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

+ W.P.(C) 2226/2016

DEEPAK KHANNA

..... Petitioner

Through

:Mr. Arun Bhardwaj, Sr. Advocate
with Mr. Jitender Kumar, Adv.

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Through

:Mr. Rajan Tyagi, Adv. for
respondent no. 1 to 3
Mr. Rakesh Tikku, Sr. Advocate with
Ms. Arpan Wadhwan, Adv. for
respondent no. 4
Mr. Sumeet Pushkarna, Standing
Counsel and Mr. Siddhartha Nagpal,
Adv. with Mr. Rizvi, Zonal Engineer,
for respondent no. 5

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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19.04.2016

By this writ petition under Article 226 of the Constitution of India, petitioner has prayed that respondent nos. 1 to 3 be directed to stop any illegal construction in the property bearing no. C-18, Greater Kailash Enclave – I, New Delhi, by the respondent no. 4. It has been further prayed that illegal construction, carried out by the respondent no. 4 in the basement, ground floor and third floor, be demolished. Petitioner is owner of the first

floor; whereas respondent no. 4 is owner of the basement, ground floor and third floor. Respondent no. 1 has filed status report stating therein that the property no. C-18, Greater Kailash Enclave – I, New Delhi has already been booked for unauthorised construction in the shape of addition/alteration and erection of partition wall in the basement vide file no. 165/B/UC/EE(B)-I/CNZ/2016 dated 2nd February, 2016 under Sections 343/344 of the Delhi Municipal Corporation Act, 1957 (“the Act”, for short), inasmuch as notice dated 1st March, 2016 has also been issued to the owner. Vide letter dated 12th April, 2016 owner/occupier of the basement has intimated that he has demolished the partition wall. As regards toilet is concerned, same is old and permissible in the light of the provisions of new BBL – 2016 as promulgated by DDA. Further, that architect’s office is being run by the respondent no. 4 in the basement, which has already been registered with the South Delhi Municipal Corporation on 22nd March, 2016.

On 13th April, 2016 Junior Engineer inspected the basement and found that partition wall has already been demolished. A clarification has been sought from the Building Head Quarter, South Delhi Municipal Corporation with regard to the toilet in the basement and necessary action will be taken upon receiving the clarification. The use of basement by the

architect for office purposes is permissible under the MPD-2021/BBL.

As per the status report, deviation/excess coverage and infringement of setbacks at basement, ground floor, first floor, second floor against the sanctioned building plan and unauthorized construction of part third floor has also been booked vide file no. 333/B/UC/EE(B)-1/CNZ/2016 dated 31st March, 2016 and a show cause notice under Sections 343/344 of the Act has already been issued to the owners/co-owners.

From a perusal of the status report filed by the respondent no. 1, it is evident that deviations have been noticed at the first floor of the property as well, of which petitioner is the owner. Petitioner's portion has also been booked under Sections 343/344 of the Act and a show cause notice has been issued to him. Since petitioner's property has also been booked, he also appears to be on the wrong side of the law. Learned Senior counsel for the parties submits that show cause notices would be replied. Petitioner has not approached the Court with clean hands, inasmuch as his property has also been booked for contravention of the sanctioned plan. Accordingly, I am not inclined to entertain this writ petition.

Be that as it may, action has already been initiated by the respondent nos. 1 to 3 against the alleged unauthorised construction/deviation and the

Court expects that respondents no.1 to 3 will take the action initiated against the subject property, to its logical end, in accordance with law. Writ petition is disposed of with the above observations.

A.K. PATHAK, J.

APRIL 19, 2016
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