
(2012) 03 DEL CK 0106

In the Delhi High Court

Case No : Writ Petition (C) No. 4638 of 2003

Tej Pratap Singh

APPELLANT

Vs

N.D.M.C. and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A

Citation : (2012) 190 DLT 126

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Ravi Gupta with Mr. Gaurav Gupta, for the Appellant; Arjun Pant, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur

1. Orderly Municipal Governance is the responsibility of the New Delhi Municipal Corporation (herein referred to as NDMC). Space for parking of vehicles is necessary corollary to the construction of multi-storeyed building for commercial use. Utilization of the parking space outside multi-storeyed commercial building is not only to the benefit of the occupiers but is also of use to public at large, to have access the said building. It is in the aforesaid context, petitioner's challenge to respondent-NDMC to take over an area of 6131.46 Sq. Ft. abutting the rear side of petitioner's property bearing No. 23, Barakhamba Road, New Delhi (herein referred to as subject premises), for the purpose of widening the road and to provide commercial parking to the premises in question, has to be considered. So far as the remaining reliefs sought in this petition regarding shifting underground water tank from the front portion of the building to the rear portion of the said building is concerned, the same stands already granted, as is evident from order of 6th April, 2004 which reads as under:-

Learned counsel for the petitioner states that the area acquired for the DMRC

shall be handed over to DMRC today itself. Since an alternate underground water tank has already been constructed and is operational as per order dated 29.10.2003.

2. It is undisputed that the subject premises which was a residential property was got converted to commercial use by the petitioner after paying the conversion charges to NDMC, but when this was done, is not disclosed. In any case, it is the assertion of the respondent-NDMC that at the time of the conversion of the subject premises from residential to commercial, vide letter of 25th August, 1985 (Annexure-1), petitioner was intimated that the afore-noted portion of the land abutting the rear side of the subject premises is mandatory required for the purpose of road widening/development of parking lot and the petitioner vide aforesaid Communication was called upon to handover the vacant possession of the afore-noted portion to the respondent-NDMC. Again vide Communication of 10th November, 1989 (Annexure -III), petitioner was reminded by the respondent-NDMC that the approval of the plan for the proposed construction of multi-storeyed commercial building at the subject premises, is subject to handing over the afore-noted portion abutting the rear side of the subject premises for widening of road, parking lot etc.

3. At the stage of approval of the completion plan for the construction of the newly constructed multi-storeyed building at the subject premises by the petitioner i.e. at the stage of issuance of "Completion Certificate", petitioner vide Communication of 5th September, 2002 (Annexure P-7), had written to the respondent-NDMC to take over the stipulated area of both sides i.e. from rear side of the subject premises also for the purpose of widening of road etc.

4. According to learned senior counsel for the petitioner, aforesaid Communication surrendering the rear portion of the subject premises to the respondent-NDMC was not voluntary because if the petitioner had not surrendered the afore-noted rear portion abutting the subject premises then the respondent-NDMC would not have issued the "Completion Certificate" for the commercial building on the subject premises. Upon receipt of petitioner's Communication (Annexure P-7), respondent-NDMC had promptly issued the "Completion Certificate" in respect of the subject premises on 17th October, 2002 (Annexure-P-8).

5. The grounds upon which taking over of the afore-noted rear portion abutting the subject premises by respondent-NDMC for parking lot, is assailed by learned senior counsel for the petitioner, are as under:-

A. This alleged condition of the respondent-NDMC is ultra vires the provisions of New Delhi Municipal Council Act. No provision under the Act empowers the NDMC to impose any such condition for sanction of the building plans.

B. Imposition of any such condition by the NDMC is also otherwise illegal as the petitioner has been made to lose his valuable land for his no fault.

C. Respondent-NDMC cannot take any such land from the petitioner without adopting the acquisition proceedings as envisaged in law and also without making any payment of any compensation to the petitioner for the value of such land.

D. The rear side land in question is being used by the NDMC for the purposes of Public Parking and has been making money by allotting such parking space to the parking contractors.

E. The front portion of the land had been taken over by the Metro for construction of station and hence the present dispute is concerning the land area admeasuring 6131.46 Sq. Ft. on the rear side of the plot in question.

F. That the action of the respondent in calling upon the petitioner to surrender the land in front and rear is against all canons of Law and is violative of Article 14, 19, 21 and 300A of Constitution of India.

6. Coincidentally, at the hearing, both the sides had placed reliance upon decision of the Apex Court in Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, wherein following directions were issued:-

(1) The Corporation shall have right to manage the land which was earmarked for school, park etc.

(2) The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.

(3) It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded.

7. The stand of the respondent-NDMC is that the taking over of 6131.46 Sq. Ft. area abutting the rear portion of the subject premises is neither arbitrary nor discriminatory as the adjoining property owners of premises bearing Nos. 19, 21 and 25 at Barakhamba Road, New Delhi at the time of completion of the commercial building have already released the land abutting their commercial buildings for the purpose of road widening, parking lot etc. without seeking any compensation and thus there is no merit in this petition, which deserves rejection.

8. The fundamental issue raised is whether the respondent-NDMC can at all impose such a condition of handing over of land for parking lot without payment of compensation as precedent condition for use of residential premises for commercial purpose. This question can be straight away answered as there is no acquisition of the petitioner's land by the respondent-NDMC and so there is no question of payment of any compensation. As regards putting some portion of the land abutting commercial premises to use for the purpose of parking lot by the Municipal Authorities is concerned, the same can be done as Apex Court in Pt. Chet Ram (supra) has permitted such user for the beneficial enjoyment of the property. Here in the instant case, beneficial enjoyment of commercial property

can be only when adequate parking facilities are provided to the general public who would be frequently visiting the subject premises.

9. This Court is of the considered opinion that the precondition to hand over rear portion of the land abutting the subject premises to the respondent-NDMC for parking lot, put by the respondent-NDMC to change of the use of the subject premises from residential to commercial, is a reasonable condition and such action of the respondent does not suffer from any arbitrariness. On the discrimination aspect, the petitioner cannot assert anything because the similarly placed land owners of property bearing No. 19, 21 and 25 at Barakhamba Road, New Delhi have already handed over the rear portion of their premises for being used for the parking lot by the NDMC and even if the NDMC is charging a fee for it, there is nothing illegal about it. So far as acquiescence of the petitioner to hand over afore-noted rear portion of land abutting the subject premises, to the respondent-NDMC for parking lot is concerned, the same cannot be said to be under duress because it was always open to the petitioner to have challenged it, instead of agreeing to hand over the aforesaid portion of the land to NDMC for parking lot to the subject premises. In this view of the matter, I find no merit in this petition and as such this petition is dismissed while leaving the parties to bear their own costs.