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

+ W.P.(C) 10233/2024 & CM APPL. 41981/2024

ASHOK MALHOTRAPetitioner

Through: Mr. Raj Kumar Sharma, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.Respondents

Through: Mr.Manu Chaturvedi and Ms.Devika Singh, Advs for MCD.

Mr.Raghvendra Upadhaya, Mr.Ruchir Baswal and Ms.Purnima Jain, Advs for R-2.

Mr.Anuj Chaturvedi and Ms.Harshita Maheswari, Adv for DDA.

Ms.Mattika Tripathui, SC with Ms.Rony John, Adv for R-7.

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+ W.P.(C) 10753/2024 & CM APPL. 44279/2024

DEEPAK JAINPetitioner

Through: Mr.Anuj Kapoor and Mr.Shivom Sethi, Adv.

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr.Vishal Chadha, Adv for MCD.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **07.08.2024**

1. The instant writ petitions pertain to the very same property being shop no.638, Old Lajpat Rai Market, Chandni Chowk, Delhi, 110006 and hence, they are being decided by this common order. In W.P.(C) 10233/2024, the



petitioner, namely Ashok Malhotra has sought for demolition of the unauthorised construction on account of alleged violation. Whereas, the petitioner, namely Deepak Jain in W.P.(C) 10753/2024 is assailing the demolition action initiated by the respondent-MCD. For the sake of clarity, the facts are being extracted from W.P.(C) 10753/2024, however, facts of W.P.(C) 10233/2024 shall be referred wherever necessary.

2. The petitioner in W.P.(C) 10753/2024 is seeking quashing of the show cause notice dated 22.07.2024, issued by the respondent-MCD relating to the subject property, which happens to be the shop of the petitioner. The record would reveal that the subject property was allotted to the petitioner's father, which consisted of ground floor, first floor and second floor at the time of allotment. Subsequently, when the subject property came into possession of the petitioner in 2008-09, it included a basement and a third floor in addition to the aforementioned structure.

3. Thereafter, on 20.08.2014, a directive came to be issued by the Division Bench of this Court in W.P.(C) 3332/1998 titled as ***M/s Ellar Traders V. Govt. of NCT of Delhi & Ors.***, wherein, further unauthorised construction, in an area where the subject property situates, was directed to be stopped and the existing unauthorised construction beyond the Floor Area Ratio (FAR) of 300 was ordered to be immediately removed. In pursuance of the said order, the petitioner had himself sealed the third floor of the subject property. However, upon a complaint stated to have been made by the petitioner in W.P.(C) 10233/2024, the respondent-MCD issued a show cause notice dated 22.07.2024, seeking a response from the petitioner as to why demolition should not be conducted against the subject property. Aggrieved by the action of the respondent-MCD, the petitioner has



approached this Court to ventilate his grievance.

4. Learned counsel appearing on behalf of the petitioner submits that the construction of the petitioner is protected by the decision rendered by this Court in *M/s Ellar Traders (supra)*. He, therefore, submits that any part of the construction, if at all, can be termed to be unauthorised, the same would only relate to the third floor. According to him, the said premises is non-operational as on date and the petitioner further undertakes to ensure that the same would remain sealed.

5. Learned counsel for the petitioner additionally submits that the action in question has been triggered on the basis of a complaint made by the petitioner in W.P.(C) 10233/2024. He also submits that the petitioner is ready to seal the basement and the third floor and therefore, the remaining building can be allowed to be used to the extent of ground floor, first floor and second floor.

6. Upon issuance of notice, the respondent-MCD placed on record its counter-affidavit. In paragraph no.3 of the affidavit, the respondent-MCD states that the property in question was inspected on 22.07.2024 and during inspection, it was noticed that the property comprised of a basement, ground floor, first floor, second floor and third floor. The construction has been noted to be old and occupied. According to the respondent-MCD, neither any further construction was being carried out nor was any building material found at the site.

7. The respondent-MCD, however, takes a categorical stand that there exists no sanctioned building plan in respect of the property in question and therefore, the construction has been categorised as 'unauthorised'. Accordingly, the same has been booked *vide* file dated 22.07.2024 under



Section 343 and 344(1) of the Delhi Municipal Corporation Act, 1957 (Act of 1957).

8. The respondent-MCD further submits that the show cause notice dated 22.07.2024 was issued to the owner and demolition order came to be passed on 05.08.2024. The respondent-MCD also states that the owner of the property in question has been directed to demolish the construction within six days, failing which, necessary action will have to be taken by the respondent-MCD at the cost and risk of the owner of the property in question.

9. The order passed by the Division Bench of this Court in *M/s Ellar Traders (supra)* consists of following pertinent observations:-

"22. We also direct the concerned municipal corporation or the other agency having jurisdiction over the markets to ensure that at least till the finalization and implementation of the redevelopment plan, no further unauthorized construction is carried out in the markets and that the unauthorized construction which is beyond the FAR of 300 at least is removed forthwith. Since in the ordersheets, we have found some controversy whether the market has / had been handed over to the MCD or not and as to the local body / authority having jurisdiction over the market, Hon'ble Lt. Governor to also ensure that our directions are conveyed to the concerned agency and it implemented. We suggest that Hon'ble Lt. Governor calls for periodic implementation report, as this Court has been doing for the last 15 years. "

10. It can be reckoned from a perusal of the aforesaid extract that till the finalisation and implementation of the development plan, further unauthorised construction which is beyond the FAR of 300 has been prohibited by this Court. The unauthorised structure beyond the permissible FAR was directed to be removed forthwith.

