

संकेत संख्या (योजना) एम.डी.आ.  
द्वारा सं. 2053  
दिनांक 30/11/12

MOST IMMEDIATE



UDM Dy.No.4716/2012-DD-I  
भारत सरकार/Government of India

शहरी विकास मंत्रालय /Ministry of Urban Development

निर्माण भवन/Nirman Bhavan

नई दिल्ली/New Delhi

Dated 14<sup>th</sup> November, 2012

OFFICE OF THE DIR (Pig.)  
MTC, D.D.A. N. DELHI-2  
No. L-259  
Dated 3/12/12

To

✓ The Vice Chairman,  
Delhi Development Authority,  
Vikas Sadan, INA,  
New Delhi

The Commissioner,  
North Municipal Corporation of Delhi  
Civic Centre, New Delhi

The Commissioner,  
South Municipal Corporation of  
Delhi  
Civic Centre, New Delhi

The Commissioner,  
East Municipal Corporation of Delhi,  
Udyog Sadan, Patpad Ganj  
Industrial Area, Delhi.

Subject: Review of MPD 2021- Regularization of floorwise/blockwise  
sanction/regularization of residential plotted development  
scheme - as proposed by the Municipal Corporation of Delhi.

Sir,

I am directed to forward herewith a copy of letter dated 28/9/2012  
received from Shri Romesh Chopra on the subject cited above for  
examination/taking action and reply to the concerned under intimation to  
this Ministry.

Yours faithfully,

(Sunil Kumar)

Under Secretary (DD-I)

Tel.No.23061681

Encl. as above

Copy for information to:

Shri Romesh Chopra, 25A, Palam Marg, Vasant Vihar, New Delhi -  
110057

19/11/12  
AC (Reg) Mr. A.K. Jain

PS  
Director (AP)  
AC (MP)  
Dro (MP)

30/11  
3/12/12

40  
Secretary  
Jain

अति.आ. (यो.) यू.ई.एंड.पी.  
द्वारा सं. MC.O.P.-59  
दिनांक 26/11/12

3103-B  
16/11/2012

Hon'ble Shri Kamal Nath  
Union Minister for Urban Development

As  
To  
28/9/12

25A Palam Marg  
Vasant Vihar  
New Delhi 110057  
28 September 2012

OFFICE OF UDM  
Dy. No. 47.16...  
Date 28/9/12

AS (ur)

Sub: Review of Master Plan of Delhi 2021 -

Regularisation of floorwise/blockwise sanction/regularization of residential plotted development scheme - as proposed by the Municipal Corporation of Delhi

01/10/12

PR. SPC.  
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LSP

Respected Minister,

Many families, upon the death of their father/family elder, are facing difficulties on the issue of the inheritance of a single plot of land between more than one person. This not only causes unnecessary friction between family members but also clogs up the already over-burdened law courts with lengthy family disputes.

It may be noted that **unfettered freedom of operation** has already been accepted in principle for flatted horizontal units in the 'sanction/regularization of residential plotted development scheme' of the MCD which is entirely in conformity with the principle of law in the judgement of the Usha Devi Sharma case upon which this proposal rests.

I have a suggestion for a minor but vital amendment with regard to this proposal moved by the Municipal Corporation of Delhi for 'floorwise sanction/regularization of residential plotted development scheme', viz -

It would be most desirable that the same principle should apply in the case of a single plot upon which **vertical residential units** exist and where the plot has been divided by 'meets and bounds' between co-owners, where the FAR for the plot has also been equitably divided and agreed upon, and where the document formalizing this division has been registered with the authorities.

**Each individual co-owner of vertical residential units must be allowed the same freedom of decision-making and action for his or her own portion - as in the afore-mentioned case of flatted horizontal units - without requiring the signatures of other co-owners, whether for the purposes of freeholding the land, sanction of building plans, applying for electricity connections and all such matters relating to house-building/renovation etc.**

This suggestion will NOT, in any way, affect the proportionate permissible ground coverage and/or FAR or setbacks in respect of the proportionate land owned in the indivisible plot. This is purely for the independence of operation of individuals. This suggestion will remove any ambiguity in this particular scheme and so help thousands of families currently in distress.

**It may be pointed out that this suggestion is in no way suggesting a sub-division of the plot or a change in the setbacks or a change in the**

**FAR of the plot.** It is merely to ease independence of operation of joint property.

I am sure this matter will receive your sympathetic consideration so that the revised Master Plan of Delhi 2021 will remove the unnecessary misery being suffered in the past by thousands of families because of this apparent ambiguity in the MCD regulations.

