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

+ **W.P.(C) 11979/2021**

MOHD. ZAKRIA

.....Petitioner

Through: Ms.Komal Chhibber and Mr.Sahil
Kalra, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS.

.....Respondents

Through: Mr.Manu Chaturvedi, SC for MCD.
Mr.Tushar Sannu and Mr.Sahaj
Karan Singh, Advs for GNCTD.
Mr.Shashi Pratap Singh and
Ms.Urvashi, Advs for R-4.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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12.09.2024

1. The petitioner in the instant writ petition prays for the following reliefs:-

"(a) By issuance of writ of mandamus to respondent no. 1 to immediately stop the illegal construction on the property of the respondent no. 5 and 6 for which no permission has been granted by the respondent no. 1;

(b) To direct the Respondent no. 1 to 4 or any other appropriate writ(s) or direction(s), the respondent no. 1 be directed to remove the encroachment of public land, Old Brij Puri, Delhi/Khureji Khas, Delhi.

(c) To direct the Respondent no. 1 to 4 to immediately take legal action against the relevant officials, who in the garb of policy decision are acting hand in gloves with people like respondent no 5 and 6 and letting the public lands/roads/pavements being usurp by notorious people like the respondent no. 5 and 6.



(d) To direct the respondent no. 3 to provide police protection to the officials of respondent no. 1, 2 and 4 for the demolition work on the illegal encroachments and unauthorized construction carried out by the respondent no. 5 ad 6.

(b) Any other and further order, which this Hon'ble court may deem fit and proper may also be passed in the facts and circumstances of case."

2. One of the earlier Status Reports dated 18.02.2022 indicates that the respondent-MCD took action of partial demolition of the property in question. Paragraph nos.2 to 7 of the said report reads as under:-

"2. That, as reported by the Executive Engineer (Building)-I, Shahdara (South) Zone, there are four properties which are under construction without intimation or sanctioned building plan, having the same address i.e. 251, Khureji Khas, Delhi. ('Property in question')

3. That, the unauthorized construction (Part pertaining to Sh. Tajuddin/Respondent Nos. 5&6) in the form of raising RCC column and brick-wall at ground floor was booked vide file No .1 73/B/U C/S S/021 dated 01.11.2021. Show Cause Notice dated 01.11.2021 under Section 343/344 of Delhi Municipal Corporation Act, 1957 was sent to Sh. Tajuddin to stop construction work with immediate effect and to explain the reasons as to why order of demolition be not passed in respect of construction already carried out. Subsequently, demolition order against the impugned property was passed on 02.12.2021 after following due process of law. The demolition action was taken on 28.12.2021 and 15.02.2022 wherein two RCC columns were demolished and reinforcement was cut down with help of gas cutter in the presence of police force. Photographs to this effect are annexed as Annexure R-1.

4. That, the unauthorized construction (Part pertaining to Sh. Zahid) in the form of raising ground floor, first floor, second floor, third floor & fourth floor with projection on municipal land was booked vide file No.174/B/UC/SS/021 dated 01.11.2021. Show Cause Notice dated 01.11.2021 under Section 343/344 of Delhi Municipal Corporation Act, 1957 was sent to Sh. Zahid to stop construction work with immediate effect and to explain the reasons as to why order of demolition be not passed in respect of construction already carried out. After following due process of law, demolition order was passed on 02.12.2021. As per the demolition order, the demolition action was executed on 15.02.2022 where one RCC panel of top floor was demolished and reinforcement



was cut down with help of gas cutter in the presence of Police Force. Photographs to this effect are annexed as Annexure R-11 (Colly).

5. That, the unauthorized construction (Part pertaining to Sh. Mohd. Sher) in the form of raising ground floor, first floor, second floor, third floor & fourth floor was booked vide booking file No.175/BIUC/SS/021 dated 01.11.2021. Show Cause Notice dated 01.11.2021 under Section 343/344 of Delhi Municipal Corporation Act, 1957 was sent to Sh. Mohd. Sher to stop construction work with immediate effect and to explain the reasons as to why order of demolition be not passed in respect of construction already carried out. Demolition order was passed on 02.12.2021 in accordance of law. It is further submitted that sealing proceeding under Section 345- A of the Delhi Municipal Corporation Act, 1957 was also initiated against the above said unauthorized construction and sealing order was passed after following due process of law. The premise I above property has been sealed at various points on second, third & fourth floor in the presence of police force on 15.02.2022.

