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

% Judgment delivered on: 23rd February, 2022

+ W.P.(C) 6174/2021& CM APPL. 19567/2021, CM APPL.
21342/2021, CM APPL. 30551/2021& CM APPL. 2067/2022

SAMEER MALHOTRA AND ANOTHER Petitioners

versus

NORTH DELHI MUNICIPAL
CORPORATION AND OTHER Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sunil Malhotra, Advocate

For the Respondents: Mr. Ajjay Aroraa, Standing Counsel for North DMC

Mr. Lalit Gupta Adv. and Mr. Siddharth Arora Adv. for
Respondent Nos. 2-4.

**CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J

1. The hearing was conducted through video conferencing.
2. Petitioner seeks a direction against the respondent-Corporation to take action against the illegal unauthorized construction being carried out over half portion measuring 288 sq. yards towards eastern side of the property bearing No. 61/22, Ramjas Road, Karol Bagh, New Delhi-110005



without any sanction plan or requisite permission.

3. Order dated 07.07.2021 records the contention of learned counsel appearing for the municipal corporation that there was a sanctioned plan for the building which was applied for under the Saral Scheme. Further, it was contended that there were certain misrepresentations at the time of making the application and accordingly action in accordance with law was proposed to be taken.

4. Undertaking was given by the respondent no. 2 to 4 that no construction shall be carried out till disposal of the show cause issued by the Corporation seeking to revoke the sanction plan.

5. Order dated 22.07.2021 of this Court notes that as on that date basement had been dug up and there was a possibility of a mishap because of the ongoing rainy season. Accordingly, directions were issued to the concerned engineer of the Municipal Corporation to suggest steps required to ensure the safety of the area.

6. On 09.09.2021, it was pointed by learned counsel for the petitioner that, despite the undertaking given to the Court, construction activity was carrying on. This Court, noticing the photographs which were produced on record and also the fact that respondents 2 to 4 had not stopped construction despite three work stop notices issued by the Corporation, issued a notice to show cause to Mr. Rachit Gupta/respondent no. 4 to show cause as to why proceedings under the Contempt of Court Act be not initiated. Further, the Corporation was directed to seal the property and not to permit any further



construction thereafter.

7. Mr. Rachit Gupta had filed his affidavit tendering an unconditional apology and also explaining that the construction that had been raised was as per the advice given by his Architect and Engineer for the purposes of protecting the basement by creation of a rigid box.

8. Noticing the said submissions officers of the Corporation were directed to examine the same and submit a report as to whether the contention of Mr. Rachit Gupta was correct or not.

9. Status report has been filed by the Corporation stating that part of the construction was raised beyond what was recommended by the Executive Engineer of the Corporation for purposes of protecting the property.

10. Mr. Lalit Gupta, Advocate appearing for Mr. Rachit Gupta submits that the error occurred on account of the advice given by the Engineer and Architect and he unconditionally tender his apology for the same and submits that he is willing be put to terms for the error committed by him.

11. It is pointed out that with regard to the revocation of the sanction plan, respondent no. 2 and 3 have already approached the Appellate Tribunal-MCD and proceedings are pending before the Appellate Tribunal-MCD.

12. It is also pointed out that the petitioners have filed an application



before the Appellate Tribunal-MCD in the appeal filed by respondent no. 2 and 3 and they are being heard by the Appellate Tribunal-MCD in those proceedings.

13. Learned counsel appearing for respondent no. 2 to 4 further volunteers that they shall fill up the entire basement to the satisfaction of the engineers of the Corporation and further undertakes that no construction activity shall be carried out in the subject property except in accordance with the orders to be passed in the appeal by the Appellate Tribunal-MCD.

14. In the facts and circumstances of the case, the unconditional apology tendered by respondent no. 4 is accepted, however, subject to payment of costs of Rs. 75,000/-. The cost shall be deposited by the respondent no. 4 within a period of two weeks with the Horticulture Wing of the CPWD.

15. It is directed that the property shall be de-sealed by the municipal corporation to enable respondent no. 2 to 4 to fill up the basement to the satisfaction of the concerned executive engineer of the corporation.

16. Respondent no. 2 to 4 shall not change the status of the property or carry out any construction activity except in accordance with the orders to be passed by the Appellate Tribunal-MCD, if any.

17. It is clarified that Appellate Tribunal-MCD shall consider the appeal of the respondent No. 2 and 3 in accordance with law without being influenced by anything stated herein on merits.



18. Further, the Horticulture Wing of the CPWD shall utilise the said amount for the purposes of providing/improving the infrastructure/facilities at the Buddha Jayanti Park located in the Central Ridge. Said work in the Buddha Jayanti Park shall be carried out by the Horticulture Wing of the CPWD in consultation with the concerned Deputy Conservator of Forests (West Forest Division), Government of NCT of Delhi.

19. Petition is disposed of in the above terms. The notice of contempt is also discharged.

20. List on 07.04.2022, for reporting progress by the CPWD. CPWD shall also submit the proposal for providing/improving the infrastructure/facilities in the Buddha Jayanti Park.

21. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 23, 2022
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