

**Y.S.Manchanda Vs. Mcd**

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**SooperKanoon Citation :** [sooperkanoon.com/955651](http://sooperkanoon.com/955651)

**Court :** Delhi

**Decided On :** Dec-04-2012

**Judge :** G. S. Sistani

**Appellant :** Y.S.Manchanda

**Respondent :** Mcd

**Judgement :**

06. \$~1 \* + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 8186/2009, CM Nos.13583/2009, 13584/2009, 14793/2009 & 13660-61/2009 % Judgment dated 04.12.2012 Y.S.MANCHANDA Through : ..... Petitioner Mr.S.C. Nigam, Adv. versus MCD Through : ..... Respondent Mr.Ajay Arora, Adv. for respondent no.1. Mr.Santosh Kumar, Adv. for Mr.Rakesh Kumar, Adv. for respondent no.2. Mr.M.K. Chaudhary, Adv. for respondents no.3 and 4. Mr.Subodh K. Pathak, Adv. for Ms.Yeshma Hinduja, applicant in CM 14793/2009. Mr.T.N. Tripathi, Adv. for the applicant in CM 13583-84/2009. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. Present petition has been filed by petitioner under Article 226 of the Constitution of India seeking a writ, order or direction to the respondent no.1 MCD to grant a completion certificate/regularization plans duly certified to the petitioner in respect of the ground floor of the property bearing no.15, Siri Fort Road, New Delhi; and carry out demolition of the non-compoundable deviations on the ground floor of the property in question and bring it in conformity with the sanctioned plan.

2. Petitioner claims himself to be the owner and in occupation of the ground floor portion of the property in question. As per the petition, the entire building comprises of four floors, which are stated to be owned by different persons. According to the petitioner there is unauthorized construction in the annexee portion for which the DDA, who was then in administrative and civic control of the area, issued demolition order dated 29.5.1991, under Section 30 of Delhi Development Authority Act, 1957. The order of demolition passed by the DDA on 29.5.1991 was challenged by the owner of the building, Mr.S.P. Madan, by filing W.P.(C) 7860/2005 in the High Court. The said writ petition was disposed of by an order dated 28.4.2008 passed by a Single Judge of this Court. Relevant portion of the order, sought to be relied upon by the petitioner, which has been extracted in the writ petition, is reproduced below: .. Once the respondent MCD has taken an action to send the requisite notice under Section 343 of the DMC Act along with the detailed area chart clearly showing as to what area and in respect of which floor, the unauthorized construction can be compounded on payment of compounding fee and what is the extent of area which would be left after such compounding of the existing unauthorized construction and also of the fact that the applicants have already approached the respondent MCD with the requisite applications seeking compounding of the unauthorized construction, the grievance raised by the petitioner seeking demolition of the unauthorized construction as existing in the said property stands redressed.

3. Based on the above observations made certain directions were issued by the Court in W.P.(C) 7860/2005, which reads as under: . In the backdrop of the aforesaid discussion, the respondent MCD is hereby directed to initiate a time bound action against any unauthorized construction existing in the said property after taking a decision on the applications of all the applicants seeking compounding of the unauthorized construction falling within the compoundable limit. Any unauthorized construction which after determination of the said application falls beyond the compoundable limits, then the same shall be demolished without any delay in accordance with law. The respondent MCD shall process the application so moved by the occupants seeking compounding of the unauthorized construction within a period of eight weeks and the occupants who have not yet approached, shall approach the MCD within a period not later than

two weeks from the date of order.

4. Pursuant to the order passed in the W.P.(C) 7860/2005 respondent no.1 issued a notice under Section 343 of the DMC Act on 4.4.2008 to the owners/occupants of the property in question reciting the operative portion of the order dated 28.4.2008 and comply with the same. Thereafter the petitioner filed an application along with documents and drawings on 12.5.2008 for regularization of deviations existing on the ground floor of the property in question.

5. It is the case of the petitioner that respondent no.1 after checking and spot inspection condoned that compoundable deviations to the extent of 24.53 sq mts. and non-compoundable deviations to the extent of 13.52 sq. mts. existed at the property in question. A compounding fee of Rs.1,28,723/- was worked out and the non-compoundable deviation was to be demolished on the basis of the above findings. Respondent no.1 issued the order on 24.6.2008 and directed regularization of the compoundable deviations to the extent of 24.53 sq. mts. on payment of compounding fee of Rs.1,28,723/- and removal of non-compoundable deviation within four weeks. It is further the case of the petitioner that in compliance of the order the petitioner deposited the sum of Rs.1,28,723/- being the compounding fee. The petitioner after depositing the compounding fee and the regularization plan also requested respondent no.1 to demolish the non-compoundable deviations in the building as the same is under two floors above and appropriate action for its removal can only be taken by the Municipal Authority. It is further the case of the petitioner that in the third floor portion even the non-compoundable portion has been regularized by the respondent for which regularization certificate has been issued on 23.9.2008. Since despite reputed requests to issue/certify the regularization plan and the petitioner having complied with all the directions issued by the High Court in WP.(C) 7860/2005 and the order passed by them no action was initiated by respondent no.1 the petitioner has filed the present writ petition.

