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

+ W.P.(C) 15201/2022

NEERAJ ARORA

.....Petitioner

Through: Mr. Ravi Bassi and Mr. Sanyam
Malik, Advocates.

versus

MUNICIPAL CORPORATION

OF DELHI & ANR.

.....Respondents

Through: Mr. Kartikay Yadav, Advocate for
R-1.
Mr. Dhruva Bhagat, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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25.11.2024

1. The petitioner has filed this petition, under Article 226 of the Constitution, complaining of alleged unauthorised and illegal construction on the second and third floor alongwith roof of the property bearing No. M-496, *Guru Harkishan Nagar, New Delhi-110063* [‘subject property’].

2. The petitioner is the owner of the ground floor of the subject property, having purchased it in the year 2005.

3. Municipal Corporation of Delhi [“MCD”] has filed several status reports, the last of which was filed on 12.11.2024, pursuant to an order dated 07.08.2024, by which MCD was directed to inspect the entire building and to submit a report as to whether any part of the construction is in contravention of the sanctioned plan or unauthorisedly constructed. In the said status report, MCD has stated that inspection was carried out upon notice to all the owners/occupiers of the subject property, and with



reference to a sanctioned plan dated 29.11.2023 provided by the owner of the second and third floor as well as roof of the subject property [Respondent No. 2 herein].

4. The details of the unauthorised construction/deviation in each floor of the subject property are stated floor wise as follows:-

*“7. That it is pertinent to mention here after examination it was found that at **ground floor** of the subject property there exist unauthorized construction in the shape of covering of front setback and excess coverage against sanctioned building plan at rear-open & covering of shaft. That at the **first floor** there is unauthorized construction in the shape of extension of balcony beyond sanction building plan and excess coverage in shape of one store room in rear-open beyond sanctioned building plan and shaft is also covered. That at the **second floor** there is excess coverage beyond sanction building plan in front setback and two store rooms are constructed in rear-open and shaft is covered partially. That at the **third floor** there is excess coverage beyond sanction building plan in front setback and two rooms are constructed in rear-open. Moreover, a separate stair case has been constructed inside the second floor to third floor (as duplex floor). That It is pertinent to mention here that stairs case from ground to top floor has been constructed in side-open in contravention to sanctioned building plan.”*

5. In an earlier status report dated 19.09.2023, MCD had mentioned that an additional room and toilet have been constructed on the terrace.

6. Mr. Kartikay Yadav, learned counsel for MCD, upon instructions, states that proceedings have not commenced in respect of the unauthorised construction only in view of pendency of this writ petition.

7. Mr. Ravi Bassi, learned counsel for the petitioner, submits that the latest status report does not deal with unauthorised construction on the roof of the subject property, and the allegations with regard to unauthorised construction in the ground floor of the subject property, owned by the petitioner, are inconsistent with earlier status reports filed in this case. He further submits that the construction in the ground floor



is protected by the moratorium granted under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 [“Special Provisions Act”].

8. I am of the view that it is unnecessary in these proceedings, under Article 226 of the Constitution, to enter into this controversy further. The latest status report shows that MCD has identified certain unauthorised construction at the subject property. MCD is at liberty to commence proceedings in accordance with law in respect of any such unauthorised construction. Naturally, such proceedings will commence with issuance of a show cause notice to the owner/occupier of the respective portions of the subject property, who will be free to make their submissions, both on the factual aspects of the matter and as to the protection granted under the Special Provisions Act. MCD may consider those submissions and pass such orders, as required, in accordance with law, only thereafter. The procedure for action in respect of unauthorised construction is provided in the Delhi Municipal Corporation Act, 1957 [“the Act”], and certain precautions have also been laid down by the Supreme Court in a recent judgment dated 13.11.2024 in *In Re: Directions in the matter of demolition of structures* [WP (C) 295/2022 and connected matters].

9. This Court has not entered into a consideration of any of these aspects, in respect of which the rights and remedies of the parties remain reserved. In the event MCD decides to take further action, the concerned parties will also have the remedy before the Appellate Tribunal for MCD under Section 347B of the Act.

10. The writ petition is disposed of with the aforesaid directions. As stated above, the rights and contentions of parties are expressively



reserved. MCD is directed to act strictly in accordance with law and after compliance of all statutory formalities, and in consistence with the judgment of the Supreme Court in *In Re: Directions in the matter of demolition of structures* [WP (C) 295/2022 and connected matters].

11. In the event the petitioner remains aggrieved with regard to unauthorised construction, he is at liberty to approach the Special Task Force [“STF”], constituted by the Supreme Court *vide* orders dated 24.04.2018 and 18.07.2018 in W.P.(C) 4677/1985 [*M.C. Mehta vs Union of India & Ors.*]. This direction is made with reference to the decisions of the Division Bench in *Devender vs. Govt. of NCT of Delhi and Ors* [order dated 20.09.2018 in W.P.(C) 1807/2018], *Sneh Lata & Anr. vs. North Delhi Municipal Corporation & Anr.* [order dated 08.04.2019 in LPA 245/2019], *Fazruddin vs. DDA & Ors.* [order dated 23.04.2019 in WP (C) 4649/2017], and in *Himanshu vs. East Delhi Municipal Corporation & Anr.* [order dated 31.07.2023 in W.P.(C) 8104/2022], and decisions of Coordinate Benches in *Abdul Gaffar vs South Delhi Municipal Corporation & Ors.* [order dated 28.02.2019 in W.P.(C) 1773/2019] and *Rashiduddin Malik vs. MCD & Ors.* [order dated 02.09.2024 in WP (C) 12102/2024].

PRATEEK JALAN, J

NOVEMBER 25, 2024/‘bh/AD’/