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

% **Date of Decision: 23.04.2024**

+ **W.P.(C) 5578/2024**

MUNIZA BEGUM ALIAS JAHAN ARA Petitioner
Through: Mr. Samman Vardhan Gautam and
Mr. Harsh Raj, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents
Through: Mr. Tushar Sannu, SC along with Mr.
Manoviraj Singh and Mr. Hardik
Saxena, Advs. for MCD.
Mr. Ashim Vachher, SC and Mr.
Kunal Lakra, Adv. for DDA.
Mr. Mohit Jolly and Ms. Shikha
Bhardwaj, Advs. for Interveners.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

CM APPL.23031/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 5578/2024 & CM APPL.23030/2024 (Stay)

1. The present petition assails the de-sealing order dated 08.01.2024, issued by the respondent no. 1, in respect of the property bearing House No.14, fifth floor, Khasra No.176, Lane No.1, Johri Farm, Jamia Nagar, New Delhi-110025.
2. The petitioner had initially filed a writ petition bearing W.P.(C) No.



12144/2021 wherein it was alleged that unauthorized construction subsists at the aforesaid property. The said writ petition was disposed of by this court on 27.01.2023, in which it was *inter alia* directed as under:

“1. The petitioner is aggrieved by the unauthorised construction carried out by respondent No. 3 at the 5th Floor of the property bearing House no- 14, Fifth Floor, Khasra No. 176, Lane no. 1, Johri Farm, Jamia Nagar, New Delhi- 110025;

2. Mr. Tushar Sannu, learned Standing Counsel for respondent No. 1 submits that subject property was inspected and unauthorised construction was found at the 4th Floor of the subject property. He further submits that the same was booked and demolition order was passed. He submits that sealing of the subject property had also taken place in the unoccupied portion of the premises.

3. He submits that though demolition action against unauthorized portion of the property was planned, however, the same could not be taken for want of police force on 19.01.2023. He further submits that requisite action would be taken against the unauthorised construction expeditiously.

4. Ms. Arushi Gupta, learned counsel appears for respondent No. 2 and submits that necessary police assistance will be provided as and when the same is sought for.

5. Mr. V.K. Mishra, learned counsel for respondent No. 3, on instructions, submits that respondent No. 3 has not carried out any unauthorised construction and undertakes not to carry out any construction which is not in accordance with law.

6. Writ petition is disposed of.

7. Respondents would ensure that the requisite steps are taken expeditiously and in accordance with law, preferably within a period of four months from today.”

3. Subsequently, a Contempt Petition being Cont. Cas(C) No.1214/2023 was filed by the petitioner alleging non-compliance with the aforesaid order dated 27.01.2023. The same was also disposed of by this court *vide* order dated 28.08.2023, in which *inter-alia* it was directed as under:

“1. This is a petition seeking initiation of contempt proceedings against the respondents for violation of the order dated 27.01.2023 passed in W.P.(C) 12144/2021. As per the said order, it was directed that



demolition action be taken against the unauthorized portion of property bearing House no- 14, Fifth Floor, Khasra No. 176, Lane no. 1, Johri Farm, Jamia Nagar, New Delhi- 110025.

2. Mr Tiwari, learned counsel appearing for the respondent No.1-MCD states that the demolition action has been taken and in case any other demolition is required, the same shall be undertaken within a period of four weeks from today. Taking his statement on record and binding the respondents to the same, the present contempt petition is disposed of.

3. In case vacation of property is required, the respondent shall also ensure the same.

4. Needless to add, if the petitioner is still aggrieved by any non-action, the petitioner is at liberty to revive the present contempt petition.”

4. It is noticed that the said order dated 28.08.2023 specifically recorded the contention on behalf of the MCD to the effect that demolition action has been taken in respect of the property in question and that further demolition action shall also be taken within the period specified therein.

5. The petitioner being aggrieved by the inaction of the MCD thereafter, filed an application for seeking revival of the aforesaid contempt petition. However, the said application came to be dismissed on 02.04.2024 on the basis of the status report dated 09.03.2024 filed by the MCD, in which it was *inter-alia* stated as under:

“6. That it is most respectfully submitted that Ms. Asim Fatima, owner of one of the portion of fourth and fifth floor filed representation hereby claimed that structures at her portion at fourth and fifth floor are very old and protected under Special Law. She requested that her premise sealed on 09/03/2022 may be de-sealed in the light of Special Act. It is submitted that presently “The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2023” are in force. It laid down that status quo as on 01/06/2014 in respect of unauthorized developments in unauthorized colonies shall be maintained till 31/12/2026. It further laid down that all notices issued by any local authority for initiating action against protected encroachment or unauthorized development shall be deemed to have been suspended and no punitive action shall be taken till the 31st day of December 2026.”



6. Learned counsel for the petitioner contends that the aforesaid status report filed by the MCD is in contravention to the situation projected by the MCD itself during the course of Cont. Cas(C) No.1214/2023, in which a categorical statement was made by the MCD that further demolition action would be taken *qua* the property in question. Had the property been protected under “The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2023”, there was no occasion for the MCD to make the said statement.

7. It is further submitted that the status report dated 17.03.2022, filed by the MCD itself during the course of hearing of W.P.(C) 12144/2021, makes it clear that the MCD was constrained to issue a work stop notice in respect of the property in question on account of the ongoing unauthorized construction. As such, once it was found that unauthorized construction was ongoing, there can be no applicability of the provisions of “The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2023” with regard to the property in question.

8. After some hearing, it is deemed apposite that the aforesaid contentions of the petitioner be duly considered by the MCD by treating the present petition itself as a representation and a speaking order be passed thereon. It is directed accordingly.

9. Let a speaking order be passed by the MCD, after affording an opportunity of hearing to the petitioner, within a period of four weeks from today. The MCD shall also afford an opportunity of hearing to the concerned owner/occupier of the property in question, if necessary.

10. With the aforesaid directions, the present petition along with pending application/s stands disposed of.



11. In case, the petitioner is aggrieved with the aforesaid exercise, she shall be at liberty to avail appropriate remedies in accordance with law.

SACHIN DATTA, J

APRIL 23, 2024/cl