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

+ **W.P.(C) 3375/2024 & CM APPL 40056/2024**

BILAL AHMED AND ANR

.....Petitioners

Through: Mr. G.M. Farooqui and Mr. Mohd.
Faisal, Advs.

versus

MUNICIPAL CORPORATION OF DELHI AND ORS

.....Respondents

Through: Mr. Ajjay Arora and Mr. Kapil Dutta,
Advs. for MCD
Mr. Diman Singh Chauhan, Adv. for
R-4
Mr. Tushar Sannu, Mr. Sahaj Karan
Singh, Adv. for GNCTD with SI
Aayush Rajput, P.S. Jama Masjid

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% 12.09.2024

1. The instant petition has been filed seeking the following reliefs:-

“a) issue a writ of Mandamus or any other writ of the like nature, thereby directing the Respondent No. 1 to 3 to stop and restrain the Respondent No. 4 for raising any kind of illegal or unauthorized construction at property bearing No. 4021, GALI KHAN KHANA, URDU BAZAR, JAMA MASJID, DELHI-110006, and further taking appropriate punitive action as per law against the Respondents including Respondents No. 4 for raising the illegal and unauthorized construction at the property in question;

b) pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the Petitioner and against the Respondents.”



2. The supplementary affidavit which has been placed on record by the respondent-MCD would indicate that various actions have been taken against the unauthorised construction. The same have been delineated in paragraph Nos. 3 to 9 of the said affidavit which read as under:-

“3. That it is respectfully submitted that vide letter bearing no.D/AE(B)-II/CSPZ/2024/135 dated 03.05.2024, Ms. Samar Sultan, owner and Sh. Raj Kumar, Architect were directed to submit the Structure Stability Certificate in respect of property no.4021, Gali Khan Khana, Urdu Bazar,. Jama Masjid, Delhi- 110006 alongwith detailed submissions as to whether any damage has been caused in adjoining property no. 4026, Gali Khan Khana, Urdu Bazar, Jama Masjid, Delhi-110006 due to erection of pillars/columns. A copy of the said letter dated 03.05.2024 has already been placed on record of this Hon'ble Court as Annexure-B. It is submitted that in response to the said letter dated 03.05.2024, Ms. Samar Sultan, owner has submitted her reply along with a Structure Safety Certificate dated 20.05.2024 in respect of property no.4021, Gali Khan Khana, Urdu Bazar, Jama Masjid, Delhi- 110006. In the Structure Safety Certificate, it has been reported that the owner has installed the pillars in her own property and there is no encroachment by the owner on any private or public property. It has been further submitted that no damage has been noticed in any wall or pillars of the property no.4026, Gali Khan Khana, Urdu Bazar, Jama Masjid, Delhi-110006 or an S c. ty Certificate dated properties. A copy of the Structure aie 20.05.2024 is annexed herewith as Annexure-D.

4. That it is respectfully submitted that while raising construction, owner of the property has deviated from the sanctioned building plan which has been got acknowledged under Saral Scheme. It is submitted that accordingly MCD has initiated action against unauthorized construction in the shape of deviations/excess coverage against SBP vide I.D. No. 20007583 dated 31.01.2024 at stilt floor and ground floor with projection on municipal land under section 343 & 344 of the DMC vide file no.151/UC/75-N/BII/ CSPZ/2024 dated 08.07.2024 and a show cause notice dated 08.07.2024 has been issued to the owners namely Mst. Samar Sultan. It is submitted that after following the due process of law, demolition order dated 18.07.2024 has been passed by the Quasi Judicial Authority thereby directing the noticee to demolish the unauthorized construction in the shape of deviations/excess coverage against SBP vide I.D. No. 20007583 dated 31.01.2024 at stilt floor, ground floor and first floor with projection on municipal land in the subject property within 06 days. A copy of the demolition order dated 18.07.2024 is annexed herewith as Annexure-E.



