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

+ **CONT.CAS(C) 635/2024 & CM APPL. 22900/2024**

VIJAY KHODARIA AND ANR.

..... Petitioners

Through: Mr. Amit Jain, Mr. Sumit Rana & Mr.
Sachin Hooda, Advs.
M: 9911525000
Email: amitoswal14@gmail.com

versus

JAGPAL SINGH AND ORS.

..... Respondents

Through: Mr. Sunil Goyal, ASC with Ms. Pooja
Joshi and Mr. Vijay Shankar Tiwari,
Advs. for R-1 & 2.
M: 9811056767
Mr. Rituraj Biswas & mr. Murari
Kumar Singh, Advs. for R-3.
M: 8851582508, 9811880481

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Date of Decision: 23rd April, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 22900/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

CONT.CAS(C) 635/2024

3. The present petition has been filed alleging willful disobedience of the order dated 28th April, 2023 passed in *W.P.(C) No. 5458/2023*. The said writ had been filed seeking action against the illegal and unauthorized construction being carried out by respondent no.3 at the subject property.
4. By way of the aforesaid order dated 28th April, 2023, the writ petition was disposed of by recording the submission of the Municipal Corporation

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of Delhi (“MCD”) that Show Cause Notice had already been issued and necessary action would be taken against the unauthorized construction existing in the subject property, viz. bearing Plot No. 44, Situated in Ward-IV, Main Road Chandni Chowk, Delhi-110006.

5. Learned counsel appearing for the petitioner submits that no action has been taken by the MCD till date against the said unauthorized construction.

6. Per contra, learned counsel appearing for the respondent nos. 1 and 2-MCD has handed over copy of a Speaking Order dated 08th April, 2024 issued by the office of the Assistant Engineer, City S.P. Zone, MCD, which reads as under:

*“Municipal Corporation of Delhi
Office of the Assistant Engineer/City S.P. Zone
Nigam Bhawan Old Hindu College,
Kashmere Gate, Delhi-110006*

No. D-38/AE C(B)-II/CSPI/2024

Dated:08/04/2024

SPEAKING ORDER U/S 343-344, OF DELHI MUNICIPAL CORPORATION ACT 1957 IN RESPECT OF PROPERTY No. 43 to 46, MAIN RAOD, CHANDNI CHOWK, DELHI-110006.

Municipal Corporation of Delhi has initiated action against the unauthorized construction in the shape of entire ground floor, first floor, second floor, third floor and partly fourth floor (building is old and occupied, some alternation carried out at ground floor and first floor without SBP) at the instance of owner/builder in Property No. 43 to 46, Main Road, Chandni Chowk, Delhi-110006 u/s 343 & 344 (1) of the DMC Act, 1957 vide file no. 64/UC/74/B-II/CSPZ/2023 dated 27.04.2023 and a Show Cause notice vide no. 64/UC/74/B-II/CSPZ/2023 dated 27.04.2023 (Printed No. 6479) u/s 343, 344 of DMC Act was issued and served at site to the owners/occupiers of the property.

In reply to the show cause notice dated 27.04.2023, Sh. Mukesh Goel filed reply on 22.08.2023 stating that he has not done any unauthorized construction and only carried out repairing work. The hearing was attended by Sh. Mukesh Goel and Sh. Vijay Khodaria. Mr. Vijay Khodaria submitted copy of sale deed dated 26.05.2010 and

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photographs allegedly taken on 30.01.2023 and other records which were taken on record. Sh. Mukesh Goel also submitted sale deed dated 21.08.2006, copy of receipts of payment made to property tax department which are taken on record. It has been reported by JE (B) who had inspected the property on 14.03.2024 and submitted the report on 28.03.2024 stating that the property comprises ground floor, first floor, second floor, third floor and part fourth floor. The property is entirely commercial in nature. One of the staircase leading from ground floor to first floor which was earlier demolished by owner/occupier has been re-erected. It is further reported that there is one more staircase leading from ground floor to first floor. Since the owner/occupier has himself demolished the staircase and re-erected the same, he himself has violated the "status quo" and is as such not entitled to protection as envisaged in the provisions of "The National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011.

