

(2019) 01 DEL CK 0300

In the Delhi High Court

Case No : Civil Reference No. 1, 2 Of 2017

Senjil Gupta

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 25-01-2019

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 1 Rule 10, Order 22 Rule 10
Delhi Municipal Corporation Act, 1957 — Section 313, 314, 315(1), 317(2), 334, 336, 337(1), 338, 339, 340, 343, 344, 345, 345A, 346(2), 347, 347B, 347B(2), 347B(3), 347C, 347C(3), 347D, 347D(1)
Limitation Act, 1963 — Section 5, 14

Citation : (2019) 257 DLT 674 : (2019) 2 AD(Delhi) 153

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Jitender Choudhary, Puja Kalra, Virendra Singh, A.D.N. Rao, Siddharth Arora

Judgement

V. Kameswar Rao, J

O.REF. 1/2017

1. This reference being O.REF. 1/2017 has been made by the learned District and Sessions Judge (Hqs.) under Order XLVI of the Code of Civil Procedure on 11th December, 2017 with regard to the jurisdiction of the Court of District and Sessions Judge (Hqs.) Delhi for entertaining appeals under Section 347 D of the Delhi Municipal Corporation Act, 1957 (Act in Short).

2. The facts which arises for consideration on the reference are that the appellant Senjil Gupta has filed an Appeal before the District and Sessions Judge (Hqs.) under Section 347D of the Act challenging an order dated June 5, 2015 passed by Smt. Raj Rani Mittra, Presiding Officer, Appellate Tribunal (ATMCD) in Appeal No. 1156/ATMCD/2013 titled as Vishni Hingorani v. North Delhi Municipal Corporation and Ors. Vide the said order, ATMCD has dismissed an application filed by the appellant Senjil Gupta Under Order XXII Rule 10 read with Order I

Rule 10 CPC. It is noted that appellant Senjil Gupta had also filed an application under Sections 5 and 14 of the Limitation Act for condonation of delay in filing the appeal. In the said application, it is mentioned that against the impugned order dated June 5, 2015, the appellant had preferred a writ petition being W.P. (C) 9244/2015 before this Court. Notice was issued in the said writ petition and after response from the counsel for the respondent MCD, this Court decided the writ petition vide order dated 14th September, 2016 and granted liberty to the appellant to approach the court of District and Sessions Judge (Hqs) against the impugned order dated June 5, 2015. Pursuant thereto, an appeal was filed by the appellant before the District and Sessions Judge (Hqs) on September 28, 2016 and the same was registered as an MCD Appeal No. 3074/2016 and is pending in the said Court. On January 3, 2017, it was informed to the appellate court that respondent no.3 had expired and steps were taken to implead his legal heirs. An application to implead the legal heirs of the deceased / respondent no.3 was allowed vide order dated May 17, 2017 and amended memo of parties was taken on record.

3. Vide order dated June 5, 2015, ATMCD disposed of the application under Order XXII Rule 10 read with Order I Rule 10 CPC and it is the view of the learned District and Sessions Judge in the reference made that the said order is not covered under sub-section 1 of Section 347D of the Act which gives power to the District and Sessions Judge (Hqs.), Tis Hazari Courts, Delhi, to hear appeals only against the orders of the Appellate Tribunal either confirming, modifying or annulling orders made or notices issued under the Act. It is stated that the impugned order dated June 5, 2015 is neither confirming, nor modifying nor annulling an order made, or notice issued under the Act. The question of law, which has been posed by the learned District and Sessions Judge reads as under:

1. Whether the Administrator (here in this case the District and Sessions Judge (Hqs.) Tis Hazari Court, Delhi) has the power to hear appeals against order of the Appellate Tribunal, Municipal Corporation of Delhi (ATMCD) restricted only to the orders of the Appellate Tribunal by which the orders made or notices issued under the Delhi Municipal Corporation Act, 1957 have been either confirmed or modified or annulled as provided under Section 347D of the Delhi Municipal Act, 1957? Or

2. Whether the Administrator (here in this case the District and Sessions Judge (Hqs.) Tis Hazari Court), Delhi is empowered to hear appeals as a regular Appellate Court under the Code of Civil Procedure, 1908 against all orders passed by the Appellate Tribunal, Municipal Corporation of Delhi in the appeals pending before the said Tribunal passed during the course of hearing, the appeals including the impugned order by which the application under Order XII Rule 10 read with Order I Rule 10 CPC filed by the applicant / appellant was dismissed, as observed by this court in W.P.(C) 9244/2015 decided on September 14, 2016.

