



\$~103

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

+ **CONT.CAS(C) 116/2020 & CM APPL. 36624/2021**

KUSHMAKAR RASTOGI

..... Petitioner

Through: Mr. Satya Priya Kamrah, Adv. along
with petitioner in person
M: 9810610466

versus

VERSHA JOSHI & ORS.

..... Respondents

Through: Mr. Ajjay Aroraa, Mr. Kapil Dutta,
Mr. Vansh Luthra & ms. Simran
Arora, Advs. for MCD.
M: 9811160827
Email: ajayaroramcd@gmail.com
Mr. Ankit Jain, Mr. Mohit Gupta, Ms.
Anisha Gupta, Ms. Deeshikha Bansal,
Ms. Manisha Gupta and Ms. Gunjan
Negi, Advs. for R-4.
M: 9528348795
Email: gunjannegi116@gmail.com
Mr. Anuj Aggarwal, ASC, GNCTD
with Ms. Arshya Singh, Mr. Yash
Upadhyay & Ms. Mehak, Advs. for
GNCTD
M: 9891363718
SI Ramakant, PS Kotwali
M: 9871757734

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

02.05.2024

%

1. The present petition has been filed alleging willful disobedience of the order dated 14th February, 2017 passed in *W.P.(C) No. 11417/2016*, wherein



the statement of North Delhi Municipal Corporation (now Municipal Corporation of Delhi) (“MCD”) was recorded that no construction activity was being undertaken on the site in question, i.e., property bearing No. 5703-5722, Kothi Barwali, Nai Sarak, Delhi-110006.

2. The Contempt petition has come to be filed, since a sanctioned building plan for the property was approved in violation of the building bye-laws.

3. Learned counsel appearing for the petitioner submits that various complaints were made by the petitioner with respect to the unauthorized construction being carried out in the property in question. He further submits that the petitioner had also pointed out about the existence of an old Banyan Tree, which was being damaged on account of the construction being carried out by the respondent no.4, who is the owner of the property in question.

4. Attention of this Court has been drawn to the complaints dated 31st July, 2017 and 22nd June, 2018, to submit that the complaints made by the petitioner categorically pointed out the existence of the old Banyan Tree which had been damaged.

5. Learned counsel appearing for the petitioner has also drawn the attention of this Court to the photograph of the Banyan Tree, to show the status of the said tree, as it existed earlier, and the current photograph of the said Banyan Tree. By referring to the aforesaid photographs, it is submitted that the Banyan Tree has been damaged and debris are lying all around it.

6. Per contra, learned counsel appearing for respondent no.4-owner of the property in question, submits that the entire property of respondent no.4 has been demolished. He further points out to the recent photographs of the plot in question to show that no construction exists in the said plot.



7. He further submits that the tree in question has been preserved by way of the support of iron pipes, that have been put by the respondent no.4-owner, as duly confirmed and approved by respondent no. 5, i.e., Tree Officer, Government of National Capital Territory of Delhi (“GNCTD”).

8. Learned counsel appearing for respondent no. 4 further draws the attention of this Court to another petition being *W.P.(C) No. 3433/2020* that had been filed with respect to the same property, wherein, order dated 11th October, 2023 has been passed. By reference to the aforesaid order, it is submitted that the Coordinate Bench of this Court has categorically given a finding that the unauthorized construction in the property in question stands demolished and that the said position is undisputed.

9. Learned counsel appearing for respondent no. 4 further submits that steps have already been taken to ensure the preservation of the tree in question.

10. Likewise, learned counsel appearing for respondent no. 5-Tree Officer, GNCTD as well as respondent nos. 1 and 2-MCD, have confirmed the fact that steps have been taken to preserve the Banyan Tree existing in the plot in question. They further submit that inspection is being carried out once in four weeks to make sure that the said Banyan tree is being preserved in a proper manner, in terms of the directions as issued by order dated 11th October, 2023 in *W.P.(C) No. 3433/2020*.

11. In rejoinder, learned counsel appearing for the petitioner has drawn the attention of this Court to the orders dated 14th July, 2020 and 13th August, 2020 passed in *W.P.(C) No. 3433/2020*, wherein, directions had been issued to preserve the tree in question.

