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

+ **W.P.(C) 10990/2024**

MR. GAJENDRA SINGH

.....Petitioner

Through: **Mr. Srikanth Hariharan and Mr.
Paripoorn Singh, Advs.**

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

.....Respondents

Through: **Mr. Manu Chaturvedi, SC, MCD with
Ms. Devika Singh, Adv.
Mr. Manish Sharma and Ms. Jigyasa
Sharma, Advs. for R-2.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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08.08.2024

CM APPL. 45335/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 10990/2024

3. The instant petition has been preferred by the petitioner against the speaking order dated 30.07.2024 passed by the respondent-Corporation directing the respondent No.2 to demolish the room inside *chajja* and room at 3rd floor *qua* the property bearing Plot No.14, Sector-C, Pocket -5, Vasant Kunj, New Delhi-110070.

4. Learned counsel appearing for the petitioner submits that on 29.10.2003, a sale deed was registered by the erstwhile owner in favour of



respondent No.2, by way of which the title of the second floor along with the entire terrace and rights to use one servant quarter with common bath/toilet were conveyed in favour of the petitioner. He further submits that on 16.02.2004, a sale deed was registered by the erstwhile owner in favour of Mrs. Premlata Tyagi for ground floor and basement along with back space, back and side courtyard, one servant room on the terrace. According to him, on 15.04.2004, a sale deed *qua* the first floor along with rights to use a servant quarter on the terrace with common toilet/ bath stood registered in favour of respondent No.3.

5. He, therefore, submits that as on 01.01.2006, on commencement of the Delhi Laws (Special Provisions) Act, 2006, the construction in question was already in existence and the same is, therefore, protected in view of the provisions under the said Act.

6. The case of the petitioner is that on 26.08.2007, respondent No.2 made a complaint to the LG of Delhi against the alleged illegal servant quarters and thereafter, the petitioner bought the ground floor and basement from its erstwhile owner with all its rights along with one servant room on the terrace on 23.02.2023.

7. The petitioner has taken the Court through the sale deed, as has been referred to hereinabove, and he contends that if the concerned sale deed is carefully perused, the same would indicate that there is no deviation/variation against sanctioned building plan. According to him, no sanctioned building plan is necessary in view of the construction being in existence prior to commencement of the Act and therefore, when the room inside *chajja* and room at 3rd floor was already in existence, hence, the entire action is illegal and improper and the same deserves to be set aside.



8. Learned counsel appearing for the respondent-Corporation, on instructions, points out that a writ petition being W.P.(C) 9802/2024 has been filed by respondent No.2. In the said writ petition, the respondent-Corporation has filed a status report, wherein, it was stated that the property in question is situated over DDA Plot No.14, Sector-C, Pocket -5, Vasant Kunj, New Delhi-110070 and was inspected on 15.07.2024. During inspection, the property was found comprising of basement, ground floor, first floor and room at terrace/third floor.

9. The report further stipulates that the deviation/ variation against sanctioned building plan in the form of extension of room inside *chajja* and room at 3rd floor was also noticed. According to status report, the said construction was of respondent No.2.

10. Learned counsel appearing for the respondent-Corporation further explains that there appears to be a dispute between the petitioner and the private respondent with respect to the ownership of the room.

11. Be that as it may, in the instant writ petition, the Court is only concerned with respect to the impugned order which has been passed on 30.07.2024 which unequivocally records that the room at 3rd floor is unauthorisedly constructed.

12. The room or the *chajja*, as to whom they actually belong, is not the subject matter in the instant petition. The Court is of the considered opinion that none of the sale deeds or the document presented by the petitioner would indicate that the room on 3rd floor was in existence before the commencement of the provisions of the Act.

13. The respondent-Corporation, therefore, rightly records in the impugned order dated 30.07.2024 that the construction in question is



unauthorized.

14. For the sake of clarity, the impugned order dated 30.07.2024 is extracted as under:

“Whereas, a Writ Petition (Civil) No. 9802/2024 titled as Dr. Vanga Siva Reddy & Anr. Vs Municipal Corporation of Delhi & Ors. pending adjudication before the Hon'ble High Court of Delhi. Accordingly, the entire impugned property i.e. DDA Plot No.14, Sector-C, Pocket-5, Vasant Kunj, New Delhi-70 was inspected on 15/07/2024. During inspection, property was found comprising of basement, ground floor, first floor second floor and room at terrace/third floor, which is occupied by different Owner(s)/Occupier(s).

Whereas, during inspection the "unauthorized construction in the shape of deviation/variation against SBP in the form of extension of room inside chajja and room at 3rd floor" was noticed qua the floors/portion of pertaining to Mr. Vanga Siva Reddy against the DOA Sanctioned Building Plan No.223 dated 01/05/2000. Accordingly, the answering Department booked the above quoted deviations/variations under Section 344(1) and 343 of the DMC Act, vide U.C. File No.329/B/UC/NG/24 dated 15/07/2024 and show cause notice was issued and served upon Mr. Vanga Siva Reddy.

Whereas, in response to above stated show cause notice, a reply was received in the Department from Mr. Vanga Siva Reddy vide Diary No.128 dt. 23/07/2024 seeking personal hearing. Hence, the opportunity for personal hearing was granted to him.

Whereas, Mr. Vanga Siva Reddy appeared in person before the undersigned for personal hearing. During course of hearing, he submitted his written submission in the Department along with chronology of various agreements etc. and photographs, DDA sanctioned plan bearing No.223 dated 01/05/2000 and Occupancy Certificate bearing No.337(01)/2000/Bldg. dated 03/06/2003. The documents submitted by the appellant are taken on record.

Whereas, after dealing with all the submissions, pleas and defenses raised by the Appellant as well as relevant records/documents placed on record; the undersigned has come to the conclusion that the Appellant has not been able to establish the valid status of unauthorized construction/deviation/variations, as has been booked by the Department. Hence, the unauthorized construction, as has been booked by the Department, is liable for action under the DMC Act-1957.



*I, Rajbir Singh, Assistant Engineer, Building Deptt., Najafgarh Zone (M.C.D.) wh has been delegated the power by the worthy Commissioner, M.C.D. under Section 491 of the DMC Act for the implementation of the provision of Section 343 & 344 of the DMC Act, 1957, hereby pass the demolition order under Section 343 of the DMC Act against the 'deviation/variation against SBP in the **form of extension of room inside chajja and room at 3rd floor**' as has been booked by the Department under U.C. File No.329/B/UC/NG/24 dated 15/07/2024 and therefore the Noticee (s) is/are required to demolish the same within six days of the receipt of this order. In case he/they do not comply with the orders, Municipal Corporation of Delhi by itself will initiate action for demolition of impugned unauthorized construction/deviation/variation; and expenditure so incurred towards demolition would be recovered from the Owner(s)/ Builder(s)/Occupier(s) as arrears of taxes under aforesaid Act."*

15. The Court is, therefore, unable to accede to the prayer for interference against the impugned order. Unless the petitioner is able to show that the construction sought to be demolished is either protected by the provision of the amendment Act, or the same has been raised with due approval of the competent authority, the Court under article 226 of the Constitution of India, would not be justified in stalling the statutory action contemplated by the respondent-Corporation.

16. The writ petition is, accordingly, dismissed along with pending applications, if any.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 8, 2024/p