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

+ **W.P.(C) 5669/2019 and CM APPL.24864/2019**

RAJ RISHI

..... Petitioner

Through: Mr. Rizwan, Mr. Azadar Husain, Ms.
Sachi Chopra, Mr. Vatsal Anand and
Ms. Nistha Sinha, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through: Mr. Ajjay Arora, Mr. Kapil Dutta,
Mr. Vansh Luthra and Mr. Simran
Arora, Advs. for MCD.
Mr. Rizwan, Mr. Azadar Husain, Ms.
Sachi Chopra, Mr. Vatsal Anand and
Ms. Nistha Sinha, Advs.
SI Babulal, PS Naraina.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

01.05.2024

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1. The present petition has been filed by the petitioner, *inter-alia*, seeking that no unauthorized construction be allowed to subsist in the ground floor of the property bearing No.G-242, Naraina, New Delhi. Further, it is sought that no structural change be allowed to be made by the owner/occupier of the ground floor of the property in question and that no commercial activity be carried out from the ground floor of the property in question.

2. *Vide* order dated 11.03.2024, it was directed as under:



“1. After some hearing, learned counsel for the MCD submits that a fresh inspection shall be carried out in the property in question, inter-alia, to ascertain:

- i. Whether any load bearing walls have been removed from the ground floor of the premises in question which impact the structural stability of the property in question;*
- ii. The purpose for which the basement of property in question is being used.*

2. It is agreed that the inspection of the property shall be carried out on 13.03.2024 at 02.30 PM in the presence of a representative of the petitioner Let a status report be filed within a period of one week thereafter.

3. It is assured and undertaken, on instructions that appropriate action in accordance with law shall be taken by the MCD, if warranted, pursuant to the inspection.

4. List on 01.05.2024.”

3. Pursuant to the aforesaid order, the property is stated to have been inspected. A status report has been filed on behalf of the MCD, wherein, it has been, *inter-alia*, stated as under:

*“4. That as per Conveyance Deed dated 04.07.2022 the ground floor, Plot No.242 in Block-G, measuring 200 sq. yds. situated in Naraina Residential Scheme, New Delhi is commercial. By virtue of this, the ground floor was/is being used for commercial purposes. At present, one CSB Bank is in operation at the Ground Floor, First Floor and barsati are lying vacant. The photographs take at the time of inspection of the suit property are annexed herewith as **ANNEXURE-A**.*

*5. That there exists Bank Lockers of the same Bank i.e. CSB Bank in the basement floor. It is pertinent to mention that DDA vide notification no.S.O.3844(E) dated 24.10.2019 had notified that Bank Lockers, if part of existing Bank, shall be allowed in the respective basement of same premises. Additional FAR amounting to Rs.4,63,007/- had been paid for the basement on 01.03.2023 for 63.74 sqm. NOC to open a branch of Bank at basement and ground floor was granted by the Respondent Corporation on 13.04.2023. The receipt of payment of additional charges paid by the occupier and NOC to open a branch are annexed herewith as **ANNEXURE-B (Colly.)**.*

6. That the Building Plan had been sanctioned by the DDA vide file



*No.F.5(2)/75 Dt. 27.05.1975 for Basement, Ground Floor, First Floor & a Barsati Floor. At the time of inspection, the site conditions vis. a vis. the Sanctioned Building Plan revealed that a wall running depth-wise, as sanctioned, was not in existence at the Ground Floor of the property. That the department had already sent a letter bearing no. D/848/AE(B)/KBA/2019 Dt. 20.05.2019 to the SHO, PS-Naraina, Delhi to get the work stopped, if any. Further, to ascertain the structural stability of the suit property a notice dated 22.04.2024 has been sent to the owners of Ground Floor, First Floor and Second Floor/Barsati calling upon them to provide the structural stability report from an empanelled structural engineer. The copy of the letter dated 22.04.2024 is annexed herewith as **ANNEXURE-C**.*

*7. That in case the structural stability certificate, as required, is not submitted by the owners/occupants of the property, requisite action under the provisions of the DMC Act, 1957 would be initiated. Further, it is respectfully submitted that the property has been booked for unauthorized construction/deviation from the sanctioned building plan and show cause notice u/s 344 (1) & 343 of the DMC Act has also been issued. Copy of the Show Cause Notice and the booking details are annexed herewith as **ANNEXURE-D**.”*

4. As such, it has been clarified by the MCD that the ground floor of the property in question can be used for commercial purposes. Therefore, it is not possible to accede to the prayer made by the petitioner that the owners/occupants of the ground floor be restrained from using the said floor for commercial purposes.

5. As regards the unauthorized construction/structural changes made in respect of the ground floor of the property in question, the aforesaid status report categorically states that during the inspection it clearly transpired that the actual construction therein is at variance with the sanctioned building plan inasmuch as a wall running depth-wise was not existent at the ground floor of the property. It is apprehended that the absence of the said wall may affect the structural stability of the property in question and hence to ascertain the structural stability of the property in question, a notice dated



22.04.2024 has been sent by the MCD to the owners/occupants of the ground floor, first floor and second floor/barsati calling upon them to provide the structural stability report from an empanelled structural engineer.

6. Learned counsel for the MCD submits that the ground floor of the property has already been booked for unauthorized construction/deviation from sanctioned building plan and a show cause notice u/s 344 (1) & 343 of the DMC Act has already been issued. He further submits and undertakes, on instructions that further appropriate action shall be taken pursuant to the said show cause notice for removal of the unauthorized construction and to ensure that the ground floor of the premises is in consonance with the sanctioned building plan. The said undertaking is taken on record.

7. It is further stated that requisite action, as may be warranted in accordance with law, shall be taken in case the structural stability certificate is not provided by the owners/occupants of the building in question.

8. Learned counsel for the MCD assures that the requisite action shall be taken latest within a period of eight weeks from today. Let a compliance affidavit be filed within a period of twelve weeks from today.

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

SACHIN DATTA, J

MAY 1, 2024/cl