6. That, the unauthorized construction with same address of property under reference was booked vide file No.197/B/UC/SS/021 dated 25.06.2019 in the form of first floor and raising of wall and pillar with laying of shuttering on second floor. Show Cause Notice dated 25.06.2019 under Section 343/344 of Delhi Municipal Corporation Act, 1957 was sent to owner/builder to stop construction work with immediate effect and to explain the reasons as to why order of demolition be not passed in respect of construction already carried out. Subsequently, demolition order was passed on 08.07.2019 after following due process of law.

7. That, further action against unauthorized construction over the properties in question shall be taken in due course of time as per the provisions of Delhi Municipal Corporation Act, 1957."

3. With respect to encroachment, the respondent-MCD in its Status Report states that the efforts were taken with the assistance of the Revenue Department and the relevant paragraphs of the said report read as under:-

"8. That, as reported by the Executive Engineer (Maintenance)-I, Shahdara (South) Zone, the property in question was inspected by the concerned field staff on 10.11.2020 and it was reported that the property in question falls in unauthorized regularized colony in ward No. 23E.



9. That, it is submitted, the regularized plan along with its resolution no. 2497/STG dated 25.10.1982 of group of colonies 1970-72 namely Arjun Nagar, Radhey Puri, Brij Puri, Radhey Puri Extension, Radhey Shyam Park, Govind Park, Anarkali Garden, Radhey Shyam Park Extension, Old Govind Pura Extension and Jagat Puri was obtained from Town Planning Department, East Delhi Municipal Corporation. It was observed that the road under reference has been shown in the regularized plan as a proposed road of 9.00 mtrs. in width, but the same has not been acquired by the East Delhi Municipal Corporation.

10. That, in this regard, a letter vide No.EE M-I Sh.S/2022/D-3~1 was sent to Deputy Commissioner (East), Revenue on 12.04.2018 with a request to depute the concerned field staff for physical demarcation at site as per revenue and also to provide the demarcation plan to this office to ascertain the quantum of encroachment, so that action against encroachment can be taken up. The aforementioned letter has been annexed as **Annexure R- 111**. 11. That, however, no reply from the Revenue department has been received by this office. Accordingly, a reminder to Deputy Commissioner (East), Revenue was sent vide letter No.EE M-I Sh.S/2022/D-3539 dated 15.02.2022, to depute the concerned staff for physical demarcation at site as per revenue and also provide the demarcation plan to this office to ascertain the quantum of encroachment, so that action against encroachment can be taken up. The aforementioned reminder letter has been annexed as **Annexure R- IV.**"

4. It is also to be noted that the respondent-MCD, thereafter, on 27.04.2023 placed on record another Status Report, wherein, in paragraph nos.3 to 5, it is stated that on 19.12.2022, the demolition/sealing action was scheduled and second floor of the property in question i.e., 241 (Part-III), Near Makki Masjid, Khureji Khas, Delhi was re-sealed.

5. This further indicates that unauthorised construction pertaining to respondent nos.5 and 6 which was earlier booked was demolished and made uninhabitable. Paragraph nos.3 to 6 of the said report read as under:-

"3. That, as reported by the Executive Engineer (Building)-1, Shahdara (South) Zone, that in compliance of this Hon'ble Court order dated 02.12.2022, the answering respondent was fixed the demolition I sealing action program on 19.12.2022 and second floor of the property



in question i.e. 251 (Part-III), Near Makki Masjid, Khureji Khas, Delhi was re-sealed.

4. That, it is further submitted that the demolition/sealing action program was fixed on 24.04.2023 and second floor of property bearing No.251, Parwana Road, Near Makki Masjid, Khureji Khas, Delhi was sealed.

5. That, one part of unauthorized construction pertaining to Sh. Tajuddin/Respondent no. 5 & 6 which were booked vide file no. 173/BIUCISH(S)/2021 dated 01.11.2021 has been demolished and made unusable.

6. That, the further demolition I sealing action program has been fixed for 10.05.2023 and same would be taken a per law. In this regard, a letter dated 24.04.2023 has been sent to the SHO, P. S. Jagatpuri, Delhi with request to provide adequate police force. Copy of the letter dated 24.04.2023 is annexed as Annexure 'A'."

6. When the matter is called out for hearing today, learned counsel appearing on behalf of the petitioner submits that the respondent-MCD has not taken any substantial steps with respect to prayer no.(b) which according to him, requires the respondent-MCD to remove the encroachment from public land in its entirety.

