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

+ **W.P.(C) 764/2016**

NORTH DELHI MUNICIPAL CORPORATIONPetitioner

Through: Mr. Tushar Sannu, SC for MCD.
versus

LALITA GULIANI AND ANRRespondents

Through: Mr. Mahfooz A. Nazki, Ms. Harsha
Gollamudi and Mr. Meka Venkata
Rama Krishna, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **29.07.2024**

1. This petition is directed against the impugned judgment dated July 8, 2014, rendered by the Appellate Tribunal-MCD, which has invalidated the sealing action undertaken by the petitioner.
2. The brief facts leading to the filing of this petition would exhibit that the petitioner initiated a sealing action on June 10, 2008, against the shop of the respondent, located at DDA Flat No. 353, Pocket B-9, Sector 3, Rohini, Delhi, on the grounds of misuse and the presence of unauthorized construction on the first floor of the said property.
3. Aggrieved by this action, the respondents preferred their first appeal in 2013, wherein the learned Appellate Tribunal-MCD, Tis Hazari Court, Delhi, did not favor the respondents and upheld the sealing action on July 8, 2014.
4. Against this, the respondents preferred a second appeal under Section



347D of the Delhi Municipal Corporation Act, 1957, before the Second Appellate Court of the District Judge, Rohini, Delhi, *vide* Appeal No. 02/2015.

5. The appeal of the respondents was decided by the Hon'ble Appellate Court in favor of the respondents on 16th November 2015, and the judgment dated July 8, 2014, of the MCD Appellate Tribunal was set aside, with the petitioner being directed to de-seal the shop in question.

6. Learned counsel appearing for the respondent-Corporation submits that the learned Additional District and Sessions Judge cum Presiding Officer, Appellate Tribunal-MCD, Tis Hazari Courts, has grossly erred in directing de-sealing of shop No.3.

7. According to the petitioner, there have been violations concerning the shops adjacent to the respondent's subject property. He, therefore, submits that the entire premises must be considered for the purposes of issuing any directives pertaining to sealing or de-sealing, and the shop of the respondent should also be encompassed within the ambit of such sealing action.

8. The learned counsel appearing for the respondents countered the petitioner's submissions by relying on the findings of the learned Appellate Tribunal-MCD, asserting that the concerned Tribunal had considered all relevant facts and circumstances and had rightly held that the respondent cannot be held liable for any unauthorized use of the adjacent shops. According to him, there is no violation brought on record with respect to Shop No. 3, i.e., the shop of the respondent. Therefore, the owner of Shop No. 3 cannot be subjected to any adverse action without any specific transgression of law indicated on her part. He further contended that it is a fundamental tenet that no one should be punished for no fault of their own, and the



petitioners should exercise utmost caution in ensuring that its plenary powers are not wielded against individuals who have committed no wrongdoing.

9. Learned counsel appearing for the respondents has placed reliance on the decision in the cases of ***Bathutmal Raichal Oswal v. Laxmibai R. Tarta and Anr.***¹, ***Bandaru Satyanarayana v. Inmandi Anasuya and Anr.***² and ***South Delhi Municipal Corporation v. Bharat Bhushan Jain***³.

10. I have considered the submissions made by learned counsels appearing for the parties and perused the record.

11. The relevant findings recorded by the Appellate Tribunal-MCD in the impugned order dated 08.07.2014 reads as under:-

“In view of the above discussions, the present appeal is hereby dismissed. The shop in question belonging to the appellants cannot be de-sealed for the time being. However, if in future, all the unauthorized constructions in the property is removed and the entire building from bottom to top is got regularized/compounded by joint efforts of all the co-owners as well as existence of shop no. 2 in real sense comes to amend by merging with other portion of the flat by removing subdivision and the owner of shop no. 2 give in writing before the Tribunal that she will not claim any right in respect of her portion for use as shop in future and has no objection if appellants can run the shop from the flat, then appellants can also, apply to this Tribunal by filing an affidavit that they will use shop no. 3 for permissible trade activities under Master Plan-2021 in future. They have also to further submit an undertaking that they will pay all the charges in future in time and no unauthorized construction shall be raised again. After that affidavit is specifically accepted, then only de-sealing will take place by passing specific order on it. Till then shop in question shall remain sealed. However, before de-sealing, appellants have to pay all the deficient conversion charges with interest and penalties, if any as found from the report to be called from the MCD at that relevant time.

