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

+ W.P.(C) 3913/2017

JITNENDER KUMAR

..... Petitioner

Through Mr. Samrat Nigam, Mr.Amit Punj and
Mr. Shaurya Kuthiala, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION
& ORS

..... Respondents

Through Mr. Ajjay Arora and Mr. Kapil Dutta,
Advs. for NDMC.
Mr. Ankur Chhiber and Mr.Bhanu
Gupta, Advs. for R-2/GNCTD.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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28.02.2019

The petitioner is aggrieved by alleged widespread unauthorized building activities in New Lajpat Rai Market, Delhi in the vicinity of Red Fort. The petitioner contends that in flagrant violation of the Master Plan for Delhi as well as applicable Building Bye-Laws indiscriminate, haphazard and totally illegal construction has been undertaken over decades in the said market, evidently under the nose of the respondent authorities, who have turned a blind-eye to such utter disregard of the law.

2. Mr. Samrat Nigam, learned counsel appearing for the petitioner draws attention to order dated 20.08.2014, made by a Division Bench of this Court headed by Hon'ble the Chief Justice at that time in W.P.(C) No. 3332/1998

titled *M/s Ellar Traders vs. Government of NCT of Delhi and Ors.* in which, vide order dated 20.08.2014 the Division Bench was constrained to observe as follows :

“19. We are of the view that no useful purpose is being served in keeping the present petition pending at the cost of precious judicial time. As perusal of the aforesaid would show, inspite of best efforts, this Court has been unable to expedite the preparation of the redevelopment plan of the Lajpat Rai Market. The said preparation of redevelopment plans is dependent upon the interplay of several agencies and inspite of directions issued by this Court from time to time to each of the agencies, the preparation of the redevelopment plan has not been finalized owing to the buck being passed from one agency to another. The task of preparation of the redevelopment plan is in any way an administrative one. However, the delays in finalization thereof have an adverse impact on the city of Delhi in general; owing to the said delays, the Old as well as New Lajpat Rai Markets which admittedly have haphazard construction, continue to be an eye sore affecting the majesty of the ancient monument of Red Fort which attracts all tourists visiting the city of Delhi and which is a designated World Heritage site. The existence of such haphazard unplanned construction in full view of Red Fort which continues to have historical importance with the Prime Minister addressing the Nation every year from the ramparts thereof, is indeed a blot on our culture, history and heritage. The uncertainty which prevails has also led to the action which ought to have been taken for demolition of unauthorized constructions in the said markets being also held up. Such delays bordering on inaction, make the entire exercise of preparation of Master Plan for the city, a futility.

20. We therefore see no option but to invite the attention of Hon’ble the Lt. Governor of Delhi to the matter and to request him to ensure that the redevelopment plan, at least

of the Lajpat Rai Market, Old and New, is finalized and implemented at the earliest so that the majesty of the Red Fort/Lal Quila to that extent is restored.

21. Copies of the ordersheets in these petitions be forwarded along with a copy of this order to Hon'ble Lt. Governor forthwith for intimation and follow-up action.

22. We also direct the concerned municipal corporation or the other agency having jurisdiction over the markets to ensure that at least till the finalization and implementation of the redevelopment plan, no further unauthorized construction is carried out in the markets and that the unauthorized construction which is beyond the FAR of 300 at least is removed forthwith. Since in the ordersheets, we have found some controversy whether the market has/had been handed over to the MCD or not and as to the local body/authority having jurisdiction over the market, Hon'ble Lt. Governor to also ensure that our directions are conveyed to the concerned agency and implemented. We suggest that Hon'ble Lt. Governor calls for periodic implementation report, as this Court has been doing for the last 15 years.

23. With the aforesaid, the petition is disposed of.”
(Emphasis Supplied)

3. It be noted that the aforesaid order came to be passed after the court had given its attention to the issue for 16 long years. W.P. (C) No.3332/1998 aforesaid had been filed in the name of his sole proprietorship concern by the same person who is petitioner in this matter.

4. Since the anguish and exasperation expressed by a Division Bench of this Court yielded no meaningful result, an application was moved by the petitioner in the said matter seeking revival of the writ petition, in which revival application bearing CM APPL No.15028/2015, the Division Bench observed as under in its order dated 03.02.2017:

“3. Having gone through the contents of the applications moved in this petition disposed of on 20th August, 2014 and having heard the counsels, we are of the view that no purpose will be served, neither by revival of this writ petition nor does the question of impleading new parties in the disposed of petition arises.

4. We dispose of these applications granting liberty to the petitioner/applicant in the application for revival of the petition to institute fresh proceedings as he may be entitled to in accordance with law and to the applicant seeking impleadment to also take legal remedies available to him in law. Needless to state that the fresh proceedings, if any brought by the applicant in the application for revival of the petition, will not be defeated owing to any orders passed in this petition.