6. It may be noticed that initially the petitioner had only impleaded MCD as respondent. Thereafter the owner of the building, Mr.S.P. Madan, was arrayed as respondent no.2 (occupant of the first floor). The occupants of the second floor

and third floor were also impleaded as respondents no.3 and 4, respectively, to the present writ petition. An amended memo of parties was filed on 5.5.2009. Subsequently, an application, being CM 14793/2009, was filed under Order 1 Rule 10 CPC by Ms.Yeshma Hinduja, who claims herself to be the owner and in occupation of the ground floor of the property in question.

7. The stand of respondent no.1 before this Court is that since the petitioner did not remove the non-compoundable deviations from the property in question a show cause notice under Section 345-A of DMC Act, 1957, dated 19.11.2008 was issued to the petitioner calling upon the petitioner as to why the property be not sealed and thereafter sealing order under Section 345-A of the DMC Act, 1957, dated 26.11.2008 was passed. A sealing action was taken by respondent no.1 on 7.1.2009 and garage portion of the first floor, second floor and the third floor of the property in question were sealed. While apparently there is no dispute with regard to the ownership of the basement, first floor, second floor and third floor of the property there is serious dispute with regard to the ownership and as to who is in occupation of the ground floor of the subject property.

8. Petitioner, who claims himself to be the owner and in possession of the ground floor of the property in question, also claims that he had deposited Rs.1,28,723/- as compounding fee with respondent no.1 whereas Ms.Yeshma Hinduja has seriously opposed the claim of the petitioner with respect to the ownership and occupation of the ground floor of the property in question. Attention of the Court was drawn to the order dated 3.2.2011, which reads as under:

1. Though certain directions were issued to the respondent MCD on the last date of hearing but the counsel for the respondent MCD states that ongoing through the departmental file today he has discovered that the petitioner while applying for regularization and for which relief this writ petition has also been filed, the petitioner has scored out the column required to be filled to show his title to the premises and has not produced any document whatsoever of his title to the premises. CM No.14793/2009 has been filed by one Ms. Yeshma Hinduja claiming title to the ground floor of the property with respect to which the present petition has been filed.

2. It has as such been enquired from the counsel for the petitioner as to under what title he is seeking to regularize the construction on the ground floor. The counsel though admits that for the purpose of obtaining sanction for construction proof of ownership is required but contends that for the purpose of regularization the petitioner need not be the owner or have any other title to the property. Attention in this regard is invited to Section 346 of the Delhi Municipal Act, 1957 dealing with completion certificate. Prima facie I am of the view that the same would not apply to an application for regularization and which has to be treated at par with the application for obtaining sanction.

3. It is found that the petitioner before this Court also has not filed any document qua title to the property. The counsel however states that the petitioner has been dealing with the respondent MCD for long qua regularization and has even deposited the compounding fee but no objection in this regard was raised. I am of the view that if in law an applicant for regularization is required to have title to the property then no estoppel thereagainst would operate. It has also been enquired from the counsel for the petitioner whether any dispute with respect to title to the ground floor is pending before any court/fora. The counsel replies in the negative.

4. In the circumstances, it is deemed expedient to grant an opportunity to the petitioner to file an affidavit with documents disclosing the title to the property whereunder the regularization is sought. Advance copy of the affidavit besides being served to the counsel for the respondent MCD be also served to the counsel for Ms. Yeshma Hinduja within four weeks and who may file reply thereto.

5. List on 27th July, 2011.

9. On 9.10.2012, at the request of Ms. Yeshma Hinduja, this Court had appointed a Local Commissioner to visit the ground floor of the property and file a report as to who is in possession of the ground floor of the property in question. The Local Commissioner has submitted his report and has given a conclusive finding that Ms. Yeshma Hinduja is in actual physical possession of the ground floor of the property in question. Objections to the report of the Local Commissioner have been filed.

10. At this stage, it is not necessary for this Court to give a finding as to who is the owner and in occupation of the ground floor of the property in question for the reason that counsel for all the parties, who are present in Court, have no objection and have agreed to demolish the noncompoundable portion in the entire property. It is also agreed that none of the parties will cause any obstruction and a single agency will be unanimously appointed by all the parties present in Court to demolish the non-compoundable deviations. It is also agreed that the cost of demolition and removal of debris will be shared equally by all the parties including petitioner and Ms.Yeshma Hinduja except respondent no.1. It is made clear that shares of cost of demolition will not result in any special equity in favour of any of the party with regard to title and possession of the property in question. This arrangement has been arrived at as all the parties agree that irrespective of disputes with regard to title of the ground floor it would be in their interest if the non-compoundable construction/deviation is demolished and finally a completion certificate is issued with respect to the property in terms of the order passed by the MCD on 4.4.2008. All the parties agree that whatever is necessary be it compounding or demolition they will take necessary steps within three months from the date of passing of this order. After self-demolition of the building and/or compounding fee is deposited the petitioner, respondents no.2 to 4 and Ms.Yeshma Hinduja will file a fresh plan to enable respondent no.1 to process their case for regularization. Thereafter respondent no.1 will process the same within six weeks.

11. Learned counsel for respondents no.3 and 4 (owner of second floor and third floor respectively) points out that second floor and third floor of the property already stand regularized and respondents no.3 and 4 have received a copy of the regularization plan. Learned counsel appearing on behalf of the owner of the basement of the property has also made a similar averment. While passing a final order respondent no.1 will consider the regularization plans of respondents no.3 to 4 and owner of the basement of the property and if no action is necessary at the end they will not share the cost of self-demolition.

12. Accordingly, writ petition and all applications stand disposed of in view of above. G.S.SISTANI, J DECEMBER 04 2012 msr

