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

+ **W.P.(C) 10779/2024 & CM APPL. 44364/2024**

SURINDER KAUR

.....Petitioner

Through: Ms. Payal Chawla and Mr. Tarun
Gumber, Advs.

versus

MCD, WEST ZONE

.....Respondent

Through: Mr. Varun Chandiok, Mr. Alok
Kumar and Ms. Anubhi Goyal, Advs.
for MCD.
Mr. Ashutosh Gupta, ASC with Mr.
Arman Monga and Mr. Abhinav
Shokeen, Advs. for MCD.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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18.09.2024

1. The petitioner, in the instant writ petition, has prayed for the following reliefs:-

“It is most respectfully prayed that the impugned notice/order dated 22.07.2024 under section 435 & 433 of DMC Act for demolition /sealing action of the property of the petitioner bearing No. WZ-206A, 3rd Floor, Krishna Park, Street No. 2, New Delhi-110018 for demolition / sealing or otherwise be quashed and the Respondent and his officials be restrained from taking any coercive action on the basis of the aforesaid orders or any further orders if passed by respondent in respect of the flats/properties in any manner whatsoever.”

2. The respondent by way of counter affidavit, has stated that the impugned action is strictly in accordance with law, and in terms of



paragraph Nos.3 to 7, the following position has been taken:-

*“3. That as per record maintained by the answering respondent No. 1 /MCD i.e. Building Department-1, West Zone, it is submitted that the property bearing No. WZ-206B, Krishna Park, Street No.2, New Delhi has been booked vide file no. EE(B)- I/WZ/UC/2014/12 dated 17.01.2014 for unauthorized construction in the shape of making entire Third Floor & one room at fourth Floor with projection on municipal land. Consequently, a show cause notice u/s 344 (1) and 343 of the DMC Act was issued to Sh. Amrik Singh on 17.01.2014. Copy of the show cause notice dated 17.01.2014 is annexed herewith as **Annexure-'A'**.*

4. Thereafter, in response to said show cause notice a reply was received in the department from Sh. Amrik Singh on 23.01.2014, wherein he has submitted that the property bearing No. WZ- 206B, Krishna Park, Street No.2, New Delhi does not belong to him and no construction work is taking place at my house and there is no room at fourth floor as no fourth floor exist in my property and I am the owner of property bearing No. WZ-206A, Krishna Park, Street No.2, New Delhi. However, no proof in this regard was submitted before the department.

*5. That however, the said reply was not found satisfactory in the absence of any sanction plan / permission from competent authority. Therefore, after following due process of law under DMC Act a Demolition Order under Section 343 of DMC Act, 1957 was passed on 23.01.2014. The copy of the demolition order dated 23.01.2014 is annexed herewith as **Annexure-'B'**.*

*6. That further, in compliance of direction of the Hon'ble JSCC/ASCJ/GJ(WEST) vide its order dated 05.04.2024. A demolition program of the above mention property / area was fixed for 24.07.2024 under the jurisdiction of PS Tilak Nagar, New Delhi. During the course of action one room at fourth floor was completely demolished. Copy of the court order dated 05.04.2024 is annexed herewith as **Annexure-'C'**.*

7. That it is further pertinent to mention that the property bearing No. WZ-206, Krishna Park, Street No.2, New Delhi is a property which has been constructed in two stacks but the stacks are not numbered either A & B and the property number has been marked in Zig-Zag manner and both the stacks have mixed property number A & B in them.”

3. Learned counsel for the petitioner then contends that the petitioner herein is primarily aggrieved by the action *qua* the property located at WZ-206A, 3rd Floor, Krishna Park, Tilak Nagar and according to him, the



respondents have failed to place on record any Show Cause Notice [SCN] or other specific order pertaining to the said property.

4. In response, learned counsel appearing for the respondent, while drawing the attention of this Court to paragraph no.7 of the counter affidavit, explains that the subject property has been constructed/marked in a haphazard manner, akin to a zig-zag and therefore, according to the respondent, the entire property was found to have been unauthorisedly constructed.

5. The Court is of the considered opinion that all the aforesaid aspects can be considered by the Appellate Tribunal-Municipal Corporation of Delhi [AT-MCD] if the petitioner challenges the impugned action before the AT-MCD.

6. Upon considering the submissions advanced by the respondent in its counter affidavit, it can be seen that the petitioner is an aggrieved person and accordingly, is entitled to institute the proceedings before the AT-MCD.

7. The Court, therefore, instead of expressing any findings on the merits of the case, relegates the petitioner to the remedy before the AT-MCD.

8. Learned counsel appearing for the petitioner further contends that the Court, while entertaining the instant writ petition *vide* order dated 05.08.2024, had restrained the respondents from taking any demolition action.

9. She, therefore, prays for extension of the said order till the petitioner approaches the AT-MCD. She also requests that the time consumed in the instant writ petition may also be considered to be condoned.

10. With respect to the condonation of the time consumed in the instant writ petition, the petitioner shall be at liberty to explain the same before the



AT-MCD and the same shall be considered by the AT-MCD in accordance with law.

11. The Court directs the petitioner to file the appeal before the AT-MCD within 10 working days. If the petitioner does so, the interim protection granted by this Court *vide* order dated 05.08.2024 shall remain in effect until the concerned Tribunal considers the petitioner's application for interim protection.

12. The petition stand disposed of alongwith the pending application.

13. All rights and contentions are left open.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 18, 2024/p