11. It is also noteworthy to peruse the relevant extract of the survey report which has been placed on record in tabular form as *Annexure P-2* in W.P.(C)



10233/2024. According to the aforesaid report, the shop in question has been shown to have an allotted area of 137 sq.ft. The area of basement is shown to be 'NIL'. The ground floor and the first floor, both have been shown to be measuring 156 sq. ft., whereas second floor was shown to be measuring 165 sq. ft.

12. Even no third floor was existing as per the survey report. Rather, at the time of survey, the report indicates that the petitioner was already breaching the permissible FAR to the extent of 66 sq. ft. This survey was conducted during the pendency of the case of *M/s Ellar Traders (supra)*.

13. The inevitable conclusion that comes to the fore is that the petitioner has reconstructed the basement and third floor in addition to the ground, first and second floor, though the said reconstruction was prohibited in light of the decision passed by the Division Bench.

14. The Court is, therefore, of the considered opinion that the petitioner has violated the statutory provisions of the Act of 1957, as mentioned above. Not only the infraction of statutory provisions, but even the reconstruction appears to have been carried out in the teeth of existing applicable directions passed by the Division Bench of this Court.

15. At this juncture, the Court deems it apposite to traverse through a catena of judicial pronouncements which affirm the settled position of law that the Court should not endeavour to proliferate illegality by allowing regularisation of unauthorised construction and judicial discretion in such matters should not follow the trajectory of expediency. In the case of *Priyanka Estates International (P) Ltd. v. State of Assam*¹, the Supreme Court took a view that constructions without any sanction of law are against



the interest of public and the same are required to be dealt with sternly.

Paragraph no.55 of the said decision reads as under:-

*“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. **Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free.** Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. **Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings.** To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”*

(emphasis supplied)

16. In another case titled as ***M.I. Builders (P) Ltd. v. Radhey Shyam Sahu***², while dealing with the menace of unauthorised construction, the Supreme Court has held that the Court should not show any consideration to the builder or any other person in cases where construction is not legal and if such structure cannot be compounded, the same should be demolished. The relevant paragraph of the said decision is culled out herein for reference:-

*“73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. **This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the***

¹ (2010) 2 SCC 27

² (1999) 6 SCC 464



robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. *Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”*

(emphasis supplied)

17. The Court also lends a credence on the dictum laid down by the Supreme Court in the case of ***Shanti Sports Club v. Union of India***³, wherein, it has been explicitly held that no relief should be granted by the Court to the violators and settlement should not be reached on the score that the violator has spent an enormous sum in building such unauthorised construction. Paragraph no.74 of the said decision is reproduced hereunder as:-

“74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the

³ (2009) 15 SCC 705



relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. **This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.**—K. Ramadas Shenoy v. Town Municipal Council, Udipi [(1974) 2 SCC 506] , G.N. Khajuria (Dr.) v. DDA [(1995) 5 SCC 762] , M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1996) 6 SCC 464] , Friends Colony Development Committee v. State of Orissa [(2004) 8 SCC 733] , M.C. Mehta v. Union of India [(2006) 3 SCC 399] and S.N. Chandrashekar v. State of Karnataka [(2006) 3 SCC 208] .”

(emphasis supplied)

18. It is also pertinent to refer to the following observations of the Supreme Court in the case of ***Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai***⁴ :-

“1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this **Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.**”

⁴ (2013) 5 SCC 357



(emphasis supplied)

19. The Supreme Court in the case of ***Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.***⁵, has extensively discussed the ramifications of an unauthorised construction which goes much beyond a mere breach of statutory provisions and rather, affects the well-being of a planned living for all the stakeholders. The relevant paragraphs of the said decision are reproduced herein for reference:-

“159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

*160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. **Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.***

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building

⁵ (2021) 10 SCC 1



plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.”

(emphasis supplied)

20. An upshot of the above discussion manifests that the Courts must adopt a strict approach while dealing with the cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. While the Court cannot remain oblivious of the housing and other infrastructural needs of a common man, however, the same cannot be fulfilled at the expense of compromising the regulatory integrity and neglecting the multifaceted consequences of unauthorised construction.

21. The law ought not to come in rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.



22. In light of the aforesaid, the Court also finds itself unable to accede to the submission of the petitioner with respect to voluntary sealing of the basement and third floor. The same is also untenable in view of the flagrant violations of the directions passed by the Court. So far as the argument of the petitioner that the entire building has not been reconstructed and only basement is built is concerned, in the considered opinion of the Court, the ground floor and upper floors cannot exist till the foundation for basement is laid. The said argument is fallacious, unacceptable and apparently too far-fetched. In any case, if the petitioner was interested in constructing the basement afresh without demolishing the superstructure, necessary permission ought to have been obtained from the Court, which has admittedly not been done.

23. At this juncture, learned counsel for the petitioner in W.P.(C) 10753/2024 submits that the petitioner in W.P.(C) 10233/2024 has prayed for the demolition of illegal and unauthorised construction of the subject property in question and seeking for sealing of the same. He contends that the said petitioner is also placed on an equal footing and is himself engaged in unauthorised construction. However, since the Court has already rejected the prayer of the petitioner in W.P.(C) 10753/2024 regarding regularisation of property in question, therefore, there arises no need to delve into the intricacies of the W.P.(C) 10233/2024.

24. However, bearing in mind the abovesaid submissions, the Court deems it appropriate to direct the respondent-MCD to inspect the premises of the petitioner in W.P.(C) 10233/2024 and take necessary steps in accordance with law.

25. The petitioner in W.P.(C) 10753/2024 is also at liberty to approach



the respondent-MCD with respect to the petitioner in W.P.(C) 10233/2024.

26. In view of the aforesaid, the instant writ petitions along with pending applications stand disposed of.

PURUSHAINDR KUMAR KAURAV, J
AUGUST 7, 2024/MJ