



2023:DHC:8498



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

% **Date of order: 1st November, 2023**

+ **W.P.(C) 10954/2020 & CM APPL. Nos. 24912/2021 & 51619/2022**

RISHI SEHDEV Petitioner

Through: Appearance not given

versus

SOUTH DELHI MUNICIPAL CORPORATION OF DELHI & ANR.

..... Respondents

Through: Mr. Ajjay Arora and Mr. Kapil Dutta,
Advocates for MCD
Mr. Jivesh Kumar Tiwari, SPC with
Ms. Samiksha, Advocates for R-2
Mr. Rishikesh Kumar, ASC, GNCTD,
Ms. Sheenu Priya, Mr. Sudhir Kumar
Shukla and Mr. Sudhir, Advocates for
GNCTD
Mr. Anuj P. Agarwala and Mr.
Aayush Agarwala, Advocates for Mr.
Vinod Ambawatta and Mr. Anil
Ambawatta (Contemnors)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

*“A. To issue a Writ in the nature of **MANDAMUS** and/or any other appropriate Writ/Order/Direction of like nature thereby*



directing the Respondent No. 1&2 to forthwith take action against unauthorized construction/illegal encroachment carried out in the immovable property bearing property bearing no. H-5/6 to H-5/10, Kalka Das Marg, Mehrauli, Delhi and to thereafter demolish/seal the same;

AND

B. To further issue a Writ in the nature of PROHIBITION and/or any other appropriate Writ/order/direction of like nature thereby restraining the Respondent No.1&2 from allowing any construction in the aforesaid property except in strict accordance with the law; in the light of the facts and circumstances narrated hereinabove;

AND

C. Pass any other and further order as this Hon'ble Court deems fit."

2. The facts of the present petition have been recapitulated herein below:
 - a) The petitioner is the Director of M/s Golden Chariot Recreations Private Limited, having its registered office at 101, Gagandeep Building, 12 Rajendra Place, New Delhi 110008.
 - b) M/s Golden Chariot Recreations Private Limited is one of the partners at the partnership firm named M/s Integration 2020 Developers Partner (hereinafter "partnership firm") and one Mr. Mukesh Punika (hereinafter "respondent no.5") is the co-partner. A partnership deed dated 9th July 2012 was executed between the partners.
 - c) Subsequent to the execution of the partnership deed, the firm acquired property bearing No. H-5/6 to H-5/10, Kalka Das Marg, Mehrauli, Delhi, famously known as Qutub Colonnade (hereinafter "property") and subsequently decided to renovate the said property with the



intention of putting it up for rent.

- d) Thereafter, during the course of the aforesaid renovation, the partners of the partnership firm got involved in a dispute, spiraling into long drawn litigation, leaving the property without any tenant.
- e) Subsequently, it has been alleged that the respondent no.5, in connivance with certain other stakeholders, started certain illegal construction activities at the property and the same has been done within 40 meters of Qutub Minar complex, a historical site as identified by the Archeological Survey of India, which is against the settled law.
- f) The said construction activities were undertaken without the consent of the petitioner, however, once the petitioner was apprised of the same, the petitioner made several representations to the Archeological Survey of India (hereinafter “respondent No.2”), however no action was taken by the respondent no.2.
- g) Subsequently, the Competent Authority of NCT of Delhi vide letter dated 3rd August 2017, directed the learned Superintending Archeologist of India of the respondent no.2, to further direct the Conservation Assistant / Surveyor to examine the case and initiate action as per the provisions of AMASR (A&V) Act, 2010. However, the same has not been acted upon by the respondents.
- h) Further, vide letter dated 26th September 2020, the petitioner addressed the Superintending Archeologist of India of the respondent no.2 and Executive Engineer (Building), SDMC, Municipal



Corporation of Delhi, thereby, urging them to penalize all violations *qua* the alleged illegal constructions. However, no response has been received from the concerned parties.

- i) Aggrieved delinquency on part of the concerned officials, the petitioner has preferred the present petition.
3. Learned counsel appearing on behalf of the petitioner submits that the respondents have acted in a *mala fide* and arbitrary manner, thereby, overlooking the settled law and guidelines under the Ancient Monuments and Archaeological Sites and Remains Act, 1958.
4. It is submitted that the respondents have evidently allowed the unauthorized construction activities taking place, in connivance with individuals at higher levels and therefore have turned a blind eye to the same.
5. It is submitted that the respondent no.1 has overlooked the rampant illegal construction activities that are being conducted at a large scale in the entire Mehrauli area.
6. It is submitted that the involvement of the respondents, especially the respondent no.2 has allowed the respondent no.5 to openly and actively conduct construction activities.
7. It is also submitted that the respondents have acted in the most *mala fide* manner by allowing the respondent no.5 to conduct renovation and moreover never checking on the extent of renovation being conducted.
8. In view of the aforementioned submissions, it is prayed that the instant petition may be allowed.



