

**N THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.**

ORDER

- 1. DB CIVIL SPECIAL APPEAL (WRIT) NO.303/2015
IN
SB CIVIL WRIT PETITION NO.11817/2014**

Smt. Krishna Sharma vs. JDA Tribunal & Ors.

- 2. DB CIVIL SPECIAL APPEAL (WRIT) NO.332/2015
IN
SB CIVIL WRIT PETITION NO.11817/2014**

Jagdish Prasad Sharma vs. JDA Tribunal & Ors.

Date of Order : 31.03.2016.

**HON'BLE MR.JUSTICE AJAY RASTOGI
HON'BLE MR.JUSTICE PRAKASH GUPTA**

SAW No.303/2015:

Mr. NK Maloo, Sr. Advocate assisted by
Mr. Vishnu Bohra for the appellant
Mr. Amit Kuri for respondent JDA
Mr. LL Gupta for respondent No.3.

SAW No.332/2015:

Mr. LL Gupta for the appellant.
Mr. Amit Kuri for respondent JDA
Mr. NK Maloo, Sr. Advocate assisted by
Mr. Vishnu Bohra for respondent No.3.

These special appeals have been preferred against order of the learned Single Judge dated 28th January, 2015 by both the contesting parties. They are the owners of plot No.5 and plot Nos. 1 and 2 respectively in the scheme Pyramid Kunj of Mitra Grah Nirman Sahkari Samiti (for short `the Housing Society') situated near by Kamla Nehru Nagar, Ajmer Road, Jaipur. It is neither approved nor regularised scheme by the Jaipur Development Authority (for short `the JDA') and on the basis of the pattas issued by the Housing Society respective owners of the plots have raised constructions according to their own choice indisputably without following the building Byelaws of the JDA.

When there was illegal constructions raised by the respective

owners of the plot, the respondent No.3 Jagdish Prasad Sharma approached the Jaipur Development Authority Appellate Tribunal, Jaipur (hereinafter referred to as 'the Tribunal') with a reference under Section 83(8b) of the Jaipur Development Authority Act, 1982 impleading the present appellant as one of the respondents. After appreciating the submissions/counters submissions of the parties, the reference filed by respondent No.3 Jagdish Prasad Sharma, was disposed of by the Tribunal vide its order dated 16th October, 2014 and left over the action to be taken by the JDA without recording any finding on the basis of material which came on record and it is a fact well known that in absence of any positive direction, it always goes in vain. The person aggrieved to whom shoe pinches approaches the Court with a hope and belief that justice will be done to him. But looking to such innocuous disposal of the reference filed by the Tribunal vide order dated 16th October, 2014, he approached this Court by filing of writ petition assailing the order of the Tribunal and seeking mandamus to the JDA.

The learned Single Judge appreciating the factual matrix in the matter and revealing that both the contesting parties raised constructions by violating the Jaipur Development Authority Building Bye-Laws, 2010, laying down the parameters for the respective setbacks according to the size of the plot and the admitted position which came on record is that after the site inspection was made through JDA representative on 9th December, 2014 of the plot Nos. 1 and 2 of the present appellant and plot No.5 of respondent No.3 it reveal that the area of plot No.5 belongs to respondent No.3, the original petitioner was 191 Sq. yards and as per the building bye-laws he was required to maintain

front set back of 15 ft. and back/rear set back of 8.25 ft. and thus, over and above, respondent No.3 has left no back/rear setback. In the front set- back also, he raised temporary construction without leaving the required setback. At the same time, as regards position of other plots owned by the present appellant i.e. plot Nos. 1 and 2, the area of Plot No.1 is 62 ft. x 30 ft.=206.66 Sq. yards, of Plot No.2 is 52 ft. x 30 ft. =173.93 Sq. yards which in total comes to 383.33 Sq. yards. Obviously, the appellant is also required to maintain front setback of 15 ft., side setback of 10 ft. and back setback of 10 ft. The inspection report further reveal that the present appellant has left front setback of 7.10 ft. as against 15 ft. side setback of 4.6 ft. as against 10 ft. and back/rear setback of 4.9 as against 10 ft. It also reveal from the report that as per the plan of the society, the width of the road is 20 ft. After taking note of the building bye-laws and the report of the authorised officer of JDA, which has been elaborately referred to by the learned Single Judge in its order impugned, finally disposed of the writ petition with the following directions:-

“(i)Petitioner as well as Respondent No. 3, on their own, shall remove encroachment on the public road and/or demolish unauthorised construction in the area of set back, as referred to above within fortnight.

(ii)If they fail to do so, Jaipur Development Authority shall take appropriate action for removing construction raised by petitioner as well as Respondent No. 3 to the extent such construction is found in area in excess of the approved setback, assuming plot size of the petitioner to be 191 sq. yards and plot size of Respondent No. 3 to be 383.33 sq. yards within one month after expiry of the aforesaid period of fortnight.

(iii)If the petitioner fails to remove his encroachment from the public road, Jaipur Development Authority shall remove all such encroachment of the petitioner on the public road as per the width of 20 ft. shown by the Society in its plan within one month after expiry of the aforementioned period of fortnight.

