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

+ **W.P.(C) 6496/2024**

SANJAY GUPTA & ANR.

..... Petitioners

Through: Mr. Rajat Aneja, Adv. alongwith Ms. Sonali Chopra, Mr. Sahil Gupta and Mr. Siddhartha and Ms. Garima Saxena, Advts.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr. Sanjeev Sabharwal, ASC for NDMC alongwith Ms. Shweta, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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10.05.2024

1. The present petition has been filed by the petitioner seeking that the respondent/New Delhi Municipal Council be directed to allow the petitioner's application dated 06.03.2024 and extend the time period granted to the petitioners to carry out repair/renovation work at the properties bearing No. E-40 & E-41, Connaught Place, New Delhi vide Permission/Sanction Letter dated 11.09.2023, by a further period of six (6) months.

2. The permission/sanction letter dated 11.09.2023 is in the following terms:-

“With reference to above cited subject and your above-mentioned online scheme, it is to intimate that your request for carrying out renovation work as per clause 2.0.1(d) of UBBL-2016 was forwarded to Heritage Conservation Committee for their NOC. Now, NOC from HCC under clause 7.26 and Annexure-II of UBBL-2016 has been received for carrying out the following works:-



Annexure-A

- 1. Plastering, POP punning*
- 2. Painting/Whitewashing*
- 3. Flooring/Re-flooring*
- 4. False Ceiling*
- 5. Temp wall panelling*
- 6. Electrical Wiring*
- 7 Waterproofing and plumbing works with new fixtures*
- 8. Re-roofing and filling of cut out at ground floor roof level & first floor level in open to sky area.*
- 9. Proposed internal doors and windows*
- 10. Repainting of external windows from inside*
- 11. Repairing of staircase*

You are further directed not to carry out any work beyond the Annexure-A without prior approval of NDMC, also directed adhere to the conditions of HCC mentioned in their letter, and comply with the following during renovation work

- 1. The malba during the renovation work should be removed on weekly basis.*
- 2. Noise related activities should not be taken up for renovation work at night after 10:00 pm.*
- 3. The renovation work shall be completed within 6 month from the date of issue of this letter and also inform NDMC after completion of Renovation Work.*
- 4. The work will be carried out strictly as per approval & observations of HCC vide their letter No. 6(34)/2023-HCC-online OL-1008236034 dt. 31.08.2023.*
- 5. If the premise is used for any activity which requires NOC from Delhi Fire Service (DFS), prior NOC from DFS shall be obtained before use of space.*
- 6. This letter will not give any legal right for regularization if any, unauthorized construction, change of use and legal title of the premises.*
- 7. The provisions of UBBL for Delhi, 2016 and MPD, 2021 shall follow without fail.*
- 8. As per directions of HCC the following points are to be strictly adhered, being Heritage building.*
 - (i) No changes are permitted on the external facade, which should be retained as per the original design. It should be ensured that the repair work be carried out on-site upholding the originality of the structure in terms of its heritage character, construction, colour, form, materials etc.*



I (ii) Standardisation of the materials, colour scheme, colour grade, grooves, ' and overall originality of each element of the existing heritage structure l be ensured by the NDMC.

(iii) The structural safety of the building should be ensured.

(iv) All outdoor air-conditioning units shall be such installed that they should i not remain visible on external facade.

(v) NDMC shall ensure that the placement, size, colour, text etc. of the signage/signboards etc. be as per approved policy/ guidelines prepared by NDMC for the Connaught place area.”

This issues with the prior approval of Director (A&E)”.

3. Learned counsel for the petitioner has drawn attention to the fact that the necessary repair/renovation could not be carried out within the time granted *vide* the aforesaid letter, in view of obstruction/hindrances by the owner/occupier of the adjacent property and as result of which, the petitioner was compelled to initiate court proceedings. The said court proceedings culminated in favour of the petitioner only on 08.01.2024.

