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

Date of decision:05 October, 2016

+ LPA 475/2015

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr.Jagdish Sagar, Adv.

versus

BHARAT BHUSHAN JAIN Respondent

Through: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

INDIRA BANERJEE , J (ORAL)

1. This intra court appeal filed by South Delhi Municipal Corporation, hereinafter referred to as SDMC, is against a judgment and order dated 11th May, 2015, of the learned Single Judge, dismissing the application filed by SDMC captioned as an application under Article 226 and/or Article 227 of the Constitution of India.

2. The respondent is the owner of immovable property at 23, Ansari Road, Darya Ganj, New Delhi-110012, which is hereinafter referred to as the said property. The respondent intends to develop the said property by constructing a building for residential use of the respondent, upon demolition of existing structures.

3. Sections 332 and 333 of the DMC Act provide as follows:

“332. Prohibition of building without sanction-

No person shall erect or commence to erect any building or execute any of the works specified in section 334 except with the previous sanction of the Commissioner, not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works.

333. Erection of building-(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.

(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed.”

4. The respondent issued notice to SDMC under Section 333 of the DMC Act, read with Building Bye Laws for the Union Territory of Delhi, 1983 (hereinafter referred to as the Building Bye Laws), and applied for sanction of a building plan.
5. After receipt of the aforesaid application of the respondent for sanction of building plan, SDMC issued a notice dated 10th August, 2010, to the respondent, pointing out alleged defects in its application. The respondent apparently replied to the queries on or about 20th August, 2010.
6. DMC neither sanctioned nor rejected the application of the respondent for sanction of the building plan. Section 347B(I)(g) provides that any person aggrieved by any of the orders set-forth in the clauses thereunder may prefer an appeal before the Appellate Tribunal constituted under the DMC Act. An order withholding sanction of a building plan is appealable.
7. Furthermore Section 337(i) of the DMC Act provides as follows:

“Section 337. When building or work may be proceeded with

(1) Where within a period of sixty days, or in cases falling under clause (b) of Section 331 within a period of thirty days, after the receipts of any notice under Section 333 or Section 334 or of the further information, if any, required under Section 335 the Commissioner does not refuse to sanction the building or work or upon refusal does not communicate the refusal to the person who has given the notice, the commissioner shall be deemed to have accorded sanction to the building or work and the person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:

Provided that if it appears to the Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Commissioner may withhold sanction of the building or work for such period not exceeding three months as he deems fit and the period of sixty days or as the case may be, the period of thirty days specified in this sub-section shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.”

8. On or about 1st November, 2010, the respondent filed an appeal under Section 347 (B) (1) (G) of the DMC Act before the

Appellate Tribunal, claiming that the plan submitted by the respondent had to be deemed to have been sanctioned under Section 337 (1) of the DMC Act as SDMC had failed to communicate its decision on the sanction of the building plan to the respondent within 60 days from the date of the receipt of the information on the queries raised by DMC.

9. By an order dated 10th October 2011, the learned Appellate Tribunal allowed the appeal and held that the building plan submitted by the respondent to DMC was to be deemed to have been sanctioned in favour of the respondent w.e.f. 19th October, 2010.
10. Being aggrieved by the decision of the Tribunal, DMC filed an appeal being Appeal No.1/2011 before the District Judge under Section 347 (D) of the DMC Act. The appeal was dismissed by the District Judge by an order dated 13th February, 2012.
11. DMC challenged the said order dated 13th February, 2012, of the learned District Judge, dismissing the appeal filed by the DMC, by filing an application in this Court styled as an

application under Article 226/227 of the Constitution of India, which has been dismissed by the judgment and order dated 11th May, 2015, under appeal.