I have gone through the records of the case which includes reply of noticee received on 27.04.2023, copy of House Tax assessment record, copy of sale deed dated 21.08.2006 which mentions the extent of construction from ground floor to third floor with area details, copy of sale deed dated 26.05.2010 and photographs. None of the owners/occupiers have submitted any documents to show that their construction is authorized and with sanction plan.

After going through the records pertaining to this property, it is held that the construction in the shape of entire ground floor, first floor, second floor, third floor and partly fourth floor in Property No. 43 to 46, Main Road, Chandni Chowk, Delhi-110006 is without sanctioned building plan and any valid permission from the competent authority and is thus unauthorized construction, liable to be demolished. Mrs. Chanchal Goyal, Sh. Mukesh Kumar Goyal, Sh. Vijay Khodaria and other owners/occupiers of the property are directed to demolish the aforesaid unauthorized construction in the shape of entire ground floor, first floor, second floor, third floor and partly fourth floor in Property No. 43 to 46, Main Road, Chandni Chowk, Delhi-110006 is without sanctioned building plan and any valid permission from the competent authority and is thus unauthorized construction within 06 days from the issuance of this notice failing which the same shall be demolished by MCD at the risk and cost of owner without any further notice.

However, keeping in view of the above discussion, it is held that the said unauthorized construction in the shape of second floor and third floor was in existence prior to 08.02.2007 and is as such entitled to protection against any punitive action and that status- quo has to be maintained as envisaged in the provisions of "The National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011 and the

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demolition for the same be kept in abeyance till 31st December, 2026 or till the time that protection is extended and available to the property and it will be liable to be demolished after the stipulated period is over.

xxx xxx xxx”

7. By way of the said Speaking Order, demolition order has been passed against the unauthorized construction existing on the entire ground floor, first floor, second floor, third floor and partly fourth floor in property bearing Plot No. 43-46, Main Road Chandni Chowk, Delhi-110006, since the same was without any sanctioned building plan.
8. The said Speaking Order dated 08th April, 2024 further records that the unauthorized construction in the shape of second floor and third floor was in existence prior to 08th February, 2007 and as such is entitled to protection against any punitive action and that *status quo* has to be maintained in terms of the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 (Special Provisions Act, 2011). Thus, it has been stated that the demolition of the aforesaid floors has to be kept in abeyance till 31st December, 2026 or till the time the protection is extended and available to the property.
9. Learned counsel appearing for respondent no.3 on advance notice submits that the said Speaking Order dated 08th April, 2024 has wrongly granted protection only to the second and third floor. He submits that the ground floor and first floor of the property could not have been constructed subsequent to the construction of the second and third floor.
10. He submits that the ground floor and first floor were in existence prior to the construction of second and third floor and thus, he submits that the protection in terms of the aforesaid Special Provisions Act, 2011 has to be extended to the ground floor and first floor also.



11. Thus, he submits that the respondent no.3 shall make a representation to the MCD in this regard, as the said order on the face of it, is patently illegal on account of the fact that the protection in terms of the Special Provisions Act, 2011, ought to have been extended to the ground floor and first floor of the property also, and not merely to the second and third floor. Needless to state, as and when such representation is made by respondent no.3, the same shall be considered by the MCD.

12. It is pertinent to note here that *prima facie* it is manifest that once protection has been granted to the upper floors of the building under the provisions of the Special Provisions Act, 2011, the said protection has necessarily to be extended to the lower floors also, as construction therein would have been prior to the construction in the second and third floor.

13. Considering the aforesaid factual matrix, this Court is of the view that no further orders can be passed in the present petition.

14. At this stage, learned counsel appearing for the petitioners submits that the easement rights of the petitioners have been affected, since the respondent no.3 and his representative/agent, are not allowing the access to the petitioners to second and third floor of the property in question.

15. This Court cannot go into this issue in the present contempt proceedings. However, liberty is granted to the petitioners to seek their remedies, in accordance with law.

16. Accordingly, the present petition is disposed of with the aforesaid directions.

MINI PUSHKARNA, J

APRIL 23, 2024/kr