



2024 : DHG : 3234



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

+ **CONT.CAS(C) 1954/2023 & CM APPL. 12754/2024**

KAVITA GROVER

..... Petitioner

Through: Mr. Biswambar Nayak, Adv. along
with petitioner in person.

M: 9811027360

Email: advocate3685@gmail.com

versus

**ANGEL BHATI CHAUHAN, DY. COMMISSIONER(SOUTH
ZONE) & ORS.**

..... Respondents

Through: Mr. Sanjeev Sabharwal, SC for MCD
M: 9810031680

Email: solicitor6@gmail.com

Mr. Raghvendra Mohan Bajaj, Mr.
Kumar Karan & Mr. Shivansh
Dwivedi, Advs. for Applicant.

M: 9810048083

%

Date of Decision: 03rd April, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 12754/2024

1. Learned counsel appearing for the applicant in *CM APPL. No. 12754/2024*, confirms the fact that requisite action has been taken by the Municipal Corporation of Delhi ("MCD") in the property bearing No. L-47A, Ground Floor as well as on the Fourth Floor in property bearing No. L-47C.
2. The aforesaid statement made by learned counsel for the applicant is recorded.
3. The applicant in *CM APPL. No. 12754/2024* further submits that he

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shall approach the MCD for the purposes of compounding and regularization of the existing structure.

4. Accordingly, the application is disposed of in terms of the aforesaid.

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5. The present petition has been filed alleging willful disobedience of the order dated 13th April, 2023 passed in *W.P.(C) No. 3669/2019*. By way of the aforesaid order, respondents were directed to take action against the illegal and unauthorized construction including encroachment existing at property bearing No. L-47A, Ground Floor and L-47C, First to Fourth Floor, DDA Janta Flats, Saket, New Delhi-110017.

6. Since no action had been taken by the MCD, the present petition has come to be filed.

7. Learned counsel appearing for the respondent-MCD submits that two Status Reports have been filed on behalf of the MCD. He submits that requisite action has already been taken. He draws the attention of this Court to the further Status Report/Action Taken Report filed on behalf of the MCD.

8. He draws the attention of this Court to the photographs which have been filed along with the said Status Report/Action Taken Report to submit that the Second, Third and Fourth Floor of the property bearing No. L-47C, DDA Janta Flats, Saket, New Delhi-110017 has been made totally inhabitable.

9. He submits that as regards property bearing No. L-47A is concerned, there was unauthorized construction and there were certain deviations on the Ground Floor of the property, which have since been removed. He submits that one room of Ground Floor of the property bearing No. L-47A has been sealed.



10. I have heard learned counsels for the parties and have perused the records.

11. By order dated 13th April, 2023 passed in W.P.(C) No. 3669/2019, the following directions had been passed:

"1. By way of present petition, the petitioner has sought action against the unauthorised construction statedly carried out by respondent Nos. 2 and 3 at property bearing No. L-47 A, Ground Floor and L-47C, First Floor, DDA Janta Flats, Saket, New Delhi -110017.

2. Earlier, a Status Report was placed on record relevant extract of which are reproduced hereinunder :-

"3. That on inspection of the aforementioned subject property and upon referring to the record the status of the actions as already taken/carried out by the Building Department-!, South Zone/SDMC till dated are entailed herein below:-

i) The subject properties are already stands booked vide file No. 135/UC/B-II/SZ/19 dated 09/04/2019 for unauthorized construction in the shape of deviation against Sanctioned Standard Plan of DDA in L-74-A, Ground Floor and deviation against the Sanctioned Standard Plan of DDA in L-47-C, First Floor and unauthorised construction above L-47-C, Second Floor, Third Floor and raising of walls on roof top of third floor for taking the necessary demolition action u/s 3431344 of DMC Act. Upon following the due process of law in this regard the necessary demolition order also stands passed by the competent authority i.e. the AE (Bldg), South Zone on 22/04/2019. The copy of the demolition order/notice in this regard is annexed herewith as Annexure-A.

