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

+ **W.P.(C) 16343/2023**

SH MUKESH KUMAR

.....Petitioner

Through: Mr. Vivek Sharma with Ms. Meenal Kapoor and Mr. V.K. Mehra, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.Respondents

Through: Mr. Udit Malik, ASC (civil) with Mr. Vishal Chanda, Advocates for GNCTD.

Ms. Manika Tripathy with Mr. Rony John, Mr. Barun Dey and Mr. Naveen Kumar Saraswat, Advocates for DDA.
Mr. Ashutosh Gupta, Advocates for MCD.

Mr. Rajat Aneja, Advocate for applicants in the disposed off CM No. 47401-47404/2024

Dr. Charu Wali Khanna, Mr. Dharmendra Baghel, Mr. Alamgir, Advcoates for Impleaders in CM APPL. 41874/2024.

Mr. B.S Mathur with Mr. Rajat Mathur, Advocates for Impleaders.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

11.09.2024

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1. Present Public Interest Litigation (PIL) has been filed under Article 226 of the Constitution of India seeking direction to the respondents to take action against the concerned officials who have illegally sanctioned the construction plan on the open space/land and to remove the encroachment on

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the open space/land situated at West Jyoti Colony, in the area of Chhajjupur, Kabir Nagar, Shahdara, Delhi, adjoining Guru Harkishan Public School, reserved for community facility. Petitioner further seeks direction to respondents to construct the community facilities as mentioned in the layout plan of Kabir Nagar, Chhajjupur, North and West Jyoti Nagar, Delhi, sanctioned in the year, 1992. He also seeks directions to respondents not to entertain any application/representation to sanction the site plan for construction before the regularization of the colony, in pursuance of the order dated 17th April, 2018 passed by this Court in W.P.(C) 8435/2017 filed by the petitioner.

2. It is observed that during the pendency of the present PIL, several orders were passed from time to time. In pursuance thereto, the respondent MCD had filed its reports. It is apposite to reproduce the relevant paragraphs of the status report dated 25th July, 2024 filed by MCD which are as under:-

“4. That as per records, the said colony was earlier an unauthorised colony, which was later regularised vide resolution No 1761 dated 14.10.1992 passed by the Standing Committee, of the erstwhile unified MCD, while exercising its powers u/s 312 & 313 of the DMC Act, 1957, as amended upto date. Upon, its regularisation, the said colony has acquired the status of unauthorised Regularised colony.

5. That upon close scrutiny of the said layout plan coupled with the resolution dated 14.10.1992, it has been revealed that the area earmarked for community facility has not been acquired by the Secretary (L&B), Delhi Administration.

6. That as such, the area comprising of the "Community Facility", as shown in the said regularisation plan has not yet been handed over to the MCD, till date.

7. That the said fact is further substantiated from the reading of clause 3 & 5 of the resolution dated 14.10.1992, where under the head "Recommendations", it is written as under: -

“3. The sites which have been earmarked for parks, schools, open



spaces and other community facilities would be immediately acquired through Secretary (L&B) Delhi Admn.”

“5. Alternative plots should be provided on reasonable basis to persons whose plots are covered in this public utility area”.

It is thus submitted that the Community Facility area, as shown in the regularisation plan of the year 1992, qua which, the present petition has been filed has never been acquired and has not been handed over to MCD till date.

8. That as such, as the resolution dated 14.10.1992, the said area is thus required to be acquired in terms of the provisions of the Land Acquisition Act by the Secretary (L&B), Delhi Admn, and at the same time, the eligible occupiers/owners are required to be given an alternative site.

9. That the above facts and circumstances has been gathered by the Zonal Office Shahdara (North) only, after obtaining the copy of the above resolution and copy of the regularisation plan.

10. That with regard to the allegations of the petitioner that various sanction plans have been sanctioned by the officers of the responden/MCD illegally, it is submitted that no sanction has been accorded by the answering respondent with respect to any area/plot forming part of the land shown as "Community Facility". However, with the amendment in UBBL-2016, Under Ease of Doing Business, the Registered empanelled Architect / Engineer / Supervisor have been entrusted with the responsibility of obtaining the sanction plan under SARAL Scheme upto plot area 105 sq meter and under Self-Simplified Scheme through online module area up to 500 Sq-mtr, with no test check of the answering respondent, at the time of obtaining the said sanction. The information is provided and uploaded by the said Architect and the plan is released on the basis of the information, so provided by the engaged Architect. It is submitted that in case any false or wrong information, is provided by the Architect, at the time of applying/release of the sanction plan, provisions u/s 338 of the DMC Act are adopted and the plan so obtained are subject to revocation.

11. That however, out of abundant precaution, about 75 properties forming part of the "Community Facility Area" were booked by the building department in the year 2017 and demolition orders were also passed, as no substantive replies were received from the owners contending that the said properties are protected under Delhi Special Protection Law Act or not.