5. The applications are disposed of.”

5. At the outset the petitioner asserts that his own premises in the said market conforms to all regulations, including the Building Bye-Laws and applicable provisions of the Master Plan.

6. The present petition is therefore a renewed effort by the petitioner to seek remedy against the blatant and rampant breach and violation of all laws, rules and regulations pertaining to building construction in the said part of Delhi.

7. The petition however stands-out inasmuch as, added to the petitioner's long standing grievance, is the anguish, pain and annoyance expressed by no less than a Division Bench of this court headed by Hon'ble the Chief Justice at that time; the observations contained in judgment dated 20.08.2014 having been honoured only in the breach and not in the observance.

8. Status report dated 01.08.2018 filed by respondent No.1/North DMC

in this matter recites to the effect that the redevelopment plan/scheme for the area was prepared and was approved by the Standing Committee of respondent No.1 *vidé* Resolution dated 08.02.2017 as also by respondent No.1/corporation on 14.03.2017.

9. Thereafter, the status report states, the redevelopment plan was sent to the Secretary, Department of Urban Development of the Government of NCT of Delhi for notification *vidé* note dated 20.04.2017; but the same is yet to be notified.

10. The status report also sets-out the action taken in respect of individual shops in the said market; thereafter taking the usual stand that respondent No.1/North DMC takes in almost every such matter, namely : that demolition order has been passed; that demolition action is planned and will be executed subject to availability of police force, *in accordance with law*.

11. Needless to add, that according to the petitioner, *no action* has ensued, *in accordance with law*.

12. In the context of the grievance made in the petition, it transpires that in compliance of orders of the Supreme Court in Writ Petition (Civil) No. 4677/1985 titled ***M.C. Mehta vs. Union of India & Ors***, the Ministry of Housing & Urban Affairs (“MHUA”) of the Government of India has *vide* Office Memorandum dated 25.04.2018 constituted a Special Task Force to comprehensively address violations of the provisions of the Unified Building Bye Laws and Master Plan for Delhi-2021 relating *inter alia* to construction activity and land-use in Delhi. *Vide* another Office Memorandum dated 23.05.2018 the MHUA has also formulated an action plan for monitoring construction activities in Delhi and for fixing responsibility in case of violations of the Unified Building Bye Laws and

the Master Plan.

13. *Vide* order dated 20.09.2018 made in Writ Petition (Civil) No. 1807/2018 titled ***Devender vs. Government of NCT of Delhi & Ors.*** (and connected matters) by the Division Bench of this Court headed by Hon'ble the Chief Justice, the Court has held that in view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise jurisdiction in matters relating to unauthorised construction; and has disposed of such matters granting liberty to the petitioners to raise their grievances before the Special Task Force so constituted, in accordance with the scheme and procedure formulated under the aforesaid two Office Memorandums.

14. By order dated 24.09.2018 made in a subsequent matter, being Writ Petition (Civil) No. 9938/2018 titled ***Suresh Chand Goel vs. East Delhi Municipal Corporation***, the Division Bench has followed its earlier order dated 20.09.2018 in Writ Petition (Civil) No. 1807/2018, similarly disposing of the writ petition, granting liberty to the petitioner to file a complaint before the Special Task Force. I am informed that the Division Bench has subsequently also made similar orders in other matters.

15. To be sure, the petitions that were subject matter of the aforesaid proceedings before the Division Bench were petitions filed *in public interest and otherwise*; and related to contravention *not only of sanctioned building plans but also of various laws*, including the Delhi Municipal Corporation Act, 1957, the Delhi Development Authority Act, 1957, the New Delhi Municipal Council Act, 1994, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Preservation Act, 1904 as also encroachment on public land etc.

16. The aforesaid Special Task Force is a 15-member body with representation of the highest level from all concerned municipal, civic, revenue and law enforcement agencies of Delhi; and is therefore ideally suited for multi-agency, coordinated action against the rampant malaise of breach of various laws, rules and regulations governing building construction and land-use in Delhi.

17. I am informed that as of date the Special Task Force even has its own dedicated website and mobile application to facilitate making of complaints, thereby making it even easier for parties to take their grievances before the said agency.

18. Accordingly, I am of the view that the correct course of action in this matter also would be to dispose of the present writ petition, giving liberty to the petitioner to approach the Special Task Force in accordance with the policy and procedure laid down for the purpose in MHUA's Office Memorandums dated 25.04.2018 and 23.05.2018 and avail the said alternate, efficacious remedy.

19. This writ petition is disposed of in the above terms.

20. Pending applications, if any, are also disposed of.

21. In the light of what is recorded above, I am of the view that this matter deserves urgent and spirited attention of the Special Task Force, subject of course to the constraints of time and resources under which the Special Task Force no doubt operates.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 28, 2019

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