



\$~69

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

+ **W.P.(C) 10101/2024**

MALTI GUPTA

.....Petitioner

Through: Petitioner in person.

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Ms. Harshita Gulati, Adv.
Mr. Tushar Sannu, SC for MCD.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

%

11.09.2024

1. The petition is for the following relief:-

“a) Pass an order to hold the sanction plan obtained via 20004581 dated 5- Sep-2023 not maintainable as it failed to fulfill the undertaking and direct respondent 1 to cancel the same.

b) Pass an order of mandatory injunction in favor of the petitioner and against the respondents, their agents, employees, attorneys, assignees, legal heirs etc thereby directing them to stop the construction on the property bearing no. 110/10 Gautam Nagar, New Delhi.

c) Pass an order to direct respondents to maintain maximum ground coverage stipulated at 90% mentioned in Annexure VI of Master Plan of Delhi -2021.

d) Pass an order to fulfill the indemnity bond for as required by the 7.4.7 of Unified building bye laws (UBBL-2016), for causing damages and seepage in the basement and walls in the adjacent property bearing no. 110/11 Gautam Nagar.



e) Pass an order to maintain status quo in the premises 110/10 Gautam Nagar until the matter is adjudicated in the execution suit EX 637/2023 or until the disposal of this writ petition by ordering the respondents that no, construction or demolition shall take place.

f) Pass an order for respondent 1 to hold departmental inquiry for their inaction, connivance and negligence in the matter.

g) Pass an order to impose costs on the respondent for their inaction, connivance and negligence in the matter

h) Any other order which this Hon'ble court may deem fit and proper under the facts and circumstances of the case."

3. The Corporation, by way of status report dated 31.07.2024, takes the position that the property was inspected and all the relevant documents were examined.

4. According to the Corporation, it was found that there were various anomalies as has been explained in detail in the status report. The Corporation, therefore, submits that action is not only contemplated against the occupier/builder but against the Architect as well. The learned counsel for the Corporation further submits that even a work stop notice has also been issued.

5. A perusal of paragraph no.10 of the status report would indicate various reasons as to why the building plan does not meet the requirements of the relevant policy and it has been *prima facie* found that the building does not qualify for sanction of building plan. Para 10 of the status report reads as under:-

"10. That it has been reported that the building plan case of the property being situated in an Unauthorized Regularized Colony, is governed by the Notification dated 17.01.2011 I Master Plan-2021, to be read with relevant policy framed by the Town Planning Department and allied Circulars. But it appears that the case does not qualify for sanction of building plans under the aforesaid Notification/



policy, with violations committed by the applicants and Architect/Structural Engineer/ Supervisor in the following manner: 1. Ownership Documents: The chain of ownership documents as was uploaded by the applicants for the purpose of sanction of building plans through Architect/Structural Engineer/ Supervisor while sanctioning of building plans (a) Copy of duly registered Sale Deed executed on 09/09/1949 - between Chaudhary Badhra Sain S/o Chaudhary Hari Singh, in favor of R.S.R. Gautam S/o Pt. S. Gautam {individually measuring 4 Bighas and 13 Biswas and collectively mentioned as 8 Bighas 4 Biswas}.

(b) Indenture dated pt July, 1954 – executed between Shri R. Gautam and Shri Pravin Sankalchand Shah for a piece of land measuring 6 Bighas and 4 biswa

(c) Indenture dated 27th March 1969 - executed between Pravin Sankalchand Shah, Panna Pravin Shah, Mona Pravin Shah, Bablu @ LOP A Pravin Shah and Kirit Pravin Shah (as Settlers - HUF) and Savita@ Urmi Shantilal Doctor (the Trustee) - conferring/ transferring exclusive rights (including disposal of property) to the Trustee.

