
(2010) 01 DEL CK 0255

In the Delhi High Court

Case No : Writ Petition (C) 10961 of 2009

Savita Pandey

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0255

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : A.J. Bhambhani and Nisha Bhambhani, for the Appellant; Suparna Srivastava, Standing Counsel and K.K. Joshi, for R-2, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner Ms. Savita Pandey is owner of flat No. 451, ground floor, DDA flats, Lado Sarai, New Delhi. The respondent No. 2, Ms. Prem Vohra is in occupation of flat No. 452, DDA flats, first floor, Lado Sarai, New Delhi, which is situated directly above the flat of the petitioner.

2. It appears that there is unauthorized construction in the flats of the petitioner and the respondent No. 2.

3. In May and June, 2006, the petitioner's husband had made a complaint to the MCD regarding unauthorized constructions by the respondent No. 2. Subsequent complaints were also made to the DDA. On 9th October, 2006, the petitioner's husband approached the Monitoring Committee appointed by the High Court.

4. On 1st May, 2008, MCD issued the impugned order sealing the flat of the petitioner in view of the unauthorized construction. It is a case of the respondent No. 2 that unauthorized construction in her flat has been demolished twice.

5. The respondent No. 2 in the counter affidavit filed in this Court has stated that the petitioner's husband is a real estate broker through whom, the respondent No. 2 had purchased the flat No. 452 in 1995. It is also the allegation of the respondent No. 2 that the petitioner's father-in-law owns the flat No. 449 in

which there is again unauthorized construction; in fact the petitioner has amalgamated flat Nos. 449 and 451.

6. The prayer made in the present writ petition is that the flat No. 451, ground floor, DDA flats, Lado Sarai, New Delhi should be de-sealed and the petitioner is ready and willing to give undertaking that once unauthorized construction existing in flat No. 452 is demolished, the petitioner will within 7 days thereafter remove the unauthorized construction on the ground floor.

7. Husband of the petitioner, it is admitted has filed a civil suit before the Senior Civil Judge, Delhi for mandatory and permanent injunction against both MCD and the respondent No. 2. The said civil suit is based upon similar allegations. It stated in the said civil suit that until unauthorized construction existing on the first floor and above is demolished, unauthorized construction on the ground floor cannot be demolished. In paragraph 10 of the said plaint, the following averments are made:

10. That in view of the above said facts and circumstances, the defendant No. 1 is liable to be directed to demolish and remove all illegal and unauthorized constructions raised by defendant No. 1 in flat No. 452, DDA Flats, Lado Sarai, New Delhi including the illegal and unauthorized constructions and extensions etc. raised by her right from ground floor up to third floor (as shown red in site plan attached) and in case if the defendant No. 1 fails to do so, in that event the defendant No. 2 is directed to book the said illegal and unauthorized constructions so raised by defendant No. 1 from ground floor to third floor of the property in question, as per the building bye laws of the defendant No. 2 and also demolish the said illegal and unauthorized constructions, without touching the property of the plaintiff in any manner whatsoever, any further a decree of permanent injunction may be passed in favour of the plaintiff and against defendant No. 2 from sealing the property No. 451, DDA Flats, Lado Sarai, New Delhi in any manner whatsoever, otherwise the plaintiff is bound suffer irreparable loss and injury to his person and property which cannot be compensated in terms of money.

8. Counsel for the petitioner during the course of hearing admits that an interim application was filed by the petitioner's husband in the said civil suit but the same has been dismissed and the petitioner's husband has not filed any appeal or challenged the said order and the same has become final. It is also accepted and admitted that evidence of the plaintiff (petitioner's husband) has been recorded and evidence of the respondent No. 2 including her cross-examination is complete. Thus the civil suit is at the last stage.

9. Keeping in view the allegations and counter allegations made by the petitioner and the respondent No. 2 and also the fact that the petitioner's husband has already filed a civil suit, it will not be appropriate to entertain and decide this writ petition. As noticed above, the petitioner's husband had filed an application for interim relief before the Civil Judge, which was dismissed. The petitioner's

husband is also present in Court at the time of hearing of the present writ petition.

10. Counsel for the petitioner has submitted that the petitioner's husband is ready and willing to withdraw the civil suit. He also submits that as the sealing was done by the Monitoring Committee appointed by the High Court, any decision in the civil suit is meaningless and futile. Counsel has drawn my attention to the order dated 5th June, 2008, passed by the Appellate Tribunal, MCD. Evidence of the plaintiff (petitioner's husband) has been recorded and evidence of the respondent No. 2 has been recorded in the civil suit. Withdrawal of civil suit u/s 23 Rule 1 read with Section 12 of the Code of Civil Procedure, 1908 will have legal consequences, specially, when evidence of the parties has been partly recorded. Certain rights have accrued to the parties on the basis of evidence on record. In any case such request is to be made before the Judge trying the civil suit.

11. The Monitoring Committee appointed by the High Court stands disbanded pursuant to the subsequent orders of the High Court. It is pointed out by the counsel for the respondent No. 2 that vacation notice dated 11th April, 2008 was issued to the petitioner and thereafter the civil suit was filed. If required and necessary the petitioner can approach this Court after the civil suit is decided.

12. In these circumstances, I am not inclined to entertain the present writ petition as a civil suit with the same subject matter is already being before the Civil Judge. It is clarified that this Court has not expressed any opinion on unauthorized construction made by the respondent No. 2 and it is always open to the respondent No. 1, MCD to take action against the unauthorized construction as per law. No costs.