

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th December, 2010

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W.P.(C) 8720/2010 & CM No.22134/2010 (for interim relief)

ANIL DHINGRA

..... PETITIONER

Through: Mr. T.K. Ganju, Sr. Advocate with
Ms. Vidhi Goel, Advocate

Versus

COMMISSIONER, MCD AND ORS.

..... RESPONDENTS

Through: Ms. Maninder Acharya & Mr.
Yashish Chandra, Advocates with Mr.
Dinesh Kalra, AE (Central Zone)
MCD.
Mr. Rajiv Bansal, Adv. for DDA.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, being a resident of house No.C-197, Defence Colony, New Delhi, by this writ petition impugns the sanction accorded by the respondent MCD to the respondent No.4 for construction on plot No.C-198, Defence Colony, New Delhi adjoining the house of the petitioner. It is the case of the petitioner that the respondent No.4 in collusion with the respondent MCD has obtained sanction destroying the side setback as existed for the last fifty years. It is contended that if the respondent No.4 is

allowed to construct on the side setback which existed since long, it would affect the essential amenities and easementary rights of light and air to the house of the petitioner. The senior counsel for the petitioner has further contended that the said side setback on which reconstruction has now been sanctioned was also shown in the layout plan sanctioned of the colony and the layout plan having been sanctioned by the Standing Committee of the respondent MCD and having remained the same, the Building Committee of the respondent MCD cannot now sanction construction in contravention of the said layout plan.

2. The counsel for the respondent MCD appears on advance notice and with consent, the counsels have been finally heard. Need was not felt to issue notice to respondent No.4

3. The counsel for the respondent MCD has drawn attention to Clause 4.4.3 of the Master Plan for Delhi – 2021 (MPD) which provides for setbacks. It is informed that the size of plot No.C-198, Defence Colony, New Delhi is 271 sq. mtrs. and as per the Table given under Clause 4.4.3 (A), the maximum ground coverage permissible on the said plot is 75% with an FAR of 225 and with six dwelling units. Under instructions of the official of respondent MCD present in Court, it is informed that the maximum 75% ground coverage translates to 2018.75 sq. feet. It is contended that if a side setback as earlier existed were to be allowed, the same would permit maximum ground coverage of 1575 sq. feet only,

depriving respondent No.4 of valuable covered area permitted under the Master Plan.

4. Attention is next drawn to the Table under Clause (x) of the Terms and Conditions in Clause 4.4.3 where the setbacks permitted for the said plot size are on all the three sides i.e. front, rear as well as side. However, Clause (a) under the said Table provides “In case the permissible coverage is not achieved with the above mentioned setbacks in a plot, the setbacks of the preceding category may be allowed.” It is contended that in the preceding category of plot size, there is no necessity of a rear or side setback and accordingly the sanction without a side setback has been accorded.

5. To meet the argument of the senior counsel for the petitioner of the sanctioned layout plan being not permitted to be violated, attention is drawn to Table 17.1 of the MPD-2021 where while providing norms for plots other than residential plotted development, it has been expressly provided in note (iii) that the layout plan shall be followed in the sanction of the building plans. It is urged that there is no corresponding provision with respect to the residential plots. Attention is also invited to the MPD-2001 where, in Clause 8(4) dealing with “Minimum Setbacks” for residential plots, a similar provision as in MPD-2021 with respect to non residential plots existed i.e. in case the layout is sanctioned with more than the maximum prescribed setbacks, the same would be followed in sanction of the building plans. It is argued that the MPD-2021 has intentionally omitted the said clause in

relation to setbacks in residential plots.

6. The senior counsel for the petitioner has drawn attention to the Development Code under the MPD-2021 wherein it is provided that the layout plan will indicate the location *inter alia* of setbacks and the layout plans already approved shall be deemed to have been approved under the Development Code in MPD-2021 also. However, the same would not change the position aforesaid.

7. It may also be observed that if it were to be held that the layout plan would continue to have precedence notwithstanding the new building norms, then all developments of prior to the coming into force of the new Master Plan would not be entitled to benefit thereof; in that case the benefit of additional FAR would also not be available to any of the existing development. The layout plans are also concerned with the number of dwelling units in a colony and the population density thereof and if the arguments were to be accepted, the benefit of increased dwelling units and increased density under the successive Master Plan would also not be available. There is no such Clause in the new MPD-2021 making the same applicable only to the developments to take place after the coming into force thereof.

8. The senior counsel for the petitioner has also contended that an open space has in fact been left in the plans got sanctioned by the petitioner but

on the other side. It is contended that the same could have been got sanctioned on the side adjoining the property of the petitioner and in which case the petitioner would not have been aggrieved.

9. Insofar as the said contention is concerned, once it is found that the sanction by MCD is in accordance with the laws and the Master Plan, no error can be found therewith to entertain this petition. The said right, if any, of the petitioner is against the respondent No.4 and to be enforced either in a Civil Court or before the Appellate Tribunal, MCD by appealing against the sanction accorded to the respondent No.4. Similarly, the easementary rights claim cannot be the subject matter of this petition.

10. Thus, it appears that the remedy of the petitioner is not by way of this petition but is either by challenging the provisions of the Master Plan or before the Civil Court or before the Appellate Tribunal, MCD.

The petition is dismissed with the aforesaid observations.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

24th December, 2010
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