



2024 : DHC : 3741



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

+ **CONT.CAS(C) 283/2024 & CM APPL. 18312/2024**

MANISH RAWAT

..... Petitioner

Through: Mr. Deepak Kohli with Mr. Ghufan
Ahmad and Mr. Mohd. Shariq,
Advocates.
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versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents

Through: Ms. Puja Kalra, Standing Counsel for
respondent no. 1 and 2/MCD with
Mr. Rakesh Mittal, Advocate and Mr.
Surender Dabas, Asstt Engineer.
(M): 9312839323
Email: pujakalra09@gmail.com
Mr. Anuj Chaturvedi with Ms. Shreya
Manjari, Advocates for respondent
no. 3/DDA (STF).
(M): 9810473166
Email: ac10.adv@gmail.com
Mr. Sandeep Bajaj with Mr. Vipul Jai,
Advocates for respondent no. 4.
Mr. Mandeep Singh Vinaik with Ms.
Anjali Sharma, Mr. Deepak Bashta,
Mr. Sonu Kumar Sagar, Ms. Ragini
Vinaik and Ms. Kanishka Sharma,
Advocates for respondent no. 5 with
respondent no. 5 in person.
(M): 9953099193
011-23389754



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*Date of Decision: 29th April, 2024***CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MINI PUSHKARNA, J.: (ORAL)**

1. The present petition has been filed seeking initiation of contempt proceedings against the respondents alleging willful disobedience of the order dated 04th December, 2023 passed in *W.P. (C) No. 15565/2023*.
2. By way of the said order, the respondent-Municipal Corporation of Delhi ("MCD") has been directed to submit its inspection report before the Special Task Force ("STF"), so that the Action Taken Report can be uploaded on the STF portal. Further, this Court had also recorded that the respondent no. 5 herein had applied for a completion certificate for the subject property, i.e., *property no. J-10/3, Rajouri Garden, New Delhi-110027* and in that regard the MCD proposed to inspect the property, to check for any deviation from the sanctioned plan.
3. The present contempt petition came to be filed on the ground that the respondent nos. 4 and 5, who are the owner and builder of the subject property, were still carrying out unauthorised construction and no action has been taken against such illegal and unauthorised construction.
4. When the matter was listed for hearing on 22nd March, 2024, the matter was referred to the Commissioner, MCD, since it was the contention on behalf of the petitioner that despite issuance of the completion certificate on 25th January, 2024, further construction was being carried out. Thus, the Commissioner, MCD was directed to investigate the matter as to how further construction could be carried out in the property, when completion



certificate had already been issued.

5. Pursuant to the aforesaid, a Status Report has been filed on behalf of the MCD, wherein it is submitted that pursuant to the order passed by this Court, the matter was taken up by the Commissioner, MCD. Subsequent thereto, fresh inspection of the property was carried out, and it was found that the respondent no. 4 and 5 were carrying out unauthorised construction of a toilet in the stilt area. Further, respondent no. 4 and 5 had also put scaffolding on the building in question, for the purposes of painting the outer wall of the said building.

6. To similar effect, Status Reports have been filed on behalf of respondent nos. 4 and 5, wherein it is stated that the only construction that was being carried out inadvertently by them, was construction of a toilet.

7. It is submitted by learned counsel appearing for respondent no. 4 and 5, that the toilet was being constructed in the stilt area on the *bonafide* belief that the same was permissible and that no permission was required for construction of the same from the MCD.

8. Learned counsel appearing for the MCD has categorically submitted before this Court that pursuant to the inspection carried out by the officials of the MCD, the said unauthorised construction in the shape of toilet in the stilt area has already been demolished.

9. Learned counsel for the MCD has also pointed out to various photographs attached with the Status Report of the MCD, to submit that the building in question is already complete.

10. Per contra, learned counsel appearing on behalf of the petitioner submits that though the completion certificate was issued on 25th January, 2024, the unauthorised construction was carried out even thereafter. He has



drawn the attention of this Court to the photographs which the petitioner had filed along with *CM APPL. 18312/2024*, to submit that the building in question is still incomplete. He submits that no flooring has been carried out on the ground floor and that the existing gate, is only temporary in nature. Therefore, he disputes the fact that no unauthorised construction was carried out by the respondents subsequent to the issuance of the completion certificate in January, 2024.