O.REF. 2/2017

4. This reference being O.REF. 2/2017 has been made by the learned District and Sessions Judge (Hqs.) under Order XLVI of the Code of Civil Procedure on 18th December, 2017 with regard to his jurisdiction for entertaining appeals under Section 347D of the Delhi Municipal Corporation Act, 1957 (Act in Short).

5. The facts which arise for consideration on the reference are that the appellants Sarita Rajput and others had filed an Appeal before the District and Sessions Judge (Hqs.) under Section 347D of the Act challenging (i) order dated May 27, 2016 passed by Sh. Sanjeev Kumar, Appellate Tribunal (ATMCD) in Appeal No. 1041/2015 titled as Sarita Rajput & Ors. v. North Delhi Municipal Corporation & Ors., whereby the ATMCD has allowed the applicant / respondent No.2 to file documents and argue the matter despite dismissing the application under Order 1 Rule 10 CPC filed by the said respondent; and (ii) order dated August 08, 2016 to the extent that the ATMCD adjourned the matter for arguments on the objections filed by the respondent No.2, to the report of the Local Commissioner thereby taking on record the objections and also the documents filed by the respondent No.2.

6. Along with the application, the appellants had filed an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal. It is mentioned, in the said application, that against the impugned orders the appellants had preferred a Writ Petition (Civil) 10749/2016 before this Court. This Court vide order dated November 11, 2016 had granted liberty to the appellants to approach the Appellate Authority of the ATMCD in terms of Section 347D of the Act since the order is appealable under Section 347D(1) of the Act. Pursuant thereto, the appellants had filed a Review Petition bearing No. 523/2016 before this Court seeking review of the order dated November 11, 2016, which was withdrawn by the appellants on November 30, 2016 and thereafter the appellants filed the appeal before the learned District & Sessions Judge (Hqs.), on December 01, 2016 and the same was registered as MCD Appeal NO. 3079/2016 and is pending in the said Court. It is stated in the reference that on December 06, 2017, it was noticed that an appeal before the District & Sessions Judge (Hqs.) is maintainable only under Section 347D of the Act.

7. It is stated in the reference that learned counsel for the appellant had submitted that in the Civil Writ Petition filed by the appellants, this Court vide order dated November 11, 2016 was of the view that the order was appealable under Section 347D(1) of the Act before the Appellate Authority of the ATMCD, which in this case is the concerned District & Sessions Judge. It is further stated that the orders for filing status report, reply / arguments on the objections of the report of the Local Commissioner are not covered under Sub Section 1 of Section 347D of the Act, which gives power to the Appellate Authority of the ATMCD as the Authority has power to hear appeals only against orders of the Appellate Tribunal either confirming or modifying or annulling orders made or notices issued under the Act. The orders dated May 27, 2016 and August 08, 2016 are

neither confirming, nor modifying, nor annulling an order made or notice issued under the Act. According to the reference order, the following questions of law arises for consideration:-

Questions of Law:

1. Whether the Administrator (here in this case the District and Sessions Judge (Hqs.) Tis Hazari Courts, Delhi) has the power to hear appeals against order of the Appellate Tribunal, Municipal Corporation of Delhi (ATMCD) restricted only to the orders of the Appellate Tribunal by which the orders made or notices issued under the Delhi Municipal Corporation Act, 1957 have been either confirmed or modified or annulled as provided under Section 347 D of the Delhi Municipal Act? Or

2. Whether the Administrator (here in this case the District and Sessions Judge (Hqs.) Tis Hazari Court), Delhi is empowered to hear appeals as a regular Appellate Court under the Code of Civil Procedure, 1908 against all orders passed by the Appellate Tribunal, Municipal Corporation of Delhi in the appeals pending before the said Tribunal passed during the course of hearing, the appeals including the impugned orders dated 27.05.2016 and 08.08.2016 by which ATMCD had allowed the applicant / respondent No.2 to file documents and argue the matter despite dismissing the application under Order I Rule 10 CPC filed by the respondent No.2 and order dated 08.08.2016 to the extent that the Ld. ATMCD adjourned the matter for arguments on the objections filed by the respondent No.2 to the report of the Local Commissioner thereby taking on record the objections and also the documents filed by the respondent No.2, as observed by the Hon'ble High Court of Delhi in W.P.(C) No. 10749/2016 decided vide order dated 11.11.2016?

