



2024:DHC:6078-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8771/2024, CM APPL. 35715/2024 & CM APPL. 45909/2024

MS PREETI

.....Petitioner

Through: Mr. Arun Kumar Verma, Advocate
with Mr. Jamshed Alam, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.....Respondents

Through: Mr. Prithvi Sabharwal, Advocate for
MCD.Ms. Prabhsahay Kaur, Standing
Counsel with Mr. Bir Singh Gurm
and Mr. Arani Chaudhary, Advocates
for STF.Ms. Nandita Abrol, Mr. Laksh Tuli,
Mr. Lakshay Luthra, Ms. Komal
Narula, Ms. Akansha Sharma, Ms.
Shireen Goyal and Mr. Naveen
Mishra, Advocates for R-5.

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Date of Decision: 12th August, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present writ petition has been filed by the petitioner seeking directions to respondents nos.1 to 4 to immediately stop and demolish the illegal and unauthorized construction work being carried out by respondent no.5 at Plot

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Nos.5594-5596 and Plot Nos.5597-5600, Paharganj, Basant Road, New Delhi-110055.

2. On 1st July 2024, 4th July 2024 and 7th August 2024, this Court had passed the following orders:-

Order dated 1st July 2024

“1. Present writ petition has been filed by the petitioner seeking directions to the respondents nos.1 to 4 to immediately stop and demolish the illegal and unauthorized construction being carried out by the respondent no.5 at Plot No.5594-5600 (land measuring 200 sq. yds.) Paharganj, Basant Road, New Delhi-55.

2. Learned counsel for the petitioner states that the respondent no.5 and their associates are raising unauthorized and illegal construction in the abovesaid property by encroaching upon the subject land and by intentionally and deliberately endangering the life and security of the petitioner and other innocent citizens. He states that the respondent nos.1 to 4 are hand in glove with the land mafia i.e. respondent no. 5.

3. Learned standing counsel for Special Task Force (STF), who appears on advance notice, states that according to the STF website, action has been taken by the North Delhi Municipal Corporation (NDMC) on 04th June, 2024. However, she admits that the signed Action Taken Report, which should have been uploaded on the STF website, is not available.

4. Learned counsel for MCD states that the property in question has been booked on 26th February, 2024 with the following details:-

“.....Deviation/excess coverage in the shape of Amalgamation of Property Nos.5594, 5595 and 5596, Basant Road, Paharganj, New Delhi-110055 with SBPIO 20006766 and property Nos.5597, 5598, 5599 and 5600, Basant Road, Paharganj with SBPIO No.20006767 at stilt and ground floor.”

5. He further states that the present petition is a motivated one.

6. Though this Court is prima facie in agreement with the contention that the present petition seems to be motivated, yet it does not take away from the fact that the impugned construction is illegal and unauthorized.

7. This Court has been dealing with a number of similar matters where the



bonafide of the petitioner is suspect, but the factum of unauthorized and illegal construction is not in dispute.

8. This Court is further of the prima facie view that it is being used as a 'strategic tool' by both the petitioner and the officials of MCD for their ulterior purposes.

9. Consequently, the Commissioner, MCD, is directed to join the proceedings by way of an audio-video link on the next date of hearing. Further, the MCD is directed to produce the original file on the next date of hearing. The petitioner shall also be personally present in Court on the next date of hearing.

10. List on 04th July, 2024 at 2.30 P.M."

Order dated 4th July 2024

"1. In pursuance to the last order, the Commissioner (MCD) is personally present.

2. At the outset, learned senior counsel for the Respondent No.5-owner alleges that the Petitioner has filed the present writ petition to extort money from Respondent No.5.

3. This Court has informed the learned Commissioner (MCD) that in a number of Public Interest Litigations with regard to unauthorised construction, the Courts have been used as a 'strategic tool' by both the petitioner and the officials of the MCD for their ulterior purpose. Learned Commissioner has been informed that a few litigants are filing petitions with regard to unauthorised construction which has been carried out in connivance with officials of MCD in a bid to extort money. It has been pointed out that if the Court takes action against the unauthorised construction, the property owner believes that the whole process is 'rigged' and if the Court does not take action, then the unauthorised construction is presumed to be sanctified/approved by the Court.

4. Learned Commissioner (MCD) states that he is aware of and is monitoring the impugned construction. He further states that appropriate action shall be taken against deviations/unauthorised construction as well as against erring officials.

5. Though the allegation of extortion is denied by the petitioner, who is personally present in Court, yet learned senior counsel for the Respondent No.5 assures and undertakes to this Court that the Respondent No.5 shall itself demolish/remove unauthorised as well as illegal construction and



deviations, if any. He further assures that the owner/occupiers shall bring the building in question in conformity with both the sanctioned plans within four weeks.

6. Learned senior counsel for the Respondent No. 5 also undertakes that the answering Respondent shall not transfer the property or part with its possession to any third party till the completion certificate is received from This is the MCD. The assurances/undertakings given by the Commissioner, MCD as well as the owner/occupiers of the property in question are accepted by this Court and they are held bound by the same.

7. The presence of Commissioner (MCD) is dispensed with till further orders. List on 12th August, 2024.”

Order dated 7th August 2024

“CM APPL. 45080/2024

1. Present application has been filed by the Applicant-Respondent No. 5 challenging the show-cause notice dated July 30, 2024 issued by the Respondent No. 1 to show cause why the unauthorized construction being carried out on the subject property, be not sealed.

2. Learned counsel for the Applicant states that this Court vide order dated July 04, 2024 had expressly recorded the submission of Respondent No. 5 that it shall itself demolish/remove unauthorized and illegal constructions and deviations, if any, and that the building in question shall be brought in conformity with the sanctioned plans within four weeks. She further states that this Court had also recorded that Respondent No. 5 shall not transfer the property or part with its possession to any third party till completion certificate is received from the Respondent No. 1.

