



2025 INSC 1324

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6077 OF 2018

SOUTH DELHI MUNICIPAL CORPORATION
THROUGH ITS COMMISSIONER

APPELLANT (S)

VERSUS

BHARAT BHUSHAN JAIN (DEAD) THR. LRS.

RESPONDENT (S)

WITH

CIVIL APPEAL NO. 6078 OF 2018

O R D E R

J.B.PARDIWALA & K.V.VISWANATHAN, JJ.

1. These appeals arise from the judgments and orders passed by the High Court of Delhi dated 11.05.2015 in Writ Petition (Civil) No. 1497 of 2012 and 01.06.2017 in Review Petition No. 217/2017 in W.P.(C) No. 1497/2012 respectively by which the appeal filed by the appellant herein, namely, the South Delhi Municipal Corporation through its Commissioner came to be dismissed, thereby affirming the order passed by the learned District Judge granting deemed sanction to the plans which were

put forward by the respondents herein before the Corporation for construction of a residential house.

2. The short facts giving rise to this appeal may be stated thus:-

(I) The respondents herein before us have a residential house of their ownership bearing No. 4752 and 4758 respectively situated at 23, Ansari Road, Darya Ganj, New Delhi. This house is almost 85 years old and is in a dilapidated condition. In such circumstances, the respondents decided to dismantle it and put up new construction to be utilised for their residence. The plans were accordingly prepared and put forward before the appellant in the year 2010.

(II) It appears that no decision was taken by the authority concerned on the sanctioning of the plans put forward by the respondents. In such circumstances, the respondents went before the Appellate Authority-MCD, which is a Tribunal constituted under the provisions of Section 347A of the Delhi Municipal Corporation Act, 1957 (for short "the Act"). The Tribunal allowed the application and granted deemed sanction of the plans.

(III) Being dissatisfied with the order passed by the Tribunal-MCD, the appellant went in appeal before the Additional District Judge, by way of Appeal No. 1/2011. The appeal filed by the appellant herein came to be dismissed by the Court of the Additional District Judge vide order dated 13.02.2012, thereby affirming the order passed by the Tribunal.

(IV) Being dissatisfied with the order passed by the Court of the Additional District Judge, the appellant went before the High Court by way of a writ petition. The writ petition also came to be dismissed.

(V) We are informed that against the judgment and order passed by the learned Single Judge of the High Court, a Letters Patent Appeal was also filed, however, the same came to be dismissed on the ground of being not maintainable.

(VI) The Special Leave Petition preferred against the order passed in the Letters Patent Appeal was dismissed as withdrawn on 23.12.2016. Thereafter, the appellant preferred another Special Leave Petition against the order of the Learned Single Judge and obtained liberty to seek

review of the order passed in Writ Petition (C)

No. 1497 of 2012. The said Review Petition came

to be dismissed on 01.06.2017.

3. In such circumstances, referred to above, appellant is here before us with the present appeal.

4. Ms. Vandana Sehgal, the learned counsel appearing for the appellant, vehemently submitted that the High Court committed an egregious error in passing the impugned judgment and order. According to her, it is not permissible for the respondents to put up new construction in the form of a new house. Although the present residential house may be in a dilapidated condition, and it may be permissible for the respondents to continue to reside in such a dilapidated house, yet the law does not permit the respondents to dismantle the present structure and put up a new house. According to her, the new bylaws do not permit the respondents to dismantle the house and put up a new structure. In other words, according to the learned counsel, the construction has to be strictly in accordance with the Master Plan and sub-Zonal Plan respectively meant for the Ansari Road, Darya Ganj. According to the learned counsel, even if the respondents want to construct a new house, they are obliged in law to put up a shop on the ground floor which should be commercial in nature and thereafter, on the first floor or the second floor, they may make their residence.

