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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 2641/2019, CM. No. 20906/2019, CM. No. 12237/2019,
CM. No. 20905/2019 & CM. No. 15953/2019

SMT. SNEH PARBHA BHATIA THROUGH: ATTORNEY
ANAND BHATIA Petitioner

Through: Mr. Vishal Singh, Adv. with
Ms. Jyoti Kataria Bajaj, Adv.

versus

NORTH DELHI MUNICIPAL CORPORATION
AND ORS. Respondents

Through: Ms. Vandana Singh, Adv. for R-1
Mr. Arun Mehta, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **21.05.2019**

1. The present petition has been filed with the following prayers:-

“In the facts and circumstances hereinabove stated, the Petitioners mot humbly pray that this Hon’ble Court may be pleased to:

(i) issue a writ of mandamus and/or for the writ of prohibition and/or any other similar writ, order or direction, issuing appropriate direction to the Respondent Nos. 1 and 2 to exercise their statutory powers and functions under Section under 332, 333, 334, 343, 344 & 345A of the Delhi Municipal Corporation Act and to stop and prevent the large illegal and unauthorised construction and development on the premises bearing building No. C-2/48, Phase-2, Ashok Vihar, Delhi-110052;

(ii) issue a writ of mandamus and/or any other appropriate and similar writ, order or direction directing the respondents no. 1 and 2 to exercise their powers and functions under Section under 332, 333, 334, 343, 344 & 345A of the Delhi Municipal Corporation Act, 1957 to demolish and remove all illegal and unauthorised construction and development carried out on the premises bearing building No. C-2/48, Phase-2, Ashok Vihar, Delhi-110052;

(iii) Pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

2. On March 15, 2019, this Court had passed the following order:-

"Notice, Ms. Vandana Singh, learned counsel accepts notice for respondent no.1 and Mr. Abhinav Singh, Adv. accepts notice for respondent no.2. Learned counsel appearing for the respondent no. 1 states that the subject property has been booked and notice has been issued to the occupier / builder of the property in question, i.e., respondent no.3 herein. Status report shall be filed by the respondent nos. 1 and 2. Let notice be issued to respondent no.3 returnable on April 24, 2019.

It is the submission of the learned counsel for the petitioner that the unauthorized construction being made by respondent no.3 above the second floor has affected the floor in which the petitioner is residing inasmuch as the ceiling has started developing cracks. As I have noted respondent no.1 has already booked the property, they shall ensure that no further construction is made by the respondent no.3 till the next date of hearing.

Dasti."

3. A status report has been filed by the Nr.DMC, wherein in para 4, the Nr.DMC has stated as under:-

“I state that during the scrutiny of the documents, it has been revealed that Smt. Santosh Kalia and Smt. Sanchita Kalia had applied for Sanctioned Building Plan through Online process submitted through Architect Smt. Divya Goel on 15.02.2019 for addition / alteration for construction for third floor over and above the existing ground, first & second floor and on the basis of undertaking certificate and ownership documents submitted by the Architect, Owner the plan was sanctioned by the respondent’s online system believing the statement given by the applicants in their E-Undertaking dated 18.01.19 as correct in particular at point no.1 & 3 which reads as under:-

“1. That I/We am/are the owner(s)/lessee(s) of Plot No. 48 Block No.C-2 situated at Plot No. , Ashok Vihar, Phase-II, Delhi-110052.

3. That the owner(s) / lessee(s) is / are entitled to raise construction / building over the aforesaid plot of land.”

Whereas during scrutiny it has been revealed that Smt. Santosh Kalia and Smt. Sanchita Kalia are owner of only ground floor & second floor of the property in question and they had obtained the sanctioned building plan fraudulently. Accordingly, the answering respondent has already initiated action under Section 338 of the DMC Act for the revocation of sanctioned plan. Apart from this, action has also been initiated against the architect. Further action in the matter is under contemplation.”

4. On the other hand, respondent No.3- owner/occupier residing in the ground floor and the second floor has also filed an application being CM No. 20906/2019 for recall of order dated March 15, 2018.

5. Learned counsel for the Nr.DMC submits that as stated in the status report, as an action is required to be taken by the Nr. DMC against the

respondent No.3, a notice dated April 24, 2019 was issued to the respondent No.3 but the same was not responded to by the respondent No.3.

6. Learned counsel for the respondent No.3 disputes the issuance of notice by the Nr.DMC. Be that as it may, as the proceedings are pending before the Deputy Commissioner pursuant to notice dated April 24, 2019, it shall be appropriate to relegate the respondent No.3 to the Deputy Commissioner, who shall give a hearing to the respondent no.3 on notice dated April 24, 2019 on May 27, 2019 at 3 pm. The respondent No.3 shall be at liberty to rely on all such documents as deem fit in support of his case before the Deputy Commissioner, who shall take a decision with regard to the building plans, which are being reconsidered by the Deputy Commissioner. Learned counsel for the Nr.DMC is directed to give copy of notice dated April 24, 2019 to the learned counsel for the respondent No.3 within two days.

7. In view of the aforesaid, the learned counsel for the petitioner states that the grievance of the petitioner in the writ petition stands satisfied. She states, the matter be disposed of as such. Ordered accordingly. Till such time, a hearing is given by the Deputy Commissioner and a decision is taken, the respondent No.3 shall not carry out any construction. Permission

is given to the respondent No.3 to remove the shuttering on the roof of the third floor, which is stated to be existing and to cover the staircase with a plastic sheet to avoid any damage. The date of hearing on August 02, 2019 stands cancelled.

Dasti.

V. KAMESWAR RAO, J

MAY 21, 2019/ak