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

+ **W.P.(C) 2194/2018**

BALBIR SINGH CHAUHAN

..... Petitioner

Through: Mr. Nikhil Singla, Adv. with
petitioner in person.

versus

NORTH DELHI MUNICIPAL CORPORATION

AND ORS.

..... Respondents

Through: Mr. Vikas Chopra, Adv. for R1.
Mr. Sanjeev Sindhvani, Sr. Adv. with
Mr. Lalit gupta and Mr. Siddharth
Arora, Advs. for R2 to R4.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.03.2018

CAV. PET. 195/2018

As Mr. Sanjeev Sindhvani, learned Sr. Counsel briefed by Mr. Lalit Gupta, Adv. appears for respondent nos. 2 to 4 / caveators, caveat stands discharged.

CM No. 9087/2018 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2194/2018

The present petition has been filed by the petitioner with the following prayers:

“In the circumstances as aforesaid, it is prayed that this Hon’ble Court may be pleased to:

(a) Set aside / quash the Order / communication dated

10.03.2017 passed by the Respondent no.1 whereby the sanctioned building plan was revalidated and FAR to the extent of 29664 square feet was restored by North MCD in respect of portion of subject property No.2, Shamnath Marg, Civil Lines, Delhi – 110054, and

- (b) Declare that the construction carried out by Respondent no.2 in a portion of subject property no.2, Shamnath Marg, Civil Lines, Delhi – 110054 is unauthorized being without proper and legal sanction; and*

Pass such any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present petition."

The impugned order dated March 10, 2017 issued to respondent no.3 reads as under:

"Kindly refer to your application dated 27.01.2016 on the subject cited above, received in the office of EE (Bldg.) HQ North DMC vide Dy. No. 533 dated 08.02.2016 & further High Court order dated 03.10.2016 in the case Titled EIH V/s north DMC.

In this regard, I am directed to convey you that the Building Plan Committee in its meeting held on 14.02.2017, has accorded approval for Restoration of earlier deleted FAR of 29664 Sq. Ft. (for Block A, mark hatched on the plan) and to this extent, Sanction Building Plan NO. 240/B/HQ/1970 dated 02.03.1971 for the property under reference revalidated.

Copy of the attested true copy of the sanctioned building plan submitted by you, duly revalidated and returned herewith."

The facts as noted from the writ petition and also contended by Mr. Nikhil Singla, learned counsel for the petitioner are that on March 2, 1971, sanction permission was granted in favour of respondent no.4 for Group Housing Scheme by the erstwhile MCD in respect of Plot No.2,

Shamnath Marg, Alipur Road, Civil Lines, Delhi – 110054. However, two blocks were deleted as it seems there were some occupants / tenants occupying some structure which could not be demolished due to Court case. FAR / area sanctioned was deleted by MCD with regard to these two blocks. It is contended by Mr. Singla that with regard to one of the previously deleted blocks, MCD granted permission and this one of the two blocks were built after granting permission for addition / alteration and the FAR was consumed. It is his case that from 1976 onwards after developing various plots / apartments / units / portions, same were sold by respondent no. 4 being the developer / owner company to various individual owners. On January 27, 2016, an application was made on behalf of respondent no.4 being a developer / owner company to respondent no.1 on the ground that tenant / occupant occupying the second deleted block has vacated and thus their previously deleted FAR be restored and previously sanctioned building plan be revalidated regarding second block. He submits, a writ petition being W.P.(C) 2190/2016 filed by respondent no.4 was disposed of by this court on March 14, 2016 directing respondent No.1 to decide the application by way of a speaking order after giving an opportunity of hearing. It is admitted by Mr. Singla that on May 31, 2016, an order was passed by respondent no.1 declining the revalidation of sanctioned plan and refusing to restore the FAR. Pursuant thereto, respondent no.4 has filed a petition being W.P.(C) 6232/2016 challenging the communication dated May 31, 2016, which writ petition was allowed by this court on October 3, 2016 thereby restoring its previously deleted block area / FAR to the extent of 29664 Sq. Ft. It is his contention that matter was remanded back to respondent no.1 to decide the application filed by respondent no.4 in accordance with law. He

states on March 10, 2017, an order was communicated by respondent no.1 whereby sanctioned building plans were revalidated and FAR to the extent of 29664 Sq. Ft. was restored with regard to the second previously deleted block. According to him it is this order which has been challenged by the petitioner in this writ petition.

Mr. Vikas Chopra, learned counsel appearing for the respondent no.1 seeks to justify the impugned communication dated March 10, 2017. Mr. Sanjeev Sindhvani, learned Sr. Counsel appearing for the respondent nos.2 to 4 would submit that the present petition is nothing but an abuse of process of law inasmuch as the petition has been filed with the oblique motive with false facts. He also denies the case of the petitioner as averred in the writ petition that material facts were concealed while filing the W.P.(C) 6232/2016. In this regard, Mr. Sindhvani by placing a copy of writ petition states, the said petition discloses all the relevant facts at pages 17, 39, 94A, 104, 108, 109 and Page 135. He also states, the super structure being complete, this court would not like to entertain the present petition. He also states, the plea of the petitioner that the ongoing construction has affected the right of the petitioner to free passage, air and light of residents of the Oberoi Apartments is factually incorrect.

Having heard the counsel for the parties, on a specific query to Mr. Singla, as to whether any right of the petitioner has been effected because of the impugned order and also whether the petitioner is making a claim on the FAR of 29664 Sq. Ft. in his favour, his answer was in the negative. On a further query whether the rights of the petitioner to free passage, air and light has been effected, Mr. Singla states that no such rights of the petitioner are being affected. Further on a specific query whether the

present petition has been filed in public interest, his answer is also in the negative. If that be so, it is a settled position of law that it is only a person whose rights have been affected, can invoke the jurisdiction of this court under Article 226 of the Constitution of India for appropriate relief. In other words, in the absence of an enforceable right, the petition is not maintainable. Surely the petitioner has no locus to challenge the impugned communication dated March 10, 2017.

I do not see any merit in the petition, the petition is dismissed.

V. KAMESWAR RAO, J

MARCH 12, 2018/jg