3. She states that though the Respondent No. 5 has completed its demolition/rectification action in accordance with the site plan, yet the Municipal Corporation of Delhi (MCD) has issued a show-Cause notice even before the expiry of four weeks.

4. Learned counsel for the MCD, who appears on advance notice states that as the period of four weeks has now expired, it would like to withdraw the show-cause notice dated July 30, 2024 and after inspecting the premise, shall issue a fresh show-cause notice, if required.

5. The said statement is taken on record and MCD is bound by the statement.

6. In view of the said statement, the present application stands disposed of.



7. MCD is directed to file fresh status report at least two days before the next date of hearing.”

3. Today Mr. Prithish Sabharwal, learned counsel for MCD has handed over a fresh status report dated 10th August 2024. The same is reproduced herein below:-

“I, Jagat Bhushan Meena S/o Sh. Heera Lal Meena aged about 54 years presently posted as Executive Engineer, Karol Bagh Zone, Municipal Corporation of Delhi do hereby solemnly affirm and declare as under:

1. *That I am working with the answering Respondent, Municipal Corporation of Delhi, I have been authorized to depose the present affidavit. I, being conversant with the facts of the case, as brought out from the records, am competent to depose the present affidavit, in my official capacity.*
2. *That the present report is being filed by the Respondent Corporation in pursuance of the order date 04.07.2024.*
3. *It is submitted that the owner Sh. Vinod Gupta and Sh. Tarun Tuli had obtained a Sanctioned Building Plan under SARAL Scheme of UBBL-2016 by registered Architect /Engineer/Supervisor vide ID No. 20006766 dated 06.01.2024 for raising construction in subject Property bearing no. 5594-5596 (land measuring 88.12 sq mtr.) with the attributes Stilt, Ground Floor, First Floor, Second Floor and Third Floor with permissible ground coverage @90% and FAR@ 350%.*
4. *Further, the owner Sh. Vinod Gupta and Sh. Tarun Tuli had also obtained another Sanctioned Building Plan under SARAL Scheme of UBBL-2016 by registered Architect /Engineer/Supervisor vide ID No.20006767 dated 06.01.2024 for raising construction in the property bearing no. 5597-5600 (land measuring 100.0 sq mtr.) with the attributes Stilt, Ground Floor, First Floor, Second Floor and Third Floor with permissible ground coverage @90% and FAR @350%.*
5. *That the owner/ builder had carried out construction in the said properties in deviation to the sanctioned building plans and as such the properties had been booked for unauthorized construction in the shape of, "deviation/ excess coverage in the shape of amalgamation of property no. 5594-5595-5596, Basant Road, Paharganj, New Delhi with sanction building Plan ID No. 20006766 dated 06.01.2024, and the property bearing no. 5597-5598-5599-5600 with Sanctioned*



Building Plan ID No. 20006767 dated 06.01.2024 at Stilt floor and Ground Floor" and a show cause notice under section 344 (1) and 343 of the DMC Act, 1957 issued vide file no 56/C-82/B/UC/KBZ/2024 dated 26.02.2024 to owner Sh. Vinod Gupta and Sh. Tarun Tuli.

- 6. That a speaking order U/s 343 of DMC Act 1957 vide No. DI AE(B)/KBZ/2024/1420 dated 28.06.2024 had been passed by the concerned Assistant Engineer with directions to demolish the unauthorized construction in the shape of deviation/excess coverage and removal of amalgamation of the property bearing no 5594-5595-5596 with Sanctioned Building Plan ID No. 20006766 dated 06.01.2024 for constructing Stilt floor, Ground Floor, First Floor, Second Floor, and Third Floor, and the property bearing no. 5597-5598-5599-5600 with Sanctioned Building Plan ID No. 20006767 dated 06.01.2024 for constructing Stilt floor, Ground Floor, First Floor, Second Floor, and Third Floor within 06 days, failing which, the same shall be demolished at the risk and cost of the owner(s)/builder(s).*
 - 7. It is further submitted that the properties at present are constructed from Stilt, Ground Floor, First Floor, Second Floor and Third Floor. The overall height of the buildings are as per the sanctioned height.*
 - 8. That the property has been inspected by the cone JE(B)/KBZ and AE(B)/KBZ on 09.08.2024. During inspection, it has been noticed that the owner/builder demolished around 70% projections which were existing on Govt. land and further work was in progress.*
 - 9. That the owner/builder of the property has fixed a brick wall in the existing construction of two sanction building plans at stilt, ground floor, first floor, second floor and third floor but not at terrace. However the wall does not match with the boundary of both the plots as shown in the SBP. Further one shaft has also opened by demolishing the covered RCC at ground floor, first floor and second floor but not at third floor. However the entire structure of the both the sanction building plans construction is still monolithic. Photographs of the property taken during inspection are annexed herewith as Annexure- A (colly)."*
4. Mr. Sabharwal, on instructions, states that MCD is proposing to issue a fresh show-cause notice to respondent no.5 during the course of the day. He further states that after giving an opportunity of hearing to respondent



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no.5, a detailed order shall be passed. The said statements by Mr. Sabharwal are taken on record and MCD is held bound by the same.

5. It is clarified that if respondent no.5 is aggrieved by the order proposed to be passed by the MCD, respondent no.5 shall be at liberty to file appropriate proceedings in accordance with law.

6. In the event any such proceeding is filed by respondent no.5, the same shall be decided in accordance with law and on merits. The rights and contentions of all the parties are left open.

7. With the aforesaid direction, the present writ petition stands disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 12, 2024

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