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

% **Date of decision: 23rd August, 2024**

+ **W.P.(C) 11653/2024, CM APPL. 48399/2024**

SHYAM SUNDER KAUSHIKPetitioner

Through: Mr. Kirti Uppal, Sr. Advocate
with Mr. Mohit Jolly, Mr.
Suryadev, Mr. Ayush Gupta,
Mr. Rajan Sharma, Mr. Shekhar
Kumar and Ms.Priti Goswami,
Advocates.

versus

DDA AND ANR.Respondents

Through: Mr.Sanjay Katyal, SC for DDA.
Mr. Sanjeev Sabharwal, SC for
MCD with Ms. Shweta Singh,
Advocate.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 48398/2024 – EXMP.

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

W.P.(C) 11653/2024

3. The petitioner is invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India for directions to respondent No.1/Delhi Development Authority [“DDA”] to issue



NOC¹ for regularization/grant of sanction plan or in the alternative, the respondent No.2/Municipal Corporation of Delhi [“MCD”] to sanction the building plan/regularize the structure of the property bearing No. D-124A, Khasra No. 34, Freedom Fighter Enclave, Neb Sarai, New Delhi (*hereinafter to referred as the ‘subject property’*) belonging to him.

4. Learned counsels for the DDA as well as the MCD are present on advance notice.

5. Shorn of unnecessary details, the petitioner is the co-owner of the subject property and it appears that he, along with one Yogesh Saroha, agreed to purchase the subject property *vide* agreement dated 26.08.1990 from Smt. Shanti Devi. However, since the sale deed was not executed, there was a long litigation with the vender/seller Smt. Shanti Devi and eventually, a suit for specific performance was decreed in favour of the petitioner and other co-owner *vide* judgment dated 20.09.1997 by the competent civil court and the sale deed was executed in favour of the petitioner and the co-owner on 07.01.1999.

6. The area in question where the subject property is falling was urbanized *vide* notification issued by the DDA w.e.f. 16.05.2017. It appears that the original owner/vendor Smt. Shanti Devi instituted a writ bearing W.P. (C) 1849/2024 against the respondents and also impleaded the petitioner and other co-owner alleging some unauthorized construction carried out in the subject property and admittedly, the subject property stands booked for alleged unauthorized construction w.e.f. 07.02.2024.

¹ No Objection Certificate



7. Mr. Kirti Uppal, learned Senior Counsel for the petitioner has urged that they have approached the learned Appellate Tribunal, Municipal Corporation of Delhi [“ATMCD”] against the demolition order dated 23.04.2024 passed by the MCD purportedly in exercise of powers under Section 343 of the Delhi Municipal Corporation Act, 1957 [“DMC Act”]. Heavy reliance is placed on the observations on a decision by the Division Bench *vide* order dated 20.12.2011 in case titled as **Shakti Singh v. MCD** [LPA No. 992/2011]. The said judgment pertained to a property which fell in village Basai Darapur, Delhi, which was urbanized and the MCD sought to take action for unauthorized construction in terms of the DMC Act.

8. The long and short of the submissions made by the learned Senior Counsel for the petitioner is that although they have challenged the impugned demolition order dated 28.04.2024 before the learned ATMCD, what would the learned ATMCD do in the absence of there being any policy framed by the respondents for regularization or for issuance of sanction plan for construction of the property falling in the area in question. Learned Senior Counsel for the petitioner took this Court through the provisions of Sections 345-A, 333 and 336 of the DMC Act and it was urged that so long as the MCD has no policy or guidelines to sanction building plan or regularize construction on compounding or otherwise, the petitioner cannot be singled out and be given harsher treatment leaving out those who are similarly placed.

9. Learned counsel for the MCD, however, urged that although a policy decision is yet to be framed inasmuch as the same is pending for consideration before the Government of India, the MCD is within



its right to take action for any unauthorized construction being done subsequent to the notification dated 16.05.2017.

10. *Ex facie*, the present writ petition is not maintainable since the issues raised by the learned Senior Counsel for the petitioner can very well be addressed before the learned ATMCD, which, in all probabilities, would be decided in accordance with law.

11. The present writ petition is accordingly dismissed.

12. Nothing contained herein shall tantamount to an expression of opinion on the merits of the matter.

13. The pending application also stands disposed of.

DHARMESH SHARMA, J.

AUGUST 23, 2024

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