8. To answer these questions, it is necessary to reproduce Section 347D of the Act as under:

(1) An appeal shall lie to the Administrator against an order of the Appellate Tribunal, made in an appeal under Section 343 or Section 347B, confirming, modifying or annulling an order made or notice issued under this Act.

(2) The provisions of sub-sections (2) and (3) of section 347B and section 347C and the rules made thereunder, shall, so far as may be, apply to the filing and disposal of an appeal under this Section as they apply to the filing and disposal of an appeal under those sections.

(3) An order of the Administrator on an appeal under this section, and subject only to such order, an order of the Appellate Tribunal under Section 347B, and subject to such orders of the Administrator or an Appellate Tribunal, an order or notice referred to in sub-section (1) of that section, shall be final."

9. Suffice it to state Section 347D can be invoked as a provision to file an appeal to the District and Sessions Judge (Hqs.), Tis Hazari Court, Delhi (in view of the judgment of the Supreme Court in the case reported in (2011) 6 SCC 535 Amrik

Singh Lyallpuri v. Union of India and Ors.) against an order of the Appellate Tribunal (ATMCD) made in an appeal under Section 343 or Section 347B confirming, modifying and annulling an order made or notices issued under this Act.

10. In this regard, it is necessary to refer to Section 343 of the Act and also Section 347B of the Act as under:-

"343 Order of demolition and stopage of buildings and works in certain cases and appeal - (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in Section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person), as may be, specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given Provided that no order of demolition shall be made unless the person has been given the means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under sub-section (2) against an order of demolition the Appellate Tribunal may, subject to the provisions of sub-section (3) of Section 347C stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the

Appellate Tribunal unless security, sufficient in the opinion of the said Tribunal has been given by the appellant for not proceeding, with such erection or work pending the disposal of the appeal.

(4) No court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) Subject to an order made by the Administrator on appeal under Section 347-D, every order made by the Appellate Tribunal on appeal under this section, and subject to the orders of the Administrator and the Appellate Tribunal on appeal the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under sub-section (1) or where an order of demolition made by the Commissioner under that sub-section has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal in a case where no appeal has been preferred against the order of the Appellate Tribunal, and by the Administrator in a case where an appeal has been preferred against the order of the Appellate Tribunal the person against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any fixed by the Appellate Tribunal or the Administrator on appeal and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

347B Appeals against certain orders or notices issued under the Act-(1) Any person aggrieved by any of the following orders made or notices issued under this Act, may prefer an appeal against such order or notice to the Appellate Tribunal, namely:-

(a) an order according or disallowing sanction to a layout plan under Section 313;

(b) an order directing the alteration or demolition of any street under Section 314;

(c) a notice under sub-section (1) of Section 315;

(d) a notice under sub-section (2) of Section 317;

(e) an order directing the disposal of things removed under Chapter XV or seized under Section 334, or an order rejecting the claim of any person for the balance of the proceeds of sale of things so disposed of;

(f) an order sanctioning or refusing to sanction the erection of any building or the execution of any work under Section 336;

(g) an order withholding sanction under the proviso to sub-section (1) of Section 337;

- (h) an order cancelling a sanction under Section 338;
- (i) an order requiring the rounding off, splaying or cutting off the height of a building intended to be erected, or for the acquisition of any portion of a site, under Section 339;
- (j) an order disallowing the erection of any building or the execution of any work under Section 340;
- (k) an order requiring the stoppage of any erection of work under section 344;
- (1) an order requiring the alteration of any building or work under Section 345;
- (m) an order directing the sealing of unauthorised constructions under Section 345-A;
- (n) an order refusing to grant permission under sub-section (2) of Section 346;
- (o) an order granting or refusing permission under Section 347;
- (p) any such other order or notice relating to or arising out of planned development under the provisions of this Act as may be prescribed by rules.

