
(1989) 04 DEL CK 0026

In the Delhi High Court

Case No : Civil Writ Petition No. 3090 of 1987

The Statesman Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-04-1989

Acts Referred:

Citation : (1989) 38 DLT 160

Hon'ble Judges : S.B. Wad, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, H.N. Salve, R.K. Anand, S.P. Sharma, B.J. Nayyar and H.P. Sharma, for the Appellant;

Judgement

N.N. Goswamy, J.

(1) The challenge in this petition is to be action of the respondents, particularly of New Delhi Municipal Committee, in not dealing with and sanctioning the building plans submitted by the petitioner- company

(2) The petitioner No. I.the Statseman Limited, hereinafter referred to as "the company" publishes the newspaper "The Statesman" from Calcutta and Delhi. The Company holds I lease in perpetuity of plot No. 18, Barakhamba Road, New Delhi, where its present offices and press premises are located since 1930. In May 1980 the Company submitted plans to Ndmc for development of its property in line with buildings constructed by other major newspapers. The Land & Development Office under the Ministry of Urban Development, respondent No. I, levied an additional premium of Rs. 63,40,918.00 for a total construction of 1.62,000 sq. ft. of Far area. The Company accepted the additional levy and with the approval of the Land & Development Office made the entire payment in Installments with interest. The last Installment was paid on July 31, 1985.

(3) The plans submitted to Ndmc were approved on August

(4) The petitioner Company challenged the action of all the Authorities before

this Court by way of the present writ petition. Notice of the petition was issued to all concerned Authorities. A counter affidavit was filed on behalf of Delhi Urban Art Commission. The matter came up before this Court on 20.1.1988 when the following order was recorded :-

"The counter affidavit filed on behalf of respondent No. 2 is highly unsatisfactory. It does not specify the policy/policies of the Government regarding multi-storeyed buildings and the plans have been rejected on the ground that it was considered conception ally unsatisfactory without explaining further as to how and why. Respondent No. 2 will file a further affidavit explaining the policy/policies and reasons for rejecting the plans in detail within one week from today. The respondent No. 1 will place on record the various instructions issued from time to time regarding the multi- storeyed buildings. To be listed on 1st February, 1988. Rejoinder, if any, to be filed before the next date of hearing."

As directed a further supplementary affidavit was filed on behalf of Delhi Urban Art Commission. To meet the objections raised in the supplementary affidavit the petitioners sought leave to amend the petition in respect of the prayer clause only and leave to amend was granted. Thereafter the petitioner came up for hearing on various dates and had to be adjourned on the request of the counsel for Delhi Urban Art Commission on the ground that the Government will be able to take a decision on the new proposal within a stipulated time and the matter was being looked into. It was also submitted that the new members of the Commission had been appointed only recently and they wanted further time to finalise the decision. On suggestion of this Court and in order to sort out the matter it was decided that the Architects of the petitioner Company and of the Urban Art Commission would meet across the table and would try to work out the possible modalities so that the objections raised by the Urban Art Commission can be removed. When the matter came up before this Court on 9.12.1988, the following order was recorded :-

"Minutes of the 554th meeting of the Delhi Urban Art Commission held on November 22, 1988 have been placed before us. Happily it appears that the matter has been sorted out. In accordance with the said minutes the petitioners will submit the modified plans and the documents to the Ndmc within one week from today. The Ndmc will clear the file within two weeks thereafter and place it before the Commission. It is clarified that the Ndmc will not treat it as a new application and would treat it as a modified and amended application and will proceed on that basis. The Commission thereafter clear the file within two weeks and send it back to the Ndmc for final approval. We have no doubt that the Ndmc will grant the final approval without wasting any further time. In case the meeting of the Building Plans Committee of Ndmc is not scheduled to be held within two weeks. the Ndmc will so arrange that a special meeting is held so that the matter is not delayed any further. Case to be listed before Court for final orders and disposal on February 3, 1989."

When the mater came up again on 3.2.1989 this Court was informed that the

Building Plans Committee had met but the minutes of the meeting were not available. It was also agreed between the parties that in case the Building Plans Committee had any objections they would meet the Architects of the petitioner Company on 7.2.1989 and would try to sort out the entire matter. Thereafter on 17.2.1989 it was brought to the notice of this Court that practically all the objections have been taken care of and the only surviving objections are from the Chief Fire Officer and Deputy Commissioner of Police (Traffic). These two persons were impleaded as respondents in this petition and they were duly represented before us. The Chief Fire Officer had given his clearance in writing and this Court was informed by the counsel of the Chief Fire Officer that it had no objection. Thus, the only objection which remained was from Deputy Commissioner of Police (Traffic). Even the Dcp (Traffic) stand that plans were in accordance with the bye-laws but the bye-laws needed amendment, which according to the learned counsel for the Ndmc, there was no proposal to amend the bye-laws. It was submitted by the learned counsel for the Ndmc that there was hardly any objection subsisting and as such a short time was sought to clear the plans.

