



2024:DHC:5132-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6523/2024 & CM APPL. 36256/2024, CM APPL. 36257/2024, CM APPL. 37794/2024, CM APPL. 37860/2024

MANAS VIHAR CGHS LTD.

.....Petitioner

Through: Mr.S.Ghosh, Advocate with
Mr.K.T.Chandramohan, Treasurer,
Mr. Bhaskar Mishra, Joint Secretary

versus

MUNICIPAL CORPORATION OF DELHI

& ORS.

.....Respondents

Through: Mr.Akhil Mittal, Standing Counsel
for R-1
Mr.Avishkar Singhvi, ASC with
Mr.Vivek Kumar Singh, Mr.Naved
Ahmed and Mr.Shubham Kumar,
Advocates for R-2
Mr.Vishwendra Verma, Ms.Shivali
and Ms.Riya Kumari, Advocates for
R-3

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Date of Decision: 09th July, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present writ petition has been filed by the petitioner-cooperative society seeking a direction to the respondent no.1/MCD to conduct a survey and inspection of the unauthorized encroachment and construction carried out by respondent no.3/Bina Mathur and to demolish the same in accordance

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with law. Petitioner society seeks a direction to respondent no.2/RCS to produce the records pertaining to orders dated 17th August 2023 and 27th October 2023 and quash the same. The petitioner society also seeks a declaration that the petitioner is entitled to impose penalty on defaulting members in case of unauthorized construction / encroachment.

2. Admittedly, during the pendency of the present petition, respondent no.1/MCD has booked unauthorized construction in 13 flats in the petitioner's society and has also carried out partial demolition.

3. Learned counsel for the MCD assures this Court that the remaining demolition shall be carried out on 15th July 2024 provided the police force is available.

4. At this stage, learned counsel for the respondent no.3 states that the present writ petition is not maintainable as the petitioner has an alternative efficacious remedy of arbitration under Sections 70 and 71 of the Delhi Cooperative Societies Act, 2003. In support of his submission, he relies upon the judgment of the Supreme Court in ***PHR Invent Educational Society vs. UCO Bank & Others***, 2024 SCC OnLine SC 528 decided on 10th April 2024.

5. Learned counsel for respondent no.3 also states that the unauthorized construction, if any, has been carried out within the four corners of the flat and therefore MCD has no right to carry out any demolition.

6. Learned counsel for the petitioner states that respondent no.3 had carried out not only unauthorized construction but also encroachment on society land which recently stands removed by the respondent no.3 at her own initiative. He points out that only the elevated base is yet to be removed.



7. This Court is of the view that Sections 70 and 71 of the Delhi Cooperative Societies Act, 2003 are not attracted to the facts of the present case as the demolition action has to be taken by the MCD and not by the Cooperative Society. Consequently, the judgment of the Supreme Court in *PHR Invent Educational Society* (supra) is inapplicable to the present case.

8. This Court is further of the view that MCD under the Delhi Municipal Corporation Act is fully empowered to remove any illegal and unauthorised construction even if it happens within the four corners of a house/flat. In fact, the present writ petition, which has been filed to ensure that the MCD carries out its statutory duty, is maintainable.

9. It is settled law that the penalty can only be enforced if the law imposes it. Accordingly, this Court is of the opinion that it is not open for the petitioner-society to impose any penalty as there is no statutory backing for the same.

10. Consequently, this Court disposes of the present writ petition with a direction to the MCD to take action in accordance with law as expeditiously as possible. The Delhi Police is directed to render all assistance to the MCD. If respondent no.3 is aggrieved by any action of MCD, she shall be at liberty to take steps in accordance with law.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 9, 2024/ms