

**Chattarbhun Vs. M.C.D.**

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**Court :** Delhi

**Decided On :** Apr-17-1998

**Reported in :** 73(1998)DLT37; 1998(46)DRJ262

**Judge :** Manmohan Sarin, J.

**Appeal No. :** Civil Contempt Petition No. 415 of 1996

**Appellant :** Chattarbhun

**Respondent :** M.C.D.

**Advocate for Def. :** Arvind Nigam, Adv., ; V.P. Singh, Sr. Adv. and ; K.C. Mitta

**Advocate for Pet/Ap. :** Geeta Luthra and; Pinki Anand, Advs

**Judgement :**

**Manmohan Sarin, J.**

1. The petitioner has filed this civil contempt petition, alleging non-compliance with the directions given by a learned Single Judge of this Court, while disposing of Writ Petition No. 3853/95. Learned Single Judge while disposing of the said writ petition, directed respondent Nos. 1 and 2 to perform their statutory duties by taking appropriate action in accordance with law to demolish the unauthorized construction in the building in question within a period of eight weeks from the date of order i.e. 24.5.1996.

2. The property in question is House No. EA-114, Inder Puri, New Delhi. The petitioner is stated to be the original owner. The Interveners are stated to be in possession of first and second floor and claim to have purchased the same.

3. After the order was passed in the writ petition, Interveners filed LPA No. 134/96, before the Division Bench, where it was contended by the appellants/Interveners that the petitioner himself had raised unauthorised constructions on ground floor but was complaining of unauthorised constructions on first and second floors. The LPA was dismissed. During the course of proceedings, with a view to avoid technical objections on the non-service of show cause notice, a fresh notice by MCD was served in Court. Pursuant to the said show cause notice, demolition order was passed on 31.7.1996. The said demolition order was challenged in an appeal before the MCD Appellate Tribunal by the Interveners. Before the MCD Appellate Tribunal, the Interveners gave their statement that they are ready to remove the excess coverage and keep only the permissible area plus area which is within the compoundable limit. The Interveners further undertook to remove the non compoundable deviations within two months from the date of inspection by the Junior Engineer.

4. I have heard learned Counsel for the Interveners, Mr. V.P. Singh, who states that the Interveners have actually carried out some demolition and they have approached the MCD Appellate Tribunal for approval of the rectification plan, as filed. The position of the Corporation is that there is no increase in the FAR is permissible and the Interveners must first conform to the FAR, as per sanctioned plan, then only the question of compoundable area would arise. It is also submitted by both the parties that the MCD Appellate Tribunal is seized of the matter and the Interveners have sought direction with regard to approval of the rectification plan and the next date in the matter, for which notice is issued, is 5.5.1998. It is also stated that the MCD Appellate Tribunal has not granted any ex parte stay.

5. Learned Counsel for the petitioner in her usual persuasive manner has argued that this is only an attempt to delay the matter and the respondents deserve to be proceeded against for contempt. Having regard to the facts and circumstances as

have been enumerated before me and the fact that some demolition has already taken place, I do not think that this is a fit case, where action for contempt ought to be initiated against the respondents, at this stage.

6. Mr. V.P. Singh, Senior Advocate and Mr. K.C. Mittal, Advocate, on instructions from Mr. Jitender Chopra, Intervenor, who is present in Court, state that he undertake to this Court to demolish all the unauthorised construction, which is beyond the compoundable limit, as may be held by the MCD Appellate Tribunal. The undertaking given is accepted. This demolition would be done within one month of the order that is passed by the MCD Appellate Tribunal. Learned Counsel for the MCD, Mr. Arvind Nigam states that once demolition of unauthorised portions in the first and second floors is identified and/or done, they would proceed to demolish the unauthorised construction on the ground floor.

The MCD Appellate Tribunal is requested to dispose of the matter by 31.5.1998.

Civil Contempt Petition is disposed of with the above observations.

A copy of this order be given dusty to Counsel for the parties and be sent to MCD Appellate Tribunal.

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