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

+ **W.P.(C) 11548/2022 and CM APPL. 1254/2024**

**SATISH KUMAR GUPTA**

.....Petitioner

Through: **Ms. Vibha Dutta Makhija, Sr.  
Adv. with Mr. Praveen Gaur  
and Mr. Karan, Advs.**

versus

**UNION OF INDIA & ANR.**

.....Respondents

Through: **Mr. Raj Kumar, CGSC with  
Mr. Ankit Choudhary and Mr.  
Sumit Choudhary, Advs.  
Mr. Ajay Arora, SC for MCD  
with Mr. Kapil Dutta and Mr.  
Vansh Luthra, Advs.  
Mr. Tushar Sannu, SC for MCD**

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**ORDER**

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**12.07.2024**

1. The petitioner in the present writ petition essentially seeks for directions to de-seal and regularize the property bearing no. 1088-A, Ward No.1, Mehrauli, New Delhi-110030. For the sake of clarity, the relief clause is reproduced as under:-

*“a. Issue a Writ, Order or Direction in the nature of a Writ of Certiorari to call for the records with respect to the said property from the Respondents 1 and 2.*

*b. Issue a Writ, Order or Direction in the nature of a Writ of Mandamus or any similar writ of a like nature directing Respondent 2 to de-seal the above said property.*

*c. Issue a Writ, Order or Direction in the nature of a Writ of Mandamus or any similar writ of a like nature directing Respondent 2 to regularise the authorised construction.*



*d. Issue a Writ, Order or Direction in the nature of a Writ of Mandamus or any similar writ of a like nature directing Respondent 1 to grant permission for repair and renovation of above said property.”*

2. Shorn of unnecessary details, the facts of the case would indicate that the petitioner, by way of sale deed dated 05.09.2011, claims to have purchased the aforesaid property from a person, namely Mr. Ravinder Digani. The history of earlier litigation in its entirety may not have any relevance for the adjudication of the present case, except to take note of the fact that W.P. (C) No. 8055/2012 with respect to the said property, came to be disposed of by this Court *vide* order dated 15.02.2018. The relevant paragraphs of the said decision read as under:-

*“16. Clearly, no order for de-sealing the said property could be passed without obtaining orders from this Court. The matter regarding unauthorised construction was pending before this Court and as noticed above, several orders have been passed from time to time with regard to the said property. This Court is, prima facie, of the view that the action on the part of SDMC in de-sealing the property amounts to overreaching the process of this Court and the same cannot be countenanced.*

*17. Mr Sagar, the learned counsel appearing for SDMC contended that in terms of the National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011, the building raised on the said property could not be demolished. The said contention is unmerited. The photographs annexed with the application indicate that the fresh construction has been raised on the ground floor after the said property had been sealed. Such construction is clearly not protected under the said Act.*

*18. In view of the above, the SDMC is directed to forthwith take steps to demolish the additional construction raised on the said property as is clearly indicated in the photographs annexed with the application (CM 26208/2017). Any additional construction raised beyond what is indicated in the photographs dated 29.12.2014 (at page 242 of the Paper book) would be removed by the SDMC immediately. Further, the said property is directed to be re-sealed after evicting the occupants in order to restore*



the condition as was obtaining on 09.01.2015 (as indicated in the status report dated 09.01.2015).

19. As contended by the learned counsel for ASI, the said property in question falls within the prohibited zone and, therefore, no construction is/or was permissible. In this view, the SDMC shall ensure that the said property continues to remain sealed and is not permitted to be occupied for any purpose.

20. The Commissioner, SDMC shall ensure that an affidavit of compliance is filed within a period of six weeks from today.