(d) GPA dated 19/09/1985 - executed by Smt. Panna P. Shah W/o Shri Pravin S. Shah in favor of Shri Prem Sagar Gautam S/o Late Rai Saheb R. Gautam (for land measuring 4900 sq. yards falling in Kh. No. 71, 73, 74, 77, 432/76 and 433/76, Village Masjid Moth)

(e) GPA dated 20/01/1989 - executed by Shri Prem Sagar Gautam in favor of Shri Ashok Rustagi S/o Shri Din Dayal Rustagi (carving/ selling out 100 sq. yards from the land measuring 4900 sq. yards falling in Kh. No. 71, 73, 74, 77, 432/76 and 433/76, Village Masjid Moth) 2. Division of plot

(f) Agreement to Sell dated 20/01/1989 executed by Smt. Panna P. Shah W/o Shri Pravin S. Shah (vendor through Prem Sagar Gautam)- in favor of Mrs. Nanda Rustagi W/o Shri Ashok Rustagi (carving/ selfrng out 100 sq. yards or 900 sq. ft. from the land measuring 4900 sq. yards falling in Kh. No. 71, 73, 74, 77, 432/76 and 433/76, Village Masjid Moth)

(g) Sale Deed dated 24/05/2023 - Shri Ashok Kumar Rastogi and Smt. Nanda Rastogi (vendor)- in favor of Shri Pralhad Baram & Smt. Nirupama Baram (for plot measuring 100 sq. yards or 83.61 sq. mts. Forming part of khasra, in question. That as per indenture dated 27 /03/1969 power related with disposal of property was conferred or transferred to Savita @ Urmi Shantilal Doctor (the Trustee). However, the documents executed thereafter make no reference of the execution of documents under their signatures, which requires clarification. ii. Division of plots:

That the property under reference is situated in unauthorized regularized colony. However, on going through the aforementioned



ownership documents, it appears that the subdivision has taken place beyond the cut of date i.e. 16/02/1977. Hence, the inclusion of plot, in question in the layout/ regularization plan is the prerequisite condition for obtaining building plan/ permit. In this regard, reference is made to the provision made under Circular No. TP/G/SDMC/2013/1709 dated 18/01/2013, which stipulates as under: "4. In case of unauthorized regularized colonies, the plot for which sub-division/ amalgamation has been carried out prior to the cut of date of regularization i.e. 16.2.77 shall continue to remain as separate plot/ single entity subject to documentary proof. Further, sub-division subsequent to 16.2. 77 and upto 8.2.2007, shall be considered as per the notification of 17.1.2011 and these shall be incorporated in the regularization plan prior to sanction of building plan."

6. The Corporation has also noted that the division of plots was not permissible, and once such division has been done without following due process, the sanction plan ought not to have been granted under Saral Scheme and the same stands nullified.

7. The Court also takes note of the averments made by the respondent in paragraph no.11 to 16, which reads as under:-

"11. That there is failure on part of both the applicants and the Architect/Structural Engineer/ Supervisor. As far as professional responsibilities and liabilities of the Architect are concerned, it has been observed that:

a. The Architect/Structural Engineer/ Supervisor was required to ensure at his level that the case qualifies for sanction of building plans in terms of prevalent regulations notified in the Master 9 Plan-2021 , Unified Building Bye-Laws-2016 and DMC Act, 1957. The sanction of building plans has been accorded by the Engineer at his/her level and obtained by the applicants, without ensuring that the case qualifies for sanction of building plans as per prevalent regulations.

b. As an Architect Architect/Structural Engineer/ Supervisor, before sanctioning of building plans, he must be fully aware about past background of the case regarding eligibility of the case and well conversant with the mandatory provisions of the aforesaid Statutes.

c. The Architect needs to stay updated with regard to regulations and provisions of the Master Plan-2021 , Unified Building ByeLaws- 2016, DMC Act, 1957, Zonal Plans and other allied prevalent



regulations in terms of sanction of building plans, which are considered to be pivotal preliminary factors before practically preparing and designing the building.

d. Taking a common view, any sanction of building plans is not possible under the prevalent provisions until and unless it is under reference is eligible for sanction of building plans.

