



2024:DHC:4306



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 15th May, 2024***+ **CONT.CAS(C) 801/2024 & CM APPL. 28957/2024****DARSHAN SINGH POPLI** Petitioner

Through: Mr. Vivek Kumar Tandon with Ms.
Kanik Rathore, Advocates.
(M): 9810177733
Email: vivekkumartandon@gmail.com

versus

MR GYANESH BHARTI Respondent

Through: Mr. Shekar Gupta with Mr. Shashank
Upadhyay, Advocates for Mr. Nutan
Garg, Ms. Monika Garg and Ms.
Anita Garg.
(M): 7566060069
Email: shashank473@gmail.com
Mr. Chetanya Singh, SC with Mr.
Chetan Sharma, Advocate for
respondent/MCD.
(M): 7503354848

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (Oral)

CM APPL. 28957/2024 (for exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.



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3. The present petition has been filed alleging willful disobedience of the order dated 15th December, 2023 passed in W.P. (C) No. 9428/2023, wherein, the following directions were passed:-

“xxx xxx xxx

1. The petitioner claims to be owner of property No. A-102, Jagat Puri, Delhi. He has filed this petition seeking action on behalf of the Municipal Corporation of Delhi [“MCD”] in respect of unauthorised construction in the property. According to him, the unauthorised construction has been erected by unauthorised occupants/trespassers.

xxx xxx xxx

5. In these circumstances, the writ petition is disposed of with the direction that MCD will inspect the property again and in the event any part of the existing construction is found to be unauthorised, MCD will initiate necessary action in accordance with law within a period of four weeks from today. Mr. Chetanaya Singh, learned counsel for MCD, states that the action will be carried to its logical conclusion within three months thereafter.

xxx xxx xxx ”

4. Learned counsel appearing for the petitioner submits that despite the aforesaid directions, no action has been taken on behalf of the Municipal Corporation of Delhi (‘‘MCD’’).

5. Per contra, learned counsel appearing for the respondent/MCD, on advance notice, has handed over copy of a report dated 05th January, 2024 issued by the Office of the Executive Engineer (Building), Shahdara South Zone. The same is taken on record.

6. As per the said report, pursuant to the order dated 15th December, 2023, the MCD issued a letter dated 26th December, 2023 to the occupiers of the property in question, i.e., A-102, Jagatpuri, Delhi. On the basis of the



documents, as submitted by the occupiers of the property, the concerned official of the MCD inspected the property again on 04th January, 2024. Thus, the relevant portion of the aforesaid report of the MCD, reads as under:-

“xxx xxx xxx

4. *Moreover, undersigned again inspected the site in question on 04.01.2024 as per direction of Hon'ble High Court of Delhi and reported that the property A-102, Jagatpuri, Delhi is approximately of 200 Square Yards and seems to be converted into 3 portions. The composition of construction is as under:-*

i. *First Part facing to Gali No. 08 adjoining to property No. A-103, Jagatpuri, Delhi consists of Ground Floor having shutter installed which is not in use at present.*

ii. *Second Part facing to Gali No. 08 adjoining property No. A-101, Jagatpuri, Delhi consists of Ground Floor & only one room at First Floor without any gate with brick staircase. No person seen/noticed.*

iii. *Third Part facing to Gali No. 09 consist of Ground Floor & First Floor which has been demolished by the department and found sealed at present.*

Moreover, all the construction is very old as per local enquiry and site position.

From the above submitted submission (s)/document (s)/averment (s) and earlier report filed by this Corporation before various court of law, it can safely be inferred that the construction at these parts of property under reference was constructed prior to cut of date of protection as per Delhi Special Laws.”

7. Perusal of the aforesaid shows that it is the clear stand of the MCD that action against the unauthorised construction, existing in the property in question, has already been taken, and that the existing construction in the property is protected under the Delhi Laws (Special Provisions) Second Act, 2011.



8. At this stage, Mr. Shekhar Gupta, learned counsel puts in appearance and submits that though the occupiers of the property in question have not been impleaded in the present petition, he is appearing in the matter, having perused the cause list. He has handed over copy of the order dated 04th December, 2019 passed in W.P. (C) No. 7286/2018, to submit that the present petitioner had approached this Court earlier also, with similar prayer for demolition of the alleged unauthorised construction. He submits that by the aforesaid order dated 04th December, 2019, this Court had categorically come to a conclusion that the petition was motivated.

