



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 20th September, 2023
Pronounced on: 20th October, 2023

+ **W.P.(C) 14313/2022**

UNIVERSAL HUMAN RIGHTS FOUNDATION Petitioner

Through: Mr. Sundeep Sehgal and Mr. Tushar
Pahadia, Advocates.

versus

GOVT OF NCT OF DELHI AND ORS Respondents

Through: Ms. Rashmi Chopra, Mr. Puneet
Rathi, Advocates for DDA. Ms.
Malvi Balyan, Ms. Aarushi Behl,
Advocates for Ms. Sangeeta Bharti,
SC, DJB. Mr. Divya Prakash Pande,
SC, MCD. Mr. Udit Malik, ASC,
Government of NCT of Delhi with
Mr. Vishal Chanda, Advocate. Mr.
Sharique Hussain and Mr. Sahil
Arora, Advocates for BSES. Mr.
Jitesh Vikram Srivastava, SPC and
Mr. Prajesh Vikram Srivastava,
Advocate. Mr. Rahul Mehra, Sr.
Advocate with Ms. Sonia Mendiratta,
Mr. Chaitanya Gosain, Mr. Anand
Thumayil, Advocates for R-9 and R-
10.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The present petition has been filed as a public interest litigation (PIL) seeking directions against government authorities *qua* illegal construction undertaken by Respondents No. 9 and 10, Mr. Sushil Kumar Chauhan and Mr. Naveen Chauhan, respectively, on government land at Village Sheikh Sarai and Village Khirki, Malviya Nagar, New Delhi.



Facts and Petitioner's Contentions

2. The background facts and contentions of the Petitioner are as under:

2.1. Respondents No. 9 and 10, have constructed multi-storey buildings on land admeasuring approx. 10,000 sq. yards, bearing Khasra Nos. 208, 209, 210, 261 and 279 at Village Sheikh Sarai and Khasra Nos. 152, 153, 154/1, 154/2 and 155 at Village Khirki. The multi-storey buildings bearing Nos. B-99 through B-107 are situated at Panchsheel Vihar, Malviya Nagar, New Delhi. It is averred that between 2014 to 2018, Respondent No. 3-Municipal Corporation of Delhi ["MCD"] had booked some of these properties, details whereof are provided at page 13 to 16 of the petition. However, no subsequent action was taken against the said properties. There is another structure located on the subject land i.e., the Satpula Complex, admeasuring around 44.30 acres, which has two *nallahs* flowing through it. In 2021, Respondents No. 9 and 10 built a permanent structure over one of the *nallahs* by filling it up. It is stated that Respondents No. 9 and 10 are engaged in various commercial activities on the encroached land, including running gymnasiums and car workshops at properties bearing No. B-102 and B-103, respectively.

2.2. Respondents No. 9 and 10 have also constructed a multi-storey building by encroaching upon Khasra No. 2140/90 at Village Khirki. Said construction was booked by Respondent No. 3-MCD, details whereof are provided at page 21 of the petition. The building was subsequently sealed, however, Respondents No. 9 and 10 tampered with the seal and completed the construction. Presently, Respondent No. 9 himself resides on the third floor of the said building. Further, Respondents No. 9 and 10 have encroached upon Plot No. 13 in Village Khirki, in front of Khirki Masjid,



admeasuring approx. 2000 sq. yards, which belongs to Respondent No. 5-Archaeological Survey of India (ASI). Herein, Respondents No. 9 and 10 constructed a temple which is being operated by them to generate revenue.

2.3. Respondents No. 9 and 10, who are builders by profession, are Directors of a small construction/ real estate company – CMP Engineers and Contractors Pvt Ltd., which is situated at B-104, Ground Floor, Panchsheel Vihar, Khirki, New Delhi. However, this company is merely a front since the said Respondents are engaged in illegal and unauthorised construction. Presently, they are engaged at four construction sites where multi-storey buildings are being constructed without securing any plan from the concerned government department, details whereof are provided at pages 23 and 24 of the petition.

