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

+ **W.P.(C) 12059/2024**

ANUPMA SHARMA

.....Petitioner

Through: Mr.Arkanial Bhaumik, Mr.Adhishwar
Suri and Ms.Suparna Jain, Advs.

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr.Badar Mahmood, SC for MCD.
With Mr.Ammar Ahmad, Adv.
Mr.Balraj Tanwarn, Adv for R-3.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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11.09.2024

1. The instant writ petition has been filed seeking the following reliefs:-

- "a. Issue an appropriate writ, order, or direction, to Respondent Nos. 1 & 2 to demolish the illegal construction of 4th and 5th Floor carried out by the Respondent No. 3 at the subject property and to restore the status-quo ante;*
b. Pass any such order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Heard learned counsel appearing on behalf of the parties.

3. The Status Report came to be filed by the respondent-MCD on 10.09.2024 which indicates that the property was duly inspected and in paragraph no.3, it is stated that the property in question consists of basement floor, ground floor, first floor, second floor, third floor & two rooms, kitchen, toilet on the roof of third floor (fourth floor).

4. Learned counsel appearing on behalf of the petitioner submits that the



fourth floor is completely illegal and unauthorisedly constructed.

5. Learned counsel appearing on behalf of the respondent-MCD, on the other hand, submits that the occupier has been given an opportunity to explain by way of documents etc. to justify as to whether, the construction of the fourth floor is protected in view of the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

6. Learned counsel appearing on behalf of the private respondents also asserts that the construction in question is saved as per the provisions of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

7. For the sake of clarity, paragraph nos. 3 to 8 of the Status Report filed by the respondent-MCD reads as under:-

*"3. That the property has been inspected by the concerned area JE (B) on 02.09,2024 and during inspection it was noticed that the property having plot area approx 170 sqm consist of Basement floor, ground floor, first floor, second floor, third floor & two rooms, kitchen, toilet on the roof of third floor (fourth floor). The property is very old and occupied. However, a vacation notice dated 03.09.2024 was sent to the owner/occupier for further action as per due process of law. ' (Inspection report of the area JE (B) is placed at **Annexure -A***

*4. That as reported by area JE(B), after examining the record it was revealed that the property had been constructed after getting Building plan sanctioned from DDA vide letter no. 206(11)/Bldg dated 12.08.1997 for G.F. F.F. and S.F. (G.F. for commercial use). Copy of the sanctioned plan placed at **Annexure - B.***

5. That during inspection it was noticed that there are two dwelling units on each floor i.e. first floor, second floor & third floor comprising 06 flats and one dwelling unit on the roof of third floor and all are residentially occupied. For ground floor building plan is sanctioned for commercial activities. At the time of inspection an office is running and remaining portion is vacant.

6. That as per record the unauthorized construction in the shape of "U/C deviation/excess coverage at Basement, Ground floor. First floor. Second floor and U/C, at Third floor and 02 rooms, kitchen, toilet on roof of Third floor (Fourth floor)." was booked vide file no. 03/B-I/UC/SH-N/2022 dated 12/01/2022 and sealing proceedings U/s 345-A



of DMC Act was also initiated subsequently sealing orders were passed on 01.04.2022 by the competent authority. Further ground floor of property (wine shop) was sealed on 02.04.2022 and now - ground floor (portion of wine shop) is vacated.

7. That after examining the record it was also observed that "The Hutchisoh Essar Mobile Services Limited" had erected mobile tower on the roof of third floor which was regularized from the office of Executive Engineer, Shahdara (North) Zone on dated 28/11/2006 vide letter no. EE(B)/Shd.North/2006/D-1755 dated 01/12/2006 (letter dated 01.12.2006 placed at Annexure - C).

*8. That during inspection of the area JE (B) the owner/occupier handed over a copy of house tax assessment report of financial year 1999-2000 regarding construction of the floor wise units as Basement, GF, FF, SF & BF which is placed at **Annexure - D**. "*

8. The Court is of the considered opinion that the respondent-MCD has to carry out the necessary exercise to examine as to whether the construction in question is protected under the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

9. The private respondent shall also be at liberty to put forth his case before the respondent-MCD.

10. Depending upon the further exercise to be conducted by the respondent-MCD, it is further directed to take the issue to its logical end within a period of four months from today.

11. The petitioner, however, shall be at liberty to agitate the grievance in case, he remains unsatisfied with the action of the respondent-MCD before the Special Task Force (STF) which has been constituted *vide* notification dated 08.03.2019 by the Delhi Development Authority.

12. A similar view has been taken by this Court in order dated 30.08.2024 in W.P. (C) 12033/2024 titled as **Pravin Singhal v. Municipal Corporation of Delhi and Ors.**, wherein, it has been held as under:-



“6. It is discernible from the aforesaid notification that STF has been constituted with an aim of comprehensively addressing the issue of illegal construction and encroachment, including on public land, parking spaces, roads, pavements, etc., and to oversee the enforcement of provisions of MPD-21 and the Unified Building Bye Laws for Delhi. The composition of STF would indicate that the same consists of various Officers from different Departments, including municipal, civic, revenue and law enforcement agencies. The Vice Chairman of DDA is the Chairman of STF and the Commissioner (Planning) of DDA appears to be its Member Secretary.

7. The said notification further stipulates that STF shall meet at least once every month. Additionally, the monthly report of STF is required to be sent to the Hon’ble Lieutenant Governor of Delhi, the Ministry of Housing and Urban Affairs, GoI, and the Secretary of the Ministry of Environment, GoI, who are also required to review the progress achieved quarterly and assess future plans. In essence, STF has been vested with comprehensive powers to regulate construction activities and to act decisively against the erring builders, officials, encroachers, violators of building norms etc.

14. In LPA 245/2019 titled as **Sneh Lata & Anr. v. North Delhi Municipal Corporation & Anr.**, the Division Bench of this Court, while highlighting the composition and functioning of STF, has held that STF is a specialised agency which offers an alternate efficacious remedy to the litigants aggrieved by the unauthorised construction. The relevant paragraphs of the said decision are reproduced as under:-

“The Special Task Force comprises 15 members from various municipal, civic, revenue and law enforcement agencies of Delhi; and even has its own dedicated website and mobile application to facilitate making of complaints. The Special Task Force is therefore a specially constituted agency to address grievances relating inter-alia to unauthorised construction; and an aggrieved person may avail the alternate, efficacious remedy before the Special Task Force.

In view of the setting-up of the Special Task Force under directions of the Supreme Court even the respondent No.2 has a forum to agitate any grievance that may remain. It is therefore not appropriate for our court to exercise its appellate jurisdiction in the matter.

Accordingly, the appellants are free to avail their statutory remedies before the ATMCD in respect of action initiated by the corporation by issuing notices under Delhi Municipal Corporation Act, 1957. On the other hand respondent No.2 may, if aggrieved, approach the alternate



forum of the Special Task Force to seek amelioration of any grievances or invoke any other remedy available under law. Accordingly, parties may resort to the appropriate remedy, as they may be advised.”

*15. A similar view has been taken by the Division Bench of this Court in a Public Interest Litigation being W.P. (C) 8104/2022 titled as **Himanshu v. East Delhi Municipal Corporation & Anr.**, in W.P. (C) 4649/2017 titled as **Fazruddin v. DDA & Ors.**, in W.P. (C) 5988/2019 titled as **Jaladhar Das v. North Delhi Municipal Corporation & Ors.** and in W.P. (C) 11873/2023 titled as **RWA Sunlight Colony v. GNCTD & Ors.**”*

13. Reserving that liberty in favour of the respective parties, at this stage, the instant writ petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 11, 2024/MJ