

(2008) 10 DEL CK 0100

In the Delhi High Court

Case No : Writ Petition (C) 4222 of 2007

Ram Nath Suraj Singh Rishi Kum

APPELLANT

Vs

N.D.M.C. and Another

RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

New Delhi Municipal Council Act, 1994 — Section 236, 237, 238, 239

Citation : (2008) 155 DLT 41

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : A.K. Singla and Pankaj Gupta, for the Appellant; Madhu Tewatia and Sidhi Arora and S.K. Pruthi, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—Respondent No. 2, Punjab National Bank is a tenant of the petitioner in respect of the premises bearing No. K-16, Connaught Circus, New Delhi-110001. It appears that respondent No. 2 made an application to the NDMC on 9.2.2007 along with a forwarding application dated 9.2.2007 intimating the interior works which it proposed to carry out in the said premises. Punjab National Bank sought the sanction/permission of the NDMC to carry out various works. The application form as filled by respondent No. 2 pertained to "Additions and Alterations/Revised/Revalidation/New Scheme/Completion Certificate...." The list of works that the respondent No. 2 proposed to carry out as enclosed with the application were as follows:

List of works to be carried out at proposed interior for PNB, International Services Branch at K-16, Connaught Circus, New Delhi

I Furnishing

1. Wooden Low ht partition upto 4"-6"."
2. Wooden Full ht partition upto 7"-6"."

3. Wooden work stations.

4. Wooden furniture.

5. Gypboard false ceiling

6. Wooden steps

7. Wooden storage

8. Glazing at front

II Electrical

1. Electrical wiring

2. Laying of conduit pipes

3. Installation of Light fittings

4. Installation of electric fans

5. Installation of Air Conditioners

6. Installation of Electric panel

7. Cabling of Fire/Security Alarm

8. Installation of Fire/Security system

III Civil

1. Restoration of water and sewer connection as per NDMC approval.

2. Replacing sanitary and water fixtures.

3. Repairing of walls by cement plaster

4. Repairing of floor and laying tiles.

5. Fixing rolling shutter and collapsible door for security purpose. POP and paint of wall and ceiling.

2. Respondent No. 2 NDMC entertained this application and on 6.3.2007 granted sanction to carry out "internal addition/alteration". The petitioner represented against the grant of the said sanction/ permission to respondent No. 2. On receipt of the said complaint, vide communication dated 24.4.2007, the NDMC directed respondent No. 2 to stop the works being undertaken by it immediately. Respondent No. 2 represented against it. The NDMC once gain somersaulted from its earlier stand, and vide communication date 18.5.2007 withdrew its earlier communication dated 24.4.2007 thereby reviving the sanction/permission earlier granted on 6.3.2007. Aggrieved by the issuance of the communication dated 18.5.2007 by the NDMC, the petitioner has preferred the present writ petition. The petitioner has also impugned the permission/sanction granted for initial connection/addition/alterations contained in the letter dated 26.1.2006

concerning the grant of permission for road cutting to respondent No. 2. The communication dated 6.3.2007 initially granting sanction/permission to respondent No. 2 is also under challenge.

3. The submission of Mr. Singla, senior Counsel is that u/s 239 of the NDMC Act, it is only the owner who is entitled to make an application to the council in case he wishes to execute the works enumerated therein. He submits that the NDMC cannot entertain an application from a tenant in this regard. He refers to Delhi Building Bye-laws particularly to Bye law 6.2.9 which defines the documents that have to be submitted along with an application for building permission. Clause A of Bye-law 6.2.9 requires the furnishing of ownership documents and reads as follows:

(a) Ownership Documents ? Lease-deed, sale-deed etc. duly accompanied by an annexed site plan giving the physical description of the plot, property. In such cases where lease-deed has not been executed, no objection certificate from the Competent Authority shall be submitted.

4. He submits that from a reading of the aforesaid definition of "ownership documents", it is clear that it is the documents of original title which are required to be submitted. The expression "lease deed" used in Clause (a) aforesaid has to be understood in the context of the expression "sale deed". The lease deed referred to in the said Bye Law is a perpetual lease deed like the one granted by an authority like the L & D.O, DDA etc and not a lease deed executed between private persons. He submits that there is no lease deed executed between the petitioner and respondent No. 2 and the tenancy of respondent No. 2 is an oral tenancy. The NDMC, according to him, has acted illegally in even entertaining the application made by respondent No. 2. The petitioner has not granted its NOC to the carrying out of the addition/alterations by the tenant-respondent No. 2, for which permission was sought and accorded in this case by NDMC.