5. On the other hand, Mr. Paul, the learned Senior counsel appearing for the respondents, while vehemently opposing this appeal, would submit that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order. According to him, there are concurrent findings of three authorities. To start with the Tribunal, the Court of the Additional District Judge and thereafter the High Court in his favour. He would submit that the ancestors of his client started residing in this house sometime in 1940. He submitted that his clients are not in a sound monetary condition to shift to any other place in Delhi. The only option available with the respondents is to dismantle the present house and put up a new RCC construction and use it exclusively for residential purpose.

6. The learned senior counsel took us through the notification dated 15.09.2006 issued by the Urban Development Department, Government of National Capital Territory of Delhi. He invited our attention to clause 15.1 and clause 15.2 respectively. According to him, this notification permits the occupant of a property situated in the area in question to use it for mixed facility, in residential areas. He would submit that his client does not intend to use the new premises which he would like to construct for mixed use and he wants to use it only for residential purpose.

7. The principal argument canvassed by the learned senior counsel is that how can the appellant compel a person to make use of his property for mixed purposes, i.e., commercial-cum-residential, and more particularly, when the person wants to use it only for residential purpose. According to him, the new provision in the notification is an enabling provision, which permits the owner of the property, and more particularly, those who want to use it for mixed purpose.

8. In such circumstances, referred to above, he would submit that there being no merit in this appeal, the same may be dismissed.

9. While dismissing the review petition, the Learned Single Judge of the High Court noted, *inter alia*, that it was for the first time the SDMC canvassed an argument in a review petition that the ground floor would necessarily have to be used for commercial purpose. The SDMC had earlier set up the case that the building plans submitted by the respondent were deficient because the plans had failed to provide for stilt parking on the ground floor, thus the insistence on the use of the ground floor as a shopping outlet militates against the case set up by the SDMC in the writ petition.

10. The learned Single Judge went on to observe:

"Secondly, the Master Plan for Delhi, 2021 makes it amply clear that the areas notified for mixed

land use are to be used for commercial purposes to a limited extent. Shops are permitted on plots abutting notified streets albeit only on the ground floor and upto the maximum permissible ground floor coverage. This does not imply that the owners of residential property on notified streets are compelled to develop the property in that manner and apply for change of user. It is also relevant to mention that the change of user for developing the properties for partly commercial use on notified streets is permissible on payment of the conversion charges."

(Emphasis supplied)

11. A bare perusal of the relevant circular dated 27.05.2009 makes it clear that the learned Single Judge very correctly held that the owners cannot be compelled to convert the ground floor of their residential accommodation to a commercial unit, rather, he may choose to do so. The circular reads thus:

"Circular

The following guidelines in consultation with the Technical Committee of DDA and the Town Planning Department of the Municipal Corporation of Delhi are issued to all concerned for processing applications/ cases for approval of Building Plans on notified streets under mixed-use regulations:

1. The Building Plans on notified commercial streets/roads can be sanctioned for commercial use/partly commercial/partly/residential/fully residential as per the choice of the applicant.

xxx

xxx

xxx

4. Activities permitted on mixed use streets under mixed use regulations in MPD-2021 / its amendments shall be allowed in the case of plots abutting in mixed use streets on -ground floor only and upper floors shall be for the residential use.

5. One time conversion charges as per notification dated 22.06.2007 and as amended from time to time shall be charged for the area being sanctioned for commercial use on notified commercial streets."

12. The same understanding may be gained from the observations made in the case of *M.C. Mehta v. Union of India and ors* in I.A. Nos. 203615 & 218080 of 2024 and I.A. No. 210981 of 2025 in Writ Petition (C) No. 4677 of 1985 respectively by Justice B.R. Gavai, CJI, which are as follows:

"20. The learned Senior Counsel for the MCD further enlightened us on the different categories of markets across Delhi with reference to the Master Plans notified for Delhi. The first Master Plan for Delhi was MPD-1962, replaced by the 2nd Master Plan, MPD-2001 published on 01.08.1990 and then the 3rd Master Plan, MPD-2021 which came into effect on 07.02.2007. We have from the documents produced by the applicant himself, found that the applicant has obtained a sanctioned plan for construction only in the year 2005. The Master Plan for 2021 conceived the Community Centres (CC) as shopping and business centres while the Local Shopping Centre (LSC) and the Convenience Shopping Centre (CSC) would cater to the day-to-day needs of the local population. Certain areas developed prior to 1962 like Lajpat Nagar, Rajouri Garden, Tilak Nagar, Kamla Nagar and others which existed prior to MPD-1962 had consolidation of commercial activities.

