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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2176/2019, CM. APPLN. 10237/2019 & CM APPLN.**
20571/2019
SH. TILAK RAJ BHOLA & ORS

.....Petitioner
Through: Appearance not given.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS
.....Respondent
Through: Mr. Siddhant Nath Standing
Counsel for MCD with Mr.
Bhavishya Makhija, Advocates.

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+ **W.P.(C) 2217/2019, CM. APPLN. 10459/2019 & CM. APPLN.**
20576/2019
RAJEJSH VERMA AND ORS.

.....Petitioner
Through: Appearance not given

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.
.....Respondent
Through: Mr. Siddhant Nath Standing
Counsel for MCD with Mr.
Bhavishya Makhija, Advocates.

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+ **W.P.(C) 3062/2019 & CM. APPLN. 14100/2019**
SOHAN SINGH AND ANR.



.....Petitioner
Through: Appearance not given

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

.....Respondent
Through: Mr.Anun Chaturvedi, SC for
MCD.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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09.07.2024

1. The petition seeks to challenge the notice dated 28.02.2019 issued by the respondent-Corporation under Section 349(2) of the Delhi Municipal Corporation Act, 1957 ["DMC, Act"]. The impugned notice reads as under:-

As per circular No.ENC/NDMC/2018-19/D-248 dated 27.09.2018 and as per minutes of meeting held in the chamber of DC/KBZ vide No.D/SE(KBZ)/18-19/552 dated 28.09.2018. The visual survey was carried out of the permisses on 19.02.2019 on the complaint adrerssed to the DC/KBZ on 02.07.2018 received by the undersigned vide No.758/A.E(W)-III and this building is found in damaged condition and hence in dangerous for occupation as detailed below:-

1. It is Certified that property No.2120, Plot No./Khasra No.492-493, Block-J, Gali No.58, Naiwala, Karol Bagh, Delhi-110005, belonging to Mrs. Rajni Garg & Others as stated above



(Owner/occupiers) consisting of Ground floor, First & Second Floor with total Plot area approximates i.e.413.00 sq. yards lying "VACATED" from many years at first floor & 2nd floor and from local enquiry it is found that this building was constructed approximately 80-85 years back, and also verified the report of MOD empanlled Structural engineer Amit Negi (SE) MCD Licence No.SE/0264 and found constructed with mud mortar. Cement mortar and Line mortar, slab constructed with R.B. Pattern and building is load bearing structure. At many places, huge diagonal cracks are occurred in the main load bearing walls increasing slowly and slowly and some portion of the walls and chajjas are already collapse and fall down on the roof of 1st Floor also Rain Water get collected at many places and had cause rusting of steel which had made column/ roof unable to carry more load and existing load, since it is not possible to get steel rust free and neither change, buildings foundation can not be examine, but seems not in position to carry further load of construction (vertical expansion) and whole structure of the building is going to be imminent dangerous position and can fall any time. This area of karol bagh area is the heavily crowded market area, hence to meet the requirement and also safe guard the interest of general public and passerby on the road, it is compulsory to vacate the whole dangerous building entirely and demolish the same as this building is declared dangerous during inspection on 19.02.2019."

2. The Court, after entertaining the petition has passed various interim directions. Some of the interim orders dated 06.03.2019 and 11.07.2023 read as under:-



Order dated 06.03.2019

23. As recorded in order dated 02.03.2019, the complaint upon which inspection of the subject premises was carried-out relates back to July, 2018 and inspection was carried-out some even months later.
24. Considering the facts and circumstances, order dated 02.03.2019 is modified to the limited extent that the petitioners in both matters are permitted to carry-on their businesses from the subject premises, purely on temporary basis, at the petitioners' own risk, cost and responsibility. The petitioners shall also assume any risk or cost that may arise from any injury, harm or damage to any third party by virtue of the petitioners carrying-on business from the subject premises.
25. Permission to carry-on business as aforesaid shall inure until the next date of hearing; and shall be reviewed subject to the report of the structural engineer appointed for inspecting the subject premises.