11. I have heard learned counsel for the parties and have perused the record.

12. At the outset, it would be fruitful to refer to the order dated 04th December, 2023 passed in *W.P. (C) No. 15565/2023*, for compliance of which, the present petition has been filed. The order dated 04th December, 2023, reads as under:-

“1. The petitioner has approached this Court under Article 226 of the Constitution for a direction upon the Municipal Corporation of Delhi [“MCD”] to seal and demolish illegal construction in property No. J-10/3, Rajouri Garden, New Delhi-110027. Respondent Nos. 4 and 5 are stated to be the owner and builder of the property respectively.

2. It appears that the petitioner had earlier approached this Court in respect of the same cause of action. His writ petition [W.P.(C) 9916/2023] was disposed of on 28.07.2023, directing him to approach the Special Task Force [“STF”] constituted by the Supreme Court vide orders dated 24.04.2018 and 18.07.2018 in W.P.(C) 4677/1985 [M.C. Mehta vs Union of India & Ors.].

3. The petitioner has filed an online complaint on the STF portal on 13.08.2023 and claims to have approached the STF personally on 13.10.2023. It is his grievance that no action has been taken.

4. Mr. Rakesh Mittal, learned Standing Counsel for MCD submits that respondent No. 5 has applied for a completion certificate in respect of the property in question. In this connection, MCD proposes to inspect the property within one week, and in the event any deviation from the sanction plan is found, MCD will take necessary action in accordance with law expeditiously.



5. *In view of the above, Mr. Subhankar Sengupta, learned counsel for the petitioner, does not seek any further orders in this writ petition, which stands disposed of.*

6. *It is made clear that these submissions are recorded without prejudice to the rights and contentions of the respondent Nos. 4 and 5. The remedies available to the said respondents or any other owner/occupants of the subject property are expressly reserved.*

7. *MCD is directed to submit its inspection report before the STF also so, that the action taken report can be uploaded on the STF portal.*

8. *The writ petition, alongwith pending application, stands disposed of.”*

13. Perusal of the aforesaid order shows that it has been clearly recorded that the respondent nos. 4 and 5 had already applied for completion certificate in respect of the property in question. In this connection, the MCD proposed to inspect the property within one week and in case, any deviation from the sanctioned plan was found, the MCD was required to take necessary action.

14. This Court has perused the Status Report filed on behalf of the MCD, wherein, it is clearly stated that pursuant to the application of respondent nos. 4 and 5 seeking completion certificate, the MCD had duly inspected the property. After inspection of the property, certain deviations were found and the respondent nos. 4 and 5 were directed to ensure that the construction was in compliance with the sanctioned building plan. Thereafter, the requisite action was taken by the respondent nos. 4 and 5 to bring the building within compliance in terms of the sanctioned building plan. After a subsequent inspection again, completion certificate was issued in the month of January, 2024.

15. Perusal of the affidavit of the MCD also shows that after passing of the order dated 22nd March, 2024 by this Court, upon directions from the



Commissioner, MCD, the property in question was again inspected by the officials of the MCD. At that point of time, the officials of the MCD found that the respondent nos. 4 and 5 had constructed an unauthorised toilet in the stilt area. Upon noticing the same, the said unauthorised construction has since been demolished by the MCD. The Status Report of the MCD, in this regard, reads as under:-

“xxx xxx xxx

6. That, in compliance of aforesaid notice, the replies of aforesaid officers/officials have been received (**Annexure-B**), thereby submitting that subsequent to receiving of request for issuance of completion certificate from the applicants/owners on 24.11.2023, the property was inspected by the concerned Junior Engineer (Bldg.) on 30.11.2023 and based on the shortcomings noticed at site, case was referred back to the applicants with the request to make necessary corrections as per UBBL-2016/MPD-2021.

7. That, thereafter, the request was again received in the department through online portal on 03.01.2024 with the remarks that all compliances have been done. Accordingly, to determine the existing construction as per the provisions of UBBL-2016, the property was again inspected by the concerned Junior Engineer (Bldg.) on 08.01.2024 in the presence of Owner(s) and the Architect. During the inspection, said property was found within ambit of law and in adherence with the provisions of Clause 2.7.2 of UBBL-2016. Accordingly, after getting necessary approval from the Competent Authority and subsequent to deposition of requisite compounding charges of Rs. 2,17,885/- by the owner(s)/applicant(s), completion cum occupancy certificate was issued to them on 25.01.2024 vide File No. 10096121. Copy is annexed herewith as **Annexure 'C'**.