ii) That furthermore, a letter dated 11/04/2019 u/s 344 (2) of the DMC Act, has also been sent to SHO, P.S. Saket, New Delhi with the request that the said unauthorised construction be stopped immediately and workmen present at site/property in question be removed and construction material including the tools, machinery, etc. be seized. Copy of the said letter is annexed as Annexure-B.

iii) That besides this a letter for disconnection of electricity and water supply from the aforesaid property has been sent to the concerned authorities vide letter dated 06/03/2020. Copy of the said letter is annexed as Annexure-D.



iv) That, moreover, a letter dated 06/03/2020 has also been sent to the Sub-Registrar with the request not to register this property under Indian Registration Act, 1908. Copy of the said letter is annexed as Annexure -E.

4. That the Building Department-If of South Zone/SDMC has now fixed the special demolition programme in respect of the subject property on 09/03/2020 which will be taken/carried out upon availability of police force."

3. The petitioner contested the aforesaid Status Report by submitting that the impugned action was only an eye wash as no substantial action was taken. Accordingly, another Status Report was directed to be filed which however in not on record. A copy of the same has been handed over which is taken on record and the same reads as under:-

"3. That during the routine inspection of the area/property in question on 03/04/2023, the seal affixed by the department vide its previous action dated 05/01/2023 was found tempered with. Taking immediate cognizance of the same, the necessary proceedings for lodging of an FIR u/s 448/188 of IPC read with Section 461 of DMC Act, 1957 against the owner/occupier/offender has been initiated. Simultaneously, upon availability of police force, flat No. L -47-C (Third Floor) has been re-sealed. Rest of the building/flats found residentially occupied. The photographs taken during the resealing action are annexed herewith as Annexure-A (Colly).

4. That simultaneously, after taking the aforesaid re-sealing action, a letter bearing No. 05/E(B)-1112023 dated 03/04/2023 has been sent to SHO concerned, PS Saket, New Delhi with the request to direct the area patrolling staff to keep strict watch and ward over the subject property so that seal affixed by the department may not be tempered with. Copy of the letter as sent in this regard is also annexed herewith as Annexure-B.

5. That so as take/carry out further necessary demolition/sealing action in respect of the subject referred properties/flats smoothly, a Vacation Notice dated 05/04/2023 u/s 349 of DMC Act, 1957 has also been issued and served upon the owner/occupier with the request to vacate the same and a copy thereof has also been endorsed to SHO concerned PS Saket with the request to get the



impugned property portion vacated. Copy of the Vacation Notice is also annexed herewith as Annexure-C.

<i>SL. No.</i>	<i>Date of Action</i>	<i>Action Taken</i>
<i>1.</i>	<i>10/04/2023</i>	<i>Upon availability of police force, during the course of action 01 RCC column and parapet walls at terrace have been demolished. Previously sealed portion has been found lying sealed.</i>
<i>2.</i>	<i>11/04/2023</i>	<i>Upon availability of police force, during the course of action, 01 RCC panel was demolished and cut down reinforcement bars at fourth floor.</i>

6. That moreover, apart from this, subsequent reminders dated 05/04/2023 have also been sent to concerned authorities i.e. DJB and BSES to disconnect their water and electricity supply from the subject referred properties and similarly, a reminder has also been sent to Sub-Registrar, Mehrauli with the request not to register the subject properties under Indian Registration Act, 1908. Copy of the reminder letters as sent are also annexed herewith as Annexure-D (Colly).

7. That further on 10/04/2023 and also 11/04/2023, the Building Department-If of South Zone/MCD have also undertaken the necessary demolition actions in respect of the subject property by way of Special demolition/sealing action programme. The details of the action as taken are given herein below:-

The photographs taken during the aforementioned actions are also annexed herewith as Annexure-E (Colly).