Order dated 11.07.2023

5. The structural engineer has furnished a report dated 20.03.2019 to this Court [hereinafter, "the IIT Report"], which has been placed on record. The IIT Report inter alia contains the following observations/ suggestions:-
- a. The building is a fairly old construction, and the original construction appears to be of good quality. However, it is noticed that the first and second floors of the building which are owned by respondent Nos. 4 and 5] appear to be poorly maintained.
- b. Since the construction of the building was carried out before standards on seismic safety of buildings were issued by the Bureau of Indian Standards, the building does not contain the special provisions that were later made mandatory



c. *Layout and structural arrangement of the ground floor appears to have been modified to a large extent.*

d. *Other than wear and tear of the plaster, the collapse of a few sunshades and some wear and tear of the masonry joints, no major signs of structural distress were visible in the building. Further, no major structural cracks were observed in the masonry, and no signs of distress due to differential settlement or foundation failure were visible. The structural engineer has opined that at the time of the visit, the structure did not appear to be at a risk of imminent collapse, except, perhaps, in the event of an earthquake.*

e. *The inferences, including with regard to deterioration of the building, wear and tear of the plaster and mortar, ad hoc modifications in the ground floor and consequent change in the structural arrangement, have led the engineer to observe that although they do not appear to be the signs of imminent collapse, structural stability of the building in the long term and in the event of an earthquake appears to be uncertain.*

f. *The structural engineer has given various suggestions for improvement of the structural stability and safety of the building with the qualification that, although such measures would help in improving the structural stability of the building, the building will still not comply with the current requirement of standards for safety of the buildings against seismic loads. He has, therefore, opined that a complete re-building of the structure is advisable “within the coming years”.*

8. *It is also alleged by the petitioners that respondent Nos. 4 and 5, on whose complaint the MCD has taken the impugned action, are themselves owners of part of the ground floor of the building, which remains occupied by them and/or by tenants inducted by them. Respondent Nos. 4 and 5 are directed to file an affidavit within two weeks, stating as to when they came*



into ownership of the property and who has been in the occupation of the parts of the property owned by them since then. They will also place on record any licenses, leases or any other agreements entered into between them and any third parties in this regard.

9. *As the petitioners in W.P.(C) 3062/2019 have not appeared today, the Registry is directed to issue Court notice to learned counsel on record for the petitioners therein. In the event the petitioners remain unrepresented on the next date of hearing, it may be presumed that they have no interest in pursuing the petition further."*

3. When the matter was called for hearing, learned counsel appearing for the respondent-Corporation, points out that the status report has been filed on behalf of the respondent-Corporation.

4. The same is taken on record.

5. A bare perusal of the status report suggests that certain corrective measures have been advised. For the sake of clarity, the paragraphs nos. 2 to 9 of the status report are reproduced herein:-

"2. *That the present Affidavit is being filed in the form of a Status Report in compliance order dated 11.07.2023 passed by this Hon'ble Court.*

3. *That in compliance order dated 11.07.2023 passed by this Hon'ble Court the property in question i.e Property No. 2120/Plot/Khasra No. 492-493, J-Block, Gali No. 58, Naiwalan, Karol Bagh, New Delhi, was inspected on 20.10.2023 by the field staff of MCD along with the owners/shopkeepers of the said property.*

4. *That the property consist of Ground Floor, First Floor and Second Floor. The Property is facing three sides with roads including Gurudwara road and Bank Street.*



5. *The ground floor consists of several shops and some shops were found closed during the inspection. The shops which were inspected from inside mainly included of mezzanine floor and were fairly maintained. The building consists of two stair cases symmetrically portions running all the way to the second floor. The maintenance of the staircase seems to be poor and rusted steel members of staircases were exposed underneath the steps visible at some places. Overall the maintenance of the said building was found to be poor from outside as spalling of plaster on outer walls is evident.*

6. *The first floor consists of about 10 rooms. In most of the rooms at the first floor there was evident seepage and plaster falling of walls. There were Minor cracks were also observed in a few rooms. One rooms at first floor facing Gurudwara road also had plaster fallen off at places in the ceiling which exposed the brick surface of the roof slab. There was also a fairly large open area in the centre on the first floor and the plaster wall work on the wall surrounding the open area was fallen off at places. Vegetation growth was also seen on walls of first floor area.*