9. *Per contra*, learned counsels appearing on behalf of the respondents, vehemently opposed the arguments advanced on behalf of the petitioner.

10. Learned counsel appearing for respondent no.5, submitted that the petitioner has misinterpreted the fact that the petitioner is a partner in the partnership firm, whereas, the petitioner has simply paid some advance monies to the respondent no.5 for allotment of preferential shares in a project of the respondent no.5, moreover, the petitioner has admitted the same in his Arb. P. No. 593/2020 as well as OMP (I) (COMM) No. 295/2020.

11. It is submitted that the respondent no.5 is only the owner of property bearing no. H5/6 to H-5/20 and is in possession of the same. It is further submitted that the respondent no.5 has been in existence much before 1992, making the property of the respondent no.5 well included within the ambit of Section 20C (1) of the Ancient Monuments and Archeological Site and Remains (Amendments and Validation) Act, 2010.

12. It is also submitted that the respondent no.5 took all due permissions from the respondent no.2, before commencing the renovation activities.

13. It is submitted that the petitioner has misrepresented the fact that the respondent no.5 has submitted false and fabricated plans to the respondent no.2 in order to obtain the necessary permissions for the renovation work and moreover, the respondent no.5 has not made any material or structural changes to the property in question.

14. It is further submitted that the petitioner has also misrepresented the fact that the petitioner has cut down fully grown trees without obtaining due



permission of the forest department, when no significant structural changes have been carried out at the property in question.

15. It is submitted that the petitioner has not come to this Court with clean hands since the petitioner has preferred 7 rounds of litigation, one of which was an SLP which was dismissed.

16. It is further submitted that in order to amalgamate the properties, a boundary wall was removed, thereby, creating an ingress and egress in the property and all permissions as under Section 20 C(1) of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 were obtained.

17. Learned counsel appearing for respondent no.1, while replying on status report dated 25th August 2021, submitted that as per rule 4 of the Ancient Monuments and Archeological Site and Remains Rules, 2011, it is the process duty of the competent authority under the act to receive and process applications for renovations/repairs in Regulated and Prohibited Area of protected monuments and the statutory power to grant or refuse the permission for repairs, vests with the authority.

18. It is submitted that seven out of ten properties that are subject to the instant petition have shown their due permissions as taken by the respondent no.2, further, eight out of ten properties, fall within the prohibited area and the remaining two properties fall within the regulated zone.

19. It is submitted that in compliance with order dated 1st March 2021, joint inspection was carried out whereby, it was noticed that the properties in question are in different blocks and that the respondent no.2 has accorded



permissions in respect of the 7 properties for carrying out the renovation.

20. It is also submitted that out of the seven properties, the construction of six properties have been found well within the limit of the permission granted by the respondent no.2 and necessary demolition action has been initiated against the remaining one property.

21. It is submitted that so far as the remaining three properties, where no permission has been granted by the respondent no.2 are concerned, the department has taken necessary action and booked the same for unauthorized construction and issued demolition orders.

22. Learned counsel appearing on behalf of the respondent no.2 submitted that during the last inspection conducted on 6th September 2021, no fresh construction was noticed at the site and photographs of the same have been annexed with the status report filed by the respondent no.2.

23. In view of the foregoing submissions, it is prayed that the present petition may be dismissed, being devoid of any merit.

24. Heard the counsels and perused the material on record, including the status report filed by the respondent nos.1 and 2.

25. It is the case of the petitioner, that certain unauthorized activity is being conducted at the property in question, wherein he is also a partner, however, the said construction has been undertaken without his consent. It is contended that upon the construction being brought to his notice, the petitioner made several representations to concerned authority i.e., respondent no.2, however no action was taken by it.

26. In rival contentions, it has been submitted by the respondent no.5, that



all due permissions have been taken with respect to the property in question. It is contended that all the requisite paperwork has been submitted to the competent authorities i.e., respondents no. 1 and 2. It is further contended by respondents no.1 and 2, while placing reliance on the status report dated 25th August 2021, that appropriate action has been taken against the properties wherein the unauthorized construction has been undertaken and properties wherein the construction has been carried out by the due process of law, have been exempted and the said permissions have been verified.

