 250, it was provided that plots already developed or under authorized constructions would continue to be developed at an FAR exceeding 250; however when the FAR was further reduced to 150, no such relaxation was provided;

(vi) that on Court direction, NDMC had disclosed that after 1980, only one building had been granted completion certificate with FAR of 400;

(vii) that the subject building though had been constructed but was not complete and therefore the plans required revalidation;

(viii) that as per law, the building norms applicable would be the ones in force when revalidation is granted -- thus the respondents/owners will have to submit fresh plans showing proposed building having FAR of 150.

The writ petition was accordingly disposed of by denying the relief to the respondents/owners. However an option was given to the respondents/owners to, if so desire, have the existing construction regularized at an FAR of 150.

5. The respondents/owners applied for review on the strength of the letter dated 26.05.1994 of the Government of India, Ministry of Urban Development directing NDMC to consider revalidation of plans for construction of property no. 25 Barakhamba Road (USSR Embassy) in the light of decision in the meetings held on 26th September, 1990 and 9th November, 1990 that where the decision of the plan sanctioning authority had been communicated to the party prior to the coming into force of MPD-2001 w.e.f. 1st August, 1990, the building plans should be continued to be dealt with in accordance with Regulations/Bye Laws applicable prior to 1st August, 1990. It was the case of the respondents that since the Government of India had permitted revalidation of plans for construction sanctioned prior to 01.08.1990 as per the norms applicable prior to 01.08.1990, even in those cases where construction had commenced as in the present case,

the norms applicable would be those prevalent prior to 01.08.1990. The learned Single Judge, vide order dated 22nd July, 2005 directed the NDMC to seek clarification from the Government as to whether the respondents were entitled to FAR of 400 since their plans had originally been sanctioned with the said FAR. It was further ordered that if the Government so permitted the FAR of 400, the building plans in accordance with the sanction originally accorded would be released and time of two years would be granted to complete the construction.

6. In pursuance to the aforesaid directions, the Government of India vide letter dated 16.05.2007 informed the NDMC that NDMC should first resolve the issue as to whether the building plans were ever approved during the time when the FAR was 400.

7. The matter again came up before the learned Single Judge; the learned Single Judge vide order dated 06.11.2008 impugned herein has held that since structure comprising of 14 stories with FAR of 400 already stands erected and only the plumbing, sanitary and completion work remained, and applying the decision of the Government of India contained in the letter dated 26th May, 1994 supra qua 25 Barakhamba Road, New Delhi, has found the respondents entitled to release of revalidated plans with FAR of 400.

8. Though the learned Single Judge in the order dated 6th November, 2008 observed that NDMC had been unable to distinguish the subject case from that of 25 Barakhamba Road with respect to which Government of India had issued the letter dated 26th May, 1994 but in our view the difference between the two cases is writ large in the judgment dated 24th March, 2005 disposing off the writ petition. It was unequivocally held in paras 44 & 45 thereof that conditional sanction was no sanction and till the building plans with endorsement of sanction were released (and which did not happen in the present case) there was no sanction. The same learned Single Judge, while passing the order dated 22nd July, 2005 on the Review Application, did not disturb the said finding (refer para 16 of the order). The ratio of the judgment dated 24th March, 2005 and order dated 22nd July, 2005 thus was that there was never any sanction of the plans for construction on the subject property. The said finding binds both, the respondents/owners and the appellant NDMC. Notwithstanding the same, the Government of India in its letter dated 16th May, 2007 supra, in response to the clarification sought by the NDMC in pursuance to order dated 22nd July, 2005 on Review Application, enquired whether the plans had ever been approved. The answer to that, as aforesaid, in the judgment dated 24th March, 2005 was "No". Once it is held that there was never any sanction of building plans of the subject property, the same cannot be given the benefit of the decision of the Government of India contained in the letter dated 26th May, 1994 supra relating to 25 Barakhamba Road, where sanction had been granted and communicated prior to 1st August, 1990 and revalidation was sought thereafter. Axiomatically, in the impugned order dated 6th November, 2008, direction for allowing FAR of 400 to the subject property could not have been issued. Also, no equities in

favour of respondents/owners could have flown from the factum of construction of fourteen floors having been completed. Once it was held that there was never any sanction, the construction commenced and raising of fourteen floors was all illegal and unauthorized and equities do not flow from such illegal acts.

9. Though it is not in the domain of the appeal, but we may state that we concur with the finding in the judgment dated 24th March, 2005 that a conditional sanction is no sanction. Supreme Court as far back as in *Usman Gani J. Khatri of Bombay and Others Vs. Cantonment Board and others*, held that no legal right accrues from submission of building plans for sanction or from intimation by the Sanctioning Authority that sanction could be granted only after conversion of grant in the land to freehold. It was further held that building plans can be sanctioned only according to the building regulations prevailing at the time of sanction. Applying the said ratio to the facts of the present case, the conditional sanction on 23rd February, 1970 and 23rd July, 1971 was of no avail, till the conditions were complied and the building plans with endorsement of sanction released to the respondents/owners and which never happened. Thus no rights or benefits can accrue to respondents/owners from such conditional sanction. The judgment dated 24th March, 2005 itself relies on earlier Division Bench judgment of this Court in *Dev Raj Gupta Vs. NDMC* 68(1997) DLT 62 in this regard.

10. Reference may also be made to recent dicta in *N.D.M.C. and Others Vs. Tanvi Trading and Credit Pvt. Ltd. and Others*, where the Supreme Court set aside the direction of this Court to consider the plans as initially submitted and held that it is well settled that the law for approval of the building plan would be as on the date when the approval is granted and not as on the date when the plans are submitted. The same view was also taken in *State of W.B. Vs. Terra Firma Investment and Trading Pvt. Ltd.*, and in *Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others*, .

11. The principle, that where a statute provides for a right, but enforcement thereof is in several stages, unless and until conditions precedent laid down therein are satisfied, no right can be said to have been vested, enunciated in *Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others*, can also be invoked aptly to the facts of the present case.

12. The matter has been placed beyond any pale of controversy by the dicta dated 5th May, 2010 of Division Bench of this Court in LPA No. 268/2003 titled *MCD Vs. M/s Holistic Farms Pvt. Ltd.* There the building plans of a farm house were sanctioned subject to submission of NOC from the land acquisition department and deposit of certain monies. It was held that such conditional approval could not be equated to sanction and unless the conditions were met, the conditional approval does not fructify into sanction and no right accrues to proceed on the basis of conditional sanction.

13. We are therefore not in agreement with the order dated 6th November, 2008

of the learned Single Judge and set aside the same. The parties will accordingly be governed by the judgment dated 24th March, 2005. We clarify that in view of what we have observed above, para 64 of the judgment dated 24th March, 2005 will remain as contained therein and the modification thereof vide order dated 22nd July, 2005 is of no avail. We accordingly allow this appeal. In view of above, the application of the alleged buyers of built-up space in the building construction whereof is illegal/unauthorized is also dismissed.

No costs.