4. In this regard, reliance has been placed on the order/judgment dated 08.01.2024 passed in FAO No(s).-300/2023 & 301/2023 in which a coordinate bench of this Court finally concluded as under:-

“26. To sum up the aforesaid discussion, it prima facie appears that the respondents/plaintiffs are the owners and in occupation of the suit property No. E-40 & 41 and their claim that they have been in possession of the roof/open terrace cannot be said to be wrong on facts and in law. Learned ADJ has rightly found that the appellants/defendants by their own admission at one place have asserted that the user of the roof/open terrace has been permissive with the consent of its owner Mr. Y.N. Gupta, and at this stage of the matter, there is not an iota of material to show that there has been any open and hostile declaration by the appellants/defendants to claim ownership of the roof/open terrace over the suit property by way of adverse possession and to the total exclusion of the respondents/plaintiffs. Undoubtedly, the balance of convenience lies in favour of the respondents/plaintiffs and they have now received approval from the NDMC for carrying out repairs and renovation vide letter dated 11.09.2023, which deadline is expiring by 11.03.2024. No irreparable loss or damage shall be caused to the appellants/defendants in case the respondents/ plaintiffs are allowed



to have access, ingress and egress to their own property i.e. roof/open terrace so as to carry out repairs and renovations as per the law. The appellants/respondents can very well make suitable alternate arrangements to wash their utensils etc. in connection with their business.

27. This Court, therefore, finds that the impugned order dated 10.11.2023 does not suffer from any illegality, perversity or incorrect approach in law. Accordingly, the present appeals are dismissed upholding the impugned common order dated 10.11.2023 passed by the learned ADJ. However, nothing contained in this judgment shall tantamount to an expression of opinion on the merits of the case. Needless to state that the issues raised by the appellants/defendants in the counter claim are matter of trial and could only be appreciated after evidence is led by the parties.”

5. Since the permission/sanction granted *vide* order dated 11.09.2023 was valid only till 10.03.2024, the requisite repair/renovation work could not be carried out by the petitioner within the time granted *vide* the said permission/sanction letter dated 11.09.2023, hence the present petition has been filed.

6. Mr. Sabharwal, learned standing counsel for the respondent/NDMC submits that instead of carrying out the repair/renovation work in terms of permission/sanction letter dated 11.09.2023, the petitioner has in fact demolished the structure of the property in question which is in violation of the pre-condition/s mentioned in the letter dated 11.09.2023 wherein it was specifically stated that the repair/renovation would be carried out as per the guidelines of the Heritage Conservation Committee.

7. Learned counsel for the petitioner refutes that there has been any violation of the relevant guidelines of the Heritage Conservation Committee or any of the restrictions that were made applicable to the petitioner *vide* the said permission/sanction letter dated 11.09.2023.

8. It also transpires during the course of hearing that a letter dated



10.04.2024 has been issued by the department of Architecture, NDMC to submit the construction methodology to ensure strengthening of existing heritage structure alongwith the methodology for recasting roof slab as per the conservation techniques duly vetted by the Conservation Architect.

9. Learned counsel for the petitioner submits that the construction methodology adopted by the petitioner is in accordance with the construction techniques approved by the Heritage Conservation Committee and that the letter dated 10.04.2024 has already been responded to by the petitioner.

10. Considering the aforesaid circumstances and the submission of the respective counsel, following directions are issued:-

(i) The time period afforded to the petitioner for carrying out repair/renovation work in the property bearing No. E-40 & E-41, Connaught Place, New Delhi *vide* letter dated 11.09.2023 is extended by a period of 5 months from today. The petitioner shall be at liberty to resume the repair/ renovation work.

(ii) The above shall be subject to the petitioner being in strict compliance with the construction guidelines of the Heritage Conservation Committee and subject to the petitioner responding to the letter dated 10.04.2024 issued by the department Architecture, NDMC and satisfying the Department of Architecture, NDMC as to the construction methodology being followed by the petitioner.

(iii) The concerned official from the Department of Architecture, NDMC shall grant an opportunity of hearing to the petitioner on 13.05.2024 at 2.00 PM, to enable the petitioner to



satisfy and demonstrate that the construction methodology being followed by it is as per the permission/ approval granted vide letter dated 11.9.2023. Needless to say, in case the Department of Architecture, NDMC/Heritage Conservation Committee concludes that any violation has been committed by petitioner as regards the applicable construction guidelines, it shall be at liberty to take appropriate action in accordance with law including revocation of the permission/sanction issued *vide* letter dated 11.09.2023.

11. The present petition alongwith all the pending application/s stands disposed of in terms of the aforesaid directions.

SACHIN DATTA, J

MAY 10, 2024/at