27. In order to adjudicate the present petition, it is apposite to reproduce the aforesaid status report dated 25th August 2021. The same has been reproduced herein:

"4. That in view of the specific provisions under the Act and Rules framed by the legislature, it does not fall within the domain of the Corporation/answering respondent herein to sit in appeal or delve into the issue of whether or not the said permission had been accorded rightly or wrongly.

Incidentally in the present case, it was found that out of 10 properties in the present Writ Petition, permissions for repairs had been accorded by the ASI in 7 properties and these 7 property holders gave shown their permission during the course of the proceedings undertaken by the SDMC. Rightly or wrongly, since these permissions have been granted by the ASI, in exercise of its statutory functions, it is for the said authority to explain as to how and why these permissions were granted and whether the procedures and rules were adhered to or violated at the time of grant of such permissions.

5. That out of 10 properties in subject matter of the present petition, 8 properties fall within the Prohibited Area and the rest of the properties fall within the regulated zone.

6. That, having said the above, in compliance of the orders dated



01/03/2021 of this Hon'ble Court, the necessary joint inspection in respect of the subject premises/ properties have been carried out by the officials of Building Department II of South Zone /SDMC and ASI on 06/03/2021 and 17/03/2021.

At the outset, it is pointed out that during the said joint inspection, it has been noticed that there are 10 properties form H-5/1 to H-5/12 (H-5/1 to H-5/11 are in one block and H-5/12 is in another block and there is are no property bearing No. H-5/13 to H-5/20.

7. That during Joint Inspection, officials of Archaeological Survey of India informed that Competent Authority, Archaeological Survey of India, Govt. of India has accorded permissions in respect of 07 properties for carrying out the repairs/renovations work with drawings, on request of the respective owners /occupiers, in the year of 2014 & 2015.

8. That it goes without saying that ASI is the Competent Authority to ascertain and decide the status of properties falling / situated in prohibited area.

9. That keeping in view of the above, based on the permissions as already granted by the ASI, each of the properties (10 in Nos.) have been verified during the aforementioned joint survey. During the said joint survey, the approximate exiting area of various blocks / properties were measured at site and a report has been prepared containing the details about the permission granted / not granted, details of building area as informed by ASI as per their permissions, approximate area of exists area of the building as measured at site and remarks. The copy of Joint Inspection Report in the shape of chart containing the said details is annexed herewith as Annexure -B.

10. That as can be observed from the aforementioned chart annexed as Annexure -B, that the ASI of India has granted the necessary permission for repair / renovation in respect of 07 properties as mentioned at serial No. 1,2,3,6,7,8 and 10 and no permission has been granted in respect of 03 properties as mentioned at serial No. 4, 5 and 9.



11. That it is also pointed out that out of 07 properties where permission have been granted by ASI in respect of 06 properties, the existing construction have been found well within the limit of permission so granted by ASI. Whereas in respect of 01 property i.e. bearing no.

H-5/11, Block -A, identified as H-5/384, Ambawata

Complex adjoining Carma, upon noticing the construction beyond the permission granted by ASL the Building Department -II of South Zone/SDMC has already initiated / taken the necessary actions as entailed herein below:-

*a) Stands booked for unauthorized construction vide UC File No. 568/UC/B-II/SZ/2019 dated 18.12.2019 for UC in the shape of 2nd floor (1st floor & G.F. old & occupied). Upon following the due process of law, the necessary demolition order also stands passed u/s 343/344 of DMC Act, on dated 27/12/2019. The copy of demolition order is annexed herewith as **Annexure -C.***

*b) In order to execute the said demolition, order the department has tried the necessary demolition actions vide dated 27/01/2020, 03/02/2020 and 07/02/2020, but the same could not be materialized due to non-availability of police force. The copy of no force letters is annexed as **Annexure-D (Colly).***

12 During the inspection it has also been noticed that presently 3rd floor also exists at site in respect of this building. However, on referring to the record, it has also been revealed that the Owner has applied for regularization of this complex/ building which is under process. Further necessary action in respect of this premises / building / complex will be taken as per law immediately upon finalization of regularization file.

13. That further as per record in respect of 03 properties where no permission has been granted by ASI for their repair / renovation, the department has already taken / initiated the necessary actions under the relevant provision of DMC Act, 1957 as entailed herein below: -

A) Property No. H-5/3 and H-5/4, (Block-B)



(Electrical room and Toilet)

(i) This property already stands booked for unauthorized construction vide UC file No.

