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India: Delhi High Court Quashes NOC Requirement for Further Construction

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An analysis of Delhi High Court's judgment in Harish Bajaj & Anr. versus North Delhi Municipal Corporation & Anr. - wherein the Hon'ble Delhi High Court held that the NOC requirement of the North Delhi Municipal Corporation (NDMC) from all the owners in a building was unwarranted.

Background & facts:

The Hon'ble Delhi High Court while hearing an appeal from an aggrieved resident of Prashant Vihar has quashed the NDMC's requirement for obtaining a No-Objection Certificate (NOC) from the other occupants of a building while undertaking further construction as permitted under the MPD – 2021.

The acting Chief Justice and Justice Anu Malhotra took into consideration the history of events and the factual matrix of the dispute of this case. They heard the respondents (North Delhi Municipal Corporation) who placed reliance on S. 347 (B) (f) of the Delhi Municipal Corporation Act, 1957 claiming that it was a statutory requirement for the Appellants to furnish complete ownership documents of all the floors in the building along with an NOC given by the other occupants of a building where further construction was intended.

Observations:

The Hon'ble judges took into consideration the observations laid down by the court in **Municipal Corporation of Delhi v. Smt. Usha Devi Sharma (2006 III AD(Delhi)515)** wherein it had held as follows:

*"Once the property is segregated into different portions and mutated accordingly, there cannot be any requirement of all the co-owners to sign the building plans. If the plot and the building are both co-owned, then only the requirement for such co-owners to sign may at all arise. The segregation of interest of the different co-owners is recognized by the respondent corporation by mutation of the different portions in individual names of different persons. **The fate of an individual owner cannot be dependent on the pen of persons, who happens to be the owner of a different portion of the building. Thus, there cannot be any requirement of signatures of all the co-owners.**"*

*9. (contd.) **The learned Single Judge after examining the provisions of the Building Byelaws, 1983 and on an analysis thereof came to the conclusion, with which we agree, that there is no requirement that if the owner of a flat or a floor in a property intends to put up some construction, he must obtain a no objection certificate from the other flat owners. As long as separate ownership of different flats is permissible in law, each owner is responsible for the construction that he makes. If the construction is contrary to law, the Appellant is entitled to demolish it but if the owner of the flat wishes to make some construction and applies for sanction in accordance with law, the Appellant cannot reject it on the ground that the owners of other flats should give their no objection. It is quite clear from the Building Bye-laws that other owners have no concern with the property of a particular owner as long as that owner makes construction thereon in accordance with the Building Bye-laws after obtaining sanction.**"*

The Hon'ble Bench also considered the observations made by the court in **Kanwal Sibal vs New Delhi Municipal Council & Ors. on 27 May 2015** wherein NDMC mandated similar requirements on the petitioner who was seeking to construct further. The Delhi High Court had held as follows:

*"22. It is also necessary to bear in mind the principal purpose for framing Building Byelaws. Clearly, the same is to ensure that the buildings are constructed in conformity with the norms and parameters stipulated for planned development. **Thus, in cases where an indefensible right of ownership of a property is established and recognised, NDMC would have to confine its examination to the issues germane to planned development.**"*

Order:

The divisional bench in this present matter held, that where the owners intending to construct further have applied for and are undertaking to construct further as per sanctioned building plans, the requirement of NDMC of obtaining an NOC from other residents (owners) in the building was completely unwarranted, not sustainable, and therefore quashed. The Court further directed the NDMC to process the application for sanction of building plans within a period of three weeks to enable the petitioner to construct further as permitted by law.

Conclusion:

Prior to this order, persons who had purchased higher floors and purchased the land rights for terraces of buildings (especially in the case of builder floors) in New Delhi, faced numerous hurdles and harassment while obtaining NOC from other occupants of the building. On many occasions, fellow occupants of the building would create

frivolous and unnecessary disputes due to vested interests or for monetary gain. This progressive order by the Delhi High Court shall safeguard the interests of lawful owners and simplify the process for persons who are looking to construct further as per sanctioned building plans.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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