

(2006) 02 DEL CK 0007
In the Delhi High Court
Case No : LPA No. 2546 of 2005

Reena Mittal

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Citation : (2006) 2 RCR(Civil) 668

Hon'ble Judges : Markandeya Katju, C.J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ravi Gupta, for the Appellant; Tarun Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—In Friends Colony Development Committee Vs. State of Orissa and Others, the Supreme Court said:

Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and there

from develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

2. The Appellant says that she has completed construction on her property bearing No. C-6, Green Park, New Delhi as per the Building Bye-Laws but the Respondent Municipal Corporation of Delhi (MCD) is not giving her a completion certificate. She filed a writ petition before a learned Single Judge with a prayer for a mandamus to the MCD to grant her a completion certificate and to direct that her building be de-sealed.

3. The writ petition being CW 13152 of 2055 was dismissed and feeling aggrieved, the Appellant has preferred an appeal, in which we find no merit.

4. The learned Single Judge has revealed some rather telling facts while bringing about a comparison between the sanctioned plan and what was actually constructed by the Appellant. This is what the learned Judge says about the sanctioned plan:

12. The sanctioned building plan shows that a sanction has been accorded to construct a basement without any partition walls. Three living units on the ground, first and second floor have been sanctioned. Sanction shows that besides a drawing/dining room, 4 bed rooms having attached toilets, a kitchen and a family lounge have been sanctioned on each floor. Position of the internal partition walls, toilets, doors and windows have been shown in the sanctioned building plan. The front and rear elevation has also been shown in the sanctioned building plan.

5. As against this, what has actually been constructed is:

14. File which has been produced shows that while seeking completion, only 2 rooms on each of the floor have been constructed. As against 4 toilets, only 1 toilet has been constructed. Completion plan does not give the elevations.

15. Photographs of the building in the file show that the building constructed is capable of being used only for a commercial purpose.

6. The construction is said to be residential quarters on each floor and the dimensions of the two rooms (a drawing/dining room and a bed room) are found to be 38 ft. x 25 ft. There is no kitchen in the premises. Photographs of the premises have been shown to us also and it would strain our credulity if we were to believe that what has been constructed are premises for residential use and not for commercial purposes.

7. Learned counsel for the Appellant assured us that his client would rectify all defects. In view of the rather glaring differences between the sanctioned plan and the actual construction, we find the Appellant to be completely untrustworthy and are not prepared to accept any assurances made on her behalf.

8. We see no reason to differ with the opinion of the learned Single Judge that the building is completely unauthorized.

9. In view of the law laid down in Friends Colony Development Committee, the appeal is dismissed with costs of Rs. 5000/- payable to the MCD within four weeks.