
(2006) 05 DEL CK 0142

In the Delhi High Court

Case No : WP (C) No. 12441 of 2004 and CCP No's. 630 of 2003

Shri S.L. Gupta

APPELLANT

Vs

MCD and Others
 Brijender Kr. Tomar Vs Union of India
(UOI) and Others

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Citation : (2006) 131 DLT 116

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Atul Jha, in WPC No. 12441/2004, R.K. Tomar, Adv in CCP No. 630/2003 and Atul Jha, in CCP No. 129/200, for the Appellant; Ashok Bhasin, for R-1 and Amiet Andlay, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—It all started when CW No. 2466/2002 was filed in this Court by Brijender Kumar Tomar seeking mandamus against MCD to demolish the stated unauthorized construction by Shri S.L. Gupta on the terrace of flat bearing No. 66-C, Pocket A-12, Kalkaji Extension.

2. Brijender Kumar Tomar is the owner and occupant of Flat No. 66-B which is on the first floor. Above that is Flat No. 66-C owned and possessed by Shri S.L. Gupta.

3. For record, it may be clarified that wife of S.L. Gupta was the original allottee. She having died, S.L. Gupta claims inheritance under his wife. But, in records of MCD, necessary mutation has not been effected.

4. Writ petition filed by Brijender Kumar Tomar was disposed of vide order dated 10.12.2002. As it was informed to this Court by MCD that after serving a show cause notice, a demolition order was passed by MCD regarding unauthorized construction on the terrace of the second floor, it was held that MCD had to take the demolition order to its logical conclusion. It was noted by this Court that

counsel for the MCD informed that necessary demolition action would be taken within 4 weeks.

5. When order dated 10.12.2002 was passed, S.L. Gupta was represented by Shri Anil Grover, Advocate.

6. S.L. Gupta challenged the order dated 10.12.2002 by filing LPA No. 986/2002. Appeal was disposed of vide order dated 30.07.2003 directing that a review petition may be filed before the learned Single Judge.

7. Review application No. 10236/2003 was filed by S.L. Gupta. It was disposed of vide order dated 10.9.2003 directing MCD to grant a hearing to S.L. Gupta.

8. CCP 630/2003 was filed by Brijender Kumar Tomar in November 2003 stating that unauthorized construction continued to exist and that MCD was colluding with S.L. Gupta in not demolishing the unauthorized construction.

9. In the meanwhile, considering an application filed by S.L. Gupta to regularize the offending constructions, vide order dated 16.9.2003 Assistant Engineer held that requisite documents which had to be submitted by S.L. Gupta as per guidelines issued for regularization of excess coverage in DDA flats having not been submitted, matter could not be processed any further. S.L. Gupta was directed to collect the requisite documents and submit the same. Since S.L. Gupta did not submit the necessary documents, on 5.11.2003 MCD wrote to S.L. Gupta requiring him to submit the requisite documents failing which it was intimated to him that MCD would give effect to the demolition orders passed.

10. On 3.12.2003 application for compounding was rejected inter alia, on the ground that S.L. Gupta, having not sought mutation, had no locus standi to seek regularization.

11. On 6.12.2003 partial demolition action was taken by MCD followed by further demolition on 30th April, 2004.

12. S.L. Gupta filed another writ petition being WP(C) No. 12441/2004. Unfortunately for him, counsel remained negligent. Petition which was filed on 30th April, 2004 was returned with objections. Counsel did not bother to remove objections and re-file the petition. It was re-filed on 9th July, 2004. For a second time it was returned as all objections had not been met. Third re-filing on 13th July, 2004 was also defective. After removing the defects, writ petition was finally re-filed on 28th July, 2004.

13. In the writ petition, S.L. Gupta sought mandamus against MCD to inform him the compoundable deviations and receive money to compound the same and in the meanwhile, prayed that no demolition be effected.

14. On 30th April, 2004 as also 17.7.2004 further demolition was carried out by MCD. These 2 demolitions took place when the writ petition filed by S.L. Gupta was lying under objections.