2.4. The Petitioner-society, on 23rd May, 2022, made representations against the aforesaid illegal constructions carried out by Respondents No. 9 and 10, to the Vice Chairman, DDA, the Commissioner of Police, and the Deputy Commissioner, MCD. However, no action was taken.

3. In this background, the Petitioner seeks the following reliefs:

“1. Issue a writ of mandamus or any another appropriate direction directing the Govt of NCT of Delhi/Respondent no. 1 and DDA/Respondent no. 2 to remove the encroachment done by respondent no. 9 and 10 as mentioned in the para 10,19 and 20 of the petition.

2. Issue a writ of mandamus or any other appropriate direction directing the officials of Delhi Police/Respondent no. 6 to take appropriate legal action against the respondent no. 9 and 10 as they are engage in many illegal activity.

3. Issue a writ of mandamus or any other appropriate direction directing the Govt. of NCT of Delhi/Respondent no. 1 to terminate the liscense of the CMP Engineers and contractors Pvt Ltd as it is involved in illegal activities.

4. Issue a writ of mandamus or any other appropriate direction directing the concerned department to take strict legal action against the corrupt employees of the DDA/Respondent no. 2, MCD/Respondent No.3, ASI/respondent no. 5 and Delhi Police/Respondent No.6 who didn't take



any action on the unauthorized construction as well as does not report the encroachment.

5. *Issue a writ of mandamus or any other appropriate direction directing the MCD/respondent no. 3 to demolish the illegal/unauthorized construction raised by the respondent no. 9 and 10 as mentioned in the para 10,19 and 21 of the petition.*

6. *Issue a writ of mandamus or any other appropriate direction directing the DJB/Respondent no. 7 and BSES/respondent no. 8 to cancel the water and electricity connections issued by them on the illegal and unauthorized construction to the multi-storey building and temple mentioned in the para 10,19,20 and 21 of the petition.*

7. *Any other appropriate writ which this Hon'ble Court deems fit in the fact and circumstances of this petition"*

4. Notice was issued in this matter on 10th October, 2022, and the MCD filed a status report in February, 2023. Per the report, after inspection and examination of records, it was found that the subject properties namely, property bearing No. B-101, No. B-102, B-103, No. C-1, No. C-7 and plot adjacent to B-103 and in front of B-98, at Panchsheel Vihar, as well as Plot No. 62-A at Village Khirki, stand booked for unauthorised construction under Sections 343/ 344 of the Delhi Municipal Corporation Act, 1957 [**"DMC Act, 1957"**] and demolition orders stood issued. Sealing action was also initiated under Section 345A of the DMC Act, 1957 and accordingly, sealing orders were passed. The MCD also prosecuted certain owners/builders of the said properties under Section 466A of the DMC Act, 1957. Moreover, the MCD also sent communications to concerned authorities for disconnection of water and electricity connections of the properties in question, corresponded with the Sub-Registrar to not register the said properties, and requested the concerned SHO to ensure that construction work is ceased and any tools and machinery being used, are confiscated.
5. Thereafter, during routine inspection, it was noticed that the seals affixed on the some of the above properties were broken and demolished



portions had been repaired. Accordingly, appropriate complaints were lodged with the concerned SHO for filing an FIR under Section 488/ 188 of the IPC read with Section 461 of the DMC Act, 1957. Pursuant to demolition/ sealing orders, action was taken against the above properties and the photographs of the same are annexed to the status report. Further demolition action was scheduled for 24th May, 2023.

6. Learned counsel for MCD informed this Court on 28th August, 2023, that further demolition would be undertaken on 30th August, 2023. Learned counsel for BSES, Rajdhani Power Ltd. acceded to MCD counsel's request for co-operation in disconnecting electricity supply to the properties in question. This Court also directed the DJB to ensure that water supply was disconnected, as well. Pursuant to Court directions, a fresh status report stands filed, wherein it is clarified that the actual date of demolition was 31st August, 2023, and not 30th August, 2023. However, the same could not be undertaken due to shortage of time given that other demolition actions were also scheduled on the said date. Thus, demolition action was re-scheduled to 12th September, 2023, which unfortunately also did not materialise for want of police force.

