



\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9125/2022 & CM APPL. 27464/2022, CM**
APPL.50053/2023, CM APPL. 50138/2023

SHAKUNTALA GULIANI & ANR.

.....Petitioners

Through: Mr. Anuj Gupta, Ms. Saguna
Gupta and Ms. Pinki Aggarwal,
Advocates

versus

NORTH DELHI MUNICIPAL
CORPORATION & ORS.

.....Respondents

Through:

Mr. Ashutosh Gupta, ASC with
Mr. Arman Monga, Advocate for
MCD
Mr. Amit Kocher, Advocate for R2
and R4.
Mr. Pramod Kumar, Advocate for
R-5

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

20.11.2024

1. The petitioners have filed this petition under Article 226 of the Constitution, complaining of alleged unauthorised construction by respondent nos. 2 and 3 in quarters Nos. 347 and 348, *Hakikat Nagar, Delhi-110009* [“subject property”].
2. I have heard Mr. Anuj Gupta, learned counsel for the petitioners, and Mr. Arman Monga, learned counsel for the Municipal Corporation of Delhi [“MCD”].
3. Mr. Gupta states that the unauthorised construction complained of is in respect of the second and third floor of the property in question.



4. MCD has filed three status reports. The first status report was filed on 26.08.2022, in which it is stated that unauthorised construction on the third floor was booked on 30.05.2022 after which a demolition order was passed on 14.06.2022.

5. In the next status report, dated 18.04.2024, it was stated that unauthorised construction was found in respect of the third floor. It was stated that a vacation notice was also issued on 01.04.2024. However, the owner/occupier of the third floor filed an appeal [Appeal No. 249/2024] before the Appellate Tribunal for MCD [“ATMCD”], in which an order dated 09.04.2024 was passed restraining MCD from taking coercive action pursuant to the demolition order dated 07.06.2022. I am informed that the said *status quo* order continues till today, and the appeal remains pending before the ATMCD. It is stated by learned counsel that action will be taken by MCD subject to further orders of the ATMCD.

6. A third status report has been filed on 30.08.2024, which deals with the second floor of the subject property. The contention of MCD is that the second floor construction was booked on 22.03.2002. As constructions prior to 08.02.2007 are protected by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 [“2011 Act”], no action has been taken. Mr. Monga draws my attention to the provisions of the said Act, by which a moratorium on action against such unauthorised construction has been imposed till 31.12.2026.

7. As far as the third floor is concerned, MCD has evidently taken action, which has been challenged by the owner/occupier before the ATMCD. No further directions can be passed at this stage in the present writ petition, except to note the submission of MCD that action will be



taken in accordance with law, consistent with the orders of the ATMCD. All rights and contentions of the parties before the ATMCD are reserved.

8. As far as the second floor is concerned, Mr. Monga relies upon the 2011 Act. However, Mr. Gupta submits that the moratorium under the 2011 Act has been held to be inapplicable to posh colonies/ plotted developments. He refers to a judgment of this Court dated 09.08.2010 in W.P.(C) No. 130/2008 [*Ravinder Kumar Makkar v. Municipal Corporation of Delhi*], in which the Court observed as follows:

“20. That brings me to the second contention of the counsel for the petitioner. The NCT of Delhi Laws (Special Provisions) Second Act, 2009 is not intended to suspend the statutory function of respondent MCD to ensure compliance of Building Regulations and to take action for its breach, in the entire city of Delhi. It is intended only for protection of that, policy with respect whereto and as defined in the Preamble to the Act, has not been finalised. The Preamble mentions housing for urban poor (who have formed unauthorised colonies, proposal for regularization whereof is underway), urban street vendors, village abadi areas, jhuggi jhopari colonies, farm houses etc. The house in question is situated in a posh colony of Delhi and can by no stretch of imagination fall within the ambit of the said Act. The said Act is not applicable to unauthorised constructions in regularized old established colonies of Delhi. There is therefore no merit in the said contention also.”

9. It may be noted that the aforesaid judgment is based upon an interpretation of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2009 [“2009 Act”] and not upon the 2011 Act, which is now in force.

10. Section 3 of the 2011 Act, to the extent relevant, is reproduced below:

“3. Enforcement to be kept in abeyance.-

xxxx

xxxx

xxxx

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status



quo—

(i) *as on the 1st day of January, 2006 in respect of encroachment or unauthorised development;*

(ii) *in respect of unauthorised colonies identified under the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Regulations, 2019, in respect of village abadi area (including urban villages) and their extensions, which existed on the 31st day of March, 2002, and in aforesaid categories, where construction took place up to 1st day of June, 2014, as mentioned in sub-section (1);*

(iii) *in respect of special areas as per the Building Regulations for Special Area, Unauthorised Regularised Colonies and Village Abadis, 2010; and*

(iv) ***in respect of all other areas within the National Capital Territory of Delhi as on the 8th day of February, 2007, shall be maintained.***

Explanation.—For the purposes of this sub-section, it is hereby clarified that any development approved by the competent authority or the local authority under the relevant laws and the rules or regulations made thereunder, including repairs permissible under the building bye-laws in force, shall continue to remain permitted.”

[Emphasis supplied.]

11. It is clear from Section 3(2)(iv) that *status quo* is required to be maintained in all areas of the National Capital Territory of Delhi, not covered in the preceding clauses of Section 3(2), as on 08.02.2007.

12. The statutory provision considered by the Court in *Ravinder Kumar Makkar* did not contain a corresponding bar. For the purposes of comparison, Section 3 of the 2009 Act, to the extent relevant, is set out below:

“3. Enforcement to be kept in abeyance.—

(2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status quo—

(i) As on the 1st day of January, 2006, in respect of encroachment or unauthorised development; and

(ii) In respect of unauthorised colonies, village abadi area (including urban villages) and its extension, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 8th day of February, 2007, mentioned in sub-section (1), shall be maintained.”



13. It may be noticed that the 2009 Act did not contain a residuary provision, of the sort incorporated in Section 3(2)(iv) of the 2011 Act, which makes the moratorium applicable in all parts of National Capital Territory of Delhi. The contention of Mr. Gupta in this regard, therefore, does not commend to me.

14. In the circumstances, as far as the second floor is concerned, MCD is inhibited from taking further action at this stage in view of the moratorium. The property has already been booked for unauthorised construction in the year 2002, which clearly demonstrates that construction was in existence prior to the cut-off date 08.02.2007. MCD may take further action if and when the statutory moratorium is lifted.

15. The writ petition, alongwith the pending applications, is disposed of with these directions.

PRATEEK JALAN, J

NOVEMBER 20, 2024

uk/AL/