

#8

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 13.09.2018

CONT.CAS.(C) 139/2018 & CM APPL.27641/2018

SHAHIDA BEGUM & ORS

..... Petitioners

versus

DR. AJIT KUMAR SINGLA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. A.K. Suri and Mr. Ankit Kansal, Advocates

For the Respondents : Mr. Pankaj Yadav, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The petitioner in the present contempt petition under Sections 11 and 12 of the Contempt of Courts Act, 1971 are seeking initiation of proceedings against the respondents, who *inter alia*, include their brothers, arrayed as respondent Nos.3 to 5.

2. The present proceedings is founded on the directions issued by this Court vide order dated 04.12.2017 in W.P.(C) 10741/2017, titled as '*Shahida Begum and Ors. vs. State of NCT of Delhi and Ors.*', to the following effect:-

“.....Be that as it may, in the event, any portion of the subject property is unauthorized, and, for which, no action has come to be taken, the Commissioner, EDMC is directed to take necessary steps, on a fresh inspection carried out, as expeditiously as possible, preferably within four weeks from today. Should, for the fresh inspection, it be considered that the police aid is required, the Deputy Commissioner of Police concerned is directed to ensure providing the police assistance, as and when called for. Petition as well as pending applications are disposed off accordingly.”

3. At the outset, it must be pointed out that, admittedly, there are disputes in relation to the subject property, pending adjudication before a court of competent jurisdiction.

4. It is the assertion of the learned counsel appearing on behalf of the petitioners that, the official respondents have violated the directions issued by this Court, as above extracted.

5. A plain reading of the above directions clearly and unequivocally reflects that, this Court had directed the Commissioner, East Delhi Municipal Corporation to inspect the unauthorized construction that may have been raised in the subject property, afresh, as expeditiously as possible, with the aid of the police, if so required.

6. In response to the present petition, the respondent No.1/East Delhi Municipal Corporation has filed a short counter affidavit, rendered by Mr. Sanjay Kumar, Executive Engineer, B0-1, Shahdara North Zone, East Delhi Municipal Corporation.

7. It would be profitable to extract the relevant portions of the said affidavit for the effective adjudication of the present proceeding. The same is extracted hereinunder:-

“3. That in compliance of the direction of the Hon’ble High Court an inspection of the above mentioned property was carried out on 28.12.2017. On inspection it was found that the property is divided into 02 parts. One part of the property is occupied by Sh. Nawabuddin. This part of property i.e. P.No.174 (Part of property left side) Gali No.3, New Mustafabad has been booked for unauthorized construction in the shape of rooms etc. at GF, FF & toilet at SF with projection on lane vide file No.151/UC/B-I/SH-N/2017 dated 01.06.2017. The demolition order was passed after following due process of law. The demolition order has been challenged in Hon’ble AT:MCD vide appeal No.488/17. The Hon’ble AT:MCD vide order dated 11.07.2017 has restrained EDMC from taking any action qua on the said property. The record has been submitted in the Hon’ble AT:MCD. Further action on this property will be taken as per the direction of the Hon’ble AT:MCD.

4. That 2nd part of the property is occupied by Sh. Azizuddin. This part of property i.e. P.No.174 (Part of property right side) Gali No.3, New

Mustafabad has been booked for unauthorized construction in the shape of rooms, kitchen, toilet etc. at GF, Mezanine floor, FF & raising of walls at SF with projection on lane (GF, Mezanine Floor, FF old and occupied) vide file No.152/UC/B-1/SH-N/2017 dated 01.06.2017. The demolition order was passed after following due process of law. At the time of inspection it was found that the construction work has been completed at second floor. Further, it is submitted that no demolition programme was fixed in the month of January 2018 due to non availability of police force. A demolition programme was fixed for 23.03.2018 under the jurisdiction of P.S. Gokul Puri but action could not be taken due to non availability of police force. Further, demolition action programme is fixed for 02.04.2018 so action could not be taken. Now, the demolition order has been challenged in Hon'ble AT:MCD vide appeal No.453/18. The Hon'ble AT:MCD has restrained EDMC from taking any action qua on the said property. The record has been submitted in the Hon'ble AT:MCD."