5. Ms. Madhu Tewatia, learned Counsel for the NDMC has submitted that the provisions of Section 239 are, in fact, not even attracted in the facts of this case. She has drawn my attention to Bye-law 6.4.1. which reads as follows:

6.4.1. No notice and building permit is necessary for the following alterations, which do not otherwise violate any provisions regarding general building requirements, structural stability and fire safety requirements of the Bye-laws:

- (a) Plastering and patch repairs;
- (b) Re-roofing or renewal of roof including roof of intermediate floor at the same height;
- (c) Flooring and re-flooring;
- (d) Opening and closing windows, ventilators and doors not opening towards other's property;
- (e) Replacing fallen bricks, stones, pillars, beams etc.

- (f) Construction or re-construction of sun-shade not more than 75 cm in width within one's own land and not overhanging over a public street;
- (g) Construction or reconstruction of parapet exceeding 1 m and not more than 1.5 m in height and also construction or re-construction of boundary walls as permissible under these Bye-laws;
- (h) Reconstruction of portions of buildings damaged by storm, rains, fire, earthquake or any other natural calamity to the same extent and specification as existed prior to the damage, provided the use conforms to provisions of Master Plans;
- (i) White-washing, painting etc. including erection of false ceiling in any floor at the permissible clear height provided the false ceiling in no way can be put to use as a loft/mezzanine etc.; and
- (j) Erection or re-erection of internal partitions provided the same are within the purview of the Bye-laws;

6. She submits that the activity sought to be undertaken by respondent No. 2 does not fall within the expression "to erect a building" defined in Section 236 of the Act. The said definition reads as follows:

"to erect a building" means-

- (a) to erect a new building on any site whether previously built upon or not;
- (b) to re-erect-
 - (i) any building of which more than one-half of the cubical contents above the level of the plinth have been pulled down, burnt or destroyed; or
 - (ii) any building of which more than one-half of the superficial area of the external walls above the level of the plinth has been pulled down; or
 - (iii) any frame building of which more than-half of the number of the columns or beams in the external walls have been pulled down;
- (c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally so constructed, subsequently appropriated for any other purpose;
- (d) to convert into more than one dwelling house a building originally constructed as one dwelling house only;
- (e) to convert into a place of religious worship or into a sacred building any place or building not originally constructed for such purpose;
- (f) to roof or cover an open space between walls or buildings to the extent of the structure which is formed by the roofing or covering of such space;
- (g) to convert two or more tenements in a building into a greater or lesser

number;

(h) to convert into a stall, shop, warehouse or godown, stable, factory or garage any building not originally constructed for use as such or which was not so used before the change;

(i) to convert a building which when originally constructed was legally exempt from the operations of any building regulations contained in this Act or in any bye-laws made thereunder or in any other law, into a building which had it been originally erected in its converted form, would have been subject to such building regulations;

(j) to convert into or use a dwelling house any building which has been discontinued as or appropriated for any purpose other than, a dwelling house.

7. u/s 237 there is a prohibition against a person erecting or commencing to erect any building or executing any works specified in Section 239, except with the previous sanction of the Chairperson and, in a manner, otherwise than in accordance with the provisions of the Chapter and of the Bye-laws made under the Act in relation to the erection of buildings or execution of works. Section 238 requires that every person who intends to erect a building to apply for sanction by giving notice in writing of his intention to do so. An application for obtaining building permission/sanction is dealt with in accordance with Bye-law 6. It requires that every person who intends to erect, re-erect or make alterations in any place in a building or demolish any building shall give notice in writing to the Authority of the said intention. The application is to be accompanied by the requisite number of plans and statements. She submits that in the present case the application made by respondent No. 2 was merely for carrying out internal works i.e. for repair and renovation and none of the works proposed to be carried out by respondent No. 2 are covered either by the expression "to erect a building" or amount to addition or repair of the building u/s 239. She submits that the council could well have returned the application made by respondent No. 2 by stating that no permission/sanction is required for carrying out the proposed works by virtue of Bye-law 6.9.1.

8. Counsel for respondent No. 2 tenant submits that the works proposed to be carried out do not tantamount to erection of the building or to addition or repair or alteration in terms of Section 239 of the Act. He submits that the application had been made by respondent No. 2 by way of abundant caution. In case NDMC found that the works proposed tantamount to erection of a building or to the carrying out of addition and alteration in terms of Section 239, the NDMC could have granted permission/sanction or it could have simply returned the application by saying that the proposed works are covered by Bye-law 6.4.1. He submits that merely because an application was made by respondent No. 2 and permission was granted by the NDMC thereon, it does not lead to the conclusion that the works carried out by respondent No. 2, in fact, tantamount to either erection of a building, or to addition and alteration/repair contemplated by

Section 239 of the Act.