(iv)Jaipur Development Authority shall serve notice on the owners of plot Nos. 6, 7 and 8 and after considering their

reply, if the same are not found to be satisfactory, then ensure restoration of construction on such plots, to be in conformity with Building Regulations of 2010 and remove encroachment on the public road, if any.

(v) Pending compliance of the aforesaid, no further construction shall be made or allowed to be made by the petitioner and/or Respondent No. 3.

(vi) Jaipur Development Authority shall also determine whether on the aforesaid size of plot and width of the road, multistory building having residential flats can be allowed to be constructed and shall accordingly convey to the parties.

(vii) Cost of demolition of the unauthorised construction, referred to above, shall be realised from the petitioner and Respondent No. 3 for their respective plots."

It is brought to our notice that the respective parties i.e. the owners of plot Nos.1, 2 and 5 submitted their separate representations for regularisation/compounding of their constructions if at all illegally raised by them but in compliance of the order dated 28th January, 2015 all the representations were considered and rejected by the JDA vide its order dated 19th February, 2016.

Mr. NK Maloo, Id. Sr. Advocate and Mr. LL Gupta, jointly submit that in the joint inspection report a reference has been made by learned Single Judge, that the area of plot has been deduced by mentioning the same into square yards and the setback into square feet and this appears to be a factual error in the setback which may not confirm with the area mentioned in the building bye-laws of the JDA as the building bye-laws of the JDA mention the area into sq. meters and this shows how their representations without being appreciated on merits and rejected by the JDA vide communication dated 19th February, 2016.

Mr. Maloo, further submits that there are total nine plots in the colony and on seven plots constructions have been raised and if at all this Court comes to the conclusion that it is violating JDA

building bye-laws, others would not be affected as there is no thoroughfare and parties have settled their dispute and what ever construction has been raised, may be regularised for which they shall be bound to pay the compounding fee.

In support of his submission, Mr. NK Maloo, learned Sr. Counsel has placed reliance on the judgment of the Apex Court in the case of S.Sridhar & Ors. vs. State of Tamil Nadu & Ors. reported in **(2015) 11 SCC 562** and submit that when the representation subsequently made by them is pending for regularisation at least demolition may not take place. Mr. LL Gupta, in addition to it, further submits that there is a factual error in the order of the learned Single Judge for demolition of the construction made by respondent No.3 on plot No.5 and the owner of the plot has violated the building bye-laws/setback which is compoundable but nobody has looked into and there is no such direction given by the learned Single Judge that what is compoundable would not be carried out and required to be demolished.

Mr. Amit Kuri, counsel appearing for the JDA submits that the authority has taken action strictly commensurate with the order of the learned Single Judge dated 28th January, 2015 and the action has been taken keeping in view the building bye-laws of the JDA.

It is really shocking that the authority with whom power has been entrusted to carry out its building bye-laws strictly and whosoever commit default action shall be initiated against him who contravenes/violates the building bye-laws but the JDA seems to be not vigilant to take care of its own authority entrusted by the law. But this Court cannot shut its eyes towards what is happening. After this Court took cognizance on the writ petition filed by

respondent No.3 whatever construction raised which are in contravention with the building bye-laws must be subjected to strict action in accordance with law this what the learned Single Judge has observed in passing its order impugned dated 28th January, 2015.

Regarding the factual disputes regarding measuring the houses of the appellant and the setbacks are concerned, the appellant is always at a liberty to move application seeking clarification from the Court and even when the matter is taken up by us we have not come across any building bye-laws of JDA laying down different mode of measurement regarding the setback.

After the report has been furnished by the responsible officer of the JDA and factual matrix has not been disputed or controverted in absence of any evidence in rebuttal, there was no reason for the learned Single Judge to take a different view in the matter. As regards the representation made by the appellant and so also by respondent No.3 either for regularisation or compounding of the illegal construction, although one of the representations has been rejected by the JDA through their communication dated 19th February, 2016 we are of the view that if one continue to make representations one after the another after rejection of the representation, the authority is not under any statutory obligation to consider and decide each and every such representations unless there is any factual mistake which remain unattended.

As regards the judgment of the Apex Court in the case of S.Sridhar (supra) is concerned, it was a case where observation was in respect of construction raised which may not be in accordance with the bye-laws and when representation was

pending, the Apex Court, stayed demolition of the disputed construction till the final decision on the representation is taken but in the instant case apart from the inspection report which has been looked into and taken a note by the learned Single Judge, the representations made by the appellant as well as by respondent No.3 have been examined and decided. Hence, there remains no room further for adjudication. Further if we will permit of making representations it may be abused for obvious reasons by the officers of the JDA to exercise its discretion may be for the other extraneous reasons.

Mr. LL Gupta, learned counsel for respondent No.3 submits that the JDA while implementing the order of the learned Single Judge has extended the width of the road. We expect from the JDA for proper implementation of the order of the learned Single Judge in its spirit.

After we heard the parties, we find no error in the order of the learned Single Judge which may calls for our interference. Both the appeals being devoid of merit are accordingly, dismissed.

(PRAKASH GUPTA),J.

(AJAY RASTOGI), J.

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all corrections made in the judgment/order have been incorporated in the judgment/order being emailed"

Kailash Chandra Bairwa
PS