Yours sincerely,



Romesh Chopra

Attachments:

1. MCD Guidelines for proposed floorwise sanction/regularization of residential plotted scheme
2. Judgement of Delhi High Court in the Usha Devi Sharma case

In pursuance of the broader guidelines issued through Orders/Circulars, the following policy shall be adopted for floor-wise sanction of building plans/regularization of existing buildings

*suggested change of wording*

and consisting of different residential units/blocks within the plot

case-to-case basis on merit after ensuring compliance of provisions of Building Bye-Laws-1983, Master Plan-2021, Zoning Regulations and statutory clearances / NOC(s) from concerned department(s). The signature of owner(s) of other portion(s) of the building shall not be insisted upon in view of the orders / directions of Hon'ble High Court of Delhi in W.P.(C) No.3280/2004 in the matter of "Smt. Usha Devi Sharma Vs Commissioner MCD and Anrs"

The following broader guidelines shall be followed to deal with floor-wise sanction / regularization.

1. Structural Safety

It shall be mandatory on the part of the applicant seeking floor-wise sanction/ regularization to submit structural safety certificate for the building as a whole in the manner as defined in Building Bye-Laws. An affidavit of structural engineer empanelled with the M.C.D. (as defined in the Building Bye-Laws), shall be submitted in this regard stating therein that existing building has been personally inspected by him/her before evaluating the structural safety. In case, any dispute arises relating to sanction of plan on the pretext of structural safety, it would be the responsibility of applicant to submit structural safety certificate from any of the following agencies or from the agency as shall be ordered by the Authority:

1. Indian Institute of Technology (IIT), Delhi
2. Central Building Research Institute (CBRI), Roorkee
3. Rail India Technical and Economic Services Ltd. (RITES), Delhi.
4. National Council for Cement & Building Material, 34 KM Stone, Delhi Mathura Road, Faridabad (Haryana)
5. Indian Institute of Technology (IIT), Roorkee.

The expenses so incurred, in this regard, shall be borne by the applicant. The applicant shall submit an affidavit in this regard. In case any damage to the adjoining / surrounding property (ies) or any other floor in the property wherein sanction of building plans / regularization of an individual floor has been sought, or mislay, the onus for the same including criminal proceedings shall lie with the Structural Engineer as well as owner (s) and the concerned Architect. An Affidavit to this effect shall be submitted from them.

2. Land Share

The distribution of permissible FAR (in proportion to the land share) including ownership right over the land shall be determined as per ownership documents of the applicant. The ownership documents shall clearly delineate the land share of the applicant. If the land share is not mentioned in the Agreement,

The utilization shall not be entertained unless a separate Agreement amongst all the co-owners delineating the land share is submitted. The applicant shall furnish the details of other co-owners of the property in question. The open area falling on the lower floor (shaft open courtyard etc.) shall not be allowed to be covered on the upper floors. An Affidavit shall be submitted by the applicant that there is no dispute / court case pending before any court of law regarding ownership / title / claim / Interest of the plot / property in question.

#### Utilization of FAR In Basement:

In case basement is being used for permissible activity as per Master Plan-2021, then the area being used for such activity shall be counted in the overall FAR proportionate to the land share and the balance FAR shall be distributed according to the land share of rest of the co-owners.

#### Reliance on rights of services:

Reliance shall be made on rights of services as defined in the ownership documents of the applicant. The ownership documents need to define the right to make construction on a floor and to lay the internal services like water, electricity, drainage, sewage and use of common services etc. If such rights are not defined specifically, the applicant shall take care of existing / proposed services. The applicant shall not disturb any services in the building which affect other co-owners without the consent of the other affected co-owners. The applicant shall also indemnify the Corporation in the event of any loss or damage / dispute caused to the existing floors or adjoining building (s) on account of the construction sanctioned by MCD as well as services either in the course of its construction or even thereafter and also against any claim of any concern thereto.

#### Lift:

The proposal of new lift shall not be allowed, as it infringes the right of owner(s) of existing floor(s) in terms of ground coverage / FAR. However, if the existing building has the provision of lift with due sanction, the applicant can seek the extension of this benefit provided the right and privacy of other floor(s) owners should not be infringed.

#### Parking:

The applicant shall ensure provision of parking as per MPD-2021 / circulars issued in this regard within the premises and all other provisions notified in this regard. In case of Notified Roads, the proposal for residential use shall be considered after ensuring the parking provision as per Office Order dated 27.05.2009. The proposal with deficient parking provision as per MPD-2021 shall not be allowed to be entertained and such cases shall be liable to be rejected. That in case the applicant intends to avail benefit of additional FAR arising / available as per MPD-2021 / circular issued in this regard, the applicant would ensure provision of parking within the premises and submit an Affidavit alongwith Parking Plan to this effect.