12. Learned counsel appearing for the petitioner further submits that the



MCD never took note of the existence of the tree at the time of inspection of the plot in question and illegally sanctioned the building plan. He submits that it was only during the proceedings in *W.P.(C) No. 3433/2020*, that the Court took note of the existence of the tree in question and relevant directions were passed.

13. He also draws the attention of this Court to the Status Report filed by the Delhi Police and the various photographs that have been attached, to submit that despite various orders passed by the Court, construction was again started and the tree in question was damaged by respondent no. 4.

14. I have heard learned counsels for the parties and have perused the record.

15. At the outset, this Court notes the order dated 14th February, 2017 passed in *W.P.(C) No. 11417/2016*, for non-compliance of which, the present contempt petition has been filed. The order dated 14th February, 2017 reads as under:

“Learned counsel appearing for respondent nos. 1 and 2 under instructions submits that as on date on the inspection of the site no construction activity has been found prevailing therein. No construction material has also been found stocked at the site. Learned counsel appearing for respondent no.3/local SHO also endorses this stand of respondent nos. 1 and 2. Respondent no.4 (private respondent) submits that no construction is being carried out by him at the site. These statements of the respondents are taken on record.

Noting this stand of the respondents and also submission of the petitioner that the pillar raised by respondent no.4 has since been removed from the site and the admitted position that the walled city (Chandani Chowk) where this alleged construction activities were being carried out is a 'special area' and no construction contrary to the building bye-laws is permitted. This Court is of the view that no further orders are called for in this petition.

Needless to reiterate that the submission made by learned counsel



for respondent nos. 2 and 3 as also by private respondents are in the nature of undertakings which have been furnished to the Court and there will be no deviation from the stand. It is hoped and expected that these statements as on date will continue to be honoured in true letter and spirit and since the stand of respondent no. 4 himself is that he is not carrying out any construction activity contrary to the bye-laws the government departments will not permit the same to be carried out.

No further orders are called for in this petition. It is disposed of”

16. Perusal of the aforesaid order clearly shows that directions had been issued to respondent-MCD to ensure that no unauthorized construction takes place in the plot in question. Further, the undertaking of the respondent no. 4, i.e., owner of the property in question, was also recorded that he was not carrying out any construction activity contrary to the bye-laws.

17. It is seen from the record that the MCD has filed a compliance affidavit, wherein, it has been categorically stated that the MCD has already taken action against the officers who had not disclosed the existence of the old Banyan Tree. Further, the sanctioned building plan, *qua* the property in question, has also been withdrawn by the MCD.

18. Perusal of the compliance affidavit of the MCD also shows that the MCD has taken the demolition action against the property in question and the complete unauthorized construction existing on the plot in question, has been removed. The relevant paragraphs of the compliance affidavit filed by the MCD, read as under:

“xxx xxx xxx

4. That it is respectfully submitted that as per record the owner of property bearing no. 5703-5722, Known as Kothi Barwali, Nai Sarak, Delhi-110006 obtained the sanctioned building plan in respect of property in question vide I.D. No.10069456 dated 25.10.2019 through the online module of North DMC and started raising construction therein.



5. That it is respectfully submitted that a writ petition bearing no.3433/2020 titled Nitin Gupta Vs. North DMC alleging unauthorized construction in the property in question was filed. It is submitted that after hearing the petition this Hon'ble Court was pleased to pass orders dated 10.06.2020 directing the answering respondent to take appropriate measures apropos such illegal construction. A copy of orders dated 10.06.2020 is annexed herewith as **Annexure-B**.

xxx xxx xxx

7. That it is respectfully submitted that the additional affidavit filed by the then Executive Engineer (Bldg-I), City S.P. Zone, North DMC reported that on inspection on 10.07.2020 he found that unauthorized construction was being carried out by way of deviations from the building plan which was sanctioned online on the basis of plans submitted by an Architect. The details of deviations were recorded by this Hon'ble Court in the order dated 14.07.2020 and during the course of hearing on that day this Hon'ble Court observed the existence of old bargad tree in the rear portion of the property in question which was found to be damaged on account of unauthorized construction work. This Hon'ble Court besides other directions, was pleased to issue notice to the Tree Officer, GNCTD for his impleadment to rescue the old bargad tree. A copy of detailed order dated 14.07.2020 is annexed herewith as **Annexure-D**.