8. That, however, complaints in respect of unauthorized construction at aforesaid property were received in the department through Zonal Control Room as well as PS-Rajouri Garden on 18.03.2024 & 19.03.2024 respectively and accordingly, the property was visited by the JE(Bldg.) concerned on 19.03.2024 and he found that some construction work at ground floor was in progress, which was got stopped by him at site immediately. Accordingly, the unauthorized construction observed at site was booked vide File No. EE(B)-I/WZ/UC/2024/124 dated 19.03.2024 in the shape of deviation against completion cum occupancy certificate (**Annexure-D**). Further, a show cause notice u/s 344(1) & 343 of the DMC Act was issued to the owners on 19.03.2024 (**Annexure-E**).



9. That, in compliance of aforesaid show cause notice, a reply has been received in the department from Shri Ashok Magu on 26.03.2024 (**Annexure-F**), wherein he has admitted that since some finishing work was not carried out in the said property by the contractor/builder as per agreement, accordingly to redress his concern over such works, the contractor has carried out modification work, in the property after getting occupancy cum completion certificate like elevation colour is not as per agreed design, door and window glasses having scratches, floor marble joints are visible, design and colour of main gate is totally different etc. He further stated that he was not aware about the fact that toilet is not permitted in the rear sent back at stilt floor and further assured that he will remove the same and has also requested for personal hearing to explain the matter in detail and considering his request for personal hearing, they have given opportunity of personal hearing in the matter to explain the fact personally. The date of hearing in the matter before the AE (Bldg.) concerned is fixed for 02.04.2024 at 2.00 P.M. and further action will be taken in due course of time, as per law on its merit.

xxx xxx xxx”

16. This Court also records the submission made on behalf of MCD that for the purposes of issuance of completion certificate, certain things are mandatory, as envisaged in Clause 2.7.2 of the Unified Building Bye Laws for Delhi, 2016 (“Building Bye Laws”). By reference to the aforesaid Building Bye Laws, it is submitted that the building was complete, except for the outer wall where the respondent nos. 4 and 5 were still carrying out painting work. Therefore, the completion certificate was legally and validly issued with respect to the building in question. Clause 2.7.2 of the Building Bye Laws, reads as under:-

“2.7.2 No person shall occupy or allow any other person to occupy any building or part thereof for any purpose until such building or part of a building has been granted the OCC. The following items need to be mandatory for issuance of OCC.

(i) Flooring of any type.

(ii) Electrical wiring. However, electrical fitting shall not be mandatory.



- (iii) *Plumbing and fitting in at least one toilet and kitchen.*
- (iv) *Name and number plate.*
- (v) *For internal and external finishing of walls or plastering shall not be mandatory.*
- (vi) *Building shall be lockable, i.e. all external door and windows have to be provided. In case grill is provided in the windows then fixing of glass in the window panes shall not be mandatory. ”*

17. This Court also notes that in terms of Clause 2.0.1 (d) of Building Bye Laws, Building Permit is not required in certain situations, which includes whitewashing, painting, flooring and re-flooring etc. The aforesaid Clause 2.0.1 (d) of Building Bye Laws, reads as under:-

“xxx xxx xxx

2.0.1 (d) Building permit not required: No notice and building permit is required for addition/alterations which do not otherwise violate any provisions regarding building requirements, structural stability, fire safety requirements and involve no change to the cubic contents or to built up area of the building, as defined in bye laws, for the following:

[(i) Plastering/cladding and patch repairs.

Note: *For Heritage Buildings, refer Annexure II.]*

(ii) Re-roofing or renewal of roof including roof of intermediate floor at the same height.

(iii) Flooring and re-flooring.

(iv) Opening and closing windows, ventilators and doors opening within the owner's plot. No opening towards other's property/public property will be permitted.

(v) Rehabilitation/repair of fallen bricks, stones, pillars, beams etc.

(vi) Construction or reconstruction of sunshade not more than 75 cm in width within one's own land and not overhanging over a public street;

(vii) Construction or reconstruction of parapet and also construction or re-construction of boundary walls as permissible under these bye-laws.

(viii) White washing, painting etc. including erection of false ceiling in any floor at the permissible clear height provided the false ceiling in no



way can be put to use as a loft/mezzanine, etc.

(ix) Reconstruction of portions of building damaged by storm, rains, fire, earthquake or any other natural calamity to the same extent as existed prior to the damage as per sanctioned plan, provided the use conforms to provisions of MPD.

(x) Erection or re-erection of internal partitions provided the same are within the per view of these bye-laws.

