

(2007) 05 DEL CK 0080

In the Delhi High Court

Case No : Writ Petition (C) 1734 of 2006

Vikram Vaish Family Trust

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Delhi Development Act, 1957 — Section 11A(2)

Citation : (2007) 05 DEL CK 0080

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Anusuya Salwan, for the Appellant; O.P. Saxena, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The petitioner seeks a direction to the Respondent Municipal Corporation of Delhi ("MCD") to regularise the construction made by the petitioner on its property at G-1, Pushpanjali Farms, Village Bijwasan, New Delhi. The petitioner trust purchased the property in question on 16.5.1980 and constructed a dwelling unit after getting the building plans approved by the MCD on 27.9.1999.

2. By notification dated 23.7.1998 of the Ministry of Urban Affairs & Employment, Department of Urban Development, Government of India, issued a notification in terms of Section 11A(2) of the Delhi Development Act, 1957 ("Act") making modifications to the Master Plan for Delhi, MPD-2001 which inter alia prescribed revised norms for "farm houses". The changes brought out were as under:

Farm Houses (135)

4. On page 164 (RHS) of the Gazette of India dated 1.8.1990, the table will be replaced by the following:

- (i) Minimum size of the farm house 0.8 ha. (ii) Maximum ground coverage 5%
- (iii) Maximum FAR 5 (subject to maximum of 500 sq. mtr. irrespective of the

size of the farm) (iv) Number of storeys two (v) Maximum height 8 mtrs.

All constructions including basement, if any, will be counted towards FAR."

3. Following this, the MCD brought out a public notice inviting applications for regularisation of unauthorised constructions and specified the charges that had to be paid for that purpose. The charges for the additional FAR were Rs. 450/- per sq.m., apart from compounding fee etc. In terms of this announcement, the petitioner submitted its building plans on 26.3.1999 with the fee of Rs 1,49,350/- on the basis that it was entitled to 5000 sq.ft. covered area.

4. According to the petitioner, the Executive Engineer (Building) Nazafgarh Zone called upon the petitioner on 11.1.2000 asking it to get the construction made on the property regularised by depositing the compounding fee. By its letter dated 20.1.2000 petitioner informed the MCD that it had already deposited the requisite compounding fee on 26.3.1999. It was pointed out in that letter that three copies of the building plans had already been submitted to the MCD and it was expecting the plans to be sent back after approval. The MCD was requested to inspect the premises and approve the building plans. The copy of the receipt of the payment made was also enclosed.

5. Thereafter, the petitioner received a notice dated 27.9.2002 informing it that the construction was unauthorised and was liable to be demolished. The petitioner replied to this letter on 9.10.2002 informing the MCD that it had already applied for regularisation and that its request was within the permissible limits as per the modifications to the MPD 2001.

6. In the meanwhile, this Court in W.P. (C) No. 2218/2002 (Deepak Malhotra v. MCD) considered the question of regularisation of farm houses in terms of the MCD's notification dated 27.3.1998. In its judgment reported in 2003 II AD (DEL) 594 this Court held that the applications made would have to be considered in terms of the norms as per the notification dated 27.3.1998 as the subsequent notification dated 7.8.2000 withdrawing the relaxation was only prospective. In a later judgment dated 23.1.2003 in W.P. (C) No. 3710/2002 (Sham Nijhawan v. MCD) this Court reiterated the earlier decision in Deepak Malhotra v. MCD and directed the MCD to examine and dispose of the applications for regularisation.

7. The petitioner thereafter filed this petition seeking a relief similar to the one granted to the petitioners in the aforementioned decisions.

8. While directing notice to issue in this petition on 6.2.2006, this Court directed the MCD not to take any demolition action in respect of the excess construction for which the petitioner had deposited a sum of Rs. 1,49,350/- as compounding charges.

9. The MCD has filed a status report/counter affidavit in which it is pointed out that the case of regularisation of the property of the petitioner was examined and it was found that "the documents submitted by the petitioner were

incomplete". It is further submitted that "the site plan submitted by the petitioner for regularisation was not coloured as required and further it did not tally with the existing construction". It is claimed that the petitioner was sent a letter on 5.7.1999 asking it to submit the complete documents followed by reminders dated 21.9.1999 and 22.10.1999. Since no response was received, the letter dated 11.1.2000 was sent to get the excess coverage regularised failing which action would be taken under the Delhi Municipal Corporation Act, 1957('DMC Act'). It is claimed that no action was taken by the petitioner to remove the excess coverage and Therefore on 3.12.2001 a demolition order was passed.