7. Learned counsel appearing on behalf of the respondent-MCD reiterates the steps taken and brought on record by way of the aforesaid Status Reports and he further submits that the respondent-MCD has taken action in accordance with law. According to him, with respect to a portion of property, the Appellate Tribunal - Municipal Corporation of Delhi (AT-MCD) has granted order of *status quo* and so long as the said order is not vacated or modified, the respondent-MCD's hands are tied in taking any further action.

8. Having considered the nature of the controversy involved in the instant writ petition and the Status Reports being placed on record from time to time, the Court is of the considered opinion that the if the petitioner has any further grievance, he can very well approach the Special Task Force



(STF) which has been constituted vide notification dated 08.03.2019 by the Delhi Development Authority.

9. A similar view has been taken by this Court in order dated 30.08.2024 in W.P. (C) 12033/2024 titled as **Pravin Singhal v. Municipal Corporation of Delhi and Ors.**, wherein, it has been held as under:-

“6. It is discernible from the aforesaid notification that STF has been constituted with an aim of comprehensively addressing the issue of illegal construction and encroachment, including on public land, parking spaces, roads, pavements, etc., and to oversee the enforcement of provisions of MPD-21 and the Unified Building Bye Laws for Delhi. The composition of STF would indicate that the same consists of various Officers from different Departments, including municipal, civic, revenue and law enforcement agencies. The Vice Chairman of DDA is the Chairman of STF and the Commissioner (Planning) of DDA appears to be its Member Secretary.

7. The said notification further stipulates that STF shall meet at least once every month. Additionally, the monthly report of STF is required to be sent to the Hon’ble Lieutenant Governor of Delhi, the Ministry of Housing and Urban Affairs, GoI, and the Secretary of the Ministry of Environment, GoI, who are also required to review the progress achieved quarterly and assess future plans. In essence, STF has been vested with comprehensive powers to regulate construction activities and to act decisively against the erring builders, officials, encroachers, violators of building norms etc.

*14. In LPA 245/2019 titled as **Sneh Lata & Anr. v. North Delhi Municipal Corporation & Anr.**, the Division Bench of this Court, while highlighting the composition and functioning of STF, has held that STF is a specialised agency which offers an alternate efficacious remedy to the litigants aggrieved by the unauthorised construction. The relevant paragraphs of the said decision are reproduced as under:-*

“The Special Task Force comprises 15 members from various municipal, civic, revenue and law enforcement agencies of Delhi; and even has its own dedicated website and mobile application to facilitate making of complaints. The Special Task Force is therefore a specially constituted agency to address grievances relating inter-alia to unauthorised construction; and an aggrieved person may avail the alternate, efficacious remedy before the Special Task Force.

In view of the setting-up of the Special Task Force



under directions of the Supreme Court even the respondent No.2 has a forum to agitate any grievance that may remain. It is therefore not appropriate for our court to exercise its appellate jurisdiction in the matter.

Accordingly, the appellants are free to avail their statutory remedies before the ATMCD in respect of action initiated by the corporation by issuing notices under Delhi Municipal Corporation Act, 1957. On the other hand respondent No.2 may, if aggrieved, approach the alternate forum of the Special Task Force to seek amelioration of any grievances or invoke any other remedy available under law. Accordingly, parties may resort to the appropriate remedy, as they may be advised.”

*15. A similar view has been taken by the Division Bench of this Court in a Public Interest Litigation being W.P. (C) 8104/2022 titled as **Himanshu v. East Delhi Municipal Corporation & Anr.**, in W.P. (C) 4649/2017 titled as **Fazruddin v. DDA & Ors.**, in W.P. (C) 5988/2019 titled as **Jaladhar Das v. North Delhi Municipal Corporation & Ors.** and in W.P. (C) 11873/2023 titled as **RWA Sunlight Colony v. GNCTD & Ors.**”*

10. In view of the aforesaid, instead of keeping this petition pending on the Board of this Court, the petitioner is granted liberty to approach the STF by way of proper representation along with the copy of this order. If the petitioner does so, let the grievance of the petitioner be dealt with by the STF in accordance with law as expeditiously as possible. The petitioner is entitled to place reliance on the Status Report and the pleadings filed by the respondents in this case before STF.

11. Accordingly, the instant writ petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

SEPTEMBER 12, 2024/MJ