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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 23.04.2024

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W.P.(C) 11476/2021 & CM APPL.7763/2024**DANISH INFRATECH PVT. LTD.**

..... Petitioner

Through: Mr. Sanjoy Ghose, Sr. Adv. along
with Mr. Anshuman, Mr. Rohan
Mandal and Mr. Piyush Ahluwalia,
Advts.

versus

DELHI CANTONMENT BOARD

..... Respondent

Through: Mr. Tarveen Singh Nanda, Standing
Counsel (through VC).

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition assails an order dated 09.10.2014 passed under Section 249 of the Cantonments Act, 2006. By way of the said order, the premises belonging to the petitioner i.e., CB-390, Village Naraina, Delhi Cantt-10 have been sealed. The aforesaid sealing action has been taken under Section 249 of the Cantonment Act, 2006 which reads as under:-

"249. Power to seal unauthorised constructions

(1) It shall be lawful for the Chief Executive Officer, at any time, before or after making an order of demolition under section 248 or of the stoppage of erection of any building, or execution of any work, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed at the cost of the offender in such manner as may be prescribed by rules for the purpose of carrying out the provisions of this Act or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection



or work is being carried on, has or, has been sealed, the Chief Executive Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except-

(a) under an order made by the Chief Executive Officer under sub-section (2); or

(b) under an order of an appellate authority in an appeal made under this Act.

(4) Any person who contravenes the provisions contained in sub-section (3) shall be punishable with imprisonment which may extend to six months or with fine which may extend to twenty thousand rupees, or with both."

2. It is evident from a perusal of the aforesaid statutory provision that the sealing action contemplated under Section 249 of the Cantonments Act, 2006 is referable to, and in aid of the demolition action proposed to be taken qua the property in question.

3. *Vide* order dated 11.09.2023, this Court took note of the fact that the petitioner has filed a short affidavit dated 08.09.2023 in which it has been brought out that the subject property is one of 1894 properties, with regard to which the respondent/DCB has taken a decision to suspend demolition action. The said order records the submission of the petitioner that the sealing action qua the subject property was taken only on the ground that the property is required to be demolished.

4. A short affidavit came to be filed by the respondent/DCB pursuant to the aforesaid order dated 11.09.2023, in which it has been brought out that "The Board *vide* CBR No.20 dated 08.02.2021 decided to maintain *status quo* and to suspend demolition of unauthorized construction till notification of Bye Laws". Thus, the demolition of the property of the petitioner, and all the 1894 properties, is currently not on the anvil. This position is admitted by the learned counsel for the respondent.



5. It is also submitted by learned senior counsel for the petitioner that no sealing action has been taken with regard to any of the other 1894 properties, and the petitioner has been singled out in this regard. In response, the learned counsel for the respondent submits that “3-4 other properties have also been sealed”. There is no explanation as to the selective approach adopted for the purpose of the sealing action.

6. During the course of hearing, learned counsel for the respondent also accedes that the demolition of unauthorised construction qua all the 1894 properties has been put on hold on account of “administrative stay” granted by the Cantonment Board. As such, since the demolition of the property in question is not on the anvil, the indefinite continuation of a sealing order under Section 249 of the Cantonments Act, 2006 is unwarranted.

7. Learned counsel for the respondent contends that the present petition ought not to be entertained in view of the bar contained in Section 250 of the Cantonments Act, 2006.

8. The bar under the aforesaid statutory provision cannot preclude the petitioner from invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. In any event, the premise on the basis of which the sealing action was taken, viz. the proposed demolition action, does not survive in view of the aforesaid decision of the Cantonment Board itself. Also, importantly, there is no rationale for selective and arbitrary sealing action, when admittedly, similar action has not been taken qua the other 1894 properties.

9. Consequently, the said order dated 09.10.2014 is quashed. However, the same shall be subject to petitioner furnishing an undertaking that it shall maintain *status quo* as regards title, possession and construction of the



property in question. Let an undertaking on affidavit in this regard be filed in this Court within a period of 2 weeks from today, with advance copy to learned counsel for the respondent. Upon submission thereof, the property in question shall be de-sealed.

10. Needless to say, the aforesaid directions are subject to any policy decision/guidelines that may be framed by the respondent with regard to action proposed to be taken *qua* the 1894 cantonment properties.

11. The present petition, along with pending application/s, stands disposed of in the above terms.

SACHIN DATTA, J

APRIL 23, 2024

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