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

Date of Decision: 09.12.2019

+ W.P.(C) 10599/2018 & CM APPL. 41303/2018 (*exemption*)

PANCHSHILA COOPERATIVE HOUSE BUILDING SOCIETY
LTD. Petitioner

Through: Mr. Ashim Shridhar, Adv.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Through: Mr. Sri Harsha Peechara, Standing
Counsel (SDMC) with Ms. Kriti
Sinha, Adv. for SDMC.
Mr. Ashim Sood with Ms. Payal
Chandra, Advs. for R-2 & 3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

D.N. PATEL, CHIEF JUSTICE (*Oral*)

CM APPL. 41303/2018 (*exemption*)

Allowed, subject to just exceptions.

W.P.(C) 10599/2018

1. This writ petition has been preferred with the following prayers:-

“(a) Issue a writ in the nature of mandamus or any other appropriate writ/order or direction in favour of the Petitioner directing Respondent No. 1 SDMC to take appropriate action against respondent no. 2 and respondent No. 3 under Para 15.9 and Para 15.11 of the MPD-2021 for violations of Mixed Use Regulations given under Para 15 of MPD-2021 in the basement of property situated at Plot N-85, Panchsheel Park, Malviya Nagar, New Delhi-110017.

(b) Pass any other and further orders as the Hon'ble Court may deem fit under the facts and circumstances of the case in favour of the Petitioner and against the Respondents.”

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that this petitioner is in search of appropriate action to be taken against respondents No.2 and 3 for the violations of Master Plan for Delhi – 2021 (MPD-2021) with respect to basement of the property situated at Plot No.N-85, Panchsheel Park, Malviya Nagar, New Delhi, especially, paragraph Nos.15.9 and 15.11 thereof which is about mixed use of the property in question.

3. Learned counsel appearing for respondents No.2 and 3 submitted that there is no unauthorized or illegal use of the premises owned/possessed by them. It is also submitted by the learned counsel for respondents No.2 and 3 that as and when any notice is issued by the respondent – South Delhi Municipal Corporation, the reply to the same will be given. Otherwise, these respondents No.2 and 3, in response to the notice of South Delhi Municipal Corporation, have once replied to the effect that there is no illegal use of the premises in question.

4. Learned counsel appearing for respondent No.1 submitted that as per South Delhi Municipal Corporation there is no illegal / unauthorized use of the premises in question, by the respondents No.2 and 3, much less, any violation of the Master Plan for Delhi – 2021. Nonetheless, it is submitted by counsel for the respondent No.1 that if any breach is brought to the notice of respondent No.1 in respect of MPD-2021, actions will be initiated in accordance with law, rules, regulations and Government policy applicable to the facts of the present case.

5. In view of the aforesaid submissions, it appears that highly disputed question of fact is involved in this writ petition. There are allegations about the legality or otherwise of the use of the property in question. Legality or otherwise of the use of the premises cannot be proved with the help of annexures . Cogent and convincing evidences are required to be led by the concerned Trial Court. Even as per South Delhi Municipal Corporation, after issuance of the notice to respondents No.2 and 3, looking to the facts on the relevant date, it was concluded by South Delhi Municipal Corporation that as on that date there was no illegal use of the premises by the respondents No.2 and 3. Nonetheless, if any fresh breach of MPD-2021 is brought to the notice of the respondent No.1, the respondent No.1 shall initiate actions in accordance with law, rules, regulations and Government policy applicable to the facts of the case and after giving an adequate opportunity of being heard to the respondents No.2 and 3 and such other relevant parties. The decision will be taken about the illegality or otherwise of the use and thereafter remedial actions will be taken in accordance with law.

6. With these observations, this writ petition is hereby disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 09, 2019

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