21. The petition and the applications are disposed of with the aforesaid directions.”

3. The aforesaid decision, came to be challenged by the petitioner, whereby, the Division Bench of this Court vide order dated 03.04.2018 in LPA 164/2018 disposed of the said appeal with the following observations:-

*“The appellant is aggrieved by an order of the learned Single Judge dismissing the writ petition with respect to the unauthorised construction in property bearing No.1088-A, Ward No.1, Mehrauli, New Delhi. The learned Single Judge had noticed the earlier orders and after perusing the materials on record, including photographs of the construction, held that evidently they were unauthorised. The learned Single Judge therefore declined to grant relief in respect of the threat of demolition. Learned counsel for the appellant submits that after the impugned order of 15.02.2018, the additional construction was demolished and that in the light of these developments, the seals placed on the premises should be removed.*

**This Court is of the opinion that in case the appellant wishes to apprise the Municipal Authority (SDMC) of these developments, he is at liberty to do so with appropriate documents. In such event the SDMC shall pass appropriate orders in this regard either acceding to the request or declining it or indicating if any further objections to the de-sealing survive. In case such a representation or application is made, the SDMC shall deal with it and pass an appropriate speaking order within four weeks of the receipt of the representation and shall communicate it directly to the appellant.**

*The appeal is disposed of in the above terms.”*



4. It is thus seen that the petitioner was granted liberty to apprise the respondent-Corporation along with relevant documents for mitigation of his grievance. The petitioner, thereafter, appears to have approached the respondent-Corporation by way of the representation dated 24.01.2019 for regularization of the said property. It is also seen that earlier, the petitioner has submitted certain representations/applications before the respondent-Corporation. According to the learned counsel appearing for the respondent-Corporation, on examining of the various deficiencies, the representation dated 24.1.19 was replied *vide* 'invalid notice' dated 07.02.2019. Since the Corporation did not receive any response from the petitioner, resultantly, the application suffered dismissal *vide* order dated 03.05.2019.

5. The petitioner appears to have again approached the respondent-Corporation *vide* another representation dated 23.11.2021, which appears to have been decided by the order dated 20.12.2021.

6. A perusal of the facts would indicate that the first rejection order ought to have been challenged by the petitioner, however, learned senior counsel appearing for the petitioner submits that the same was not at all communicated to the petitioner.

7. Learned counsel appearing for the respondent-Corporation, asserts that not only the first representation was rejected *vide* order dated 03.05.2019 but even the second representation was also rejected *vide* order dated 20.12.2021.

8. The court finds that the reasons for rejection of second representation is the reiteration of the earlier one. There also appears



to be dispute with respect to the service of ‘invalid notice’ as to whether the same was duly served upon the petitioner or otherwise.

9. Ms. Makhija, learned senior counsel appearing for the petitioner contends that in any case, the property in question ought not to remain sealed till perpetuity. According to her, the remaining structure is not an unauthorized structure and, therefore, the petitioner is entitled to use premises which stands free from any legal impediments. She further submits that on account of past infractions, the said property cannot remain sealed and in the interest of justice, the same must be de-sealed to protect the constitutional rights of the petitioner.

10. The petitioner should have challenged at least the second order if not the first one on account of alleged non-service thereof. The Court, however, under the facts of the present case, at this stage, is not inclined to adjudicate on the aforesaid aspects. the fact remains that this petition remains pending since 2022 and the interest of justice would be better served if the respondent-Corporation is directed to deal with the petitioner’s representation strictly in view of the observations made by the Division Bench of this Court and on the basis of the applicable rules and regulations. The Court, therefore, disposes of the petition with the following directions:-

- i. The matter stands restored with the respondent-Corporation at the stage of issuance of invalid notice dated 7.2.19.
- ii. The petitioner is at liberty to furnish comments/rectification or to satisfy the Corporation that there exists no defect.
- iii. On receiving the petitioner’s response, the Corporation is directed to extend opportunity of hearing to the petitioner or to petitioner’s authorized representatives.



- iv. The Corporation, thereafter, is directed to pass a speaking order within a period of four weeks strictly in accordance with law.
11. In view of the aforesaid, since this Court is of the view that the respondent-Corporation shall take up the matter afresh at the stage of issuance of invalid notice dated 07.02.2019, therefore, the subsequent orders dated 03.05.2019 and 20.12.2021 should not come in way of the Corporation to deal with the representation afresh. The decision shall be taken afresh.
12. All rights and contentions of the parties are left open. In case, any adverse orders are passed by the respondent-Corporation, the petitioner is at liberty to take up the same in accordance with law.
13. Pending application(s), if any, are also disposed of.

**PURUSHAINDR KUMAR KAURAV, J**

**JULY 12, 2024/P**