7. *The second floor of the said property, consists of four rooms along with water closets and one of the rooms was found locked during the inspection. Seepage and falling of plaster underneath the ceiling exposing brick slabs was evident in the two rooms at the 2nd floor, facing the Gurudwara road. Most of the parapet wall was found to be disoriented mainly due to the vegetation growth, The combined chajja of the two rooms facing the Gurudwara road at second floor was partly fallen off and poorly maintained. The floor of one balcony facing Gurudwara road at first floor was found to be damaged.*

8. *That accordingly based on the above said inspection the*



following measures are suggested to ensure that the said building in question does not remain in ruinous and dangerous condition:-

- I. Repair/Strengthening/Recasting of RBC Slab*
 - II. Sunshade may be demolished and fresh casting of sunshade may be done*
 - III The Owner/Occupier of building may engage a structure Engineer for ascertaining the structural stability of the building against the seismic load from the foundation and suggest the measures to be taken to strengthen the building*
- 9. That accordingly the present status report is being filed in compliance of order dated 11.07.2023 passed by this Hon'ble Court in the above said matter. Further the answering respondent undertakes to be duty bound to follow further order that are passed in the above said matter.*

6. It would thus appear that based on the inspection as has been carried out by the respondent-Corporation, three major steps are suggested securing the safety of the building in question.

7. *Per contra*, learned counsel appearing for the petitioner however submits that the petitioners are occupants of the ground floor only. According to him, if at all, any repairing/strengthening/recasting of RBC Slab as has been suggested by the Corporation, is to be done, the same has to be done by the occupants of the upper floor. He further submits that the sunshed which was suggested to be demolished will also have to be done by the occupants of the upper floor. So far as the sunshed on the ground floor is concerned, the same is up to the permissible limits and if at all, the Corporation suggests that it is crossing the permissible limits, he undertakes to demolish the same.



8. He further submits that so far as the engagement of the structural engineer is concerned, there is already a report dated 20.03.2019 prepared by IIT Delhi and if according to that report, some corrective measures are required to be taken by him, he shall also undertake to do so. He further submits that the complaint was made by private respondents and according to him at the instance of the private respondents, such an action is unwarranted.

9. In sum and substance, the gist of the petitioner's submissions is that so far as the ground floor is concerned, they are not required to take any further corrective measures as they are already complying with the applicable rules and regulations.

10. Learned counsel appearing for the private respondents vehemently opposed the submissions and submits that there have been various concealments on the part of the petitioner and there are numerous complaints pending before the different authorities. According to him, the instant petition is misconceived and the same deserves to be dismissed with heavy cost.

11. I have heard the learned counsel appearing on behalf of parties and perused the record.

12. Having gone through the status report, the Court is of the considered opinion that the controversy involved in the instant writ petition is rightly summarised in paragraph no. 8 of the status report, as reproduced earlier.

13. Since, the learned counsel for the petitioner, on instructions, unequivocally submitted whatever steps as suggested by the Corporation for occupants of the ground floor are concerned, he shall



undertake the same. On the conspectus of the same, the Court does not find any reason to continue the petition on its Board.

14. It also to be seen that after the Court entertained these petitions, there have been various subsequent developments as has been highlighted in preceding paragraphs. Therefore, at this stage, the impugned show cause notice becomes redundant and thus, set aside.

15. The respondent-Corporation, however, is at liberty to proceed in accordance with the law, in case, the respondent-Corporation finds that the occupants of the building including of the ground floor are in violation of any applicable rules and regulations, however, the action must be confined to the errant occupant.

16. Moreover, so far as contentions of the private respondents are concerned they are at liberty to agitate the same before the appropriate authority, in accordance with the law. At their instant in the petition filed by the occupant of the ground floor no substantive relief can be granted to the respondents.

17. With the aforesaid observations, the instant petitions stand disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JULY 9, 2024/DA