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

+ **CONT.CAS(C) 1055/2022 & CM APPL 43220/2022**

RAJIV KUMAR

.....Petitioner

Through: Mr.Humayun Khan, Adv.

versus

GYANESH BHARTI AND ORS

.....Respondents

Through: Mr.Sanjeev Sabharwal, SC for MCD
with Ms.Shweta Singh, Adv.
SI Vikas Tomar, PS Wazirabad.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **30.07.2024**

1. The petitioner in this case alleges non-compliance of the order dated 11.04.2024.
2. The aforesaid order reads as under:-

"CM APPL. 16524/2022

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

W.P.(C) 5551/2022 and CM APPL. 16525/2022 (Stay)

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to respondents to take necessary action against the local dealers/builders/colonizers in respect of illegal acts and unauthorised construction/plotting being carried out in property bearing Khasra No. 11/2, 12/2, 19, 20, 133/11/1 and 12/1 situated at Village Burari abadi known as Milan Vihar, Delhi – 110084 (hereinafter referred to as the 'subject property').

2. Learned counsel for the petitioner submits that the petitioner claims himself to be the owner of a piece of agricultural land situated in the subject property. He has referred to the order dated 04.12.2020 passed by the SDM



(Civil Lines), Delhi vide which the factum of unauthorised plotting was noticed in the subject property and directions to demolish the same was also passed. It is the grievance of the petitioner that despite passing of the aforesaid order and further complaints, no action has been taken till date.

3. Issue notice.

4. Learned counsel appearing for respondents No. 1 & 3, 4 and 5 accept notice and seek some time to file Reply(s).

5. Mr. Anand Prakash, learned Standing Counsel appearing for respondent No. 2 also accepts notice and seeks some time to file the Status Report. He also seeks a copy of the petition, which shall be supplied by the learned counsel for the petitioner during the course of the day.

6. Let the Reply(s)/Status Report be filed before the next date of hearing.

7. List on 26.07.2022.

8. In the meantime, respondent No. 2 shall take all necessary action so that no unauthorized construction/plotting is carried out in the subject property and file a State Report, which shall also indicate the steps taken in pursuance of the passing of the aforementioned order dated 04.12.2020."

3. In conformity of the abovementioned order, respondent no.2 - The Commissioner, Municipal Corporation of Delhi (MCD) was directed to ensure that necessary action is taken to prevent any unauthorised construction/plotting in the subject property.

4. In his response to the contempt petition, respondent no.2 has taken the following stand:-

*"6. That an office order in this regard has also been issued by the Additional Commissioner (Engineering), MCD vide No.Addl.Cm (Engg.)/EE(B)-I(CLZ)/MCD/2022/108 dated 05.06.222 wherein it is clearly mentioned that in areas which are declared as "Development Area" vide Gazette Notification dated 16.06.17 and which are not handed over to MCD by DDA, MCD cannot assume its jurisdiction under DMC Act, 1957. Copy of office order issued by Addl. Commissioner (Engg.), MCD is annexed herewith and marked as **Annexure 'R-2'**.*

7. That it is relevant to submit here that once an area is declared to be Development Area u/s 12(1) of DDA Act, 1957, then Section 53 A of the DDA Act, 1957 puts an embargo on all local authorities from making any rules or regulation or bye-laws with regard to certain activities like



laying of sewerage, drains, sanction for erection or re-erection of buildings etc. The provision mandated u/s 12(1) and Section 53A of DDA Act, 1957 is being quoted hereunder for convenience of Your Lordships:

"12 Declaration of development areas and development of land in those and other areas.- [(1) As soon as may be after the commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act:

Provided that no such declaration shall be made unless a proposal for such declaration has been referred by the Central Government to the Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference or within such further period as the Central Government may allow and the period so specified or allowed has expired.]

(2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a Government) unless, -

(i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act;

(ii) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local authority concerned or any officer or authority thereof empowered or authorized in this behalf, in accordance with the provisions made by or under the law governing such authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955 (53 of 1955), and in force immediately before the commencement of this Act:

Provided that the local authority concerned may [subject to the provisions of section 53A] amend those regulations in their application to such area.

(4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in



that area unless such development is also in accordance with such plans.

(5) Notwithstanding anything contained in sub- sections (3) and (4) development of any land begun by any department of Government or any local authority before the commencement of this be completed by that department or local authority without compliance with the requirements of those sub-sections.

[53A. Restriction on power of a local authority to make rules.

(1) Notwithstanding anything contained in any law for the time being in force, no rule, regulation or bye-law shall be made or amended by a local authority in respect of matters specified in sub-section (2) unless the Authority, upon consideration of such rule, regulation or bye-law, certifies that it does not contravene any of the provisions of the master plan or the zonal development plan.

(2) The matters referred to in sub-section (1) are the following, namely:-

- (a) water supply, drainage and sewage disposal;*
- (b) erection and re-erection of buildings, including grant of building permissions, licences and imposition of restrictions on use and sub-division of buildings;*
- (c) sub-division of land into building sites, roads and lanes, recreational sites and sites for community facilities; and*
- (d) development of land, improvement schemes, and housing and re-housing schemes.*

Thus on perusal of the above provision contained u/s 53A read with Sec. 12(1) of DDA Act, 1957 it becomes clear that once an area is declared to be "Development Area" under Section 12(1) of DDA Act, 1957 then In view of clause (b) of sub-section 2 of Section 53A the entire power for sanction of erection or re-erection of buildings falling under "Development Area" shall not be done by local authorities unless such rule, regulation or bye-law notified by DDA.

5. It becomes apparent from the stance of respondent no.2 that the area in question does not fall within the jurisdiction of MCD and instead Delhi Development Authority is the appropriate land-owning authority. Evidently, there was no directions to the DDA.

6. In view of the aforesaid, the Court is not inclined to keep the instant



contempt petition pending on its Board and accordingly, the same stands dismissed. Pending application is also disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JULY 30, 2024/MJ