

(2011) 11 DEL CK 0124

In the Delhi High Court

Case No : Writ Petition (C) 5002 of 2010

Pardarshita Public Welfare Association

APPELLANT

Vs

Comissioner of MCD and Others

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Citation : (2011) 11 DEL CK 0124

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Harkrishan Das Nijhawan, General Secretary of the petitioner/Society in person, for the Appellant; Mini Pushkarna, Standing Counsel, MCD with Mr. Rajesh Singh, Advocate Mr. Anil Grover, Advocate with Mr. Rajesh Garg and Mr. Rahul Khurana, Advocate for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioner/Society praying inter alia for directions to the respondent/MCD to initiate action against the unauthorized construction existing in property bearing No. A-1/19, Panchsheel Enclave, New Delhi, owned by respondent No. 5.

2. Notice was issued on the present petition vide order dated 28.07.2010. On the said date, counsel for the respondent/MCD was directed to produce the sanctioned/regularization plans of the property in question and to take instructions whether inspection of the property could be done by the petitioner or any other independent person so as to verify whether the subject premises had been built in accordance with the sanctioned plan or not. Vide order dated 14.09.2010, the owner of the subject premises, who had not been impleaded by the petitioner initially, was permitted to be impleaded as a co-respondent. On the very same date, statement of the counsel for the respondent/MCD was recorded to the effect that the requisite sanctions, obtained by respondent No. 5 from the Archeological Survey of India (ASI) before carrying out additions/alterations in the subject premises, had also been placed on record. On 01.03.2011, counsel

for the respondent/MCD handed over an inspection report of the subject premises, on the basis of an inspection undertaken on 22.07.2010, which revealed that the additional construction existing on the first, second and third floors of the premises, had been duly regularized on 11.12.2007 and 20.04.2010 respectively. The said inspection report also enclosed with it a copy of the letter dated 05.06.2008 issued by the ASI, granting sanction for construction in respect of the subject premises.

3. Learned Counsel for the respondent/MCD submits that the construction existing on the first, second and a part of third floor of the subject premises has been got compounded as per the applicable Rules in that regard and the grievance of the petitioner that prior permissions had not been obtained by respondent No. 5 before carrying out alterations in the subject premises, is belied by the NOCs dated 25.02.2005 and 05.06.2008 issued by ASI to respondent No. 5. She draws the attention of this Court to an order dated 17.08.2010 passed by the Central Information Commission (CIC) on the second appeal preferred before it by Mr. Nijhawan, General Secretary of the petitioner/Society in respect of the subject premises, wherein the allegation of the appellant/Society that false information had been provided by MCD with regard to approval of sanction plans of the subject premises, was held to be invalid. It was also observed that the appellant/Society had made the allegations of unauthorized construction without any proof and consequently, the penalty proceedings initiated against the officers of MCD were dropped.

4. Counsel for the respondent/MCD further draws the attention of this Court to the order dated 20.10.2010 passed by the Division Bench in a Public Interest Litigation (PIL) preferred by the petitioner/Society, which was dismissed while imposing costs of Rs. 75,000/- , with the observation that the said PIL was more an attempt to settle scores in a court of law and clearly exposed the vindictive attitude of the petitioner/Society. It is stated that the aforesaid judgment dated 20.10.2010 was taken in appeal by the petitioner/Society by filing an SLP before the Supreme Court, but the said appeal has also recently been dismissed vide order dated 31.10.2011.

5. It is pertinent to note that the present writ petition was filed by the petitioner/Society within three days of the dismissal order passed by the CIC on 17.8.2010 and the same appears to be nothing but yet another attempt to rake up an issue that has been duly settled in the second appeal preferred by the petitioner/Society before the CIC.

6. In view of the inspection report filed by the respondent/MCD and taking into consideration the fact that NOCs have been duly issued by the ASI in respect of the subject premises, which clearly establishes that no unauthorized construction has been carried out on the subject premises, this Court is not inclined to proceed any further with the present petition, which is accordingly dismissed as being devoid of merits.

7. Mr. Nijhawan, who appears in person for the petitioner/Society, states that he has complied with the order dated 11.03.2011, whereunder the present writ petition which was dismissed in default vide order dated 1.3.2011, was restored subject to payment of a sum of Rs. 50,000/- as costs. The writ petition having been dismissed as being devoid of merits, it is directed that the costs deposited by the petitioner/Society shall be divided and paid in equal share to the respondent/MCD and respondent No. 5, for the unnecessary and frivolous litigation initiated by the petitioner/Society against them, which appears to be an attempt to settle personal scores with respondent No. 5.

8. At this stage, counsel for respondent No. 5 states that he does not wish to receive the costs and the same may be paid to a worthy cause. It is directed that the balance costs of Rs. 25,000/- payable to respondent No. 5 shall be deposited by the Registry with the Bar Council of Delhi Indigent & Disabled Lawyers Account, within four weeks and proof of deposit shall be placed on record.