216/UC/B-I/SZ/2019 dated 27/05/2019 in the shape of unauthorized construction of Hall at First floor and Second floor on existing Ground floor / extended First floor and Second floor. Upon following the due process of law u/s 343/344 of DMC Act, the necessary demolition order has also been passed vide dated 04/06/2019, copy annexed as **Annexure -E.**

(ii) Besides above the department has also sent the letters to the concerned authorities to disconnect the water and electricity connections in respect of this property and also a letter to Sub-Registrar with the request not to register the same under Indian Registration Act, 1908. Copy of letters dated 17/06/2019 as sent in this regard are annexed as **Annexure -F (Colly).**

(iii) Moreover, as per record a letter u/s 344(2) of DMC Act, for stoppage of unauthorised construction has also been sent to the concerned SHO vide bearing No. D-789/AE(B)/SZ/2019 dated 17/06/2019, copy annexed as **Annexure -G.**

(iv) It is pointed out that in respect of this property the department has also initiated the necessary prosecution action under the relevant provision of DMC Act, and a complaint bearing No. D-1215/DC/SZ/B/2019 dated 08/07/2019 has also been sent to the concerned SHO.

Copy of complaint as sent in this regard is annexed herewith as **Annexure -H.**

(v) Pursuant to the demolition order already passed the department has also taken the demolition action on 15/07/2019 and during the same hall at First and-Second Floor were partly demolished. It is also pointed out that the owner has himself completely removed the First and Second floor from this block / building. Now only Ground floor exists in this Block -B. The photographs taken during the demolition action and regarding the present

status of the property are annexed as **Annexure-I/Colly.**



B. Property H-5/5 Block -A.

i) Upon noticing the unauthorized construction, the same has been booked vide file No. 255/UC/B-II/SZ/2021 dated 25/06/2021 in the shape of Basement, Ground floor, First Floor and Second floor for taking the necessary suitable action u/s 343/344 of DMC Act. The requisite Show Cause Notice in this regard has also been sent to the owner / occupier. Further action will be taken in due course of time upon following due process of law. Copy of the Show Cause Notice dated 25/06/2021 is annexed as **Annexure -J.**

il) That further it is pointed out that on receiving the complaint from the police about the alleged ongoing construction in respect of property bearing No. H-5/5, Block -A, the area field staff of Building Department -II of South Zone /SDMC immediately inspected the same on 04/08/2021 and upon noticing the ongoing unauthorized construction in the shape of construction of plinth steps and platform at Ground floor outside the said building, the necessary demolition action has been taken / carried out on 04/08/2021 at its ongoing stage itself. Plinth Steps & Platform constructed outside the building was completely demolished and therefore there was no occasion to take sealing action at the present property. However as per the mandate of law and as per the provisions of the DMC Act, sealing proceedings in the subject property has already been initiated under section 345-A of the Delhi Municipal Corporation Act. The copy of the Sealing Show Cause Notice is annexed herewith as **Annexure-J.**

C. Property H-5/11 Block - B (Carma):

-Upon noticing the unauthorized construction, the same has been booked vide file No. 256/UC/B-I/SZ/2021 dated 25/06/2021 in the shape of Ground floor, for taking the necessary suitable action u/s 343/344 of DMC Act. The requisite show cause notice in this regard has also been sent to the owner / occupier. Further action will be taken in due course of time upon following due process of law. Copy of the Show Cause Notice is annexed as



Annexure -L.

14. That moreover, it is also pertinent to mention here that in terms of orders dated 23.12.2020, the matter has also been brought to the kind notice of Deputy Commissioner-South Zone. In terms of the directions of Hon'ble Court, as regards the action against the erring officials, it is submitted that necessary explanation from the concerned officer / officials has been sought by issuing the show cause notices. Replies of officials have been received and are under consideration. On observing the lapses, further necessary action will be taken as per rules in this regard."

28. A bare perusal of the aforesaid status report makes it apparent that the property in question is divided into separate blocks, whereby, 10 properties from H-5/1 to H-5/12 are in one block and H-5/12 is located in another block. Moreover, out of the 10 properties, 8 fall within the Prohibited Area and the remaining within the regulated zone. It has been further pointed out that out of 10 properties, the respondent no.2 has accorded permission for repairs in 7 properties and the owners of the said properties have produced the necessary documents evidencing the same. By way of the said status report, it is clear that a joint survey was conducted, whereby, it was observed that 7 out of 10 properties have due permission to carry out the said construction, but no permission has been granted in respect of 3 properties. The respondent no.1 has further highlighted that properties wherein the said unauthorized construction has commenced, stand booked for the same and demolition orders have been served upon the owners who failed to take the necessary permissions.

29. Moreover, the respondent no.2, referred to the Ancient Monuments



and Archeological Site and Remains Rules, 2011, wherein Rule 4 states that it is the statutory duty of the competent authority under the Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010 to receive and process applications for renovations/repairs in Regulated and Prohibited Area of protected monuments. The statutory power to grant or refuse the permission for repairs, vested with the authority. The aforesaid rule has been reproduced herein:

“Functions of the competent authority.

