



\$~55

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

+ W.P.(C) 10721/2024

KUSUM LATA GAUR

.....Petitioner

Through: Mr. Sagar Shivam Jaiswal and Mr.
Rishabh Yadav, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Mr. Ajay Aroraa, Standing
Counsel with Mr. Kapil Dutta, Mr.
Prabhat Kumar and Ms. Rashika
Chopra, Advocates for MCD.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

25.10.2024

1. The petitioner has filed this writ petition under Article 226 of the Constitution for direction upon the Municipal Corporation of Delhi ["MCD"] to de-seal her sealed property bearing *No. 1-B/9, Kishan Garh, Vasant Kunj, New Delhi* ["subject property"].
2. I have heard Mr. Sagar Shivam Jaiswal, learned counsel for the petitioner, and Mr. Ajay Aroraa, learned Standing Counsel for MCD.
3. It appears that the subject property was sealed by virtue of an order dated 20.11.2017 passed by MCD under Section 345A of the Delhi Municipal Corporation Act, 1957. The order records that unauthorised construction has been found in the property in the shape of Ground Floor to Fourth Floor. MCD had issued a show cause notice dated 03.11.2017,



to which no reply was received. The Deputy Commissioner, South Zone, therefore, recorded his satisfaction that the premises/unauthorised construction was required to be sealed.

4. The MCD also passed a demolition order dated 24.10.2017 on the ground of unauthorised construction, and directed the petitioner to vacate the premises by a vacation notice dated 10.04.2018. The petitioner challenged the demolition order by way of Appeal No. 95/2019 before the Appellate Tribunal for Municipal Corporation of Delhi [“ATMCD”]. By an order dated 13.02.2019, the ATMCD observed that there was no proof of service of the show cause notice upon the appellant and, therefore, directed MCD to provide a fresh opportunity of hearing and to pass a speaking order thereafter. These observations were based on the statement of the Assistant Engineer, MCD recorded by the ATMCD. The impugned order of demolition dated 24.10.2017 was, therefore, quashed and the matter was remanded to the quasi-judicial authority of MCD to take a fresh decision.

5. A speaking order was thereafter passed on 06.05.2019, which states that the construction does not have legal sanctity, but being an old construction in existence prior to 01.06.2014, it is protected by the National Capital Territory of Delhi (Special Provisions) Second Amendment Act, 2014 [“Special Provisions Act”]. The demolition order was, therefore, kept in abeyance and under suspension.

6. The petitioner then applied for de-sealing of the property on 06.10.2020, but no response was received to her communication.

7. Mr. Aroraa does not suggest that the sealing order has been passed on any ground other than unauthorised construction, but states that the



premises could not be de-sealed as there was no challenge to the sealing order.

8. Having heard learned counsel for the parties, I am of the view that the petitioner is entitled to the relief sought. Both the sealing order and the demolition order were passed on the same allegation of unauthorised construction. The MCD has itself come to the conclusion that the petitioner is protected by a moratorium under the Special Provisions Act. In such circumstances, the question is not one of challenge being laid against the quasi-judicial authority's order of sealing, but of de-sealing the subject property due to a material change in circumstances, which affects the substratum of the sealing order.

9. In the aforesaid facts and circumstances, the writ petition is allowed and the respondent is directed to de-seal the sealed portion of the property, i.e. *1-B/9, Kishan Garh, Vasant Kunj, New Delhi*.

10. It is made clear that as and when the moratorium under the Special Provisions Act comes to an end, the MCD will be at liberty to take fresh proceedings in respect of the unauthorised construction.

11. The petitioner is directed to file an affidavit of undertaking within two weeks from today, stating that *status quo* will be maintained with regard to construction in the subject property, and no further construction will be carried out without the permission of the MCD, in accordance with law.

PRATEEK JALAN, J

OCTOBER 25, 2024/MR/