(2) An appeal under this section shall be filed within thirty days from the date of the order or notice appealed against:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Tribunal shall be made in such form and shall be accompanied by a copy of the order or notice appealed against and by such fees as may be prescribed by rules."

11. A perusal of Section 343 and Section 347B would reveal that in so far as an order under Section 343 is concerned, the same is relatable to an order of demolition and stoppage of buildings and works in certain cases. Similarly, Section 347B relates to certain orders made or notice issued under the Act. The same are relatable to Sections 313, 314, 315(1), 317(2), Sections 334, 336, 337 and 338 etc. Nowhere the sections refer to an order passed in an application filed under Order XXII Rules 10 and / or Order 1 Rule 10 CPC read with Section 151 CPC. So, it necessarily follows that in the absence of the said provisions of CPC being referred to either in Section 343 or in Section 347B, an appeal before the District and Sessions Judge against an order dated June 5, 2015, which is an order under Order XXII Rule 10 read Section Order 1 Rule 10 CPC shall not lie. In other words the appeal to the District and Sessions Judge under Section 347D of the Act encompasses in itself only orders passed under two provisions of the Act, i.e., Sections 343 and 347B and not orders passed under Order XXII Rule 10 read with Order I Rule 10 CPC or any interlocutory order. No order in an application / petition other than under Sections 343 or 347B can be a subject matter of an appeal before the appellate authority, i.e., District and Sessions

Judge (Hqs.) Tis Hazari Courts, Delhi.

12. Further, I am of the view that sub section 1 of Section 347D has to be read as a whole to know the correct purport / intention of the provision. The words "An appeal shall lie to the Administrator (District & Sessions Judge) against an order of the Appellate Tribunal made in appeal under Section 343 or Section 347B" are followed by the words "confirming, modifying or annulling an order made or notice issued under this Act". So, it necessary follows, it is that order which is passed by the Appellate Tribunal, in an appeal under Section 343 or 347B, confirming, modifying or annulling the order made or notice issued under the Act, which can be subject matter of appeal before the District & Sessions Judge. In the absence of any provision, the District and Sessions Judge (Hqs.) cannot bestow upon himself a power which is not vested in him by a Statute. It is also a settled position of law that any act liable to be done in a particular matter has to be done in that matter only and not otherwise. In the absence of any appellate power vested with District & Sessions Judge (Hqs) by the Act, no appeal shall lie. In this regard, I may refer to the following observation of the Supreme Court in AIR 1979 SC 1250 Munshi Ram and Ors. v. Municipal Committee Chheharta.

"It is well recognised that where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle, it is clear that sections 84 and 86 of the Municipal Act bar, by "inevitable implication" the jurisdiction of the Civil Court where the grievance of the party relates to an assessment or the principle of assessment under this Act."

13. It is also settled position of law, that, a Court cannot read anything into a statutory provision, which is plain and unambiguous. The Supreme Court in Shiv Shakti Co-operative Housing Society vs. Swaraj Developers AIR 2003 SC 2434, observed as under:

"It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

14. In Union of India and another vs. Hansoli Devi and others 2002(7) SCC 273 (vide para 9), the Supreme Court observed as under:

"It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."

15. In *Satheedevi v. Prasanna* reported in (2010) 5 SCC 622, the Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise-- *Kanai Lal Sur v. Paramnidhi Sadhukhan* [MANU/SC/0097/1957 : AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - *Union of India v. Deoki Nandan Aggarwal* [MANU/SC/0013/1992 : 1992 Supp (1) SCC 323] and *Shyam Kishori Devi v. Patna Municipal Corpn.* [MANU/SC/0191/1966 : AIR 1966 SC 1678]"

16. In view of the above, the references are answered by holding that it shall only be the orders / notice issued under Section 343 and Section 347B of the Act, which can be challenged in an appeal before the learned District & Sessions Judge (HQs) under Section 347D of the Act.