

28. to 31.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

- + W.P.(C) 3905/2011 and CM 8134/2011
- + W.P.(C) 3906/2011 and CM 8135/2011
- + W.P.(C) 3907/2011 and CM 8136/2011
- + W.P.(C) 3908/2011 and CM 8137/2011

ROHINI KHOSLA Petitioner in W.P.(C) 3905/2011
SADHANA SHARMA Petitioner in W.P.(C) 3906/2011
S.AMARJIT SINGH GONA Petitioner in W.P.(C) 3907/2011
SAROJ CHOPRA Petitioner in W.P.(C) 3908/2011

Through: Mr. Sanjeev Sabharwal, Advocate
with Mr. Hem Kumar, Advocate

versus

MCD Respondent
Through: Ms. Maninder Acharya, Advocate	

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

% ORDER
31.05.2011

The present petitions have been directed to be listed in the uncirculated supplementary list on urgent mentioning.

The petitioners in the present petitions state that they are owners/occupiers of different portions of the premises bearing No B-272, Greater Kailash-I, New Delhi. The petitioner in W.P.(C) 3905/2011 is the owner/occupant of the rear portion of first floor, the petitioner in W.P.(C) 3906/2011 is the owner/occupant of the front portion of the ground floor, the petitioner in W.P.(C) 3907/2011 is the

W.P.(C) 3905/2011

Page 1 of 5

owner/occupant of the rear portion of the second floor and the petitioner in W.P.(C) 3908/2011 is the owner/occupant of the front portion of the first floor. It is stated by the counsel for the petitioners that recently they received a vacation notice dated 18.05.2011 issued by the MCD under Section 349 of the DMC Act, 1957 stating *inter alia* that unauthorized construction exists in the basement, ground floor, first floor, second floor and third floor of the subject premises and the said premises may be vacated to enable the respondent/MCD to carry out demolition/sealing action with regard to the unauthorized construction/deviation existing in the premises. It is further submitted that the aforesaid vacation notice was followed by another notice dated 27.05.2011 issued under Section 435 of the DMC Act, intimating the petitioners that no lock or barriers may be put on the premises to enable the respondent/MCD to carry out demolition activities.

Counsel for the petitioners states that the demolition activity is fixed by MCD for today and the officers of the respondent/MCD have arrived at the site. He submits that the petitioners have not been given prior notice to show cause by the MCD before passing of the demolition order. Nor has the demolition notice been conveyed to them, which has been followed by the impugned vacation notice dated

18.05.2011. It is further submitted by the learned counsel for the petitioners that if the petitioners are given adequate time, they shall approach the respondent/MCD with the existing plan of the entire premises under their occupation indicating therein the excess coverage for the purpose of regularization, while completing other requisite formalities. He states that the petitioners undertake to demolish the excess coverage on their own in a time bound manner as may be fixed by the respondent/MCD in that regard, whereafter their application for regularization may be considered by the respondent/MCD in accordance with law.

Notice.

Counsel for the respondent/MCD accepts notice and states that the premises in question is occupied by some other parties as well, who are not before this Court today. She states that two of such owners/occupants are Mr.Vipin Sarna and Ms.Sweeti Sarna, who are in possession of the second and third floors of the premises and that they had filed a writ petition registered as W.P.(C) 3475/2011, against the vacation notice dated 18.05.2011 issued by MCD under Section 349 of the DMC Act, 1957, which was disposed of while directing the respondent/MCD not to take any coercive steps against them till the interim application proposed to be filed by them alongwith their appeal

before the Appellate Tribunal, MCD, would be heard and disposed of in accordance with law. She submits that in case the application for regularization is not submitted jointly by all the owners/occupants and they are not agreeable on the distribution of the FAR, the respondent/MCD shall not be in a position to entertain such an application.

Learned counsel for the petitioners responds by submitting that all the owners/occupants shall make an endeavour to collectively approach the respondent/MCD with an application for regularization of the unauthorized construction in accordance with law.