[(xi) For erection of lifts in existing buildings in residential plotted development (low-rise). Change/installation/rearranging/relocation of fixture(s) or equipments or HVAC-MEP services, UGR, STP/ETP without hindering other's property/public property shall be permitted.]

(xii) Landscaping

(xiii) Public art

[(xiv) Bank ATM (up to a maximum area of 9.0 sqm. only), Public washroom, security room/guard room are permitted in setback area, provided it does not obstruct fire vehicles movement, in plot more than 3000 sqm. (other than residential plotted), as per Chapter 12.]

(xv) Placing a porta cabin upto 4.5 sqm within the plot line subject to free fire tender movement.

Note: *The liability for any structural flaws or defects in the buildings arising out of such additions/alterations shall rest with the owner/architect/engineer/structural engineer.*

xxx xxx xxx”

18. Perusal of the aforesaid clearly shows that carrying out of work of painting on the outer wall of the building in question, was not an impediment to the MCD for the purposes of issuance of completion certificate. Further, carrying out of the said work of painting to the outer wall, did not require any separate Building Permit from the MCD, and respondent nos. 4 and 5 were within their rights to carry out the said work.

19. This Court has also noted the various photographs that have been attached along with the Status Report of MCD, which clearly show that the building in question has been completed.



20. This Court also notes the Status Report filed on behalf of the respondent no. 4, who is the owner of the building in question, wherein the respondent no. 4 has stated as follows:-

“xxx xxx xxx

2. *The Petitioner had earlier filed W.P. (C) 15565 of 2023 before this Hon'ble Court for a direction to the Respondent No. 1 to seal and demolish the allegedly illegal construction at the subject premises. This Hon'ble Court had, vide its order dated 04.12.2023, disposed of the aforementioned writ petition upon the proposal made by the Respondent No. 1. A copy of the order dated 04.12.2023 passed by this Hon'ble Court is annexed herewith and marked as ANNEXURE-2.*

3. *That in pursuance of the order dated 04.12.2023, the Respondent No. 1 through its officers, had inspected the subject premises. The Respondent No. 1 having been satisfied that the construction at the subject premises was carried out as per the approved sanction plan, was pleased to issue the completion-cum-occupancy certificate dated 25.01.2024. A copy of the completion-cum-occupancy certificate dated 25.01.2024 issued by Respondent No. 1 is annexed herewith and marked as ANNEXURE-3.*

4. *The subsequently, Deponent states on record that in the regular course of events, the Deponent felt the requirement to construct a toilet in the stilt area of the subject premises. The Deponent, being unaware of the permissibility as per the applicable laws, tried to carry out the construction of the toilet in the rear set back at the stilt floor. However, the objections were raised and upon receiving the notice from the Respondent No. 1, the answering respondent promptly removed the structure. The Deponent also undertakes not to raise any further structure in violation of the rules, regulations and bye-laws. However, taking benefit of the situation, the Petitioner clicked the Photographs of the construction of the said toilet and misled this Hon'ble Court making submissions that the construction of the property was not completed.*

5. *That furthermore it is pertinent to mention herein that, in the month of February 2024, the Deponent got some additional painting work done to the front elevation and the main gate of the subject premises. Thus, the scaffolding in front of the subject premises, as evidenced by the attached pictures, was erected to implement only the color adjustments and there was no such construction as contended by the Petitioner. The pictures depicting the change in color of the front elevation and the main gate of the subject premises is annexed herewith and marked as ANNEXURE-4.*

xxx xxx xxx”



21. At this stage, it is also relevant to note the Status Report filed on behalf of respondent no. 5, who is the builder of the property in question. The relevant portions of the reply from respondent no. 5 reads as under:-

“xxx xxx xxx

6. By way of preliminary submissions, the answering respondent is here setting out a brief list of dates and events that demonstrate the bad and malicious conduct of the petitioner himself and for that reason, the petitioner does not deserve any relief whatsoever. The petitioner is a mischievous person who is abusing the process of law and does not deserve any relief from this Honble Court. The brief list of dates and events is given as under:

February 2022

The building owned by Respondent no. 4 was demolished under arrangement by respondent no. 5. From that time onwards, the petitioner began to harass R-4 and R-5 and began to issue threats and false complaints.

23rd February 2022

It is alleged that one column of the old building came crashing down on the balcony of the petitioner. This is a serious allegation and serious damage is alleged and it is striking that the petitioner waited nearly a month before lodging a complaint, and that too over email to the Deputy Commissioner of Police.