(5) However, to our surprise on the final date of arguments, that is, on 31.3.1989 the Ndmc changed its counsel and the Standing Counsel for Ndmc appeared instead of Mr. H.P. Sharma, advocate who had been appearing throughout. The contention of the Standing Counsel before us was that neither the Urban Art Commission nor the Chief Fire Officer had cleared the plans and as such the final sanction could not be granted by the NDMC. Luckily for the petitioners the Urban Art Commission was represented by a Senior counsel before us and so was the Fire Officer. In fact the Fire Officer was also present in person. Both of them categorically stated that they had given their clearance and they had no objections to the sanction of the plans. Mr. Anand the learned counsel for Urban Art Commission fairly stated before us that u/s II of the Delhi Urban Art Commission Act the duties of the Commission were only to advise the Central Government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the skyline. He submitted that the Commission on consideration of its powers had already found the plans to be in order and had no objection to the same being sanctioned. It had however, given opinion to Ndmc to get clearance from other Authorities, Similarly the learned counsel for the Chief Fire Officer who was also accompanied by the Fire Officer stated that the only objection raised by the Fire Officer at an earlier occasion had been removed and thereafter the Fire Officer had categorically stated that he had no objection to the plans being sanctioned. The learned counsel for the Ndmc also tried to raise a legal point regarding the maintainability of the writ petition. However, when confronted with the pleadings wherein no such plea had been taken the learned counsel gave up this contention and did not press.

(6) I must make an observation that all through the hearing of the petitioner the Urban Art Commission and other Authorities who were concerned with the sanctioning of the plans had been co-operating and acting as directed by this Court. But surprisingly Ndmc was not willing to take a decision and continued to raise frivolous objections for reasons best known to it. Inspire of the fact that the clearance had been granted by Urban Art Commission as also by all other Authorities the sanction was not conveyed and was withheld for no reasons. This attitude of Ndmc is beyond our understanding. Since I have come to the conclusion that no objection remains from any Authority I am of the opinion that non-sanction of the plans on the part of the Ndmc is absolutely unjustified and cannot be supported by any reason whatsoever.

(7) For the reasons recorded above, I make the rule absolute and direct the New Delhi Municipal Committee to convey its formal sanction of the building plans and release the same to the petitioner Company on or before the 5th day of May, 1989. The petitioner Company will be entitled to its costs from the New Delhi Municipal Committee. Counsel's fee Rs. 2000.00 .

(8) S.B. Wad, J. I have gone through the judgment written by brother Goswamy and I entirely agree with the reasoning and the operative order.

(9) During the course of the arguments counsel for the N.D.M.C. produced a letter dated January 12, 1989, which created some apparent confusion as to the respective functions of the Delhi Urban Art Commission and N.D.M.C. in matters of the sanctioning of the building plans. Elucidation of their respective functions is the reason for this separate opinion.

(10) In the letter dated January 12, 1989. from Delhi Urban Art Commission to the Chief Architect, N.D.M.C., while conveying the approval of the petitioner's plan "as being satisfactory from the point of view of Delhi Urban Art Commission Act" the Commission observed :

"The Commission was constrained to note that the Ndmc while forwarding the proposal had not authenticated the compliance of the various regulatory provisions including the NDRAC's recommendations and the revised comprehensive guidelines issued by the Government, nor the workability of the traffic, parking and servicing. The detailed proposal was otherwise found satisfactory from the point of view of Delhi Urban Art Commission Act and the same was approved, subject to the condition that the Ndmc will ensure the conformity of the proposal to the various regulatory provisions as well as the revised comprehensive guidelines issued by the Government and ensure further that the proposal fits in to the traffic pattern/system of the area and in no way should it conflict with the same."

(11) As a matter of fact, (it may be seen) from the various orders passed by us on 9.12.88, 3.2.89, 17.2.89, 3.3.89 and 10.3.89, it is clear that all the objections raised by the Buildings Plan Committee of the N.D.M.C. from time to time were removed by the petitioner. On 10.3.1989 it was noticed that the objection of the