#### Compliance with Building Bye-laws/ MPD-2021:

It is mandatory on the part of the applicant / architect to ensure that the proposal is in accordance with the relevant provisions of Building Bye-laws/ MPD-2021. The proposals not adhering to the relevant provisions of Building Bye-laws/ MPD-2021 shall be liable to be rejected.

**NOTES**

The sanction of building plan for additional floor shall be considered only after ensuring that construction of existing floors has been done with due sanction / regularized and the same adheres to the sanction/ regularization plan. In case of deviations against sanctioned plan or if the existing construction has come up without getting the building plan sanctioned, necessary steps shall be initiated to get the non-compoundable deviations rectified / demolished if any, and regularization of compoundable construction. Upon receipt of any application for sanction of building plans of individual floor, the co-owners of remaining floors of the property shall also be sent a communication by the Department, whereby they will be required to intimate to the Department if their rights get infringed in any manner within 15 days. The same procedure shall be followed in case of regularization of floor(s).

The applicant shall file an undertaking in the shape of an affidavit and also indemnify MCD against any liability in case of any dispute due to sanction of plan / regularization.

Regularization as well as sanction of building plan of the floor shall be permitted from the lower floor first i.e. from ground floor onwards. However, no new sanction of lower floor(s) in an existing building, wherein upper floors are in existence, shall be allowed under this policy.

This Issues with prior approval of the Competent Authority.

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Delhi High Court

Municipal Corporation Of Delhi ... vs Smt. Usha Devi Sharma  
/O Shri Ved ... on 30 January, 2006

Equivalent citations: 127 (2006) DLT 275

Author: M B Lokur

Bench: C.J., M B Lokur

JUDGMENT

Madan B. Lokur, J.

The Appellant is aggrieved by the judgment and order dated 23rd May, 2005 passed by a learned Single Judge in WP (C) 3280/2004

The appeal is an example of how a citizen can be compelled to litigate due to sheer harassment by officers of the State.

The Respondent (writ petitioner) had purchased the 2nd floor of K-1, Kailash Colony, New Delhi 1991 through a registered sale deed. The respondent was living in a room with an asbestos cement roof, which is temporary in nature. She submitted building plans on 3rd February, 2000 to the Appellant for making a sanctioned construction. Despite several visits to the office of the Appellant, no action was taken on the application. This led the Respondent to file CW 6670/2003 in this Court, which was disposed of on 20th October, 2003 with the following direction:-

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With the consent of learned counsel for parties the matter is taken up for final hearing.

The grievance of the petitioner is that the application submitted by the petitioner on 03.02.2000 in respect of Property No. K-1 Kailash Colony, IInd Floor New Delhi, for sanction of the plan has not been decided.

In view of the limited nature of grievance, it is directed that a decision be taken on the application by the petitioner within a maximum period of one month from today, if not already taken and the decision be communicated to the petitioner within two weeks thereafter. In case the decision has already been taken, the said decision be communicated to petitioner within 15 days from today.

The writ petition stands disposed of in the aforesaid terms.

Costs to learned counsel for the parties.

Subsequent to the order passed by this Court, the Appellant passed an order to the effect that the plans could not be sanctioned since they were not signed by the other co-owners of the entire plot, that is, the owners of the ground and first floors. It was also mentioned in the rejection letter that the plans were rejected earlier on the same ground. According to the Respondent the earlier sanction was not received and that is why she had filed CW 6670/2003.

In any case, after the rejection of the building plans on the ground that they were not signed by other co-owners of the property, the Respondent filed a writ petition in this Court in which it

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ed that the rejection of the building plan was contrary to law and a mandamus be issued to Appellant to sanction the building plans.

6. By the impugned judgment and order, a learned Single Judge held that the rejection of the building plan was not warranted in law and the Appellant was directed to process the application for sanction in accordance with the judgment of the Court and pass an order within four weeks.

7. Feeling aggrieved, the Appellant has preferred this appeal under Clause X of the Letters Patent.

8. At the outset, it may be mentioned that a similar issue appears to have arisen in CW 3535/2001 which was decided by another learned Single Judge on 11th March, 2003 in which it was held as under:-

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 a 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. The learned Single Judge took note of the above decision but added some other reasons for agreeing with the writ petitioner. The learned Single Judge after examining the provisions of the Building Bye-laws, 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 insistence of the Appellant that the other co-owners of the property, namely, the owner of the ground floor and the first floor must give their no objection is not warranted by any provision of the Building Bye-laws, nor was any such Bye-law brought to our notice.

10. We see no reason to interfere with the order passed by the learned Single Judge. The appeal is dismissed. The Respondent is entitled to costs of Rs. 5,000/- payable by the Appellant within four weeks from today. In compliance with the order of learned Single Judge the Appellant is directed to process the papers of the Respondent in accordance with law and take a decision on the building plans within four weeks from today.