12. That with regard to new construction/s being raised in the said area, it is submitted that the Building Department, Shahdara North Zone has already initiated the proceedings against all the said new unauthorized constructions and have even contemplated demolition actions, at on-going stage and also after passing necessary order u/s 343 of the DMC Act.

13. That further, 02 numbers of unauthorized constructions have been noticed in the year 2023 and action against these 02 properties have been initiated as follows:

(i) F-21, Gali no. 11, West Jyoti Nagar- The property has been booked and Show Cause Notice dated 02.06.2023 u/s 344(1) & 343 of DMC Act was sent through speed post dated 06.06.2023 and demolition order was passed on dated 23. 06.2023. The demolition action was fixed on 06.03.2024, 22.03.2024, 18.04.2024, 23.04.2024, 29.04.2024 06.05.2024 & 08.05.2024 but could not be taken due to non-availability of Police Force.

(ii) F-3 (F-139), Gali no. 11, West Jyoti Nagar- The property has been booked and Show Cause Notice dated 02.06.2023 u/s 344(1) & 343 of DMC Act was sent through speed post dated 06.06.2023 and demolition order was passed on dated 23.06.2023. The demolition action was fixed on 06.03.2024, 22.03.2024, 18.04.2024, 23.04.2024, 29.04.2024 06.05.2024, 07.05.2024, 08.05.2024, 11 .06.2024, 14.06.2024 & 26.06.2024 but could not be taken due to non-availability of Police Force.

That further, the Owner/Occupier of the property bearing no. F-3 (F-139), Gali no. 11 , West Jyoti Nagar has recently, approached the Hon'ble High Court by the way of filing writ petition bearing no. 9143/2024 titled as "Harish Bhardwaj & Ors. Vs MCD" seeking directions against the MCD to deal with his pending application in accordance with law. The Hon'ble High Court vide order dated 11 .07.2024 disposed off the said case with directions to respondent MCD to consider this petition as application for regularization of the petitioner and to decide the same for regularization.

14. That the above facts are placed before this Hon'ble Court after consulting the records maintained by the Town Planning Department as well as by the Building Department, Shahdara (North), MCD. "

(emphasis supplied)



3. In pursuance of the above status report, it is apparent that the area earmarked for community facility has not been acquired by the Delhi Administration and show cause notices have been issued by MCD to the persons/occupiers who have allegedly carried out unauthorized construction of houses without any prior permission /sanction. It has been informed that those affected persons have challenged the said show cause notices and other action taken by the MCD before the Appellate Tribunal, MCD. It is also informed that in respect of some cases, the Appellate Tribunal, MCD has passed certain interim orders and cases of other persons are pending adjudication before the Appellate Tribunal, MCD.

4. Besides, this Court had, *vide* the order dated 26th July, 2024, directed the MCD to file a Satellite Image of the area in question after superimposing it on the Layout Plan. In compliance thereto, the MCD has handed over a status report today which is taken on record. The relevant portion of the status report, is reproduced hereinbelow:-

“2. That the Hon’ble Court vide order dated 21.07.2024 has directed respondent MCD to file a Satellite Image of the area in question after superimposing it on the Layout Plan.

3. That the demolition actions were fixed on the properties as follows:-

(i) F-21, Gali no.11, West Jyoti Nagar: The demolition action was fixed on 12.08.2024, 13.08.2024 & 14.08.2024 with the help of PS Jyoti Nagar. On dated 12.08.2024 the property was found residentially occupied and the police force could not able to vacate the property. The vacation notice already served to owner/occupier vide letter dated 05.08.2024. Further area councillor and other resident create hindrance at the site. The parapet wall and mummy is demolished.

(ii) On 13.08.2024 & 16.08.2024, letters have been sent to the Station House Officer-PS Jyoti Nagar from the office AE(B)-II/SNZ with the request to vacate the premises so that the complete demolition action could be taken as per the directions of the Hon’ble



Court.

(iii) Again on dated 13.08.2024, the property was found residentially occupied and the police force could not able to vacate the property. Further public alongwith local leaders created hindrance at the site. The roof projection of RCC roof at IVth floor roof level has been demolished and brick parapet wall also demolished. During the demolition action a resident woman comes to the terrace/Chajja of the property and attempted to jump from the terrace/chajja in the protest against the demolition action. Subsequently the situation is control by the police force available at the site.

(iv) Again on dated 14.08.2024, the property was found residentially occupied and the police force could not able to vacate the property. Further public created hindrance at the site. When demolition action initiated at the site with the help of JCB machine again mass public hindrances created at the site to the extent that a resident woman laid down in front of JCB machine to stop the demolition action and public starts man handling with demolition labour contractor in the protest against the demolition action. After controlling the situation by the police force demolition action started manually at roof projection of 2 floor roof.

