Vikram Enterprises Vs. Govt. of Nct of Delhi and ors.

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Court : Delhi

Decided On : Jan-11-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : Constitution of India - Article 226, 227

Appeal No. : W.P.(C) 10221-22/2004

Appellant : Vikram Enterprises

Respondent : Govt. of Nct of Delhi and ors.

Advocate for Def. : Mr. Asutosh Lohia, Adv.

Advocate for Pet/Ap. : Mr. Abhay Singh ; Ms. Yasmin Zafar, Advs.

Judgement :

1. Whether reporters of Local papers may be allowed to see the judgment? No

2. To be referred to the reporter or not? No

3. Whether the judgment should be reported No in the Digest?

1. It was made clear on 6th September, 2010 that the application for restoration shall be heard only when the petitioner is also willing to argue the writ petition on merits. The counsel for the petitioner has today expressed willingness to argue the writ petition on merits. The counsel for the petitioner has been heard on the writ petition. The counsel for the respondent no.3 NDMC has been heard in opposition

to the application for restoration.

2. For the reasons stated in the application, the same is allowed and the writ petition is restored to its original position. W.P.(C) 10221-22/2004

3. The counsels for the petitioner and the respondent no.3 NDMC have been heard.

4. The writ petition impugns the order dated 8th January, 2004 of the Appellate Tribunal, MCD, only partly allowing the appeal of the petitioner against the order dated 15th February, 2000 of the respondent no.3 NDMC of demolition of unauthorized construction on Plot No.2, West Kidwai Nagar, New Delhi of the petitioner and the order dated 17th March, 2004 of the Administrator, Delhi in second appeal preferred by the petitioner, dismissing the same.

5. It is not in dispute that construction beyond the sanctioned plan exists on the property. The contention of the petitioner is that the said construction beyond the sanctioned plan has been in existence since prior to 1984 when the Punjab Municipal Act, 1911 then governing the area was amended. Prior to the said amendment, the unauthorized construction was actionable only within a period of six months of construction.

6. Both, the Appellate Tribunal, MCD and the Administrator, Delhi have returned a finding of fact that the construction of which demolition has finally been ordered, was not in existence since prior to 1984 and therefore not protected.

7. Notice of the writ petition was issued and interim relief against the demolition granted to the petitioner. In the order dated 6 th September, 2010 in the present proceedings, it is noted that a perusal of the record shows that the petitioner after obtaining the interim order had been delaying the disposal of the writ petition. It was in these circumstances directed that the application for restoration of the writ petition dismissed in default will be considered only when arguments on merits on the writ petition are also addressed.

8. The finding that the unauthorized construction is of a period after 1984 is a finding of fact. The Legislature in its wisdom has provided no further remedy

against the order of the Administrator, Delhi in second appeal. This Court in exercise of writ jurisdiction would not interfere with such findings of fact especially concurrent, unless any grave miscarriage of justice or flagrant violation of law calling for intervention is pointed out. It was held by the Supreme Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447 that if there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either in law or on fact then in exercise of the power under Article 226 the High Court should refrain from interfering with such findings made by the appropriate authorities. Similarly, in Bathutmal Raichand Oswal v. Laxmibai R. Tarta AIR 1975 SC 1297, dealing with the supervisory powers of the High Court under Articles 226 and 227, it was held that the powers cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of Appeal and the High Court in the guise and exercise of jurisdiction under Articles 226 and 227 cannot be converted into a Court of Appeal when the Legislature has not conferred a right of appeal and made the decision of subordinate Court or Tribunal final on facts. In Shamshad Ahmad v. Tilak Raj (2008) 9 SCC 1 it was reiterated that the power under Article 226 though wide, the High Court in exercise of such power cannot act as a Court of Appeal or a Court of Error; it can neither review nor reappreciate nor reweigh the evidence upon which determination of a subordinate Court or an inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision. In State of Maharashtra v. Millind 2007 (7) SCALE 628 it was held that the High Court would be justified in interfering with those cases where the conclusion of the inferior authority is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior authority has no jurisdiction at all or that the finding is such which no reasonable man could arrive at on the materials on record.

9. Faced with the aforesaid, the counsel for the petitioner has contended that the Tribunals below have considered only one of the two House Tax assessment notices relied upon by the petitioner. Attention in this regard is invited to the notices No.ACII/14/2/278/Tax and No.ACII/14/2/276/Tax, both dated 8th January, 1985 purportedly issued by the respondent no.3 NDMC to the petitioner. However a perusal of the order of the Administrator, Delhi shows that the Administrator in

the last paragraph of the order has considered both of the said notices. It is thus not as if any evidence has been left out.

10. The counsel for the petitioner then contends that the Administrator, Delhi has misread one of the documents. It is contended that the Administrator, Delhi has, while concluding that there were two office rooms admeasuring 182 sq. ft. each relied upon the abbreviation "Do" in the notice bearing No. ACII/14/2/276/Tax and has not considered the office room in the notice bearing No. ACII/14/2/278/Tax.

11. I am afraid the aforesaid investigation is beyond the scope of interference in this jurisdiction. It cannot be lost sight of that the petitioner has no equities in its favour. The petitioner claims that the plot was allotted as a war widow and for the purposes of construction of an LPG godown. It is further the case that the plans for construction of the godown were got sanctioned and the notices aforesaid of the respondent no.3 NDMC are stated to be the first notices of assessment after the completion of construction. It is undisputed that the construction as in existence is beyond the sanctioned plan. I find it difficult to fathom that the respondent no.3 NDMC while issuing the notices of first assessment for House Tax would not have objected to the unauthorized construction, if any then existing.

12. Moreover, a person who indulges in and raises unauthorized construction has no equity in its favour.

13. The counsel for the petitioner on enquiry states that no objections to the notices of proposed assessment were filed. On enquiry, it is further stated that the orders of assessment have not been produced before the Tribunals below or before this Court. I am of the view that it would have been the order of assessment which would have disclosed as to what construction was finally assessed.

14. No grounds for interference in the concurrent orders of the Tribunals below are made out. The writ petition is dismissed and the interim orders stand vacated. No order as to costs.