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

+ W. P. (C) 6107/2016,

Date of order : 18th July, 2016

NYAYA MANCH (NGO)

.....Petitioner

Through: Mr. Abhishek K. Ghai with Mr. Ashish
Sharma, Advocates.

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS.

.....Respondents

Through: Mr. Mukesh Gupta, Standing Counsel
for SDMC.

Mr. Deepak Pathak, Advocate for- R-2/BRPL.

Ms. Swaty Singh Malik, Advocate for R-3.

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HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

Ms. G. ROHINI, CHIEF JUSTICE

C.M.No.25015/2016 (*exemption*)

Allowed, subject to all just exceptions.

W.P. (C) 6107/2016

1. This petition by way of Public Interest Litigation has been filed with the following prayer:

“a) Issue a writ order or direction in the nature of mandamus thereby directing respondent No.1 to take all actions including

demolition action against properties unauthorizedly constructed mentioned in para 16 above in a time bound manner.

b) Issue a writ order or direction in the nature of mandamus thereby directing the respondent No.1 to take prosecution action against the owners/builders of the unauthorizedly constructed properties mentioned in para 16 above in a time bound manner and take them to logical conclusion.

c) Issue a writ order or direction in the nature of mandamus thereby directing respondent No.2 to disconnect electricity supply to unauthorized constructed property regarding which request is received from SDMC.

d) Issue a writ order or direction in the nature of mandamus thereby directing respondent No.1 to take disciplinary action against all the officers of South Delhi Municipal Corporation who turned blind eye when the unauthorized construction was being raised and despite making of complaint failed to take demolition, sealing and prosecution action against the unauthorized properties as well as their owners/builders.

e) Issue a writ order or direction in the nature of mandamus thereby directing respondent No.1 to stop unauthorized construction in the properties unauthorizedly constructed mentioned in para-16 above.

f) Issue a writ order or direction in the nature of mandamus thereby directing respondent No.1 to devise mechanism whereby the area Junior Engineer and Assistant Engineer maintain daily records of their visits to the area under their supervision and control and taking of disciplinary actions against them, if they fail to notice any property being constructed unauthorizedly.

g) Award cost of the present petition in favour of the petitioners.”

2. Placing reliance upon the order of this Court dated 10.09.2008 in C.Ms.No.1238/2007 and 239/2007 in **WP(C) No. 4582/2003** titled Kalyan Sanstha Social Welfare Organization vs. UOI & Ors. in which a scheme has been approved by this Court to deal with the menace of unauthorized encroachment/construction in Delhi, it is alleged by the petitioner that in spite of various complaints made by the petitioner the respondents failed to take any action in terms of the said scheme. It is also pleaded that the directions dated 10.09.2008 in W.P.(C) No.4582/2003 have been reiterated by this Court in **W.P.(C) No.6844/2012** dated 13.02.2013 titled Anil Dutt Sharma vs. Govt. of NCT of Delhi & Ors. The directions issued by the Division Bench of this Court in W.P.(C) No.4582/2003 read as under:-

“1. MCD should not only deal with on-going unauthorized constructions but also take actions against encroachments on Govt. lands and against existing/already book unauthorized constructions under the Act.

2. The senior officers of MCD like Additional Commissioners and equivalent will be directly responsible to this Court for enforcing and implementation of law in a timely and effective manner by their staff members as per the duties assigned to them under law and otherwise.

3. The detection of authorized construction at the first level shall be carried out by the Junior Engineers and Assistant Engineers of the concerned zones under the supervision of Executive Engineers. Superintending Engineer would ensure that the separate teams for detection and ensuring action, act as per law and if either of the teams/officers fails, it would be the primary responsibility of the superintending engineer of the zone

and if any dereliction of duty is noticed he would initiate appropriate action against the erring officers. However, the ultimate responsibility of unauthorized construction would lie on the part of the Additional Commissioners of the concerned zones who will ensure that if any of the Officers fails to take any action appropriate disciplinary proceedings would be initiated against the erring officers within the fixed time frame.

4. A “Nodal Steering Committee” is to be constituted with the following officers as its members:

I) The Additional Commissioner (Engineering)

II) The Chief Vigilance Officer

III) The Chief Town Planner

IV) The Chief Law Officer.

This “Committee” would monitor the overall working of zones and its officers including the highest officers of the zone. It will meet at least once every month and would review the functioning of the zonal staff and forward its monthly report to the Commissioner. If any laxity is noticed in any zone, it would also recommend action against the erring officers.

5. A Co-ordination Committee consisting of nodal officers of the rank of Additional Commissioner or equivalent of MCD, DDA, Revenue Authorities, L&DO, CPWD and Delhi Police shall meet once a month.

6. MCD would ensure that within a period of six months from today it fills up all its vacancies and recruits staff equivalent to the extent of its sanctioned strength.

7. MCD would ensure that unauthorized constructions which are compoundable under the law are regularized on a payment of fine within a period of six months from today.

8. A Junior Engineer of MCD would every month issue a certificate under his signature to the effect that there is no unauthorized ongoing constructions and/or encroachment on public/government land. The said certificate must also give details regarding any unauthorized ongoing construction and or encroachment on public/government land and action if any proposed to be taken. Copies of this certificate and action taken plan would be furnished to the concerned Deputy Commissioner with a copy to the Head Quarters who would maintain records of such certificate.

9. MCD will also prepare a Scheme within a period of four months from today to protect and utilize the public land retrieved from the encroachers in the last two years.

10. MCD to maintain a Building Plan Register and to maintain a Construction Watch Register (CWR) regularly.

11. The whole system of booking of unauthorized construction should be computerised and made online and the following procedures will be followed:-

i. As soon as the municipal staff detects any unauthorized construction or comes to the notice of the MCD through any other source, the required details will be posted on a formatted sheet fed in the computer.

ii. The computer would generate a Performa of all the mandatory actions required under the Act.

iii. Once any complaint is registered in the system, the system would forward the same to all concerned officers for taking action as per provisions of the Act.

iv. The status of the case would be available for monitoring purpose to senior officers and would also be put on the website of the MCD.

v. Once the unauthorized construction is detected and registered, action would be taken against the unauthorized construction within a time bound manner.

vi. Any complaint received and registered would be acted upon within four weeks so as to ensure that no grievance goes unheard and the status of the action taken would from time to time be updated on the website of the MCD.

12. MCD should create a Centralized and Zone wise complaint cell with telephone facility (on the line of Tel. No. 100 of Police Control Room). On receipt of complaint in the centralized complaint centre, it should be immediately referred to the concerned MCD zone/officer within 24 hours and action taken within one week thereafter.

13. All the maps i.e. to say, the Master Plan of Delhi, the Zonal Plans of Delhi, Sub Zonal Plans, Layout Plans of every colony clearly indicating the ownership of the land i.e. Government, Institutional or private as well as land under acquisition, should be put on the MCD, DDA and Delhi government websites. The information available on the website will be available to all concerned to know the actual ownership of the land before purchasing the same and it will enable the Public spirited persons to assist the authorities in preventing the encroachment of the public land.”

3. Having heard the learned counsel for the petitioner as well as the respondents, we consider it appropriate to dispose of the writ petition with a direction to the respondent No.2 to treat the present writ petition as a representation and take appropriate action in accordance with law in terms of the above-referred order passed by this Court. The action taken shall be

communicated to the petitioner within eight weeks from today. In case the issue sought to be espoused is not fully resolved, the petitioner is at liberty to file a fresh writ petition.

4. The writ petition is accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL

JULY 18, 2016
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