In view of the aforesaid submission made by the counsel for the petitioners, the present petitions are disposed of with liberty granted to the petitioners as also the other owners/occupants of the subject premises to jointly approach the respondent/MCD with an application for regularization of the deviations/unauthorized construction within a period of two weeks from today. For the aforesaid period of two weeks, no coercive steps shall be taken by the respondent/MCD against the premises in question, i.e., B-272, Greater Kailash-I, New Delhi. However, it is clarified that failure on the part of the petitioners and other owners/occupants to jointly approach the respondent/MCD

with an appropriate application for regularization of the unauthorized construction/deviation within the stipulated time would entitle the respondent/MCD to proceed further against the unauthorized construction existing in the said premises in accordance with law.

The petitions are disposed of alongwith the pending applications.

DASTI under the signatures of the Court Master.



HIMA KOHLI, J

MAY 31, 2011
rkb

- CM 9570/11 - for directions
- Disposed of matter → 31⁵/₁₁

\$2 & 3

* IN THE HIGH COURT OF DELHI AT NEW DELHI

2.

+ CM No.9570/2011 in W.P.(C) 3906/2011

SADHANA SHARMA Petitioner

Through:Mr.Sanjeev Sabharwal, Adv.

versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through:Ms.Maninder Acharya, Adv. along with

Mr.Harvinder Singh, Executive Engineer, MCD.

AND

3. CM No.9569/2011 in W.P.(C) 3907/2011

AMARJIT SINGH GONA Petitioner

Through:Mr.Sanjeev Sabharwal, Adv.

versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through:Ms.Maninder Acharya, Adv. along with

Mr.Harvinder Singh, Executive Engineer, MCD.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

% 09.08.2011

These applications have been filed by the petitioners in disposed of writ petitions seeking directions to the respondent-MCD to consider the joint application submitted by them for regularization of their portions of the property bearing No.B-272, Greater Kailash-I, New Delhi, that is the basement, ground floor and the rear part of the second floor. It is conceded by the counsel for the petitioners that though the application for regularization is stated to be joint, fact of the matter is that out of 6 apartment owners, only 5 apartment

owners have jointly approached the MCD for regularization of the unauthorized construction/deviation of their portions of the property. He states that those apartment owners who are petitioners in W.P.(C) No.3475/2011, that is the owners of the front portion of the second floor and the third floor of the property, are not cooperating with the petitioners in approaching the MCD jointly.

Counsel for the respondent/MCD submits that the orders on the application for regularization submitted by the petitioners were deferred on account of MCD being under the *bona fide* impression that no action was to be taken against the petitioners in view of the order dated 31st May, 2011.

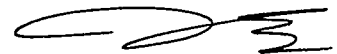
Vide order dated 31st May, 2011, the present petitions were disposed of in view of the statement made by the counsel for petitioners that all the owners/occupants would jointly make an endeavour to collectively approach the respondent-MCD with an application for regularization of the unauthorized construction in accordance with law. As a result, it was directed that no coercive steps would be taken against the premises in question for a period of two weeks. It was further clarified that in case the petitioners and other owners/occupants would not jointly approach the MCD with an application for regularization, then MCD would be at liberty to proceed

against the unauthorized construction existing in the premises in accordance with law.

As it is stated on behalf of the respondent that it was under bona fide impression that there was a stay in respect of the petitioners' portions in the building, it is to be noted that clarification in this regard was already given in the aforesaid order dated 31st May, 2011.

Now, that it is submitted by the counsel for the petitioners that the application of the petitioners for regularization of the unauthorized construction/excess coverage with respect to the subject premises comprising of the basement, the entire ground floor, entire first floor and rear portion of second floor is pending at the end of the respondent-MCD, the MCD is directed to dispose of the same within a period of two weeks from today under a written intimation to the petitioners.

Both the applications are disposed of.



HIMA KOHLI,J

AUGUST 09, 2011
Bisht