(v) The demolition action was again fixed on 17.08.2024, 20.08.2024, 21.08.2024, 22.08.2024, 23.08.2024 & 24.08.2024 with the help of PS Jyoti Nagar. On dated 17.08.2024 the property was found residentially occupied and the police force could not able to vacate the property. The vacation notice already served to owner/occupier vide letter dated 05.08.2024. Further local leaders and other residents create hindrance at the site. During the demolition program, on the request of MCD made to the Nodal Officer, IGL at IGL Bhawan, the IGL team disconnected the PNG gas connections. Similarly on request the BSES team also disconnect the electricity connection during demolition program.

(vi) On 20.08.2024, a letter dated 20.08.2024 addressed to CEO (BYPL), Karkardooma Shahdara Delhi has been sent from the office of AE(B)-II/Shah(N) Zone with the request of disconnection of electric supply at the subject properties as the electric is connection was found re-connected after earlier demolition actions taken at the subject properties.

(vii) On dated 21.08.2024, the demolition action could not be taken due to non-availability of police force.



(viii) That at this juncture, the residents/owner/occupier namely Ms. Mamta Rawat and Others approached the Hon'ble Appellant Tribunal MCD, Tis Hazari Delhi and filed appeal bearing no. 658/2024 case titled as Mamta Rawat & Ors. Vs MCD against the ins notice dated 12.08.2024 issued under u/s 435 of the DMC Act. The Hon'ble ATMCD vide order dated 21.08.2024 has directed as under:

“To maintain status quo with respect to the demolition of the property and not to take any coercive action till further orders.”

And the same is listed on 26.11.2024.

(ix) F-3, Gali No. 11, West Jyoti Nagar: The demolition action was fixed on 12.08.2024, 13.08.2024 & 14.08.2024 with the help of PS Jyoti Nagar. On dated 14.08.2024, the property was found residentially occupied and the police force could not able to vacate the property. The vacation notice already served to owner/occupier vide letter dated 05.08.2024. Further public created hindrance at the site. When demolition action initiated at the site with the help of JCB machine again mass public hindrances created at the site to the extent that a resident woman laid down in front of JCB machine to stop the demolition action and public starts man handling with demolition labour contractor in the protest against the demolition action. After controlling the situation by the police force demolition action taken manually at projection of 4th floor roof level.

(x) On 13.08.2024 & 16.08.2024, letters have been sent to the Station House Officer-PS Jyoti Nagar from the office AE(B)-II/SNZ with the request to vacate the premises so that the complete demolition action could be taken as per the directions of the Hon'ble Court.

(xi) The demolition action was again fixed on 16.08.2024 with the help of PS Jyoti Nagar. On dated 16.08.2024 the property was found residentially occupied and the police force could not able to vacate the property. The vacation notice already served to owner/occupier vide letter dated 05.08.2024. Further residents create hindrance at the site. Demolition action was taken at IVth Floor RCC roof projections by extending the earlier demolished panel.

(xii) On dated 17.08.2024 the property was found residentially occupied and the police force could not able to vacate the property. The vacation notice already served to owner/occupier vide letter dated 05.08.2024. Further local leaders and other residents create mass hindrance at the site. During the demolition program, on the



request of MCD made to the Nodal Officer, IGL at IGL Bhawan, the IGL team disconnected the PNG gas connections. Similarly on request the BSES team also disconnect the electricity connection during demolition program. Demolition action was taken at RCC projections at Ground Floor roof level with the help of JCB machine.

(xiii) On 20.08.2024, a letter dated 20.08.2024 addressed to CEO (BYPL), Karkardooma Shahdara Delhi has been sent from the office of AE(B)-II/Shah(N) Zone with the request of disconnection of electric supply at the subject properties as the electric connection was found re-connected after earlier demolition actions taken at the subject properties.

(xiv) On dated 21.08.2024, the demolition action could not be taken due to non-availability of police force.

(xv) That at this juncture, the residents/owner/occupier namely Mr. Harish Bhardwaj and Others approached the Hon'ble Appellant Tribunal MCD, Tis Hazari Delhi and filed appeal bearing no. 659/2024 case titled as Harish Bhardwaj and Others Vs MCD against the notice dated 12.08.2024 issued under u/s 435 of the DMC Act. The Hon'ble ATMCD vide order dated 21.08.2024 has directed the as under:

“To maintain status quo with respect to the demolition of the property and not to take any coercive action till further orders.”

And the same is listed on 26.11.2024.”

5. Be that as it may, since the issues related to and arising from the present petition are pending adjudication before the Competent Appellate Tribunal, this Court need not pass any further directions in that regard.

6. In view of the above, this Court is of the opinion that nothing further survives in the present PIL and the same is closed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 11, 2024/rl