

Taj Mohd Vs. Mcd and ors

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Court : Delhi

Decided On : Nov-01-2011

Judge : Hima Kohli, J.

Appeal No. : W.P.(C) 1165 of 2010

Appellant : Taj Mohd

Respondent : Mcd and ors

Judgement :

1. Counter affidavit has not been filed by respondent No.4/DDA despite repeated adjournments granted for the said purpose. In these circumstances, the right to file counter affidavit stands closed.
2. Rejoinder to the counter affidavit filed by respondent No.1/MCD is awaited. Counsel for the petitioner states that he does not wish to file any rejoinder thereto.
3. The present petition is filed by the petitioner praying inter alia for directions to respondent No.1/MCD to re-construct the shop occupied by the petitioner as a tenant under the Delhi Wakf Board, which, as per the petitioner, was illegally demolished on 16.1.2010. The petitioner has also sought directions to respondents No.2 & 3/Police not to harass him. Lastly, compensation of Rs.10.00 lacs has been demanded by the petitioner from respondent No.1/MCD, for the alleged illegal demolition.

4. The stand of respondent No.1/MCD is that the shop in question, situated at Savitri Nagar near Kali Masjid, New Delhi, was demolished during an encroachment removal drive, as it was found to have been constructed on public land. Counsel for respondent No.1/MCD states that there were a total of four shops in the said area which were found encroaching on public land, out of which one was occupied by the petitioner. Out of the remaining three shops, another shop had been demolished, whose owner has not approached this court in a writ petition. As far as the third shop was concerned, the owner of the same had removed the encroachment on his own. In respect of the fourth shop, it is contended that the owner of the same approached this court, soon after the aforesaid two shops were demolished, by filing WP(C)No.1153/2010 entitled 'Rashida Bano vs. MCD'. Vide order dated 6.7.2010 passed in WP(C)No.1153/2010 (Annexure R-1 enclosed with the affidavit filed by respondent No.1/MCD on 1.4.2011), both MCD and DDA were directed to give seven days notice to the petitioner therein, in case either agency was contemplating any action against the said shop. It is further stated that no action has yet been taken against the said shop and it is still in existence, even though the shop is admittedly an encroachment on public land.

5. A perusal of the ordersheet in the present petition shows that this case was listed on the same date as the aforesaid writ petition and it has been recorded in the said order dated 6.7.2010 that it is the stand of DDA in WP(C)No.1153/2010 that the land on which that shop was constructed, belongs to respondent no.4/DDA and that the petitioner therein was an encroacher. In light of the same, DDA was directed to be impleaded. Counsel for respondent No.4/DDA reiterates that DDA is the owner of the land on which the subject shop is constructed, which fact is also confirmed by counsel for respondent No.1/MCD.

6. Counsel for the petitioner argues that respondent No.1/MCD has been acting in a discriminatory manner inasmuch as even though the petitioner is a similarly placed person as the petitioner in W.P.(C) No.1153/2010, yet the same relief of seven days notice before encroachment removal action has not been granted to him. It is further stated that the MCD has adopted a pick and choose policy and has acted arbitrarily in not taking any action against the adjoining shop of Rashida

Bano, petitioner in WP(C)No.1153/2010, even though it is admittedly an encroachment on public land.

7. This Court has heard the counsels for the parties and perused the affidavit filed by respondent No.1/MCD. The petitioner has failed to place on record any document of title in respect of the land on which the subject shop was constructed. Instead, counsel for the petitioner concedes that the petitioner is not the owner of the subject shop, but rather a tenant under the Delhi Wakf Board and the latter has not been impleaded in the present proceedings. The question as to whether the land underneath the shop which has since been demolished is government land or not and whether there was an encroachment existing on it, is a dispute between the landlord/Delhi Wakf Board and the respondent/DDA, which claims to be the owner of the land. In case any relief is sought against respondent No.1/MCD for reconstruction of the shop occupied by the petitioner, the same can only be sought in a proceeding filed by the landlord/Delhi Wakf Board, and not by the petitioner/tenant in the present proceedings. Similarly, the claim for compensation for demolition of the shop, if payable, would be available to the owner of the shop in question, and a claim for compensation/damages against the landlord, if available to the petitioner, would lie before another forum.

8. In the light of the aforesaid observations, the relief sought in the present petition against respondent No.1/MCD cannot be granted. However, if the petitioner has any grievance against the landlord/Delhi Wakf Board, he shall be entitled to seek his remedies as may be available to him in law.

9. As regards the grievance of the petitioner that respondent No.1/MCD has discriminated against him, by demolishing his shop while not taking any such action against the adjoining shop, which is occupied by Rashida Bano, petitioner in WP(C) No.1153/2010, the said contention has weight. The shop of the petitioner in W.P.(C.) No.1153/2010 is admittedly an encroachment on public land as observed in the order dated 06.07.2010. Therefore, respondent/MCD is directed to take necessary steps for removal of the said encroachment after issuing a notice to the said party, in terms of its statement as recorded in the order dated 6.7.2010 passed in WP(C)No.1153/2010.

The petition is disposed of, while leaving the parties to bear their own costs.

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