8. A plain reading of the above extracted paragraphs reflects that, in terms of the directions of this Court, the official respondents conducted a fresh inspection of the subject property on 28.12.2017. Upon inspection, it was found that, the subject property is divided into two parts. One part of the property is occupied by Mr. Nawabuddin. This part of the property had been booked for unauthorized construction in the shape of rooms etc. at the ground floor, first floor and toilet at the second floor. The inspection was carried out vide File No.151/UC/B-I/SH-N/2017 dated 01.06.2017. A

demolition order had been rendered by the official respondents, in relation to that part of the subject property, which has been assailed by the aggrieved party, vide appeal No.488/17, currently pending adjudication before the Statutory Authority i.e. Appellate Tribunal, Municipal Corporation of Delhi.

9. In this behalf, it is observed that, vide order dated 11.07.2018, the Hon'ble Appellate Tribunal, Municipal Corporation of Delhi, has directed as follows:-

“.... Further respondent is restrained from taking any action qua the property of the appellant bearing No.174, (property of left side) Gali No.3, New Mustafabad, Delhi-110094 in pursuance of the impugned order till next date of hearing.

Appellant is directed to file affidavit giving details of construction with measurements of the existing construction alongwith existing site plan and photographs of the property in question within five days failing which status order granted shall be deemed to be vacated.

Appellant is also directed not to carry out any addition, alteration, repair or construction and shall also not create any third party interest in the property in question.”

10. A perusal of the above order dated 11.07.2017 clearly reflects that, the official respondents had been restrained from taking any further demolition action, in relation to the subject property.

11. Insofar as, the second part of the property occupied by Mr. Azizuddin is concerned, the same has also been booked for unauthorized construction in

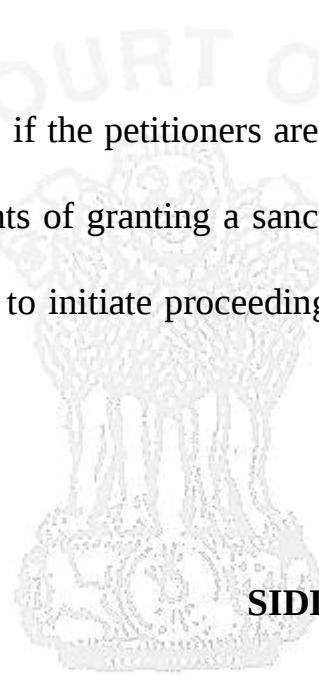
the shape of rooms, kitchen, toilet etc. at GF, Mezanine floor, FF and raising of walls at SF with projection on lane (GF, Mezanine Floor, FF old and occupied) vide File No.152/UC/B-I/SH-N/2017 dated 01.06.2017. In relation to this part of the property, a demolition order has been passed. It is the stand of the official respondents that, despite dates fixed for demolition of this part of the subject property, on two occasions, the same did not fructify, on account of non-availability of police force. At present, the said demolition order has been assailed before the Appellate Tribunal, Municipal Corporation of Delhi vide appeal No.453/18, wherein the official respondents have been restrained from taking any action *qua* that part of the property, as well.

12. From the foregoing, it is evident that, although unauthorized construction is stated to exist in the subject property, the demolition orders passed by the official respondents are subject matter of proceedings in statutory appeal, in accordance with law, before the Appellate Tribunal, Municipal Corporation of Delhi. Further it is also relevant to point out that, the petitioners moved an application seeking impleadment in those proceedings, which has since been rejected. Insofar as, the official respondents are concerned, the petitioners have not been able to demonstrate

any violation of the directions issued by this Court vide the order dated 04.12.2017, leave alone wilful violation.

13. In that view of the matter, the present petition seeking initiation of contempt proceedings against the official respondents must stay. The petition is accordingly dismissed. The pending application also stands disposed of.

14. Needless to state that, if the petitioners are aggrieved by a subsequent act of the official respondents of granting a sanctioned plan qua the subject property, they are at liberty to initiate proceedings, in accordance with law, to challenge that decision.



**SIDDHARTH MRIDUL
(JUDGE)**

SEPTEMBER 13, 2018

dn