10. Ms. Anusuya Salwan, learned Counsel for the petitioner, submits that the case of the petitioner is no different from that of the petitioners in the cases in which the judgment in Deepak Malhotra was delivered. She submits that the petitioner had made an application for regularisation on 26.3.1999 itself and without disposing of the said application in accordance with the law, the petitioner's property could not be ordered to be demolished by the MCD. In reply, Mr. O.P. Saxena, learned Counsel for the MCD submits that the scheme itself was discontinued in the year 2000 and Therefore the question of the petitioner being considered for regularisation at this stage did not arise. He has placed on record the photocopies of the letters dated 5.7.1999 and 21.9.1999 which are claimed to have been written to the petitioner asking for further documents. since no reply was received, the MCD proceeded to order the demolition of the unauthorised construction.

11. This Court is of the view that the petitioner is entitled to succeed. The reply of the MCD is not categorical about the disposal of the application made by the petitioner for regularisation. Although the letters dated 5.7.1999 and 21.9.1999 have been placed on record, there is nothing to indicate they were in fact delivered to the petitioner. The petitioner denies having received these letters. On the other hand, the petitioner has placed on record its letters dated 20.1.2000 (in reply to the MCD's letter dated 11.1.2000), 9.10.2002 (in reply to the MCD's letter dated 27.9.2002), and 27.1.2003 (in reply to the MCD's letter dated 22.1.2003). In each of these letters the petitioner refers to the fact that it had applied for the regularisation; that it had submitted the complete building plan and that the revised norms permitted a coverage of 5000 sq. feet. The MCD does not dispute having received these letters. What is it silent on, however, is why it did not dispose of the application for regularisation in accordance with the law before proceeding to order demolition of the unauthorised construction.

12. The petitioner is right in its contention that its case should be processed in accordance with the directions issued by this Court in Deepak Malhotra case. Like the petitioners in that case, the petitioner here also made an application on 26.3.1999 by depositing the compounding fee. In terms of the judgment in Deepak Malhotra, the petitioner's case should be processed in accordance with the norms prevalent on the date of the application i.e. the norms announced on

23.7.1998. The fact that the scheme for regularisation of excess construction in farm houses was discontinued on 6.7.2000 cannot make any difference to this position. It was incumbent on the MCD to first process the application for regularisation before proceeding to order demolition. Nothing is indicated in the status report/counter affidavit filed by the MCD as to why the benefit of the decisions in Deepak Malhotra and Sham Nijhawan cannot be extended to the petitioner as well.

13. As regards the deficiencies pointed out by the MCD for the first time in its counter affidavit viz. the site plan was not coloured and did not tally with the existing construction, the MCD could have easily visited the site and indicated to the petitioner the exact portion of the excess construction that was required to be shown in the site plan by a different colouration. In fact this is the approach adopted by this Court in the Sham Nijhawan case. This Court finds no reason to not follow the said judgment.

14. For all of the above reasons, this petition deserves to succeed. A direction is issued to the MCD to process the application made by the petitioner for regularisation in terms of the norms specified by the notification dated 23.7.1998. The case for regularisation will be considered in respect of the portion for which it has been sought and payment of compounding fee made. It will be open to the Respondent MCD to ask for additional documents which will be supplied by the petitioner within a period of two weeks from the date on which such demand is made. The MCD officials will also visit the site after a prior notice and indicate to the petitioner the exact portion which is proposed to be considered for compounding so that it can be indicated on the site plan by a different colour. The petitioner will give an undertaking to the MCD to remove non compounding portion within a period of three months after the MCD communicates its decision to the petitioner and the ultimate sanction of the plan by the MCD will be subject to the petitioner complying with the said undertaking.

15. The MCD will process the petitioner's case for regularisation and dispose of the same, in the manner indicated hereinabove, and consistent with the judgment of this Court in Deepak Malhotra and Sham Nijhawan within a period of two months from today and in any event not later than 23.7.2007. Till then no action would be taken by the MCD against the petitioner to demolish the construction which is sought to be regularised.

16. The writ petition is accordingly allowed with the above directions with no order as to costs.