15. Unfortunately, counsel for S.L. Gupta never informed the Court on 30th July, 2004 that MCD took 3 demolition actions on 6.12.2003, 30.4.2004 and 17.7.2004. Show cause notice was issued in the writ petition. Matter was fixed for 13.8.2004. On 13th August, 2004 none appeared for MCD. While deferring further hearing for 6.9.2004, an interim order was passed directing status quo to be maintained as on 13.8.2004.

16. Contempt Case(C) No. 129/2005 was filed by Shri S.L. Gupta alleging that notwithstanding order dated 13th August, 2004 requiring status quo to be maintained, demolition was effected on 13.8.2004.

17. Since litigating parties are the same, I am disposing of the writ petition and the 2 contempt petitions by a common order.

18. The writ property is admittedly a DDA flat. Additions and alterations as also regularization can be effected only as per policy notified by DDA pertaining to DDA flats. Inter alia, vide Clause 1.4 of the policy, additional coverage outside the precincts of a flat over a courtyard and terrace can be effected only where owners of one vertical block jointly submit the proposal to DDA/MCD. In case a owner is not interested to carry out additional constructions, the remaining owners have to obtain no objection certificate from him.

19. Clause 1.4 reads as under:

1.4 In cases where permission is required for interchanging the position of kitchen, bathroom & WC or for additional coverage in courtyard and terraces, all the owner(s) of one vertical block will jointly submit the proposal to DDA/MCD. In case, where all the owner(s) of one vertical block are not interested to carry out the addition/alteration but one or two of them are interested, they will have to obtain no Objection Certificate from the remaining owner's .

20. Since Brijender Kumar Tomar is not willing to give the requisite consent and since his flat and flat of S.L. Gupta are one vertical block, question of compounding any additional construction on the terrace above the second floor does not arise. If that be the position, it hardly matters whether MCD rejected the request for compounding on wrong grounds.

21. Indeed, it would be an idle formality for this Court to direct MCD to treat S.L. Gupta as the owner of Flat No. 66-C, Pocket A-12, Kalkaji Extension, New Delhi and thereafter process his request for compounding. In the teeth of para 1.4 of the policy under which additions and alterations can be regularized, till S.L. Gupta sorts out the issue with Brijender Kumar Tomar his request cannot be considered. Indeed, as per the policy, owners of flats in a vertical block have to either jointly seek regularization or must give a no objection in favor of the other. The application filed by S.L. Gupta has to be rejected as not maintainable.

22. Writ Petition being 12441/2004 is accordingly dismissed.

23. Facts pertaining to CCP 630/2003 and Contempt Case(c) No. 129/2005 have

been noted above.

24. S.L. Gupta cannot maintain any action in respect of demolitions carried out on 6.12.2003, 30.4.2004 and 17.7.2004 in as much as orders for status quo were passed in WP(C) 12441/2004 on 13th August, 2004.

25. As regards the demolition which took place on 13th August, 2004 I have no reason to disbelieve the reply filed by the Municipal Engineer wherein he states that demolition commenced in the morning and by the afternoon when it was informed that an order for status quo was passed, same was stopped.

26. As noted above, petitioner and his counsel remained negligent in prosecuting WP(C) 12441/2004 which was filed for the first time on 30th April, 2004. Objections were not removed till 28.7.2004. In the meanwhile, thrice demolition action was taken.

27. That apart, Municipal Engineers were under court orders to take to the logical conclusion the demolition order passed for the reason vide CCP No. 630/2003, Brijender Kumar Tomar was breathing down their neck. On 6.1.2005, learned Single Judge of this Court, Ms. Gita Mittal, J. directed MCD to demolish all unauthorized constructions as she noted that demolition carried out in December, 2005 was a cosmetic demolition. Indeed, municipal authorities were acting in accordance with law when they took the demolition action.

28. I find no merit in the Contempt Case(C) No. 129/2005. The same is dismissed.

29. Since offending constructions have now been demolished, I discharge the notice of contempt in CCP No. 630/2003 but with a direction to MCD to ensure removal of the debris and to further ensure that in future S.L. Gupta does not effect any construction on the terrace of the block of flats till owner of the ground floor and first floor join him or give the necessary no objection.

30. No costs.