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

+ **W.P.(C) 11054/2024**

SH. NARESH KUMAR & ORS.Petitioners

Through: Mr. Rohit Jain, Adv.

versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr. Ashutosh Gupta, ASC for MCD
with Mr. Ankur Goel, Adv.

CORAM:

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

ORDER

09.08.2024

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CM APPL 45638/2024 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 11054/2024 & CM APPL 45637/2024

1. The instant writ petition seeks to assail the order dated 30.05.2023 passed by the quasi-judicial authority with respect to the demolition of the property of the petitioner situated at House No.C-58, old plot No.34, Gali No.6, GT Colony, Delhi-110032.
2. Learned counsel appearing for the petitioner submits that the impugned order of demolition is illegal and arbitrary. He submits that the respondent-Corporation's stand has been totally inconsistent with respect to



the subject property. Firstly, the respondent-Corporation itself *vide* notice dated 07.06.2010 categorised the entire construction to be illegally constructed, however, by the impugned order, it has accepted that the part of the construction i.e. basement and ground floor is protected under the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007.

3. He further submits that as of now, the Appellate Tribunal-Municipal Corporation of Delhi (ATMCD) is non-functional and the petitioner has filed an application for regularisation of the building which is pending before the respondent-Corporation. He, therefore, submits that so long as the application for regularisation is not decided by the respondent-Corporation, the action of demolition be kept under abeyance. Learned counsel for the petitioner submits that in any case, the illegality of the order passed by the quasi-judicial authority can be examined by the ATMCD once it becomes functional and the petitioner avails the said remedy.

4. The aforesaid submissions are vehemently opposed by learned counsel appearing on behalf of the respondent-Corporation and he submits that the impugned order has been passed way back on 30.05.2023. He submits that there is a delay of more than one year and the petitioner is unable to explain the aforesaid inordinate delay. He further submits that on the date of passing of the order and even thereafter, the ATMCD was functional for a long time, and the petitioner has chosen not to challenge the aforesaid order of demolition.

5. Furthermore, so far as the application for regularisation is concerned, he submits that the same is bereft of any merit and appears to have been filed on 18.07.2024 as an afterthought. He, therefore, submits that the quasi-



judicial authority, after the matter was remitted back by the ATMCD, has thoroughly examined the facts and situation and came to the conclusion that except for the basement and the ground floor, the remaining structure of the petitioner is unauthorisedly constructed. He further submits that a perusal of the order would clearly indicate that there is no document produced by the petitioner so as to satisfy the said authority. He, therefore, submits that the instant petition deserves to be dismissed.

6. I have considered the submissions made by learned counsel for the parties and have perused the record.

7. The ATMCD *vide* its order dated 13.12.2022 remitted the matter back to the quasi-judicial authority and consequent thereto, *vide* order dated 30.05.2023, the quasi-judicial authority has passed the following order:-

“It is reflected from the booking file no. 54/B/UC/SHN/2010 dated 31/05/2010 that the unauthorized construction of one hall with stair case at basement and ground floor was booked on the complaint and on completion. In booking file unauthorized construction activities was not found in progress. In fact the old structure at basement and ground floor was booked. It is further reflected from the recent booking dated 22/07/2022 that the unauthorized construction in the shape of basement, ground floor, first floor, second floor part third floor (old and occupied) was booked vide file no. 48/B-II/UC/SHN/2022 dated 22/07/2022. These bookings are not in dispute. It is also not in dispute that the appellants have purchased there respective shares of the built up portion in vide sale deeds executed in the year 2021. It is also not in dispute that the construction over the property has been raised without obtaining the building sanction plan. Hence, entire structure over the property is without sanction plan. The basic issue before me to decide whether the structure over the property under the provisions of Special Act if so at what extent.

The documents submitted by the appellant clearly suggest that the basement and ground floor was exist prior to booking of 2010. Even in the booking of 2010 no new construction was noticed. The basement and ground floor was being used by the owner/occupier of the property prior to 2010 as per property tax paper. Hence, I am of the considered view that the basement and ground floor over the property was exist prior to 2007 as



reflected from the documents submitted by appellant. The structure first floor to third floor was raised after 2010 and as reflected from the booking file as well as property documents submitted by the appellants.

Thus there is force in the contentions of the appellants that the Structure over the basement and ground floor property in question is very old and exists prior to Feb-2007 which is cut off date for immunity from the punitive action against the unauthorized construction. However it is admitted fact that the construction over the property has been raised without obtaining building sanction plan and as such entire structure over the property is unauthorized. Hence I am of the consider view that the existing structure at basement and ground floor over the property is old and existed prior feb-2007 hence at the stage no punitive action could be taken against the basement and ground floor as per the provisions of the Special Act at this junction. However, the structure existing at first floor to third floor has been raised after 2010 (first booking) which cannot be protected as per the provision of Special Act hence, liable to be action.

Thus, in the light of above discussion and in compliance of the directions of the Hon'ble Appellant Tribunal dated 13/12/2022 and as per the provisions of the DMC Act 1, S.L. Meena, Assistant Engineer (Building)-11, Shahdara (North) Zone, MCD hereby passed the demolition order u/s 343/344 of DMC Act against the unauthorized construction in shape of basement, ground floor, first floor, second floor and part third floor booked vide booking file 48/B-II/UC/SHN/2022 dated 22/07/2022. However this demolition order quo basement and ground floor are hereby kept in abeyance as per the provision of National Capital Territory of Delhi Laws, (Special Provisions) Act, as at this stage punitive action cannot be taken against the old structure over the basement and ground floor.”

8. It is thus seen that the petitioner was afforded sufficient opportunity of hearing and the factual finding to that effect has been recorded by the concerned authority that the petitioner was unable to satisfy that the construction, barring the ground floor and the basement, is protected by the operation of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007. Therefore, the contention of the appellant that the respondent-Corporation has violated the principles of natural justice deserves to be rejected on that perspicuous count.



9. Furthermore, there appears to be two applications for regularisations, the first one is dated 11.11.2022, which is prior to the passing of the order of the respondent authority and the second application appears to have been filed on 18.07.2024 i.e. immediately before approaching this Court.

10. A bare perusal of regularisation applications would further indicate that the petitioner himself has agreed to pay the penalty and to demolish the encroached portion, if any. Both the applications do not refer any of the averments as to how in law, the petitioner is legally entitled for regularisation. Furthermore, the regularisation will have to take place only on the basis of applicable rules, regulations and existing policies. The Supreme Court in the case of **Joginder v. State of Haryana**¹, while dealing with the question of illegal occupation of the government land and then claiming regularisation, held that the regularisation cannot be claimed as a matter of right but will be done in accordance with the extant rules and regulations. The relevant extracts of the said order reads as under:-

“It is required to be noted that the persons in illegal occupation of the Government Land/Panchayat Land cannot, as a matter of right, claim regularization. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization. As observed by this Court in the recent decision in the case of State of Odisha v. Bichitrananda Das, reported in (2020) 12 SCC 649, an applicant who seeks the benefit of the policy must comply with its terms.”

11. Therefore, in light of the settled legal position that the regularisation cannot be claimed as a matter of right, the contention of the petitioner that since the regularisation application has not yet been accepted, the



unauthorised construction can be protected, deserves to be rejected on that score. Under the guise of regularisation application being pending, the lawful action of the official respondent cannot be disregarded.

12. In view of the aforesaid, the Court is unable to accede to the prayer made in the instant petition.

13. The petition is accordingly dismissed alongwith the pending application, if any.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 9, 2024

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¹ 2021 SCC OnLine SC 59