9. The relevant portions of the order dated 04th December, 2019, passed in W.P. (C) No. 7286/2018, read as under:-

“xxx xxx xxx

9. *It is manifest that actually a civil dispute is pending between the petitioner and the private respondents No.4 to 8, which is now being sought to be urged before this court.*

10. *I may only note that the status report has been filed by respondent No.1/EDMC. It has been pleaded that as per record, the property in question has been divided into four portions with two portions facing Gali No.8 and two portions facing Gali No.9. As far as portion facing Gali No.9 is concerned, demolition action was taken on the said property in a manner so that the same cannot be used. This demolition was done long ago and the property was made inhabitable and unusable. The said property facing Gali No.9 was again inspected on 03.12.2018 and the conditions of the property was found to be inhabitable and unusable. The said property is lying sealed. It was noticed that the seal was damaged due to weather conditions and the property was re-sealed on 03.12.2018. As far as the portions of the property facing Gali No.8 are concerned, the same is being used by some labours since the beginning. As per local enquiries no commercial activity is being carried out in the said portions.*

11. *The learned counsel for the petitioner however states that the entire property may be sealed and made inhabitable and unusable as it is unauthorised and illegal.*

12. *I may only note that earlier also litigation has been initiated by the*



petitioner seeking somewhat similar relief. A contempt case was also filed against respondent No.1/EDMC being Cont. Cas(C) 95/2000 which was disposed of on 21.05.2004. It was noted that some activity of marble cutting was going on. A direction was also issued to MCD to take appropriate action in this behalf so as to ensure that no such activity takes place in the area. Presently there is no such allegations of any marble cutting going on.

13. One cannot help to reach a conclusion that this petition is motivated. There is a civil dispute pending between the petitioner and private respondents No. 4 to 8. The petitioner has filed a suit against the said private respondent seeking possession of the property and damages. In view of the said conclusion, I see no reason for this court to entertain the present writ petition.

14. Apart from the above, in any case, in my opinion nothing further survives to be adjudicated upon. EDMC has in its status report clearly stated that the two portions of the house which face Gali No. 9 have been rendered inhabitable and unusable. Regarding property facing Gali No. 8, as per the report, no commercial activity is going on.

15. I hence dispose of the writ petition directing respondent No 1-EDMC to continue to deal with the property in terms of the order of this court dated 21.05.2004.”

10. Subsequently, a Review Petition being *Review Petition 37/2021* was filed by the petitioner herein, which was also dismissed as withdrawn, vide order dated 18th April, 2022, in the following terms:-

“1. After some arguments, learned counsel for the petitioner, on instructions, seeks leave to withdraw the review petition.

2. Leave, as prayed for, is granted and the review petition is dismissed as withdrawn.”

11. Perusal of the aforesaid orders, manifest that there is a civil dispute which is pending between the petitioner herein and other private parties, who Mr. Shekhar Gupta, Advocate, represents.

12. Mr. Shekhar Gupta submits that his clients are in occupation of the property in question, for which, the petitioner herein has filed a civil suit



seeking possession and damages. It is submitted that the said civil suit is still pending between the parties.

13. Per contra, Mr. Vivek Kumar Tandon, learned counsel appearing for the petitioner submits that all the facts regarding the pending civil dispute between the parties, were duly brought to the notice of the Court in the writ proceedings. He further submits that the order dated 15th December, 2023, itself reflects that civil dispute is pending with respect to the property in question. Thus, he submits that there is no suppression of facts by the petitioner before the Court.

14. He further submits that the MCD has only sent the notice asking for documents from the clients of Mr. Shekhar Gupta and not to the petitioner, who is the owner of the property in question.

15. However, the claim of the petitioner, as owner of the property, is disputed by Mr. Shekhar Gupta.

16. Having heard learned counsel for the parties, it is held that this Court cannot go into the disputed questions of facts as regards the ownership of the property in question, in the present proceedings. This Court further notes that a civil dispute is already pending as regards the possession and ownership of the property in question.

17. For the purpose of the present petition, this Court notes the report submitted by the MCD, wherein, it is categorically submitted that only old construction is existing in the property as of now, and that the demolition action against the unauthorized construction existing in the property, already stands taken by the MCD.

18. Considering the aforesaid report submitted by the MCD, no further orders are required to be passed in the present petition.



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19. The petition is accordingly, disposed of.

MINI PUSHKARNA, J

MAY 15, 2024

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Signature Not Verified

Digitally Signed By: CHARU
CHAUDHARY
Signing Date: 27.05.2024
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