



\$~53

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

+ **W.P.(C) 3185/2024**

KAMLESH PASRICHA

.....Petitioner

Through: **Mr. Rahul Khanna, Adv.**

versus

MCD & ORS.

.....Respondents

Through: **Mr.Pritish Sabharwal, Adv for MCD.
Mr.Kamlesh Mishra, Ms.Renu and
Mr.Nitin Nayak, Advs for R-2 & 3.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **11.09.2024**

1. The petitioner in the instant writ petition has prayed for the following reliefs:-

" a. Direct the Respondent No. 1 to check/inspect the newly illegally constructed in the third-floor property (i.e., B 11/12, Double story, Ramesh Nagar, New Delhi- 110015, and also direct them to take necessary action and furnish the action taken report along with photographs, as per law.

b. Direct to the Respondent no. 1 to consider all the couple of complaints, filed by the petitioner, annexed here as Annexure P-3 and informed to the Petitioner for action taken by them accordingly within the time frame.

c. Issue the mandamus, the order, dated 15/12/2023 will not affect any of the parties / suit pending before Trial Court, will independently describe the civil suit with considering the order, dated 15/12/2023.

d. Order, dated 15/12/2023 will not affect the MCD/ Respondent No. 1 deciding of status of Respondent No. 2 & 3 in relation to the so-called property B-11/12, Second Floor; roof (i.e third Floor), Ramesh Nagar, New Delhi-110015.

e. MCD will take appropriate action as required in the provision of law on the basis of the complaints on the facts and circumstances whatever in relation to the said Roof at Property No.: B-11/12 third Floor, D.S. Ramesh Nagar, New Delhi, under intimation- to this Hon'ble Court.

f. Pass such other or further order (s) as this Hon'ble Court may be



deemed fit and proper in the facts and circumstances of the case."

2. On 12.03.2024, the matter was taken up for consideration and the Court, while directing for issuance of notice, issued the following directions:-

"1. The present petition raises a grievance as regards unauthorised construction on third-floor of the property bearing no.- B11/12, Double story, Ramesh Nagar, New Delhi- 110015.

2. Prior to filing the present petition, another petition i.e. W.P.(C) 16229/2023) qua the same property was filed by the respondent no(s). 2 & 3 herein, which was disposed of vide order dated 15.12.2023. It was held therein under:-

"1. The petitioners have approached this Court under Article 226 of the Constitution of India against an order dated 30.11.2023 by which the Municipal Corporation of Delhi ["MCD"] has permitted temporary de-sealing of their property [B-11/12, Third Floor, Ramesh Nagar, New Delhi -110015] for the purposes of self-rectification.

2. The petitioners are aggrieved by the order, to the extent that it provides for temporary de-sealing of the property and re-sealing thereof after rectification.

3. The undisputed facts of the case are that the petitioners' property was first sealed in the year 2014 on account of unauthorised construction. They made an application for de-sealing to rectify the property in the year 2015.

4. By a further application on 22.05.2023, they sought de-sealing of the property "so that it can be furnished and occupied for residential purpose".

They thereafter made another representation on 18.10.2023, this time seeking de-sealing of the third floor of the property "for rectification".

5. Upon consideration of these applications, and of the earlier undertaking filed by the petitioners, MCD has permitted temporary de-sealing of the property from 01.12.2023 to 15.12.2023 for self-rectification purposes, to be re-sealed thereafter.

6. Ms. Shivani Verma, learned counsel for the petitioners, submits that the petitioners have not given any undertaking with regard to re-sealing of the property and reference to the undertaking in the impugned communication dated 30.11.2023 is erroneous.

7. Learned counsel for MCD, on the other hand, submits that the property has not yet been rectified and the unauthorised construction remains. He submits that the petitioners have taken advantage of the impugned order dated 30.11.2023 by which their property was de-sealed and have approached the Court only on the last date of the temporary de-sealing order.

8. Having heard learned counsel for the parties, I am of the view that the property which was sealed in the year 2014 ought not to remain sealed indefinitely if the petitioners are willing to rectify the unauthorised construction. However, the petitioners claim that the



sealing order has not been served upon them and that they are not aware of the extent of the unauthorised construction.

9. In order to facilitate the interest of the petitioners in rectification of their property and de-sealing thereof, the writ petition is disposed of with the following directions:

A. MCD will conduct a joint inspection with the petitioners' representative on 18.12.2023 at 11:30 am and clearly state the extent to which the property is an unauthorised construction.

B. MCD will thereafter de-seal the property for a period of 30 days only for the purpose of rectification of the property. The property will not be occupied or used for any other purpose and undertaking to this effect will be given by the petitioners to MCD prior to de-sealing.

C. After the lapse of 30 days, MCD will re inspect the property alongwith the petitioners and will re-seal the property if any unauthorised construction remains. In the event no unauthorized construction remains in the property, the property will be de-sealed within 15 days thereafter.

D. In the event MCD comes to the conclusion that there remains some unauthorised construction- in the property, it will issue an order to that effect and the petitioners' remedies against the said order will lie before the Appellate Tribunal for Municipal Corporation of Delhi.

10. The writ petition is disposed of with these directions."

3. It is submitted that despite the directions contained in para 9 of the aforesaid order dated 15.12.2023, no action has been taken qua the unauthorized construction, which continues to subsist in the property in question.

4. Issue notice.

5. Learned counsel as aforesaid accepts notice on behalf of the respondent no.1/MCD.

6. Learned counsel for MCD who appears on advance notice submits that in compliance with the directions contained in the aforesaid order dated 15.12.2023, the property in question was de-sealed for a limited period to enable the petitioner in W.P.(C) 16229/2023 to rectify /remove any unauthorised construction. However, when the property was re-inspected after the period specified in the aforesaid order dated 15.12.2023, the unauthorised construction was found to be subsisting; consequently the property in question was again sealed by the MCD.

7. Learned counsel for the MCD submits that the requisite steps in accordance with law shall be taken to remove the unauthorised construction. Let a Status Report in this regard be filed within a period of 4 weeks from today.

8. List on 08.05.2024.

9. The MCD shall also be at liberty to inspect the other floors of the property in question and to ascertain whether any unauthorised construction is subsisting therein. If so, necessary action in accordance with law shall be taken with regard thereto.



3. Learned counsel appearing on behalf of the respondent-MCD has placed on record the Status Report dated 22.07.2024. A perusal thereof would indicate that the property in question was inspected along with the petitioner on 18.12.2023. It has been noted that certain new constructions were raised at the third floor of the property.

4. *Vide* letter dated 18.12.2023, it appears that the respondent-MCD had already directed *Mr. Rati Ram Chauhan* to remove the unauthorisedly constructed portion within a period of 30 days with effect from 18.12.2023. It is also to be noted that the property, as of now, stands sealed as has been stated by the respondent-MCD in paragraph no.7 of its Status Report which reads as under:-

"7. That the concerned JE(B) vide his report dt. 17.01.2024 reported that the property had been inspected and no rectification work had been carried out at the site. Thereafter, the property had been re-sealed on 17.01.2024. The property is still lying sealed."

5. The Court, therefore, is of the considered opinion that when the property is lying sealed and the fact as to who shall be entitled for its possession after de-sealing, as of now, is not decided, no further directions in the instant writ petition are required to be passed.

6. The respondent-MCD, however, is directed to ensure that if the property is de-sealed, the respondent-MCD must take further legal action in accordance with law to ensure that the property remains free from any unauthorised construction.

7. The instant petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J
SEPTEMBER 11, 2024/MJ