Since, the MCD record also nowhere point out that any legal action was taken in respect of unauthorized construction raised on the first floor so MCD is directed to take separate demolition and sealing actions under

¹ 236 (2017) DLT 452.

² (2011) 12 SCC 650.

³ 2016 SCC OnLine Del 5970



section 343 and 345-A DMC Act as per law in respect of that construction. Mere fact that construction was raised prior to 2007 and is protected from demolition action due to bar of Delhi Laws (Special Provisions) Act, 2011 is no ground not to initiate the proceeding's in respect of unauthorized construction. Maximum the respondent can defer the coercive action but proceedings can be completed. Copy of the order be sent to Deputy Commissioner concerned for information and compliance.

12. A relevant finding recorded by the Appellate Tribunal-MCD in the impugned order dated 16.11.2015 reads as under:

“On 02.05.2012, the said Ms. Sunita, not only moved an application but also gave an affidavit mentioning therein, that she would use the said shop premises only for residential purposes in future and undertook that non-compliance or any misrepresentation would subject her to the offence of forgery, contempt and all legal actions. However, even thereafter the Monitoring Committee did not approve of de-sealing shop no. 3 but rather raised another objection of unauthorized construction made on its first floor of the flat. Now, this issue of unauthorized construction was never alleged in the sealing notice nor in any proceedings initiated by the respondents, yet it was not considered by the Ld. Tribunal. Moreso the first floor of the property is acquired by some other person than the appellants and hence, the appellants do not have any control over its construction or its removal or its sealing. It was rather the duty of the Monitoring Committee to seal such unauthorized construction and / or to take steps for removal of such unauthorized construction. In fact, vide its impugned Judgment, the Ld. Tribunal had rather directed the MCD to take separate demolition and sealing action u/s 343 and 345(a), qua such unauthorized construction. Now if the NDMC is not taking any action qua demolition on the pretext it being protected because of the bar of Delhi Laws (Special Provisions) Act, 2011, till 31.12.2017, then saying that the appellants, suo moto ought to have demolished the aforesaid construction on the first floor would be asking too much. It was rather the duty of the Monitoring Committee or the NDMC to take action against the owner of the first floor and hence the appellants cannot be held responsible for the same. Even otherwise, the initial order dated 26.03.2009 of the Monitoring Committee did not talk of any unauthorized construction on first floor.

Hence, I am of the considered view that refusing the de-sealing of shop no. 3 on the reasons given by the Ld. Tribunal was wholly incorrect. Hence, I allow this appeal and while I set aside the impugned Judgment dated 08.07.2014, I direct to de-seal shop no. 3 situated in Flat No. 353, Pocket B- 9, Sector-3, Rohini, Delhi.



With these observations, the appeal stands, disposed of. The parties are left to bear their own cost. Record of the Appellate Tribunal be returned alongwith an attested copy of the Judgment passed today. Appeal file be consigned to Record Room, after completing the necessary formalities.”

13. It is thus observed that there is no specific allegation with respect to Shop No. 3 regarding its utilization for any unauthorized purpose. Accordingly, even if the adjacent shops are in violation of the extant regulations, the owner of Shop No. 3 cannot be made to suffer as a consequence.

14. Accordingly, this Court does not find any apparent error, perversity, or gross illegality in the passing of the impugned decision that needs to be interfered in a writ jurisdiction. Therefore, the same is sustained.

15. The instant petition stands dismissed.

PURUSHAINdra KUMAR KAURAV, J

JULY 29, 2024/p