

**Chand Ram Vs. Dda and Others**

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**Court :** Delhi

**Decided On :** Feb-24-2012

**Judge :** The Honourable Ms. Justice Hima Kohli

**Appeal No. :** W.P.(C) 1445 of 2011

**Appellant :** Chand Ram

**Respondent :** Dda and Others

**Judgement :**

**HIMA KOHLI, J**

(ORAL)

1. Vide order dated 04.11.2011, counsel for respondent No.2/MCD had assured the Court that the balance demolition action in respect of the subject premises bearing Flat No.D-12-59, Sector-7, Rohini, Delhi would be undertaken within four weeks from the date of passing of the aforesaid order. The matter was re-notified for today with directions to the respondent No.2/MCD to file a fresh status report. It was further directed that in case the balance demolition action is not undertaken by respondent No.2/MCD before the next date of hearing, the deponent of the affidavit dated 04.11.2011 would be present in Court.

2. Pursuant to the aforesaid order, Sh. Jagpal Singh, Executive Engineer, MCD, who has stepped into the shoes of the deponent of the said affidavit, is present in Court. Counsel for respondent No.2/MCD submits that respondent No.4 had filed an appeal before the Appellate Tribunal, MCD against the demolition order dated 09.02.2011 passed by the respondent No.2/MCD in respect of the subject premises, registered as Appeal No.623/2011 that came to be disposed of on 09.01.2012. A copy of the aforesaid order passed by the Appellate Tribunal, MCD is handed over by counsel for respondent No.4 and is taken on record. The operative para of the aforesaid order is reproduced hereinbelow:

“The respondent shall provide the opportunity of submitting reply of the show cause notice as well as personal hearing to the appellant who is directed to appear in the office of AE (B) on 16.01.2012 at 3:00 p.m. on which date the appellant is permitted to file reply, document and written submissions, if any. Appellant, however, shall not seek any adjournment on any ground for personal hearing or for filing any document or written submission or for submitting reply of the show cause notice.

The AE(B), Rohini Zone thereafter shall pass the speaking order and deal with all the submissions, pleas and the defenses raised by the appellant and shall complete the proceedings maximum within one month thereafter. With these observations appeal is remanded back. The file of the department be returned to the respondent alongwith copy of this order. The appellant shall not raise any further construction in the said property nor shall sell it or create any third party interest in the same till the matter is decided afresh by the AE(B), Rohini Zone. Appellant shall also not carry out any repair (except whitewash) in this property without written permission of AE(B) concerned.

In view of the statement made by the AE(B) and in view of the above order, the impugned demolition order referred above is quashed and set aside.

The appeal is, thus, disposed of. Copy of the order be given dasti to both parties and appeal file be consigned to record room.”

3. It is stated that pursuant to passing of the aforesaid order by the Appellate Tribunal, MCD, respondent No.4 had appeared before the AE (Building) on 16.01.2012 for a hearing whereafter, an order dated 27.01.2012 has been passed by respondent No.2/MCD upholding its earlier demolition order. Further, it has been observed that in view of the protection granted under the National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011, which has been extended up to 31.12.2014, at present, the respondent No.2/MCD is not in a position to initiate demolition action in respect of the aforesaid subject premises and the said order is, therefore, kept in abeyance. A copy of the aforesaid order is also handed over by counsel for respondent No.2/MCD and is taken on record.

4. In view of the aforesaid position, the present petition is accordingly disposed of with the following directions:

i. Respondent No.4 shall file an affidavit furnishing the details of the presently existing construction on the first floor and the terrace of the first floor under her occupation along with relevant photographs. In the said affidavit, respondent No.4 shall give an undertaking that no further construction shall be undertaken by her in the subject premises, nor shall she undertake any addition, alteration, renovation etc. without obtaining prior permission of the respondent No.2/MCD. The said affidavit be filed within one week with a copy to the counsel for the petitioner as also respondent No.1/DDA and respondent No.2/MCD.

ii. Immediately upon receipt of the aforesaid affidavit, respondent No.2/MCD shall carry out an inspection of the subject premises and compare the existing constructions with the photographs submitted by respondent No.4 and satisfy itself that the correct position has been brought out. A record of the same shall be maintained by MCD. The respondent No.2/MCD shall also videograph the entire existing construction at the site at the expense of respondent No.4 so as to ensure that when demolition action is required to be undertaken later on, the respondent No.2/MCD is in a position to compare the construction existing with the construction proposed to be demolished at that stage.

iii. The respondent No.2/MCD shall make sure that regular inspections of the subject premises are carried out so that no further unauthorized construction is undertaken by respondent No.4 in the subject premises.

iv. A written intimation of this order shall also be communicated by the respondent/MCD to the local police for strict compliance.

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