xxx xxx xxx

11. That it is respectfully submitted that so far as the unauthorized construction in the property in question is concerned the answering respondent had booked the unauthorized construction under section 343 & 344 of the DMC Act vide file no.65/90-N/B/UC/EE(B)-I/CSPZ/2020 dated 10.07.2020 and after following of due process of law demolition order dated 20.07.2020 was passed by the Competent Authority thereby directing the owner/noticee to demolish the unauthorized construction in the shape of deviation/excess coverage against sanctioned building plan in the shape of infringement of set back at basement, stilt floor, ground floor, first floor, second floor and third floor of the property in question within 06 days.

12. That it is respectfully submitted that apart from the demolition proceedings, sealing action under section 345-A of the DMC Act was also initiated vide show cause notice dated 15.07.2020 and after following of due process of law sealing order dated 28.08.2020 was passed thereby directing the sealing of the property in question.



13. That it is respectfully submitted that proceedings under section 338 of the DMC Act were also initiated against the property in question for revocation of sanctioned building plan obtained by the owner through mis-representation. A show cause notice was issued to the owner and after following the due process of law order dated 29.09.2020 was passed by the Competent Authority directing revocation of sanctioned building plan.

14. That it is respectfully submitted that the owner challenged the demolition order dated 20.07.2020 by filing appeal bearing no. 152/2020 before the Appellate Tribunal, MCD (ATMCD) which was listed before the ATMCD on 30.07.2020. It is submitted that during the course of hearing before the ATMCD on 30.07.2020, the Appellant/owner undertook to demolish the excess coverage/deviation within 15 days and in view of the said undertaking it was stated by the answering respondent that no demolition action shall be carried out till the next date of hearing. It is submitted that the matter was adjourned to 17.08.2020, 24.08.2020, 25.08.2020. It is submitted that on 25.08.2020 after hearing the case the Ld. Tribunal allowed the interim order to continue in the next date i.e. 31.08.2020. The said appeal was listed on, 25.09.2020 and in the mean time the owner filed another appeal bearing no. 190/2020 challenging the sealing order dated 28.08.2020 passed by the answering respondent. It is submitted that vide order dated 01.09.2020 the Ld. Tribunal restrained the answering respondent from sealing the property in question in terms of sealing order dated 28.08.2020. It is submitted that vide order dated 25.09.2020, the interim order was continued till next date i.e. 23.11.2020.

15. That it is respectfully submitted that in the meantime another appeal bearing no.253/2020 was filed by the owner challenging revocation order dated 29.09.2020 which was listed before the Ld. Tribunal on 06.10.2020 wherein after hearing the matter at length the Ld. Tribunal restrained the answering respondent from taking action in the property in question pursuant to impugned order till next, date of hearing i.e. 26.10.2020. The said appeal was listed on 26.10.2020 when the said appeal adjourned to 23.11.2020. It is submitted that on 23.11.2020 all the three appeals were listed together whereafter the said appeals were adjourned to 14.12.2020, 25.02.2021, 01.07.2021, 01.10.2021 and finally to 18.01.2022. A copy of orders dated 30.07.2020, 17.08.2020, 24.08.2020, 25.08.2020, 31.08.2020, 01.09.2020, 25.09.2020, 06.10.2020, 26.10.2020, 23.11.2020, 14.12.2020, 25.02.2021, 01.07.2021, 01.10.2021 are annexed herewith as **Annexure-H (Copy)**.

xxx xxx xxx”



19. Thus, it is clear that the unauthorized construction existing on the plot in question has been completely erased to the ground in question. No construction exists on the plot in question, except the Banyan Tree and the support around the Banyan Tree.