9. He has also relied upon two decisions of this Court in AIR 1986 Del, Rawal Singh v. Kwaliti Stores and Anr. AIR 1986 Del 236 and Asha Das v. Dunlop (I) Ltd. 1988. Raj Ir 484.

10. Having heard learned Counsel for the parties and considered their respective submissions, I am inclined to dismiss this writ petition. In my view, the petitioner is seeking to make a mountain of a mole hill and to take advantage of the fact that respondent No. 2 had filed the application with NDMC in the format meant for carrying out addition/alteration in a building, as provided for in Section 239 of the Act. A perusal of Sections 236, 237, 238 and 239 of the Act shows that prior sanction/permission of the Council is required to be obtained only if the person concerned wishes to "erect a building" within the meaning of Section 236 or carry out additions to, or repairs in a building provided for in Section 239 of the Act. The question whether the application u/s 239 could be made by a tenant/lessee, or only by a landlord, or with his consent by the lessee would be relevant for determination only in a case where such an application is made for carrying out works which tantamount "to erect a building" or to "addition to or repairs in a building" u/s 236 and 239 of the Act respectively. If the proposed works do not tantamount to either "erection of a building" or "to addition to or repairs in a building" under Sections 236 and 239 respectively, no prior sanction/permission is necessary, and merely because a tenant may have made an application either by way of abundant caution or under a mistaken belief to the NDMC and because the NDMC has chosen to grant the permission/sanction rather than return the same as not being necessary, it does not follow that the permission accorded by the NDMC is liable to be declared as illegal only on the ground that the NOC of the landlord had not been obtained or that the application had not been made by the landlord himself. The mandate of the law as is evident from Sections 236 to 239 read with Bye-law 6.4.1 is that no prior sanction/permission is necessary, to carry out alterations which do not otherwise violate any provisions regarding general building requirements, structural stability and fire safety requirements of the Bye-laws, and which are enumerated in the said Bye-law. The same is akin to an automatic sanction/permission to carry out the works enumerated in Bye-Law 6.44.1 to all concerned.

11. The works that respondent No. 2 desired to carry out, and as enumerated hereinabove, clearly show that none of these works tantamount either to "erection of a building" within the meaning of Section 236 or to addition to or alteration in a building in terms of Section 239. Pertinently it is not even argued by Mr. Singla, learned senior Counsel for the petitioner that any of the said works even remotely fall either within the definition of "to erect a building" or can be said to be additions/alterations u/s 239 of the Act. In Kalidas Dhanjibhai Vs. The State of Bombay, the Supreme Court has held that merely because a person had made an application under the Shops and Establishment Act, which was not applicable in the facts of that case, he could not be prosecuted under the

provisions of the said Act. There is no estoppel against the law.

12. I also find merit in the submission of respondent No. 2 that respondent No. 2 being the tenant is entitled to carry out the said works without any objection from the petitioner. In *Rawal Singh (supra)*, this Court has held that a tenant is entitled to make alterations or adjustments in the demised premises to make them suitable to his requirements and the landlord cannot be heard to take exception to them when no damage impairing the premises, or material alteration has resulted which cannot be restored back to the original position by the tenant at his own cost whenever he vacates the same. No order for removal of such alterations is called for. In *Asha Das (supra)*, this Court was of the view that the putting up of new wooden frames in the doors and windows, new sanitary fittings in the bath room and the conduit electric fitting and false ceiling in the demised premises and even the creation of certain small openings in the wall for putting in ducts for air conditioning do not tantamount to a structural change in the demised premises or cause any damage to the premises entitling the landlord to have any injunction against the tenant. The Court took notice of the decision of the Supreme Court wherein it had been held that "material alterations" would mean important alterations such as those which mark or substantially change the front or the structure of the premises. So far as the challenge to the road cutting premises contained in the letter dated 26.1.2006 is concerned, no separate submission has been made by Counsel for the petitioner to assail the same, and it cannot be said that even the said works tantamount to those falling u/s 236 or 239 of the Act.

13. I am, therefore, of the view that merely because respondent No. 2 made an application in the format prescribed by the NDMC seeking sanction/permission for carrying out addition/alteration, and merely because the said permission was granted by the NDMC it does not mean that the sanction/permission can be said to be one u/s 239 of the Act. The sanction sought by respondent No. 2 and granted by respondent No. 1, NDMC was not required at all in the facts of this case, and even if granted cannot be said to be in any manner opposed to any law. I see no merit in this petition.

Dismissed.