Dcp (Traffic) was contrary to the bye-laws and could not, Therefore, stand in law. The objection of the Chief Fire Officer was also removed by the petitioner and the counsel for Chief Fire Officer had made a statement to that effect in the Court. The legal requirements, which the N.D.M.C. can consider before sanctioning the building plans, were, this completely met by the petitioner. Even then we gave one more opportunity to the N.D.M.C. to inform us, from the various officers concerned with the sanctioning of the plan, as to whether any objections still survived. We had also directed the officers to be present in the Court. However, on March 31, 1989 the standing counsel for the N.D.M.C., who, for the first time appeared in these proceedings, (on the strength of the said letter of the Delhi Urban Art Commission dated January 12, 1989) submitted that the Urban Art Commission had objection to the sanctioning of the Plan. He also submitted that the Chief Fire Officer had also an objection from the point of view of fire protection. The letter dated January 12, 1989, of Delhi Urban Art Commission expressly states that the petitioner's plans were found satisfactory from the point of view of Urban Art Commission Act and that they had given their approval, but the Senior Counsel appearing for the Urban Art Commission also stated before us that in terms of the Act the Plans submitted by the petitioner were found satisfactory and the approval was given. The Chief Fire Officer was also present in the Court who stated again that objections raised by them were removed by the petitioner. From the para of the said letter quoted above an unfortunate impression was created that at this late stage when all the objections were smoothly removed with the cooperation between the parties the Urban Art Commission was trying to raise objections which even the Ndmc had not raised and the Ndmc was trying to show that the Urban Art Commission had not given its final approval.

(12) On reading the Delhi Urban Art Commission Act and the arguments of the counsel for both sides, I am of the firm opinion that it was not lawful for the Delhi Urban Art. Commission to give the so-called conditional approval when it found that the plans were satisfactory according to the Delhi Urban Art Commission Act. They have indirectly trespassed on the field of Ndmc, the "condition" being invalid. The approval of the Delhi Urban Art Commission shall be treated as complete and absolute in terms of the requirements of Delhi Urban Art Commission Act.

(13) The Delhi Urban Art Commission Act, 1973 (No. 1 of 1974) was passed with the object of "preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi". The Commission consists of the persons having special sensibility and interest in plastic and visual arts and urban environment or possess special knowledge or practical experience in respect of architecture or art (Section 4). Chapter Iii of the Act delineates the functions and powers of the Commission. Sub- Section (1) of Section 11 states :

"It shall be the general duty of the Commission to advise the Central Government in the matter of preserving, developing and maintaining the

aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the sky-line or the aesthetic quality of surroundings or any public amenity provided therein."

(14) The functions of the Commission inter alia are development of the administrative buildings, residential complexes, public parts public gardens and various aspects of the town planning from the point of view of improving or maintaining the aesthetic quality of surroundings in Delhi. It may be noted that one of the functions, with which are immediately concerned, and which is mentioned in Section 11(1). is to provide advice and guidance to any local body in respect of any project of building operations. Section 12 of the Act makes the decision of the Commission u/s 11(1) or 11(2) binding on such local body. By virtue of Section 15 the Commission has powers of the Civil Court of receiving evidence on affidavit?, requiring discovery and production of documents and summoning attendance of any person and examining him. The members of the Commission are also protected from legal proceedings for the act done by them in good faith in pursuance of the Act.

(15) Reading the object clause of the Act with Section Ii of the Act, it is clear that it is the aesthetic quality of the buildings which is the primary concern of the Commission. In fact, the name of the Commission itself is Delhi Urban Art Commission. The Senior Advocate for the Uoi, who appeared for the Commission, fairly conceded that the only angle from which the approval of the building plan is necessary from the Commission is the aesthetic quality of the building and surroundings. He specifically referred to Section 11. As I read Section 11(1) the function of the Commission is to advise and guide the Central Government and the local bodies in matters of preserving, developing and maintaining the aesthetic quality of urban and environmental design. By virtue of Section 12 the advice of the Commission is "binding" on the local bodies only in regard to the main function of the Commission of looking after the aesthetic quality of urban and environmental designs. In order words, whether the Ndmc building bye-laws are complied with or not or whether the building was safe from the point of fire safety or from the point of view of traffic movement are the matters out of the legal competence of the Commission under the Act. They are, mainly, the functions of the NDMC.

(16) From time to time during our hearings we had made it clear to the counsel for the Ndmc and its officers that we want the petitioner to strictly comply with the building by-laws, fire safety requirements and traffic regulations, etc. We also found that both sides in the spirit of cooperation were attending to the objections and their removal by appropriate actions. The application for the sanction of the building plan filed by the petitioners was pending for a considerably long time and we had only tried to cut down the avoidable delays, red tape and unwitting dithering at the administrative levels when we passed various orders.

(17) For the reasons recorded above, I make the rule absolute and direct the New Delhi Municipal Committee to convey its formal sanction of the building plans and release the same to the petitioner Company on or before the 5th day of May, 1989. The petitioner Company will be entitled to its costs from the New Delhi Municipal Committee. Counsel's fee Rs. 2000.00 .