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Court : Delhi

Decided On : Mar-23-2010

Judge : Sanjiv Khanna, J.

Appeal No. : W.P.(C) 38/2010

Appellant : Chattar Singh and ors.

Respondent : Mcd

Advocate for Def. : Nawal Kishore Jha, Adv.

Advocate for Pet/Ap. : Bhagwat Prasad Gupta, Adv.

Judgement :
ORDER

Sanjiv Khanna, J.

1. The petitioners had applied for sanction of building plan for construction on plot No. 74, Taimoor Nagar, New Delhi on 20th August, 2008. The respondent by the letter dated 26th August, 2008 called upon the petitioner to furnish documents and clarify doubts. On 30th September, 2008, the petitioners replied to the queries raised and furnished the documents to the respondent, MCD. The respondent, MCD again on 10th November, 2008 asked the petitioner to clarify doubts and submit documents, which were replied and furnished by the petitioners. The

petitioners by their letter dated 21st November, 2008 asked the respondent, MCD to examine their application for sanction of building plan.

2. The respondent, MCD after a gap of nearly four months again wrote a letter dated 9th March, 2009, asking the petitioners to comply with the letters dated 20th August, 2008 and 10th November, 2008. The petitioners responded and informed the respondent, MCD by their letter dated 9th April, 2009 that they had already complied with and answered the letters dated 20th August, 2008 and 10th November, 2008.

3. On 11th June, 2009, the respondent wrote to the petitioners that they have received comments from the Central Town Planning Office that plot of the petitioners abuts 24 meter road, whereas at site there is another adjoining plot/vacant land in existence. The letter states that this needed clarification and the petitioners should comply with the objection/clarifications asked for in the letters dated 20th August, 2008 and 9th March, 2008.

4. The petitioners sent the legal notice dated 8th July, 2009, to the respondent MCD that they were delaying the matter and unnecessarily harassing the petitioners. It was stated in the letter dated 16th November, 2008 that copy of the Jamabandi was furnished and the property is residential. The petitioners stated that they had filed copy of the letter dated 23rd March, 2006, issued by the SDM (Defence Colony) that the plot in question falls is khasra No. 837, which is Abadi Deh (Lal Dora). It was also stated that the petitioners have already complied with the letters dated 26th August, 2008 and 10th November, 2008.

5. The respondent, MCD by their letter dated 10th May, 2009 informed the petitioners that a complaint against sanctioning building plan was received and thereafter the matter was sent to the office of the SDM (Defence Colony) for clarification regarding ownership. It appears that one Mr. Mukesh Kumar had made a complaint to the respondent and accordingly the matter was referred to the SDM for comments in respect of ownership.

6. The matter has remained hanging and pending with the respondent since 20th August, 2008 when application for sanction of building plan was filed. The

petitioners have approached this Court by way of the present writ petition for direction to the respondent MCD to act in accordance with law and to sanction building plan as per the proposed plan submitted on 20th August, 2008 and re-submitted on 29th September, 2009.

7. The respondent, MCD in their counter affidavit have stated that two reports dated 5th November, 2009 and 23rd December, 2009 have been received from the office of the SDM (Defence Colony). In the letter dated 5th November, 2009 it is stated that the Shizra does not show plots of individual occupants in Abadi Deh (Lal Dora) separately. This is well known and cannot be a ground to deny sanction of building plan. The said letter further states that the plot No. 74, i.e. the plot in question, measures 495 sq. yards and was in possession of Mr. Chhattar Singh and his brothers at the time of visit and house tax receipt is in the name of the petitioner's father Mr. Bhima. The letter dated 23rd December, 2009 states that there a civil suit is pending with regard to a plot on the south side of the property in question. The letter states that the south side of the property is bounded by a boundary wall on its south and east sides. It is a contention of the petitioner that he is not asking for sanction of building plan in respect of south side or the disputed plot but only in respect of 495 sq. yards of land i.e. property No. 74. This plot is not disputed.

8. The aforesaid two letters of the SDM, do not in any manner show and state that the petitioners are not the owners of the plot in question and they cannot apply and ask for sanction of building plan. In the present case, the petitioners, who are owners of land in Abadi Deh (Lal Dora) have asked for sanction of building plan. In most cases the owners of land in Lal Dora land do not ask for sanction of building plan but carry out construction. The petitioners, who want to abide by law, are unfortunately being unnecessarily harassed. The application of the petitioners has remained pending since August, 2008, though, there is no dispute about the ownership of the plot No. 74 measuring 495 sq. yards. Dispute with regard to the adjacent plot cannot be a ground to refuse sanction of building plan of another plot.

9. Counsel for the petitioner states that after objections were raised by the respondent MCD, the building plan was re-submitted on 29th September, 2009 and the disputed strip of land was clearly excluded.

10. In view of the aforesaid, the writ petition is partly allowed with a direction to the respondent, MCD to consider the application filed by the petitioners for sanction of building plan submitted on 20th August, 2008 and re-submitted on 29th September, 2009, within a period of one month from today. The petitioner will visit office of the concerned Assistant Engineer (AE) on 31st March, 2010 at 2.30 P.M. along with relevant papers and documents. These relevant papers and documents will be examined by the AE on the said date itself. In case there is any deficiency, the petitioners or their authorized representative will be informed in writing on the said date. No costs.

Dasti to the Counsel for the petitioner.

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