

In the Matter of Vimla Sharma Vs. M.C.D. and Others

In the Matter of Vimla Sharma Vs. M.C.D. and Others

SooperKanoon Citation : sooperkanoon.com/948732

Court : Delhi

Decided On : May-07-2012

Judge : The Honourable Ms. Justice Hima Kohli

Appeal No. : W.P.(C). 1380 OF 2004

Appellant : In the Matter of Vimla Sharma

Respondent : M.C.D. and Others

Judgement :

HIMA KOHLI, J.

(Oral)

1. Vide order dated 20.03.2012, it was recorded that though four reliefs were sought by the petitioner in the present petition, notice was issued limited to the reliefs sought in prayer (a) and (d) alone while granting leave to the petitioner to claim damages as sought by her in prayers (b) and (c), before the appropriate forum.

2. Counsel for the petitioner states at the outset that he does not wish to press for the relief sought in prayer (a) which is for restoration of the subject flat and he seeks to confine the present petition to relief sought in prayer (d) which is for quashing of the order dated 31.12.2003 whereunder, respondents No.1 to 4/MCD had demanded demolition charges of Rs.5,875/- from the petitioner.

3. The petitioner claims to be a lawful owner in possession of flat bearing No.360-F, Second Floor, Pocket-II, Mayur Vihar, Phase-I, Delhi that was purchased by her from the respondent No.8 in the year 1996. It is averred in the petition that on 09.06.2003, respondent No.1-4/MCD had issued notices under Sections 349 and 433 of the DMC Act stating that the addressee had failed to comply with the earlier notice issued under Section 343 and 344 of the DMC Act and that MCD intended to take demolition action against the unauthorized construction in the subject premises and therefore, the owner/builder thereof was asked to remove the lock at the entrance of the property. Vide another notice dated 09.06.2003, issued by the MCD under Section 349 of the DMC Act, the owner/occupier of the subject premises was called upon to vacate the same within three days from the receipt of the notice, failing which it was informed that the occupants would forcibly be removed from the building for undertaking demolition action.

4. It is contended by the counsel for the petitioner that the petitioner had furnished a reply dated 13.06.2003 to the aforesaid notices and she had personally met the officers of the respondents No.1-4/MCD and informed them that she had not carried out any addition/alteration in the subject flat. As per the petitioner, when she submitted her reply with the relevant documents, the same were duly received in the office of the Deputy Commissioner, South Zone, MCD (Pages 45-47), and the concerned officers of the MCD also seemed to be satisfied. However, without intimating the petitioner, a demolition squad of MCD had visited her premises on 27.12.2003 and they had demolished a part of the flat as highlighted in red colour in the site plan enclosed with the writ petition. A perusal of the site plan reveals that the demolition action was carried out in the balcony of the subject premises. Thus, the present petition came to be filed by the petitioner in January, 2004 claiming inter alia that the demolition action undertaken by the respondents No.1-4/MCD on 27.12.2003 was arbitrary and illegal and the same was undertaken without issuing any prior show cause notice to the petitioner.

5. As per the counter affidavit filed by the respondents No.1-4/MCD, the unauthorized construction existing in the subject premises, which was in the shape of a room in the balcony, had been booked by the MCD on 04.02.2003 and a show cause notice was served upon the owner/builder of the subject premises directing

the addressee to submit a reply within three days. However, the owner/builder of the subject premises failed to file a reply to the aforesaid notice to show cause as a result of which, a demolition order dated 10.02.2003 was passed by the MCD and the owner/builder was called upon to demolish the unauthorized construction pointed out in the notice to show cause within 5 days from the date of receipt of the demolition order. However, no such steps were taken by the owner/occupier to remove the unauthorized construction and consequently, the respondents tried to take demolition action on 09.04.2003 but could not do so as the premises was found to be locked. It was only then that the notice dated 09.06.2003 was issued by the MCD, informing the petitioner that due to the non-compliance of the earlier notice issued under Section 343 and 344 of the DMC Act, the MCD had intended to take demolition action in regard to the unauthorized construction in the premises. The said notice was followed by a vacation notice dated 09.06.2003 issued under Section 349 of the DMC Act. Finally, the demolition action took place on 27.12.2003 when, one room and some extended portion of the wall was demolished in the presence of the police force and thereafter, the impugned notice dated 31.12.2003 was issued by the MCD to the petitioner calling upon her to pay demolition charges of Rs.5,875/- as per the provisions of DMC Act.

6. It is the contention of counsel for the petitioner that the aforesaid demolition charges are not payable by the petitioner as the action of demolition undertaken by the MCD was arbitrary and illegal and not preceded by any notice to show cause.

7. It is relevant to note that the notices referred to by the petitioner and enclosed with the petition were for vacation under Section 349 of the DMC Act and for calling upon the petitioner to remove the locks under Section 433 of the DMC Act. However, the petitioner has not placed on record the reply that she had submitted to the notice to show cause calling upon her to inform the respondent/MCD as to why the subject premises be not demolished. The petitioner has also not stated as to the steps if any taken by her upon receiving the demolition order dated 10.02.2003 in respect of the subject premises. In other words, the records reveal that the petitioner failed to take any legal steps to challenge the demolition order that was passed by the MCD.

8. For the petitioner to contend that the charges for demolition claimed by the respondents No.1-4/MCD from her under the impugned notice dated 31.12.2003 are liable to be quashed, is impermissible in the absence of any document placed on record to show that the demolition order dated 10.02.2003 passed by the MCD had been set aside or quashed by a court of law due to which, MCD could not have taken demolition action. On the contrary, the aforesaid demolition order appears to have remained in operation and it was given effect to by the respondent/MCD by undertaking the demolition action on 27.12.2003. When the demolition action undertaken by the respondent/MCD was as per the procedure prescribed in law, it cannot be contended by the petitioner that MCD ought not to have demanded the demolition charges from the petitioner as the said demand is only consequential in nature and raised on the petitioner as per the mandate of law.

9. It is also pertinent to note that in the proceedings held on 30.01.2004, the petitioner had been informed that she could not claim compensation/damages from the MCD in writ proceedings. On a query posed to the learned counsel for the petitioner as to whether any such proceedings for claiming compensation/damages from the MCD on account of an illegal demolition action undertaken by the civic authority, as per the allegations of the petitioner, had been initiated by her, the reply is in the negative. This only fortifies the submission made by the learned counsel for the respondent/MCD that there did exist unauthorized construction in the subject premises and the MCD had taken steps to remove the same in accordance with law. In any event, the petitioner has miserably failed to demonstrate in these proceedings that the demolition order passed by the MCD was illegal and that the same had been set aside/quashed in any legal proceedings.

10. In the aforementioned facts and circumstances, the relief as prayed for in prayer (d) for quashing of the order dated 31.12.2003 issued by respondents No.1-4/MCD, cannot be granted. The prayer made in the petition is declined and the petition is dismissed while leaving the parties to bear their own costs.