12. Mr. Nigam, appearing on behalf of the respondent has taken a preliminary objection to the maintainability of this appeal inter alia contending that an appellate or revisional order of the Single Bench is not appealable before a Division Bench of this court.
13. This High Court derives authority to exercise jurisdiction from the provisions of the Delhi High Court Act, 1966, and in particular Section 5 thereof. By virtue of the said Section this Court is empowered to exercise such original, appellate and other jurisdiction as was exercisable by the High Court of Punjab, under the law in force immediately before the date of enforcement of the Delhi High Court 1966.
14. The provisions of the Letters Patent of the High Court at Lahore are, therefore, applicable to this Court. Clause 10 of the Letters Patent of the High Court at Lahore, which is in pari

materia with Clause 15 of the Letters Patent of the Calcutta, Bombay and Madras High Courts, provides as follows:

“Clause 10: And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgement (not being a judgement passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgement of one Judge of the High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgement declares that the case is a fit one for appeal, but that the right of appeal from other judgements of Judges of the said High Court or of such Division Court shall be to Us,

Our Heirs or Successors in Our or Their Privy Council,
as hereinafter provided.”

15. Clause 10 of the Letters Patent provides for an appeal to a Division Bench of this High Court from a judgment of the Single Judge, which is not a judgment in exercise of appellate jurisdiction, in respect of a decree or order made of a Court, subject to the superintendence of the said High Court or an order made in exercise of a revisional jurisdiction or an order passed or made in exercise of its power of superintendence.
16. The Division Bench of this Court may, therefore, entertain an appeal from an original order of this court, but not from an order in any appeal, in any revision or in exercise of its power of superintendence under Article 227 of the Constitution of India.
17. Mr. Nigam also referred to Section 100 (A) of the Code of Civil Procedure, which provides: -

“100A. No further appeal in certain cases.-
Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other

law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court no further appeal shall lie from the judgment and decree of such Single Judge.”

18. An order of a Single Bench of the High Court, in exercise of original jurisdiction under Article 226 of the Constitution of India, is appealable before the Division Bench under Clause 10 of the Letters Patent of the High Court of Judicature at Lahore.
19. Article 226 confers power on a High Court to issue writs, orders or directions for enforcement of any of the rights conferred by Part-III of the Constitution or any other purpose. Jurisdiction under Article 226 is neither an appellate nor a revisional jurisdiction.
20. The High Court in exercise of its power under Article 226 of the Constitution of India exercises original jurisdiction, though the said jurisdiction is not to be confused with the ordinary original civil jurisdiction of the High Court. This jurisdiction, though original in character, as contrasted, with its appellate and revisional jurisdiction, is exercisable through out the

territories, in relation to which it exercises jurisdiction, and may, for the purpose of convenience be described as extraordinary original jurisdiction. Reference may be made to the judgment of the Supreme Court in *Jogendra Singhji Vijay Singhji Vs. State of Gujrat and Others* reported at (2015) 9 SCC 1.

21. In *Jogendra Singhji Vijay Singhji* (supra), the Supreme Court held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of a valuable right to appeal, the court ought to treat the application as being made either under Article 226 or under Article 227 of the Constitution of India.
22. What is required to be ascertained is the true nature of the order passed by the Single Judge and not the provision mentioned, while exercising such powers. A statement by a Single Bench that he has exercised power under Article 227, cannot take

away a right of appeal against such judgment, if power is otherwise found to have been exercised under Article 226 of the Constitution of India.

23. In *Lokmat Newspapers Pvt. Ltd. Vs. Shankar Prasad* reported in (1999) 6 SCC 275, the Supreme Court on consideration of Clause 15 of the Letters Patent of Bombay High Court held that if the Single Bench exercised jurisdiction under Article 226 of the Constitution of India, Letters Patent appeal would be maintainable. However, where an order has been passed in exercise of a revisional or appellate power, an intra court appeal would not lie irrespective of any averment made in the petition. Therefore, if jurisdiction was exercised under Article 227 of the Constitution of India, an appeal to the Division Bench would not be maintainable.
24. The order under appeal has been passed by the learned Single Bench in exercise of the power of superintendence of the High Court under Article 227 of the Constitution of India, over all Courts and Tribunals throughout the territories in respect of

which the High Court exercises jurisdiction. This intra Court appeal to the Division Bench is, therefore, not maintainable.

25. The present appeal is accordingly dismissed.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

October, 05, 2016 /n