(1) The competent authority shall receive and process applications received for repair, renovation, construction and reconstruction in the regulated and prohibited area of protected monuments and protected areas, and forward the same to the Authority for its approval.

(2) The competent authority shall obtain archaeological assessment reports, survey or inspection reports connected with grant of permissions related to major development projects, public project, project essential to public in the context of conveying its recommendations to the Authority.

(3) The competent authority shall formulate time bound programmes for preparation of detailed site plans for regulated and prohibited area, protected monument and protected area.

(4) The competent authority shall formulate time bound programme for preparation of heritage bye-laws for prohibited area or regulated area of each protected monument and protected area.

(5) The protected monuments under different categories to be identified by the Authority shall be clubbed by the competent authority on the basis of location, architectural style, comparative analysis, attributes and value and such other features to enable time bound completion of heritage bye-laws.



(6) The competent authority shall develop a website to host information related to construction, reconstruction, repair, renovation, bye-laws, detailed site plans, awareness, capacity building and to publish its activities.

(7) The competent authority shall have regular interaction with the Authority to accomplish above mentioned tasks.

(8) The competent authority shall maintain a database and registers with regard to applications received for repair, renovation, construction, reconstruction, permissions granted, refused, permissions revalidated, site plans and heritage bye-laws.”

30. A bare perusal of the aforesaid Rule makes it clear that the Competent Authority is vested with the power to receive applications for any repair work/refurbishing that is to be carried out at areas which fall under the Prohibited or Regulated Zones. It shall accordingly, obtain the requisite obtain archaeological assessment reports, survey or inspection reports connected with grant of permissions related to major development projects, public project, project essential to public in the context of conveying its recommendations to the Authority.

31. The competent authority shall formulate time bound programmes for preparation of detailed site plans for regulated and prohibited area, protected monument and protected area and for preparation of heritage bye-laws for prohibited area or regulated area of each protected monument and protected area. Moreover, the competent authority shall interact regularly with the Authority for the aforesaid tasks.

32. At the juncture, it also becomes imperative to analyze Section 20C(1)



of the Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010, the same has been reproduced herein:

“20C. Application for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area.-

(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure, may make an application to the competent authority for carrying out such repair or renovation, as the case may be.”

33. A joint reading of the abovementioned Section as Rule 4 of the Ancient Monuments and Archeological Site and Remains Rules, 2011, makes it evident that anyone owning a building or structure in a prohibited area before 16th June 1992, or one constructed later with the Director-General's approval, wishes to undertake repairs or renovations, can submit an application to the relevant authority for the necessary permissions and that the competent authority is vested with the power to receive applications for any repair work/ refurbishing that is to be carried out at areas which fall under the Prohibited or Regulated Zones.

34. Adverting to the facts of the case, it is apparent that the petitioner has been pursuing the present cause of unauthorized construction for a substantial period, however, has failed to receive any response from the concerned authorities. By way of order dated 24th September 2021, this



Court has directed the concerned authorities i.e., respondent nos. 1 and 2 to file status report. The respondents have stated that the unauthorized construction is only limited to 3 out of the 10 properties in question and appropriate action has been initiated against the properties wherein such unauthorized construction is taking place.

35. The respondent No.1 has submitted by way of the status report dated 25th August 2021, the owners of the concerned properties have taken due permission in order to carry out the said construction. Moreover, appropriate action in the form of demolition notices have been served to the owners, who have failed to take appropriate permissions from the concerned Authority.

36. Furthermore, it is apparent that no unauthorized construction has taken place and the due process of law has been followed as provided under Section 20C(1) of the Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010, according to which construction can be carried out at any property which has been acquired prior to 16th June 1992, with due permission with the concerned authority.

37. Under Article 226, the scope of judicial review which may be exercised by this Court is limited to merely challenging the legal validity of a decision and does not allow the Courts to re-examine the evidence.

38. A prerogative writ, like, a Mandamus cannot be demanded *ex debito justitiae*, it may be issued at the Court's discretion. The Courts under Article 226 must refrain from issuing a writ of mandamus in cases there is no such illegality in the functioning of the statutory authorities against which



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the writ has been preferred.

39. The Court should exercise its power under Article 226 very cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority.

40. This Court is of the opinion that there is no such relief which can be claimed by the petitioner from this Court, in view of the status report filed by the respondent nos. 1 and 2.

41. Accordingly, the instant petition stands dismissed along with pending applications, if any.

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 1, 2023

rk/sv/ds/db

Click here to check corrigendum, if any