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

+ W.P.(C) 6538/2012 & CM Nos.17308/2012 & 11013/2013

NEW MODEL BASTI, JHABBO MAL COLONY

RESIDENTS WELFARE ASSOCIATION

..... Petitioner

Through : Ms. Risha Mittal and Mr. Abhishek
Manchanda, Advs.

versus

NORTH DELHI MUNICIPAL

CORPORATION & ORS

..... Respondents

Through : Mr. G. D. Mishra, Adv. for
R-1/NDMC.

Mr. Shantosh Kumar Tripathi, ASC,
GNCTD/R-2 & 3.

Mr. Ankit Jain, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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30.03.2016

By this writ petition under Article 226 of the Constitution of India, petitioner has prayed that the respondents be directed to demolish the unauthorized and illegal construction being carried on in the properties bearing nos.7786/60 to 7786/68, 7786/23A to 28A, Katra Atma Ram, Ahata Kidara, Chamelian Road, Delhi. Respondent no.4 be directed not to demolish the public wall of 9 Inches width dividing the colony, that is, Jhabbo Mal Colony and Katra Atma Ram; and respondent no.4 be also directed to restore the already broken and demolished wall to its original shape and close all the existing entrances from Katra Atma Ram and vice versa.

It is alleged in the petition that the respondent no.4 has carried out illegal construction in connivance with the officials of the respondent no.1.

The respondent no.4 has filed the counter affidavit alleging therein that petition has been filed by the petitioner to settle his personal scores with the respondent no.4. He has targeted only the properties of the respondent no.4. As per the respondent no.4 the writ petition is not maintainable as the same involves the disputed questions of facts. The respondent no.4 has categorically stated that no public wall exists at the site. Petitioner had given incorrect property numbers, inasmuch as has filed wrong sketch. The construction in the properties of the respondent no.4 was within the compoundable limits, therefore, applications for regularization were filed and the same were pending consideration before the respondent no.1. The respondent no.4 has reiterated that no construction was being carried out at the ground floor and first floor of the aforesaid properties and only renovation work was being done, which otherwise was permissible under the Bye Law 6.4.1 of Unified Building Bye Laws.

The respondent no.1 has filed several status reports. In the affidavit dated 16th October, 2014 of the Executive Engineer of the respondent no.1, it is stated that non compoundable deviations were processed for cancellation of the application for regularization and pursuant thereof, owner/occupier has

demolished certain non compoundable deviations in the property. In a subsequent affidavit dated 10th July, 2015, it has been stated that unauthorized construction in the properties bearing no.7786/60 to 68 was booked under Section 343/344 (1) of DMC Act followed by the demolition orders. Regularization application of the respondent no.4 was rejected on account of non compliance. Thereafter, the respondent has also demolished the properties on 28th April, 2015 and 29th April, 2015 substantially. Subsequently, property was sealed on 9th July, 2015. It has been further stated in the affidavit that matter was also referred to Vigilance Department for thorough investigation in order to ascertain the lapses on the part of the officials of the respondent no.1.

In the affidavit dated 28th October, 2015, as regard to the encroachment, it is stated that properties in question were in the same building line viz-a-viz other old existing properties in the lane. It is further stated that owners/occupiers had challenged the sealing as well as demolition orders before the Appellate Tribunal, MCD vide appeals and the same were pending. It is reiterated that demolition and sealing orders were passed and demolition action was also partially undertaken. As per the respondent no.1, the roofs of the second floor and third floor of property bearing no.7786/65-66 have been completely demolished. The roofs of the first floor and second floor of

property bearing no.7786/68 have also been completely demolished. Thereafter, properties were sealed on 9th July, 2015.

In the affidavit dated 29th October, 2015, it is stated that vigilance enquiry was completed. Shri Arvind Mukharia, the then JE (Civil), who was working on contract basis, was disengaged by the competent authority. Shri I.U. Khan, the then AE (Bldg.) had expired. Shri Saed Anwar, the then EE (Bldg.) had retired.

From the facts narrated above, it is clear that respondent no.1 has already taken action against the unauthorized construction, in accordance with law. The respondent no.4 has filed the appeals before the Appellate Tribunal, MCD, against the demolition/sealing orders, which are pending. Law will take its own course. No further orders are required to be passed in this writ petition.

Petition is disposed of. Miscellaneous applications are disposed of as infructuous.

MARCH 30, 2016/dk

A.K. PATHAK, J.