

Promila Nagpal vs.mcd and Anr

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Court : Delhi

Decided On : Aug-23-2019

Appellant : Promila Nagpal

Respondent : Mcd and Anr

Judgement :

\$~A-3 * % IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C)
8513/2011 PROMILA NAGPAL Date of Decision:

23. 08.2019

... Petitioner

Through Mr.R.M.Bagai & Ms.Preeti Sharma, Advs. alongwith son of the petitioner in person versus MCD AND ANR Respondent Through Ms.Mansi Gupta, Adv. for R1/MCD Mr.Puneet Saini, Adv. for R-3. Mr.Amit Mahajan & Mr.Sachin Khapra, Adv. for respondent Nos. 5a to 5c, 6 to 8, 9a to 9e, 11a to 11c, 12, 13, 15,16,17, 18 & 20. CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

(ORAL) 1. This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to comply with the order dated 12.10.1999 passed under section 344 of the MCD Act; and also a writ of mandamus, or writ order, or direction to the respondents to demolish the said premises/building Nos.3203 to 3209, Ram Bazar (earlier known as Mohd. Ali Bazar), Mori Gate, Delhi- 110 006.

2. A perusal of the notice dated 12.09.1999 shows that the premises/building in question consists of ground floor, first floor and second W.P.(C) 8513/2011 Page 1 of 8 floor and is fully occupied by approx. 30 family members. It is more than 100 years old and on careful examination of the structure at ground floor, first floor and second floor, it appears that the walls of the ground floor are in dilapidated conditions and some cracks have also developed. Notice further directs the occupants to vacate the said premises/building.

3. For completion of narration of the facts, it is noted that on 07.10.2010, this court had dismissed a writ petition filed by the petitioner noting that the petitioner had not impleaded the parties who are occupants of the premises/building. It was also noted that occupants had already taken their remedy. The court also held that a long period of more than 11 years had lapsed and it has lost its efficacy and had become stale. The matter was hence dismissed.

4. In appeal being LPA No.828/2010 on 04.07.2011 with the consent of the parties the order dated 07.10.2010 was set aside and the liberty was granted to the petitioner to file a fresh writ petition impleading all the occupants who are occupying the premises/building which are sought to be declared as un-habitable and deserve to be demolished. Hence, the present writ petition was filed.

5. I may note that this court on 09.05.2014 directed the Director IIT, Hauz Khas, New Delhi to appoint a properly qualified Structural Engineer to inspect the premises/building bearing No.3203 to 3209, Ram Bazar (earlier known as Mohd. Ali Bazar), Mori Gate, Delhi, and submit a report to this court regarding the state of the building including structural stability of the same.

6. On 28.10.2014 this court noted that the Structural Engineer appointed by the Director, IIT has filed his report. In the report, the court noted that the W.P.(C) 8513/2011 Page 2 of 8 expert Mr.Shashank Bishnoi, Assistant Professor, Department of Civil Engineering, IIT Delhi, has observed as under:-

"3. Conclusions The property number 3203-09, Mori Gate, Ram Bazar, Delhi-110006 is in a poor state, as demonstrated by the recent collapses and the condition of the remaining structure. Still, the building is being occupied by 18

families, each of the families including people of all ages: children, adult and elderly. This fact, poses a difficult social and humanitarian challenge since an evacuation from the building may create severe hardship for the current occupants, and a continued occupation and use of the building may lead to a loss of life and injuries to the same occupants. The undersigned trusts that the judgment of the Honourable High court in the matter will take both aspects into account. However, from a purely engineering and technical point of view, the building cannot be considered to be safe for habitation and requires immediate action to avoid loss of life. This is perhaps even more important, given the large number of people living in this building. Given the old age of the building and the likelihood of damage to the foundation, this expert also feels that it will not be practically possible and more expensive than the cost of the existing building itself, to repair the existing structure to bring it to the standards required to meet existing standards and the loads it is expected to safely bear. It is the opinion of this expert, the most practically feasible solution here, is to build a new building that follows all the requirements of the current standards in place of the existing one."

Accordingly, this court passed the following orders: In view of the aforesaid conclusion and keeping in view the precautionary principle to be adopted in cases pertaining to hazardous, dangerous and unsafe building, this court directs the respondent- corporation to give a fresh vacation notice to the occupiers of the building in question directing them to vacate the premises within a period of eight weeks. W.P.(C) 8513/2011 Page 3 of 8 Thereafter, within four weeks, the respondent-corporation is directed to demolish the unsafe structure. After demolishing the property, the possession of the premises shall be handed back to the occupiers as they are admittedly in possession of the property today. writ petition stands disposed of. With the aforesaid observations and directions, present 7. Subsequently, on 05.05.2015 this court on the applications filed under Order 9 Rule 13 CPC, recalled the above order dated 28.10.2014.

8. Subsequently, this court on 17.05.2018 with the consent of the parties directed that a joint inspection be carried out by the officers of NDMC and Dr.Shashank Bishnoi, Assistant Professor, Department of Civil Engineering, IIT, Delhi who had earlier carried out the inspection, making it clear that the parties shall be bound by

the report submitted by the joint inspection team of NDMC/IIT.