20th March 2022

After waiting nearly a month, the petitioner sent an email to the Deputy Commissioner of Police complaining about the incident of 23rd February 2022. A perusal of this complaint makes it clear that on the occurrence of the alleged incident, there was absolutely no move made by the petitioner and this waiting period of one month is actually indicative of suspicious and malicious conduct.

11th April 2022

The petitioner sent yet another email to officials of MCD and Ministers and CM of Delhi. The said email makes it manifest that it is highly generalised and does not even



specify what damage was caused. No normal police complaint was obviously filed between 23rd February and 11th April other than the email to the DCP.

30th April 2022

The petitioner wrote another email to the DC of MCD.

May 2022

The petitioner entered into a monetary transaction with respondents 4 and 5 and received a sum of money that he admitted in his earlier petition being CWP 9916 of 2023. The said fact is suppressed in the present Petition. Once he received this amount, the petitioner went quiet for several months and it can be inferred that his main motivation in lodging the false complaints was to extract monetary gain.

20th December 2022

After waiting for more than six months after receiving a sum of money, the petitioner again decided to commence raising complaints, perhaps with an idea to extract more wealth. Therefore, the next complaint was towards end of December 2022. A perusal of this complaint reveals the fact that he did not inform the authorities of his having accepted compensation earlier.

11th May 2023

Once again, the petitioner went completely quiet in the face of alleged trouble being caused to him. After waiting for another six months, he caused a notice to be issued through his Advocate making vague and generic allegations. In this notice too, he failed to disclose the fact that he has already settled and accepted monetary compensation.

17th June 2023

When the lawyer's notice did not pressurise the respondents to cough up any more money, the petitioner again wrote a complaint by email reiterating the alleged incident of 23rd February 2022. He once again failed to disclose the fact that he had already accepted compensation for the said



claim.

7th July 2023

Another complaint was lodged by petitioner and in this complaint, for the first time, he admitted having received compensation earlier.

18th July 2023

CWP 9916 of 2023 filed.

28th July 2023

This Honble Court was pleased to dispose of the said earlier Writ Petition and directed the petitioner to approach the Task Force set up for this purpose.

13th August 2023

Complaint allegedly made by petitioner to Special Task Force referred to in the order passed by this Court. It is significant that this complaint too was lodged after a significant gap of time by the petitioner.

23rd August 2023

The petitioner sent a reminder to the Task Force to deal with his complaint.

31st August 2023

The petitioner sent yet another reminder to the Task Force.

13th October 2023

Another letter was written by petitioner on 13 October 2023

On the basis of this sequence of events, it is logical to reach some conclusions and inferences, which are as under:

A. The conduct of the petitioner is obviously suspicious and is not above board.

B. The Sequence of events and nature of complaints seems to be focussed purely on creating trouble rather than being genuine.

C. The MCD has already complied with all orders passed.

D. The noticeable gaps of time between complaints indicate self defeating laches on the part of the petitioner and the petitioner is not entitled to any discretionary equitable relief.

E. The main motivation of the petitioner is to extort illegal financial gain from the answering respondent.

xxx xxx xxx”



22. Considering the aforesaid, this Court rejects the submission made on behalf of the petitioner, that the building in question is still not complete and that the completion certificate has wrongly been issued by the MCD.

23. Considering the various submissions made before this Court and on perusal of the documents on record, this Court is of the view that the order dated 04th December, 2023 passed in *W.P. (C) No. 15565/2023*, has been substantially complied with by the respondent/MCD. The MCD has taken the requisite action with respect to inspecting the property in question before issuance of the completion certificate. Even after issuance of the completion certificate, some unauthorised construction was found in the property in question, against which an action has also been taken. Thus, there is no occasion for this Court to proceed in contempt against the respondents.

24. The Supreme Court in the case of *Sunil Kumar Verma and Others Versus State of Uttar Pradesh and Others, (2016) 1 SCC 397*, while observing that no occasion arises to continue with contempt proceedings when substantial compliance is made, held as follows:

“19. After reproducing the said Order, this Court noted that as the Order had been substantially complied with the direction given by the High Court and the order passed by this Court, there is no valid reason to continue with the contempt proceedings.....”

25. In view of the aforesaid, the present petition is disposed of.

26. The next date of hearing of 29th July, 2024 is cancelled.

MINI PUSHKARNA, J

APRIL 29, 2024

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