

Sh. Manoj Kumar Sharma Vs. Mcd

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Court : Delhi

Decided On : Feb-15-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Section 347B; Constitution Of India - Article 226

Appeal No. : W.P.(C) 964/2011

Appellant : Sh. Manoj Kumar Sharma

Respondent : Mcd

Advocate for Def. : Ms. Mini Pushkarna, Adv.

Advocate for Pet/Ap. : Mr. K.S. Singh; Ms. Madhu Sharma, Adv.

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. The petitioner claiming to be owner of part of the property No.178/7,8, Street No.2, Padam Nagar, Kishan Ganj, Delhi had applied to the respondent MCD for permission to raise construction on his part of the property. The said application was rejected. Aggrieved therefrom the petitioner earlier filed W.P.(C)

No.13842/2009 in this Court. It was the stand of the counsel for the respondent MCD then that the remedy of the petitioner was under Section 347 B of the [Delhi Municipal Corporation Act, 1957](#) by appealing against the order of rejection and not by way of writ petition. In view of the said submission of the counsel for the respondent MCD, the counsel for the petitioner had then withdrawn W.P.(C) No.13842/2009 with liberty to challenge the order of rejection before the Appellate Tribunal, MCD.

2. The petitioner however after withdrawing the earlier writ petition, instead of approaching the Appellate Tribunal MCD, approached the Public Grievances Commission which vide order dated 7th July, 2010 directed the petitioner to meet the officials of the respondent MCD and directed the respondent MCD to grant opportunity to the petitioner to complete the deficiencies in his application.

3. The petitioner contends that though he has made up the deficiencies but no fresh order has been made on his application for sanction for construction. This writ petition has been filed seeking mandamus to the respondent MCD to grant sanction.

4. The counsel for the respondent MCD appearing on advance notice states that the application of the petitioner has again been rejected vide order dated 11th February, 2011, copy whereof is handed over in the Court. The counsel for the petitioner denies that the said order has been served on the petitioner. Be that as it may, a copy thereof has been handed over to the counsel for the petitioner.

5. The counsel for the respondent MCD further contends that the remedy of the petitioner against the order dated 11th February, 2011 also, is before the Appellate Tribunal, MCD and not by way of this writ petition, especially when the petitioner had earlier withdrawn the writ petition to approach the Appellate Tribunal, MCD.

6. The counsel for the petitioner however contends that his application has been rejected for the reason of the permission being not possible in a sub-divided property/plot. He refers to the news report of 10 th August, 2010 of the Delhi Cabinet having recommended sub-division of plots. He states that owing thereto he is entitled to the sanction.

7. Though the petitioner has not chosen to produce before this Court any document showing change if any made in pursuance to the recommendations of the Delhi Cabinet, but the counsel for the respondent MCD has handed over in the Court the Notification dated 17 th January, 2011 of the DDA qua "The Building Regulations for Special Area, Unauthorized Regularized Colonies and Village Abadis, 2010", issued in pursuance to the recommendations aforesaid. She has drawn attention to Regulation 3(iii) which has permitted consideration of building plans in Village Abadis, Special Areas and Unauthorized Regularized Colonies, sub-division wherein had taken place up to 8th February, 2007. She further states that Kishan Ganj where the subject property is situated is an unauthorized regularized colony and would thus be covered by the said Notification. It is contended that as per the said Notification also, the sub- division which had taken place up to 8 th February, 2007 only is to be recognized and not thereafter; the sale deed in favour of the petitioner is of 15th January, 2009. It is further contended that even if it is the case of the petitioner that he is entitled to the benefit of the said Notification, again the remedy is by way of appeal and not by way of this writ petition.

8. The petitioner having earlier filed a petition on the same/similar cause of action and having withdrawn the same on the same defence, is not found entitled to a second round of litigation. The remedy if any of the petitioner is by way of appeal against the order dated 11 th February, 2011 and not by way of this petition. It has consistently been the law that the Court would not exercise the power under Article 226 of the Constitution where alternative efficacious remedy is available.

9. The petition is therefore dismissed as not maintainable with liberty to the petitioner to avail the remedy of appeal. No order as to costs.

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