21. The LSCs were categorised into two categories, one meant exclusively for commercial use and the other for mixed use where commercial activity was allowed to be carried out on the ground floor and residential activity permitted on the upper floors. MPD-2021 designated some of the shop-cum-residential complexes which were earlier termed as 'shop-cum-residence' plots/shops as Local Shopping Centres and permitted commercial use of floors above the ground floor, subject to payment of conversion charges. The former category of LSCs

wherein exclusively commercial activities were carried out, were thus called planned LSCs while those in which conversion of the 'residential' to 'commercial' was permitted were called designated LSCs. New Rajinder Nagar in which the applicant's plot is situated has been notified as a pre-1962 built up residential and rehabilitation colony. The understanding of the applicant was also not otherwise since the sanctioned plan produced along with the IA, as applied for the applicant, clearly indicates the sanction of residential areas on the upper floors."

(Emphasis supplied)

13. We also thought fit to put few questions to Mr. Rahul Verma, serving as an Assistant Engineer with the appellant. The officer present before us is attached with the Building Headquarters Department. We enquired with the officer, what is the idea in imposing such a restriction. According to him, since the entire Ansari Road, Dariya Ganj, Delhi is now full of local shopping centres, each and every residential house should be a shopping complex, if ultimately new construction is to be put up. We were taken aback when we came to know that the residential house of the respondents which is in a very dilapidated condition is on a 300 square yard plot. This residential house as noted above was constructed sometime in 1940. The land is said to have been purchased sometime in 1935 and construction of the house was completed sometime in 1940. We are at our wits' end to understand how does the appellant expect the respondents to put up construction in a manner by

which the ground portion would be for commercial use, and the upper floor would be for residential purpose, and more particularly, when he has a vested crystalised legal right to use it for residential purpose for all times to come.

14. The argument canvassed on behalf of the appellant defies logic that the respondents may continue to reside in the dilapidated house, but if they want to put up new construction, then it has to be commercial on the ground floor and upper floor as residence. Even the notification, which we have referred to above, does not support the case put forward by the appellant in any manner.

15. We are at pains to note that this litigation is now almost 15 years old. Had the permission being granted 15 years back, the respondents would have been able to complete the construction within a particular budget. With 15 years having passed by, they will have to incur huge expenditure for putting up new construction.

16. We also looked into the photographs of the subject house of the respondents. It is in a dilapidated condition and any time may collapse. In fact, the appellant should have expressed concern about the safety and lives of the occupants of this house, rather than objecting to sanctioning of their plans. This is nothing short of harassment.

17. In such circumstances, referred to above, we see no good

ground to interfere with the impugned judgment and order passed by the High Court.

18. In the result, the appeal fails and is hereby dismissed.

19. We permit the respondents to put forward fresh plans for approval. The plans shall be for construction of a house. Once the plans are submitted, the authority concerned shall sanction the same within a period of four weeks from the date of presentation and grant necessary permission to put up construction meant for residential purpose.

20. In the gross facts and circumstances of this case, and considering the arbitrary and high-handed manner in which the appellant harassed the respondents, we impose costs of Rs.10,00,000 (Rupees ten lakh only) to be paid to the respondents on or before 17.12.2025 without fail. The payment towards costs shall be reported to us. It shall be open for the respondents to put forward the very same plans which were earlier approved by the High Court.

21. With the aforesaid, this appeal stands disposed of.

22. Pending application(s), if any, stands disposed of.

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In view of the Order passed by us in Civil Appeal No. 6077 of 2018, nothing remains in the connected appeal and the same

is also disposed of.

.....J.
[J.B. PARDIWALA]

.....J.
[K.V. VISWANATHAN]

New Delhi
6th November, 2025.