

Harjinder Kumar and Nar Vs. Dda and anr

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Court : Delhi

Decided On : Apr-22-2013

Judge : V. K. Jain

Appellant : Harjinder Kumar and Nar

Respondent : Dda and anr

Advocate for Def. : Dr. Indra Pratap Singh

Advocate for Pet/Ap. : Mr. Sanjiv Kakra, Mr. Irfan Ahmed

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

22. 04.2013 W.P.(C) 1307/2011 HARJINDER KUMAR AND NAR Petitioner
Through: Mr Sanjiv Kakra and Mr Irfan Ahmed, Advs. versus DDA AND ANR
Respondents Through: Dr. Indra Pratap Singh, Adv for DDA CORAM: HON'BLE
MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) 1. The petitioner No.1 before this Court claims to be owner of the basement and ground floor of Property No. RR-11, Mianwali Nagar, Rohtak Road, New Delhi, whereas petitioner No. 2 claims to be owner of a part of its third floor. The respondent-DDA issued notice dated 15.03.2010 to petitioner No. 1 Harjinder Kumar, alleging the following unauthorized constructions in the above-referred building:

1. Construction of property is not as per sanction plan and violative of Master Plan.
2. Construction is more than sanction.
3. Basement entry is from front set back.
- 4.
5. Coverage at all permissible/sanction.
6. Overall FAR permissible.
7. Parking space at left side set back. Encroached partly.
8. Height of building is more than sanctioned. 9.

2. Rear set back found covered and construction of steps at front set back. A restaurant is running at entire ground floor. is floors more is than more than sanction and The petitioner No. 1 was directed to discontinue the illegal and unauthorized development in the aforesaid building and was also called upon to show-cause why an order for demolition of the unauthorized development be not passed and the same be not directed to be sealed under Section 31A of Delhi Development Act. The petitioner No. 1 filed reply to the show-cause notice on 16.08.2010. Vide communication dated 11.02.2011, addressed to both the petitioners, Deputy Director (Building) passed an order directing sealing of the unauthorized development and for removal of the same. Being aggrieved from the aforesaid order, the petitioners have filed this writ petition.

3. When it is pointed out to the learned counsel for the petitioners that the order passed by the Deputy Director (Building) of DDA is appealable before Appellate Tribunal under Section 31C of Delhi Development Act, he submits that since the post of the Appellate Tribunal was lying vacant at the time the aforesaid order was passed, the petitioners could not avail the remedy of statutory appeal. The learned counsel for the petitioner again states that though the appeals were filed against the aforesaid order since there was no Presiding Officer appointed for the said Tribunal at the time the appeal came to be filed, the petitioners were compelled to approach this Court by way of this writ petition.

4. Admittedly, Presiding Officer for the said Tribunal has since been appointed and the Tribunal is now functional. Therefore, the petitioners should now pursue the appeal which they have already filed against the order of sealing and demolition passed by the Deputy Director of DDA.

5. The learned counsel for the petitioners submits that in fact there is no unauthorized construction either in the basement or on the ground floor and in case DDA finds any such unauthorized construction, the petitioners would have no objection to demolition of such a construction. Since the appeal filed by the petitioner is pending before the Tribunal, all these issues need to be agitated before Tribunal only. It would not be appropriate for this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, to go into these disputed questions of fact and take a view, either way, particularly when the appeal filed by the petitioners is pending before the Tribunal.

6. The learned counsel for the petitioners now states that as per the instructions given to him just now, the appeal filed by the petitioners was disposed of on account of pendency of the writ petition. If that was the sole ground for dismissal of the appeals, the petitioners would be at liberty to approach the Tribunal for revival of the appeal. For the reasons stated hereinabove, the writ petition is hereby dismissed. There shall be no order as to costs. Dasti. V.K. JAIN, J APRIL 22 2013
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