8. That simultaneously, after taking the aforesaid actions, letters dated 11/04/2023 have also been sent to SHO concerned, P.S. Saket, New Delhi with the request to direct the area patrolling staff to keep strict watch and ward over



the subject property so that the demolished portion be not restored/reconstructed. Copy of the letters as sent in this regard are also annexed herewith as Annexure-F (colly).

9. That further action in respect of subject property will be taken/carried out during the monthly demolition scheduled of the area in question, upon availability of police force. "

4. Mr. Kartik Koushal, learned counsel for respondent No.1/Corporation, on instructions, submits that further demolition action is now planned for 19.04.2023.

5. Learned counsel for the petitioner submits that respondent Nos. 2 and 3 have also encroached upon the common area to which learned counsel for respondent No.1 submitted that a fresh site inspection would be carried out and in case any encroachment is found existing, needful action would be taken with respect to that as well.

6. In view of the above, present petition is disposed of with directions that the concerned A.E. (Building), MCD shall ensure that requisite action is taken against the alleged unauthorised construction/encroachment in accordance with law within four months from today. Let a copy of this order be placed before the concerned Deputy Commissioner, MCD for strict compliance. Respondent No. 4 is also directed to provide necessary police assistance to respondent No.1 on receiving such request.

7. Needless to state that owner/occupier of the subject property would also be at liberty to seek remedy as may be available to them under the law. Petitioner shall also be at liberty to approach this Court in case she remains aggrieved."

12. This Court notes the Further Status Report filed on behalf of the MCD, wherein, it has been stated as follows:

"xxx xxx xxx

3. That pursuant to demolition / sealing already stand passed in respect of subject property i.e. No. L-47-A & L-47-C, DDA Junta Flats, Saket New Delhi, the Building Department -II of South Zone-MCD has tried / taken/carried out further necessary demolition / sealing action as per details given herein below:-



S No.	Date of Action	Action Taken
1.	20/02/2024	Action could not be materialized due to non-availability of police force.
2.	26/02/2024	Upon availability of police force, after de-sealing the property, windows, part of brick walls / side walls and the projections at First floor, Second floor Third floor and Top floor of the property have been demolished /cut down by making it uninhabitable. Simultaneously, after taking the aforesaid action, the property has been re-sealed at Third floor and Top floor. Whereas, during the action the previous demolished portions were found lying demolished. Hence, presently in terms of the aforementioned action the demolished portions in respect of the subject flats have been made beyond use.

*Photographs taken during the aforementioned demolition / sealing action alongwith copy of no force letter are annexed herewith as **Annexure-A (Colly)**.*

4. That after taking the aforesaid demolition / sealing action a letter dated 26/02/2024 has also been sent to SHO concerned, PS Saket, New Delhi with the request to direct the area patrolling staff to keep strict watch and ward over the subject property so that the demolished portion may not be repaired / restored / reconstructed and the seals affixed by the department may not be tampered with. Copy of the said letter is also annexed herewith as Annexure-B.

xxx xxx xxx”

13. Learned counsel appearing for the respondent-MCD submits that with



respect to property bearing No. L-47A, Ground Floor, action has already been taken and that one room where unauthorized construction existed, stands sealed.

14. This Court also records the statement that with respect to property bearing No. L-47C, action has been taken on the First to Fourth Floor of the property in question.

15. Further, this Court also records the statement made by learned counsel appearing for the MCD that property bearing No. L-47C, DDA Janta Flats, Saket, New Delhi-110017 has been sealed from First to Fourth Floor after the demolition action.

16. This Court has also perused the photographs that have been attached along with the Status Report of the MCD, which clearly show that requisite demolition action has been taken by the MCD and that the building in question has been made inhabitable.

17. Considering the aforesaid facts, this Court is of the view that substantial compliance of the order dated 13th April 2023 has been made by the respondent-MCD.

18. However, the MCD is directed to ensure that the requisite action for demolition of the existing structure is taken by the owner of the building in question.

19. With the aforesaid directions the present petition is disposed of along with the pending applications.

MINI PUSHKARNA, J

APRIL 3, 2024/kr