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

+ **W.P.(C) 4395/2024, CM APPL. 17981/2024 - STAY
NEHRU ENCLAVE KALAKJI RESIDENT WELFARE
ASSOCIATION REGD**

..... Petitioner

Through: Mr. Deepak Gupta, Ms. Hetika
Vadhera, Ms. Komal and Mr. Rahul
Dev, Advs.(through VC)

versus

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

Through: Mr. G. S. Oberoi, SC alongwith Mr.
Ankur Sharma, Adv. for MCD.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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04.04.2024

CM APPL.17982/2024 (Exemption from filing original and bright copies of
annx.)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 4395/2024 & CM APPL.17981/2024 (Stay)

1. The present petition raises a grievance as regards alleged illegal and unauthorized construction at property bearing No.R-26, Kalkaji, Nehru Enclave, Delhi-110019.
2. During the course of hearing, learned counsel for the respondent no.1/MCD, who appears on advance notice, has handed over a status report which, *inter alia*, records as under :-

"1. That deponent is presently posted as Executive Engineer in Building Department-I of Central Zone of Municipal Corporation of Delhi. I have gone through the relevant record maintained by Building Department-I of Central Zone of MCD and placed before me. On the basis of records placed before me, I have made myself conversant with the facts of the present case and, therefore, am competent to swear the present affidavit.



2. That cause of litigation on the part of the petitioner pertains to Property No. R-26, Kalkaji, Nehru Enclave, which is stated to have been constructed unauthorizedly to run a hospital.

3. That it is most respectfully submitted that claim of the petition is factually incorrect since existing structure of the building, in question, had come up after getting the building plan sanctioned and excess coverage also got regularized from time to time. The building plan in respect of aforesaid property was sanctioned in the year 2009 vide File No. 1364/B/HQ/2008 for the construction of residential building having provision of Basement, Stilt, Ground Floor, First Floor, Second Floor and Third Floor on plot measuring 724.06 square meters in size. As per record, in the year 2010 & 2022, the applicant got the excess coverage regularized and in that process deposited necessary charges on account of compounding fee.

4. That as regards claim of running hospital, it is submitted that presently no hospital is being run from the premises. However, MPD-2021 under Clause 15.7 (Other Activity) lays down permissibility of non-residential activities in residential premise whether or not the road is notified as mixed use street subject to compliance of laid down parameters and payment of requisite charges i.e. One time Conversion, One Time Parking (if required parking is not available within the premise) beside registration of premises under mixed land use. Nursing Home is one of those activities permitted under Other Activity. The plot, in question, fulfils the laid down parameters and as such is entitled to be used for Nursing Home subject to payment of requisite charges. As per record, Conversion Charges amounting to Rs.45,29,520/- stands deposited and premise stands registered under mixed land use. Director, Delhi Fire Service vide letter No. F.6 DES/MS/Hospital/2023 SZ/432 dated 12/09/2023 has granted Fire Safety Certificate in respect of this building which is valid up to three years w.e.f 12/9/2023. Copy of said letter is annexed herewith as Annexure-A.

5. That existing structure of the property consists of Basement, Stilt, Ground, First, Second and Third Floor. During current inspection infringements of setbacks, unauthorized structures at stilt and temporary structures in the shape of MS sheets at terrace of third floor came to the notice. The demolition proceedings u/s 343/344 of the DMC Act against said unauthorized construction has been initiated vide File No.28/B/UC/EE(B)-I/CNZ/2014 dated 16/01/2024 and show cause notice issued. Presently, case is under hearing. As regards basement, it is submitted that owner got the basement registered for professional activity under Mixed Land Use. There are partitions at basement to use the same for doctors' clinic etc.



6. That is most respectfully submitted that Directorate General of Health Services, Govt. of NCT of Delhi is Licensing Authority, which consider and issue Licensing to run Nursing Home. The NOC by MCD is specific and confined to permissibility of use and payment of requisite charges. It does not confer right to override any statutory clearances from other departments/agencies, which are mandatory to run Nursing Home.

7. That action will be planned as soon as demolition proceedings in respect of structure at Stilt, infringements of setbacks and temporary structures in the shape of MS Sheets at terrace of third floor are concluded and order passed.”

3. Learned counsel for the respondent no.1/MCD submits that requisite action in respect of the unauthorized construction referred to in para 5 of the aforesaid status report shall be taken expeditiously. It is further submitted that a show cause notice qua the same has already been issued on 16.01.2024 and that requisite order/s, in accordance with law, shall be passed within a period of three weeks from today, and necessary action as may be warranted shall be taken immediately thereafter. The said statement is taken on record.
4. In view of the aforesaid, no further order/s are required to be passed in the present petition at this stage, and the same is accordingly disposed of.
5. Needless to say, in case there is any deficiency/lapse on the part of the MCD in taking requisite action, the petitioner shall be at liberty to avail appropriate remedies, in accordance with law.

SACHIN DATTA, J

APRIL 4, 2024/r