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

+ **W.P.(C) 12958/2023**

SUMIT

.....Petitioner

Through: **Mr. L.B. Rai, Ms Prachi Hasija and
Mr. Vineesh Tyagi, Advs.**

Versus

MUNICIPAL CORPORATION OF DELHI AND ORS

.....Respondents

Through: **Mr. Kartik Kaushal, SC for MCD
Mr. Yogesh Gaur, Mr. Amit Riyar,
Mr. Pankaj Riyar and Ms. Deepti
Verma, Advs. for R-3**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

04.09.2024

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1. Heard learned counsel appearing on behalf of the parties and have perused the record.
2. The grievance raised in the instant writ petition is with respect to the alleged illegal/unauthorised construction of property bearing Plot-A-100, Gali No.21, Som Bazar, Gamri Extension, Delhi-110053.
3. On notice being issued, the respondent-Corporation has filed the Status Report dated 17.10.2023 as well as the additional documents.
4. The Status Report would indicate that the property in question was booked *vide* order dated 12.04.2016 for unauthorized construction in the shape of ground floor, first floor with projection on mpl land. Thereafter, Show Cause Notice was issued and demolition notice came to be passed on



09.05.2016.

5. The respondent-Corporation further states that sealing Show Cause Notice was issued to the owner/builder on 16.06.2016 and accordingly, sealing order was also passed on 26.07.2016. The respondent-Corporation thereafter stated that the demolition action was fixed on 19.05.2016, however, the action could not be taken due to non-availability of police force. The Report further indicate that in the meantime, the owner/builder appears to have approached the Appellate Tribunal-Municipal Corporation of Delhi assailing the demolition order and his appeal also got dismissed on 08.08.2023. Paragraph Nos. 3 to 12 of the Status Report dated 17.10.2023 reads as under:-

3. That vide order dated 04.10.2023 this Hon'ble Court was pleased to direct Respondent / MCD to place status report on record.

4. That the property No. A-100, Gali No. 21, Som Bazar, Gamri Exln. Was booked vide file No. 118/UC/B-I/SH-N/2016 dated 12.04.2016 for unauthorized construction in the shape of ground floor, first floor with projection on mpl land. A show cause notice was issued to Sh. Jamshed Ali vide No. 7241 dated 12.04.2016. As no reply was received of this show cause notice, a demolition notice was issued to Sh. Jamshed Ali vide No. 6429 dated 25.04.2016. As the owner/builder failed to demolish the construction within stipulated time, demolition order was passed on 09.05.2016.

5. That a sealing show cause notice was issued to the owner/builder Sh. Jamshed Ali vide No. DC/SH-N/B-I/2016/D-76 dated 16.06.2016. As no satisfactory reply was given by the owner/builder, accordingly sealing orders were passed on 26.07.2016.

6. That demolition action was fixed on 19.05.2016 but action could not be taken due to non availability of police force, further action was fixed on 01.06.2016 but action could not be taken as the property was found occupied, further action were fixed on 21.06.2016 & 08.07.2016 but action could not be taken due to shortage of time.

7. That a sealing action was fixed for 24.08.2016 but action could not be taken because despite issue of vacation notice the property could not be



vacated. The owner in a letter asked for 10 days to vacate the property.

8. That a sealing action was fixed for 01.09.2022 and the property was sealed at 01 point at first floor with the help of PS Usmanpur. Rest of the property could not be seated as the property was occupied and could not be vacated.

9. That the owner / builder filed an appeal in ATMCD assailing the demolition order but the ATMCD dismissed the appeal. The challenge to this ATMCD order was filed before the District Judge, North East. This appeal was dismissed by the Ld. PDJ, North East on as recently as on 08th August 2023.

10. That no regularization application has been filed by the owner/builder in the Building Department, Shahdara North Zone, MCD till date.

*11. That a vacation notice vide No. AE (B)-I/SH-N/2023/D-154 dated 11.10.2023 has been issued to the owner / builder with copy to SHO PS Usmanpur with the request to get the premises vacated (**Annexed herewith as Annexure R-I**).*

12. That a demolition/sealing action program has been fixed for 07.10.2023 and action shall be taken against the property with the help of PS Usmanpur.

6. The record would further indicate that on 06.08.2024, the respondent-Corporation has placed on record certain additional documents wherein, communication dated 29.04.2024 made to Imran Ali and Mudassir Khan has also been placed on record, wherein, the regularisation application with respect to the said property came to be rejected. The said communication reads as under:-

“To,

*Sh. Imran Ali
on behalf Late Sh. Jamshed Ali
P.No. A-100, Sombajar Gali No. 21,
C-5, DDA Colony, West Gorakh
Gamri Extn, Delhi-110053.*

Sh. Mudassir Khan Khan (Architect)



*C-5, DDA Colony West Gorakh
Park, Shahdara, Delhi-110032*

Subject:- Regarding regularization in respect of property bearing no. A-100, Sombajar Gali No. 21, Gamri Extn, Delhi-110053.

Sir,

This is with reference to your request for regularization of building at P. No. A-100, Som Bajar Gali No. 21, Gamri Extn, Delhi received vide Dy. No. 14/Reg. dated 07.11.2023. It is to inform you that your application for regularization in respect of existing property no. A-100, Sambajar Gali No. 21, Gamri Extn, Delhi has been rejected by the competent authority due to non compliance of Invalid Notice issued vide No. AE (B)-I/Shah.(N) Zone/2024/D-66 dated 07.03.2024.”

7. The respondent-Corporation while drawing the attention of this Court to the letter dated 24.07.2024 submits that a requisition for police force for special demolition seeking action was made to the Deputy Commissioner of Police as the demolition programme was schedule for 29.07.2024.
8. Learned counsel for the petitioner submits that despite the programme for demolition was fixed, the demolition action has not taken place.
9. Learned counsel for the respondent-Corporation, however, submits that in the meantime, another application has been moved for regularisation of the building which is likely to be disposed of within 15 days from today. He, assured the Court on instructions that if the application for regularisation is rejected, the respondent-Corporation shall take necessary steps in accordance with law.
10. Having considered the nature of submissions made by the parties and on considering the relevant record, the Court finds that the instant writ petition can be disposed of with the following directions:-
 - (i) Let the respondent-Corporation to decide the pending application for regularisation of the construction in question within a



period of 15 days from today.

(ii) The respondent-Corporation shall consider its earlier decision with respect to the aforesaid aspect while passing the order.

(iii) If the respondent-Corporation decides the regularisation application against the occupier/owner, necessary action for demolition shall be carried out immediately thereafter.

(iv) If the respondent-Corporation fails to take any action, in accordance with law, the petitioner shall be at liberty to approach the Special Task Force constituted pursuant to the directions passed by the Supreme Court in *M C Mehta v. Union of India*.

11. Accordingly, the petition stands disposed in the aforesaid terms. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J.

SEPTEMBER 4, 2024

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