



* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3275/2021 and CM APPL. 9999/2021

Date of Decision : 04.05.2022

IN THE MATTER OF:-

SACHIN KUMAR VERMA

..... Petitioner

Through: Appearance not given

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondents

Through: Mr. Tushar Sannu, Standing Counsel for
SDMC with Ms. Ritika Priya and Ms. Pooja
Gupta, Advocates

Mr. Anubhav Gupta, Advocate for respondent
No.2

Mr. G.R. Verma and Mr. Deepak Grover,
Advocates for respondents No.3 and 4

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to respondent No.1 to take action against illegal and unauthorized construction allegedly carried



out at the roof of shop Nos.1 to 5 forming part of *Khasra No.152, IGNOU Road, Near Bikaner Choice, Paryavaran Complex Saidulajab, New Delhi* (hereinafter, referred to as the '*subject property*'). The petitioner claims to be the owner of shop No.1 at the subject property.

2. It is the case of the petitioner that shop No.1 forming part of the subject property was initially owned by his mother, who expired on 29.01.2021. As a result, ownership of shop No.1 is stated to have devolved upon him. The petitioner has alleged that in January, 2021, respondent Nos. 3 to 5, who are owners/builder of shop Nos. 1 to 5 forming part of the subject property, started carrying out unauthorized and illegal construction on roof of shop Nos.1 to 5 without seeking permission or sanctioned building plan from respondent No.1/SDMC, and in violation of building bye-laws. It is his grievance that the shops in question are old structures in weak and dilapidated condition, and as such, they cannot bear the load of any construction on the roof.

3. In the petition, it has been averred that the alleged unauthorized and illegal construction carried out by respondent Nos.3 to 5 has caused damage to the petitioner's property, i.e. shop No.1 forming part of the subject property, inasmuch as cracks/crevices have started showing and the shop is at risk of collapse. Reportedly, the petitioner had made complaints dated 22.01.2021, 15.02.2021 and 21.02.2021 to respondent Nos.1 and 2 in connection with the foregoing, of which copies have been placed on record, however, no action was taken.

4. In pursuance of earlier directions by this Court, a Status Report was filed on behalf of respondent/Corporation, wherein it was stated that initially the subject property was booked vide file No. 100/UC/B-II/SZ/2021 dated



19.02.2021 for taking demolition action under Sections 343/344 of DMC Act. It was further stated that letters dated 11.03.2021 were sent to the concerned authorities for disconnection of electricity and water supply as well as to the concerned Sub-Registrar not to accede to any request for registration of the property.

As per the Status Report, prosecution action under Section 466-A of the DMC Act was initiated against the owner/builder of subject property and a complaint letter bearing No. D/4828/Prosecution/DC/EE(B)-II/SZ/2021 dated 22.03.2021 was also sent to the concerned SHO, P.S. Mehrauli. Reportedly, requisite sealing orders with respect to the subject property were passed on 13.04.2021 and demolition action was carried out on 18.03.2021, whereby 01 RCC panel at First floor and 02 RCC panels at Second floor were cut. In this regard, photographs evidencing action taken were also placed on record.

5. On the last date of hearing, learned counsel for the petitioner had raised a grievance that the private respondent(s) had carried out further illegal and unauthorized construction at the subject property and sought time to file response to the counter-affidavit and the Status Report filed on behalf of respondent/Corporation.

6. Subsequently, a counter-affidavit was filed on behalf of the petitioner, wherein it was stated as follows:-

“5. That since after demolition action taken by the respondent no.1, the respondent no.3 to 5 further reconstructed the First Floor and Second Floor during the pendency of this petition. ...

6. That the respondent no. 3 with Dr. Renuka Nagar has run a dental clinic in the name and style of “Satya Dental Care” on First floor and second Floor without any obstructions. ...



7. That the respondent no.1 has failed to seal the aforesaid illegal and unauthorized premises of respondent no.3 to 5 despite the sealing order dated 13.04.2021.”

7. Today, during the course of hearing, learned counsel for the petitioner has referred to the abovementioned counter-affidavit filed on behalf of the petitioner in response to the Status Report, whereby further photographs of the property have also been brought on record. A perusal of the same would show that the attached photographs were taken from across the street, and consequently, they do not depict the demolition action which was earlier taken by the respondent/Corporation.

8. Mr. Tushar Sannu, learned Standing Counsel for SDMC, submits that a further Status Report has been filed, however, the same has not come on record. A copy of the said Report has been forwarded to the Court Master, which is directed to be taken on record. Learned Standing Counsel submits that on a grievance made by the learned counsel for the petitioner on the last date of hearing, the subject property was re-inspected and no further unauthorized construction has been found at the spot. He further submits that there has been no change in the status after the earlier demolition.

9. Learned Standing Counsel has informed that *Dr. Renuka Nagar* (stated to be wife of respondent No.3) has already approached the ATMCD challenging the demolition order passed by respondent/Corporation and the proceedings before the ATMCD are still pending.



10. In view of the statements made on behalf of the respondent(s), no further orders are required to be passed. The petitioner may, if he so desires, may approach ATMCD in accordance with law.

11. The present petition is disposed of in the above terms, alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

MAY 4, 2022

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