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

+ **W.P.(C) 14345/2022 and CM APPLs.43803/2022, 50390/2022, 52626/2023, 3408/2024, 15287/2024**

MANISH CHAWLA

..... Petitioner

Through: In person.
versus

MUNICIPAL CORPORATION OF DELHI AND ANR

..... Respondents

Through: Mr. Mukesh Gupta, SC, Ms. Tajinder Viridi, SC and Mohd. Mubeen, Mr. Shashi Gupta and Mr. Arnav Gupta, Advs. for MCD.
Mr. Ayush Gupta and Mr. Yog Raj Sharma, Advs. for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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27.05.2024

CM APPL.50391/2022 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 14345/2022

1. The present petition has been filed by the petitioner seeking the following reliefs:

“a) Direct respondent No.1 SDMC to discharge its statutory duty as per section 15, 15.9V and 15.11 of the Master Plan of Delhi -2021 by taking penal action and after calculating all the applicable penalties, recover the entire penalty amount from respondent no.2 for the continuous misuse of basement in contravention of building bye laws in the property bearing no.24/70 Punjabi Bagh West, New Delhi- 110026.



b) Impose penalty for availing Floor Area Ratio without sanction, additional coverage beyond permissible height in the basement with respect to the ground floor and recover all applicable penalties and charges for deviations without sanction for the entire duration of time for which basement has been put to misuse in contravention of the building bye laws by the violator i.e. respondent no. 2 as per the applicable rates, penalties and interest as notified by govt. in the various provisions of Master Plan of Delhi- 2021.”

2. It transpires that the petitioner has also filed a civil suit with regard to the basement of the same property viz. bearing No.24/70, Punjabi Bagh West, New Delhi-110026. The relief(s) prayed in the civil suit is as under:

“(a) Pass a decree of permanent injunction in favour of plaintiff and against the defendants for giving the direction for not to use the basement of the suit property bearing No.24/70, Punjabi Bagh West, New Delhi-110026 as more particularly shown with red mark in the site plan attached herewith for residential purpose as the same has been sanctioned and permitted only for household storage.

(b) Pass a decree of mandatory injunction thereby giving the direction to the defendants for removing the illegal encroachment of common land, demolishing the toilet, kitchen, bathroom constructed illegally on the encroached land and fill up this land with soil and also for removing the illegal locks on the common back portion entrance on ground from suit property (basement) bearing No.24/70, Punjabi Bagh West, New Delhi-110026 as more particularly shown with red colour in the site plan attached.

(c) Cost of the suit may please also be awarded to the plaintiffs.

(d) Pass any other order or orders as this Hon’ble court may deem fit and proper in the interest of justice, equity and fair play. It is prayed accordingly.”

3. The said civil suit is pending adjudication.

4. Vide order dated 01.07.2015, in the said civil suit, it has been *inter-alia* directed as under:

“10. Now second, third and the fourth applications of the plaintiffs are taken up together. In all these three applications, the prayer is the same. The plaintiffs wish that the SDMC and its officials must take action against the property of the defendant no.1 i.e. basement/lower



ground floor, and the defendant no.1 should be directed to remove the unauthorized construction on this floor and further the said floor should be sealed and filled with soil so as to make it unusable. It is already made clear that according to the plaintiffs this portion of the suit property is a basement, whereas the defendant no. 1 claims the same to be a lower ground floor. The plaintiff's prayer is based on a notice dated 02.08.2013 bearing no. EE(BI)/WZ/UC/2013/429 issued by Sh. A.K. Mittal, A/E (Building) to the residents of the suit property. The plaintiffs point out that in this notice the first item has been mentioned as "basement floor: converting the basement hall into dwelling unit in the shape of three rooms, two bath, one toilet, one kitchen and one drawing room with different height w.r.t. ground floor in contravention of BBL." It was contended that in the status report also, the SDMC and its officials clearly stated that the basement was meant for domestic storage only but Sh. Anil Anand converted the same for residential purpose. It was contended that when the SDMC itself admits the contravention of the Building Bylaw by the defendant no.1, with respect to the basement floor, it should take immediate action and seal the said floor. It is to be noted again that the defendant no. 1 do not admit the fact that the lowest portion of the building is a basement and rather contents that the same is a lower ground floor, meant for the purpose of living. If, the prayer of the plaintiffs is allowed, the same will effect the rights of the defendant no. 1, who has never admitted the allegations of the plaintiff. The prayer of the plaintiffs for passing a decree on admission could only be allowed, if the defendant no. 1 had himself made clear, unambiguous and unequivocal admission to the allegations of the plaintiffs Admission of the SDMC cannot be taken into consideration against the defendant no. 1 and decree as desired by the plaintiffs under Order 12 Rule 6 CPC cannot be passed. Even otherwise, SDMC is an independent body and has authority to take action as per the Municipal Bylaws and at this stage this Court cannot order SDMC to take action against the defendant no.1 as desired by the plaintiffs. These applications to my mind have no merit and are dismissed.

11. Now comes the question of the fifth application of the plaintiffs in which they pray to direct the defendant no.1 to deposit penalty of an amount of Rs. 10959717/for violating the Building Bylaws by misusing the basement. Firstly, this is not the case of the plaintiffs, secondly, without evidence the calculations as have been made by the plaintiffs cannot be considered and thirdly, this is the duty of the SDMC to calculate the amount of penalty and to impose the same on the



defendant no.1, only in case any violation is there. To my mind, this application is not maintainable and the same is dismissed.

12. In the last application the plaintiffs pray to direct the SDMC to give a fresh status report with respect to the ground level of the open courtyard. Record shows that some status reports have been given by the SDMC regarding the suit property and it should not be asked again and again to give status report of each and everything. Let the plaintiffs lead evidence and prove that the portion of the defendant no.1 is in fact a basement and not a ground floor. Application is dismissed.”

5. It can be seen, that the concerned civil court is seized of the contention raised by the petitioner herein with regard to the alleged misuse of the basement of the property in question. Further, the said civil suit is still pending.

6. In the circumstances, since the petitioner has already exercised the option of approaching the civil court to raise the grievance as regards the alleged misuse of the basement in question, it would not be apposite to entertain the present petition. The same is, accordingly, dismissed, however, leaving open to the petitioner to pursue his remedies before the concerned civil court which is already seized of the matter.

SACHIN DATTA, J

MAY 27, 2024/cl