9. The joint inspection team of NDMC/IIT has now submitted its report dated 05.07.2018. In the report, the conclusions are follows: On the basis of the above observation, it was found that the repairs carried out did not address any of the structural issues in the building. The building was not found to be safe for habitation as it does not meet the requirements of the standards and most of the construction is un-engineered. Additional damage to that reported in the earlier report by Prof. Bishnoi, such as diagonal cracks due to ongoing process of foundation failure and cracks due to sagging of beams were found. The building, therefore, requires immediate action to avoid loss of life. It is the joint recommendation of Prof. Shashank Bishnoi, Associate Professor, IIT Delhi and Mr.S.C.Meena, Executive Engineer, NDMC that the building be demolished. Shashank Bishnoi Associate Professor Executive Engineer S.C.Meena W.P.(C) 8513/2011 Page 4 of 8 Department of Civil Engineering IIT, Delhi North Delhi Municipal Corporation. 10. On 06.02.2019, this court had interacted with Professor Shashank Bishnoi and had passed the following orders: In 2014 Prof. Bishnoi had submitted an inspection report dated 03.09.2014 after conducting an inspection of the structural condition of the subject property, in which report he had given details of structural faults and defects in the building. In report dated 03.09.2014, Professor Bishnoi had concluded that from an engineering and technical point of view the subject property was unsafe for habitation. He had also suggested that repairing the existing structure would be impractical and more expensive than building a new structure by razing the existing building to the ground. In 2018 Prof Bishnoi conducted a second inspection and has given report dated 05.07.2018, in which he has reiterated his views as contained in his earlier report dated 03.09.2014; has pointed-out that no structural strengthening or repairs have been found to have been carried-out in the building; and that the building continues to be unsafe, as he had observed earlier. The court has put various questions to Prof. Bishnoi to understand: (a) whether there has been further serious degradation in the structure of the subject property; (b) whether it is possible to implement any immediate, interim rectification or reinforcement measures to reduce the level of danger in which the building is found, to make the building relatively safe to live in, for the time being; and (c) whether it is possible to

repair/re-construct the building in phases, that is by only vacating certain portions of the building at-a-time, repairing such portions and then moving-on to other portions of the building. In the expert opinion of Prof Bishnoi as given in court: in response to (a) above, he says there has been discernible further W.P.(C) 8513/2011 Page 5 of 8 11. degradation in the building, which is now even less structurally safe than it was in 2014; in response to (b) above, he is of the view that no interim measures would be effective in making the building safe for habitation; and in response to (c) above, he says it will also not be possible to repair/re-construct the building in phases, since the foundational structure of the building itself is very weak and in an extremely precarious state. Having recorded the expert opinion of Prof. Bishnoi as aforesaid, in the presence of a representative of the petitioner and in the presence of counsel for all respondents, the personal presence of Prof Bishnoi is dispensed with. I have heard the learned counsel for the parties.

12. Learned counsel appearing for North DMC has stated that the inspection was jointly carried out by NDMC and IIT, Delhi. She also points out that in the report which is forwarded on 05.07.2018 a joint view has been taken as contained in earlier report dated 03.09.2014 that the building be demolished.

13. Learned counsel for the other respondent however submits that sections 348 and 349 of the MCD Act require that commissioner has to take a decision as to whether the building is dangerous and thereafter he has to make an order to prevent the danger. He submits that at best in terms of the said statutory provisions this report may be placed before the Commissioner of the concerned municipal corporation who has to pass appropriate order under section 348 of the Act after applying his mind.

14. There are two reports placed on record by Mr.Shashank Bishnoi, Assistant Professor, Department of Civil Engineering, IIT Delhi. The second report is a joint report of Mr.S.C.Meena, Executive Engineer, NDMC and Mr.Shashank Bishnoi, Assistant Professor, Department of Civil Engineering, IIT Delhi where they had categorically stated that the building is not safe for W.P.(C) 8513/2011 Page 6 of 8 habitation and that the same require immediate action to avoid loss of life. In the

earlier report of 2014, the Assistant Professor, Mr.Shashank Bishnoi, had clearly stated that from an engineering and technical point of view the subject property was unsafe for habitation and cannot be considered to be safe to avoid loss of life.

15. In my opinion, the Commissioner, MCD has already applied his mind to the facts of the case as is apparent from the notice dated 12.10.1999 that was served on the occupants to vacate the premises. A report had accompanied this order which stated that the building is not safe.

16. That apart, the subsequent two reports including of Mr.S.C.Meena, Executive Engineer, NDMC/ Mr.Shashank Bishnoi, Assistant Professor, Department of Civil Engineering, IIT Delhi confirmed that the conditions remain the same. In fact, the first report dated 03.09.2014 of Mr.Shashank Bishnoi is accompanied by the detailed photographs that the premises/building is in dilapidated condition.

17. Keeping in view the above, it would be appropriate that a writ of mandamus be issued to the respondents to take effective steps under section 348 of the MCD Act directing appropriate demolition of the premises/building as per law expeditiously.

18. The learned counsel for the petitioner, on instructions, states that necessary costs for demolition of the said premises/building would be paid by the petitioner as per law.

19. Prior to demolition of the building appropriate opportunity would be given to the occupants of the premises/building to vacate the same. After demolition is carried out the possession of the premises/building would be W.P.(C) 8513/2011 Page 7 of 8 handed over back to the occupants, namely, respondents No.2 to 23. The said occupants will deal with the said land as per law.

20. This direction to hand over the possession of the premises/building is without prejudice to the rights and contention of the parties.

21. Notices seeking to vacate the premises/building to the occupants/respondents No.2 to 23 be given by NDMC by registered post and also by affixing notices on the premises/building itself. NDMC may complete this exercise within six months

from today.

22. I am also informed that the occupants of the property had challenged the original order of NDMC dated 12.10.1999 by filing appropriate suit before the civil court. The said suit was dismissed in default on 07.10.2010. Thereafter no further steps have been taken to revive the said suit.

23. At this stage, learned counsel for the petitioner submits that the petitioner is also occupying some of the portion of the said premises/building.

24. The present petition and all pending applications, if any, stand disposed of as above. JAYANT NATH, J.

AUGUST23 2019/v Corrected and released on 04.10.2019 W.P.(C) 8513/2011
Page 8 of 8

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