20. This Court also notes the order dated 11th October, 2023 passed by the Coordinate Bench of this Court in *W.P.(C) No. 3433/2020*, titled as ***Nitin Gupta Versus North Delhi Municipal Corporation and Others***, which order pertains to the same plot, which is subject matter of the present petition. The order dated 11th October, 2023, reads as under:

“1. The petitioner filed the present petition for the following reliefs:

“(a) Issue a writ order or direction including a writ of mandamus or any other appropriate writ to direct the respondent-Bank no. 1 to take immediate steps to prohibit and demolish the illegal and unauthorized construction at property bearing no. 5708 to 5717 forming part of 5703 to 5722 Barwali Kothi, Nai Sarak, Delhi-6, constructed by or at the instance of respondent no. 2;

(b) Grant damages to the petitioner payable by the respondents, to be determined by respondent no. 1, for constructional damage caused to the property of the Petitioner due to the unauthorized and illegal construction of the respondent no. 2 and the inaction of the respondents nos. 1, 3 and 4; and

(c) To direct the institution of inquiry to punish those officials of the official respondent authorities who have responsible for causing the illegal construction by respondent no. 2;

(d) any other relief order which this Hon’ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the Petitioner and against the respondents.

(e) Award costs of the proceedings in favour of the Petitioner.”

2. As far as the alleged illegal and unauthorised construction of property No. 5708 to 5717 forming part of 5703 to 5722 Barwali Kothi, Nai Sarak, Delhi-6 is concerned, the contention of Mr. Kapil Dutta, learned Standing Counsel for Municipal Corporation of Delhi [“MCD”] is that a



sanction plan in respect of the property was granted, but subsequently revoked, and the property has since been demolished. This position factually remains undisputed.

3. The only question which remains is with regard to preservation of a banyan tree which is stated to have been damaged as a result of the impugned construction. As far as this aspect is concerned, the Tree Officer (Central), Department of Forest & Wildlife, Government of NCT of Delhi has filed a status report in which it is stated that an inspection revealed digging of approximately 5 to 6 feet from the ground level which would damage the root system of the tree, construction of a wall which might destabilise the root zone of the tree and large quantities of iron guarders/rods were found unattended at the location. An inspection was, therefore, carried out by GNCTD and MCD on 30.08.2023. It was decided as follows:

- “1. Upto 3 meters around the tree should be de-concretized.*
- 2. Cleaning should be done all around the tree and the iron guarders shall be removed, the iron pipes installed in place to support the tree should be left undisturbed to support the tree.*
- 3. Soil filling should be carried out at an area of 3 meters around the tree.*
- 4. To strengthen the roots of the tree filling should be carried out with Neem cake.”*

4. It is stated in the status report that the aforesaid action has been commenced by the Tree Officer and MCD.

5. MCD has also filed a status report dated 06.10.2023 in which it is that all the above observations of the Forest Department have been complied with at site. However, the platform around the tree has not been removed keeping in view the requirements of support to the tree.

6. In view of the action taken as aforesaid, no further orders are required in this writ petition. The writ petition accordingly stands disposed of. However, the Tree Officer and MCD are directed to carry out a joint inspection at the site within a period of one week from today, and to take such further action as required to ensure the preservation of the tree which is stated to be approximately 140-160 years old. The Tree Officer and the concerned Officer of MCD will thereafter conduct an inspection at least once in four weeks to ensure that the site is being maintained in the manner conducive to the preservation of the tree.

7. Ms. Shueta Kapoor, learned counsel for petitioner No. 1, states that



the property of petitioner No. 1 was also damaged as a consequence of the impugned construction by respondent No. 2. The rights and remedies of the petitioner No. 1 in respect of compensation in this regard are reserved.”

21. Reading of the aforesaid order clearly manifests the fact that the complete unauthorized construction existing in the plot in question, has been removed, remains undisputed. Further, directions have been issued to the Tree Officer, GNCTD, as well as the concerned Officer of the MCD to conduct an inspection at least once in four weeks, to ensure that the site in question is being maintained in the manner which is conducive to the preservation of the tree.

22. This Court records the submission made by learned counsels appearing for the respondent nos.1 and 2-MCD and respondent no.5-Tree Officer, GNCTD, that regular inspection is being carried out by their officers once in four weeks, in compliance of the order dated 11th October, 2023. They further ensure the Court that regular inspection shall continue to be carried out, in order to ensure that the old Banyan Tree is preserved.

23. Considering the aforesaid, no further directions are required to be passed in the present petition. The present petition is accordingly disposed of, along with the pending application.

MINI PUSHKARNA, J

MAY 2, 2024/kr