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

+ **W.P.(C) 12620/2022 & CM APPL. 38233/2022**

DELHI WAQF BOARD

.....Petitioner

Through: Mr.Firoz Iqbal Khan, ASC with
Ms.Bahist E.Jahan, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.Respondents

Through: Mr.Ajjay Arora and Mr.Kapil Dutta,
Advs for MCD.
Mr.Rajesh Bhatia and Mr.Hemant
Kakkar, Advs for R-4.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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02.09.2024

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

" a) Issue a Writ of Certiorari or any other suitable Writ, Order or Direction thereby revoking the building plan 'sanctioned by the erstwhile North Delhi Municipal Corporation in response to the respondent no.4's request ID no. 10 1002 13 concerning the plot no. 6480, KatraBaryan, Fatehpuri Delhi-i 10006, admittedly adjoining the Notified Heritage Property, i.e.,Fatehpuri Masjid being in violation of the Delhi Building Byelaws, 1983 and especially Byelaw 23 thereof;

b) Issue a Writ of Mandamus or any other suitable Writ, Order or Direction thereby directing the respondent no.1 to demolish and remove the impugned construction from plot nos. 6479 and 6480, KatraBaryan, Chandni Chowk, Delhi on the southern side of the Notified Heritage Property, i.e., Masjid Fatehpuri Complex, Chandni Chowk, Delhi.

c) Pass any such and further order(s) as deemed fit and • necessary in the facts of the case at hand.



2. Respondent-MCD has placed on record its Status Report and has taken the following stand in paragraphs no.4 to 10 :-

" 4. That it is respectfully submitted that as per record a Building Plan in respect of property bearing no.6480, situated at ward no.VI, Katra Bariyan, Fathepuri, Delhi- 110006 was got regularized on 16.03.2022 in the form of 04 number of hall at ground floor alongwith lofts at each hall after the payment of requisite charges and after that owner Sh. Ram Dev Sharma applied for sanctioned building plan for addition & alternation vide I.D. No.10100213 dated 13.04.2022. The said Sanctioned plan is valid upto 12.04.2027. A copy of said Sanctioned Building Plan letter dated 13.04.2022 is annexed herewith as Annexure-A. It is relevant to mention here that the said sanctioned building plan was released in favour of Sh. Ram Dev Sharma after following all codal formalities as required under the law.

5. That it is respectfully submitted that however it would be pertinent to mention herein that the property bearing number 6480, situated at ward no.VI, Katra Bariyan, Fathepuri, Delhi-110006 was duly inspected and after careful perusal of recodes it was found that the above mentioned property does not fall within the Category of notified heritage properties. Further more the regularization plan and sanctioned building plan issued by the respondent Corporation are in conformity of the DMC Act and BBL-2021. 6. That it is respectfully submitted that during inspection on 04.07.2022 by the field officials it was noticed that unauthorized construction in the form of deviation/excess coverage against aforesaid Regularization Plan dated 16.3.2022 and Sanctioned Plan dated 13.04.2022 has been carried out at ground floor of the property in question and as such the same was booked under section 343 & 344 of the DMC Act vide file no.124/90-N/B/UC/EE(B)- J/CSPZ/2022 dated 04.07.2022. A show cause notice dated 4.07.2022 was issued to Sh. Ram Dev Sharma to show cause as to why demolition order be not passed in respect of aforesaid unauthorized construction. It is respectfully submitted that the property in question was inspected on 08.09.2022 wherein it was noticed that property in question has been constructed from ground floor, first floor, second floor & upto third floor however deviations/excess coverage beyond the Regularization Plan and Sanctioned Plan have been carried out at ground floor and first floor only. No non-compoundable deviation beyond Sanctioned Plan has been noticed at second floor & third floor.

7. That it is submitted that after following the due process of law and after providing an opportunity hearing to the owner, area Junior



Engineer, Building was directed to inspect the site and submit the report. After getting the report from the concerned JE(B) a detailed Speaking Order vide no.D-980/AE(B)-I/CSPZ/2022 dated 12.09.2022 was passed, thereby directing the noticee/Sh. Ram Dev Sharma to demolish the said unauthorized construction in the shape of deviation/excess coverage beyond Regularization Plan /Sanctioned Building Plan at ground floor and first floor within 06 days. A copy of demolition order dated 12.09.2022 is annexed herewith as Annexure-B.

*8. That it is respectfully submitted that action under section 345-A of the DMC Act was also initiated against the property in question and a show cause notice under the said Act was issued vide no.DC/EE(B)-I/CSPZ/S.C.N./2022/D-08 dated 11.10.2022 to Sh. Ram Dev Sharma. As reported by the JE(B) concerned that no reply was received therefore the sealing order under section 345-A of the DMC Act was passed on 13.01.2023 by the Competent Authority. A copy of said sealing order dated 13.01.2023 is annexed herewith as Annexure-C.
NOTARY*

9. That it is respectfully submitted that demolition action at the property could not be taken due to application of GRAP-III. Therefore special programme was fixed for 16.01.2023 wherein the entire property has been sealed at ground floor. Photographs showing sealing action on 16.01.2023 are annexed herewith as Annexure-D.

10. That it is respectfully submitted that appeals no.50/2023 & 112/2023 titled Ram Dev Sharma Vs. MCD have been filed against the sealing and demolition orders. The said appeals came up for hearing before the Appellate Tribunal, MCD on 13.02.2023, 29.03.2023, 29.05.2023 whereafter the same have been adjourned to 02.08.2023. Copies of order dated 13.02.2023, 29.03.2023, 29.05.2023 & 29.05.2023 are annexed herewith as Annexure-E(Colly)."

3. The Court is of the considered opinion that the nature of the grievance sought to be agitated in the instant writ petition can very well be examined by the Special Task Force (STF) if the petitioner takes necessary steps to approach the said authority.
4. The Court also takes note of the order dated 30.08.2024 passed by this Court in W.P.(C) 12033/2024, where the scope and ambit of the STF's jurisdiction has been dealt with in greater detail.
5. Reserving all rights and contentions, the Court directs the petitioner to



approach the STF and in case, the petitioner does so, let the same be dealt with in accordance with law.

6. Accordingly, the instant writ petition along with pending application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J
SEPTEMBER 2, 2024/MJ