7. The report highlights that for action already taken against property bearing Nos. B-106 and B-104, Panchsheel Vihar, New Delhi – appeals have been preferred by the owners/ occupiers of the said properties before the Appellate Tribunal, MCD. In the said proceedings, MCD has been restrained from initiating any coercive action against certain floors of these properties, till 25th September, 2023.¹

¹ Order dated 13th September, 2023 in Appeal No. 588/ATMCD/2023 titled as “Sushil Kumar Chauhan v. MCD” and order dated 15th September, 2023 in Appeal No. 597/ATMCD/2023 titled as “Naveen Chauhan v. MCD”.



Findings

8. In our considered opinion, further action by the MCD in respect of the properties bearing Nos. B-106 and B-104, Panchsheel Vihar, New Delhi, would have to abide by the outcome of the proceedings before the Appellate Tribunal, MCD. The MCD is directed to ensure all steps are taken in accordance with the directions recorded by the Appellate Tribunal, MCD. In respect of other properties which are subject matter of the present petition, the report points out that demolition stands scheduled for 29th September, 2023, which will be carried out upon availability of police force. Considering the above, the MCD is directed to ensure that the demolition action of the other properties is completed at the earliest and if not already done, should be completed within a period of two weeks from the date of uploading of this judgment. The Delhi Police, including the concerned SHO of the area, and other concerned agencies, are directed to render assistance in the demolition action.

9. The Ministry of Housing and Urban Affairs, Government of India has constituted a Special Task Force to deal with cases of illegal and unauthorised constructions in Delhi [*hereinafter* “STF”].² The STF is a 15 member-body, headed by the Vice Chairman of DDA, and has been established pursuant to orders of the Supreme Court in W.P.(C) 4677/1985.³ It is endowed with the responsibility to look into the matters/ complaints concerning illegal constructions, encroachment on public land/ streets, pedestrian streets etc. and take appropriate action, in accordance with law.

10. In the considered opinion of this Court, the grievance urged by the Petitioner, in respect of any other illegal construction undertaken by

² Constituted vide Office Memorandum No. O-33011/1/2006-DDI dated 25th April, 2018.



Respondents No. 9 and 10 whereof action has not been taken so far, can be appropriately redressed by the STF and therefore, following the decisions of this Court in *Himanshu v. East Delhi Municipal Corporation and Anr.*,⁴ *Devender v. Govt. of NCT of Delhi and Ors.*,⁵ and *Abdul Gaffar v. South Delhi Municipal Corporation and Ors.*,⁶ we dispose of the present petition, with liberty to the Petitioner to approach the STF in respect of such grievance.

11. It is needless to mention that in case the Petitioner approaches the STF, they shall make all possible endeavours to dispose of the matter as expeditiously as possible.

12. Respondents No. 9 and 10 have filed their respective counter-affidavits, wherein challenge has been mounted to the maintainability of the petition and the Petitioner's *locus standi*. Specifically, it was pointed out that the petition is in derogation of the Delhi High Court (Public Interest Litigation) Rules, 2010, and that is being used as a tool to settle personal scores through proxy litigation. However, in view of the status reports filed by the MCD, action already stands taken against the subject properties and thus, we are not delving into this issue.

13. With the aforesaid, the PIL stands disposed of along with pending application.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

OCTOBER 20, 2023/nk

³ Titled M.C. Mehta v. Union of India & Ors., orders dated 24th April, 2018 and 18th July, 2018.

⁴ Order dated 31st July, 2023 in W.P.(C) 8104/2022.

⁵ Order dated 20th September, 2018 in W.P.(C) 1807/2018.

⁶ Order dated 28th February, 2019 in W.P.(C) 1773/2019.