5. That MCD has initiated sealing proceedings under section 345-A of the DMC against the unauthorized construction in the shape of deviations/excess coverage against SBP vide I.D. N. 20007583 dated 31.01.2024 at stilt floor and ground floor with projection on municipal land and for this purpose a show cause notice vide no.DC/EE(B)-II/CSPZ/S.C.N./2024/D-462 dated 15.07.2024 has been issued. A copy of show cause notice vide no.DC/EE(B)III_ CSPZ/S.C.N./2024/D-462 dated 15.07.2024 is annexed herewith as Annexure-F.

6. That it is respectfully submitted that as per record, a work stop notice bearing no.D-412/AE(B)/CSPZ/2024 dated 18.07.2024 has been issued to the SHO P.S. Jama Masjid to ensure that no unauthorized construction is carried out in the property in question. A copy of work stop notice dated 18.07.2024 is annexed herewith as Annexure-G. It is submitted that the said work stop notice dated 18.07.2024 has been issued by way of abundant caution as the building was old and occupied & already constructed above first floor.

7. It is submitted that demolition actions have been taken against the unauthorized construction in the property in question with the assistance of police force from PS Jama Masjid on 24.07.2024, 26.07.2024 and 27.07.2024. It is submitted that in these actions on 24.07.2024, 06 RCC panels were cut / demolished at the roof of stilt, ground floor and first floor in the covered open area and covered road widening. On 26.07.2024, 01 RCC panel has been cut down at stilt floor and 01 RCC panel at ground floor. On 27.07.2024, 01 RCC panel has been cut down at ground floor and 03 RCC panels at first floor. · Photographs of the property taken during demolition action are annexed herewith as Annexure-H.

8. That it is respectfully submitted that apart from the above proceedings under section 338 of the DMC Act for revocation of sanctioned building plan vide I.D. No.20007583 dated 31.01.2024 have also been initiated and a show cause notice vide no. D/DC/CSPZ/2024/188 dated 22.07.2024 has been issued to MSt. Samar Sultan, Owner and Sh. Raj Kumar, Architect. It is submitted that the said show cause notice has been issued noticing the following discrepancies :-

(a) The subject property falls within the historic area of the city i.e Shahjahanabad walled city and requires prior approval/clearance from DUAC . As per the relevant circular/office order dated 22.04.2022, the Professionals are empowered to acknowledge the intimation/sanction upto 500 sqm (except the properties categorized in the said circular). As such it is evident that the professional was not empowered to sanction the instant case and that he has trespassed his jurisdiction.



(b) The subject property falls in the special area/walled city and there is no approved layout plan of this area. However, the building plan application has been submitted with the stipulations showing building sub type category of Village Abadi.

(c) Complete ownership documents have not been uploaded. Moreover, single Entity is also not maintained as required as per the notification dated 17.01.2011 .

(d) As per the submitted plan the property in question is effected in road widening for such cases, the Architect/Engineer/Supervisor is not empowered to sanction at his own level and as such, has trespassed his jurisdiction.

(e) The property abuts on notified Pedestrian Shopping Street Road (PSS) for which power to sanction does not vest with the concerned professionals.

A copy of show cause notice dated 22.07.2024 under section 338 of the DMC Act is annexed herewith as Annexure-I.

9. That further demolition action against the unauthorized construction in the property has been planned on 13.08.2024.”

3. During the course of hearing, learned counsel appearing on behalf of the Corporation also submits that, as on date, the entire sanction plan is under consideration for its revocation and the Show Cause Notice has been served and the hearing is in progress. He further submits that if the Corporation is not satisfied with the explanation to be offered by the private respondent, even the action against the concerned Architect may also be taken to its logical end.

4. Having noted the aforesaid submission and the action which has been taken against the unauthorised construction, the Court is of the considered opinion that the Corporation shall take the further action to take the matter to its logical end within a period of four months from today. If the



petitioners still have any grievance, thereafter, they shall be at liberty to file appropriate application before the Special Task Force which has been constituted in terms of the directions passed by the Supreme Court in W.P. (C) 4677/1985 in the case of ***M.C. Mehta v. Union of India***.

5. Accordingly, at this stage, no further directions are required to be passed in the instant petition. The same is accordingly disposed of alongwith pending application.

PURUSHAINDRA KUMAR KAURAV, J.

SEPTEMBER 12, 2024

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