12. That the Architect while sanctioning the building plans at his level in the instant case has transgressed his assigned/defined /delegated powers in the above manner, thereby granting benefit to the applicants by sanctioning of building. plans in an unlawful manner. Moreover, in the sanction letter, the following conditions have been imposed/incorporated:

A. The intimation under 'Saral Scheme" shall not in any way relieve the owner/builder /engineer from full responsibility of carry out the work in accordance with the Building Bye-Laws and in case of any violation, they shall be liable for action under the law. Full responsibility of carrying out the work in accordance with the Building Bye-Laws shall solely and squarely lie with the owner/builder/Engineer and in case of any Building Bye-Laws violations, they only shall be liable for action under the law.

B. Any material mis-representation or fraudulent statement by the owner (s)/Builder/ Architect/Engineer contained m the intimation under 'Saral Scheme' shall lead to automatic cancellation of the undertaking and forfeiture of the building

C. The M.C.D. shall remain indemnified/ harmless in case of any dispute/ Court case arising out of this undertaking/intimation under 'Saral Scheme".

D. The owner/builder/Engineer shall be solely responsible for the correctness and genuineness of the plans and documents, details and particulars submitted by them and for obtaining all requisite NOCs from the concerned Departments.

13. That it appears that sanction of building plans was obtained by the Debajyoti Behuria Advocate Regn No. 19716 applicants and accorded by the architect by suppressing, concealment and misrepresentation of material fact. The onus for genuineness und correctness of the ownership and other allied documents submitted by the applicants at the time of sanction of building plans and ensuring the case qualifies for sanction of building plans in terms of prevelant regulations



notified in the Master Plan 2021, Unified Building Bye- Laws 2016 and DMC Act 1957 jointly lies with the applicants as well Architect /Structural Engineer/ Supervisor only

14.That according to the Provision No. 2.9 "Penal Action Revocation of building permit of the Unified Building Bye-laws, following action has been mandated: "The sanctioning authority shall revoke any building permit including sanction of building plan and/or occupancy-cum-completion certificate and take action as per law, if there has been any false statement or any misrepresentation of material facts in the application on which the building permit was based."

15.Hence, a show cause notice under Section 338 of the DMC Act-1957 has been given to the applicants to show cause as to why the sanction accorded/ granted in respect of Property No. 110/10, Khasra No. 71, 73, 74, 77, 432/76 and 433/76, Khewat No. 12 & 14 situated in the Revenue Estate of Village Masjid Moth under 'Saral Scheme' vide on line ID No. 20004581 dt. 08/05/2024 be not revoked under Section 338 of the DMC Act-1957 and also under the provisions of Building ByeLaws and the work commenced erected or done at site in pursuance of the same be treated as without any valid sanction. Further the Architect has been directed to show cause as to why the case be not referred to the competent authority for taking necessary action. Copy of the show cause notice dated 30.07.2024 addressed to the applicants and the architect is annexed as Annexure R/A.

16. That a letter has also been issued to stop the construction work Property No. 110/10, Khasra No. 71, 73, 74, 77, 432/76 and 433/76, Khewat No. 12 & 14 situated in the Revenue Estate of Village Masjid Moth. Copy of the letter/order dated 30.07.2024 is annexed as Annexure R/B."

6. Learned counsel who appears for applicant seeking impleadment, however, opposes the action being taken or proposed to be taken by the Corporation on various grounds.

7. She submits that the action taken by the Corporation is wholly without jurisdiction and is completely uncalled for.

8. Be that as it may, the Court in the instant writ petition is not adjudicating the grievance being raised by the private respondent. In the



instant writ petition, the Corporation has not indicated any action being contemplated against the applicant seeking impleadment.

9. The Corporation is directed to take the controversy to its logical end after extending opportunity of hearing to the affected parties. The affected parties, thereafter, shall also be at liberty to take appropriate legal recourse in accordance with law.

10. In any case, if the Corporation is unable to take necessary action, as has been stated in the status report within a period of five months, the petitioner shall be at liberty to take appropriate recourse in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J
SEPTEMBER 11, 2024/KG