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

+ W.P.(C) 14237/2024 and CM APPL. Nos. 59602/2024,
66254/2024 and 66255/2024

SHUBHA BHATTACHARYAPetitioner

Through: Mr. Gaurav Jain, Advocate

versus

COMMISSIONER OF POLICE DELHI
AND ORS.

.....Respondents

Through: Mr. Kushagra Kumar, SPC for R-1
Mr. Ajjay Arorra, Mr. Kapil Dutta
and Mr. Nitish Dubey, Advocates
for MCD
Mr. Tushar Sannu, Advocate for
DDA.
Mr. Anupam Srivastava, ASC for
GNCTD with Ms. Anushka
Bhatnagar, Advocate for R-4
Mr. Ankur Chhibber and Mr.
Nikunj Arora, Advocates for R-5

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
14.11.2024

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1. The petitioner is the resident of Ground Floor in premises bearing No. B-6/43, Safdarjung Enclave, New Delhi (also described as premises No. B-6/43/1). She has filed this writ petition, under Article 226 of the Constitution, complaining of alleged unauthorized construction by respondent No.5 in the first floor of the property, i.e., B-6/43, Safdarjung



Enclave, New Delhi (also described as B-6/43/2), and in neighbouring flats bearing property No. B-6/44, Ground Floor, Safdarjung Enclave (also described as B-6/44/1) and B-6/44, First Floor, Safdarjung Enclave (also described as B-6/44/2). All the three flats, i.e., B-6/43/2, B-6/44/1 and B-6/44/2 are owned by the respondent No.5 and his family members.

2. The Municipal Corporation of Delhi [“MCD”] has filed a status report dated 11.11.2024. As far as premises Nos. B-6/44/1 and B-6/44/2 are concerned, it is stated that respondent No. 5 obtained online sanction for a building plan of addition/alteration on 02.08.2024, through a registered/empanelled architect. Upon inspection, MCD has found that ongoing construction is in excess of the sanctioned building plan, and has therefore, issued a show cause notice dated 05.11.2024 to the respondent No. 5, contemplating demolition of the unauthorized construction.

3. As far as premises No. B-6/43/2 is concerned, there is no sanctioned plan for any construction, addition or alteration. According to Mr. Ankur Chhibber, learned counsel for the respondent No. 5, no construction work is going on in the said premises. However, this position is disputed by Mr. Gaurav Jain, learned counsel for the petitioner. In any event, the status report of MCD does not allude to any ongoing construction, but states that deviation or excess coverage has been noticed as against the standard plan of Delhi Development Authority, and a show cause notice has been issued to the owner of the property on 08.11.2024. It is noted in the show cause notice dated 08.11.2024 issued to the petitioner that “*property is old and occupied*”.

4. In the meanwhile, MCD has also booked the petitioner’s flat i.e., premises No. B-6/43/1, on account of excess coverage and deviation



against the standard building plan. It is also noted in the show cause notice dated 05.11.2024 issued to the petitioner that the “*property is old and occupied*”.

5. Mr. Chhibber states that respondent No. 5 and members of his family responded to the show cause notice dated 05.11.2024 in respect of premises Nos. B-6/44/1 and B-6/44/2. He submits that the respondent No. 5 has also stated in his reply to the show cause notice, that the deviations identified by the MCD are compoundable and sought regularization of those deviations. He states that the owners/occupants will respond to the show cause notice dated 08.11.2024, concerning premises No. B-6/43/2, by 23.11.2024.

6. Mr. Jain states that the writ petitioner has also responded to the show cause notice issued to her on 12.11.2024, seeking clarification as to the specific deviations identified by MCD.

7. Mr. Kapil Dutta, learned counsel for MCD, states that the responses submitted by the owners/occupants of all the four flats in question will be considered in accordance with law, and necessary orders will be passed as expeditiously as possible. He also points out that any orders of demolition that may be passed against any of the properties, as well as any decision on regularization of compoundable deviations and the sanctioned building plan itself are susceptible to appeal before the Appellate Tribunal of MCD [“ATMCD”] under Section 347B of the Delhi Municipal Corporation Act, 1957.

8. Mr. Chhibber states that, until the decision is taken by the MCD on the show cause notice or any application for regularization filed by respondent No.5, no further construction shall be carried out in the



aforesaid premises.

9. Having regard to the above submissions, the writ petition is disposed of, alongwith the pending applications, with the following directions:

- a. MCD will consider the replies to the show cause notices filed by the owners/occupants of all four flats, including the petitioner and respondent No.5, in accordance with law, and pass necessary directions after hearing the parties.
- b. In the event, any application is made for regularization of compoundable deviations, MCD will consider such application in accordance with law, and pass necessary orders as expeditiously as possible, after hearing the parties.
- c. Until the aforesaid applications are considered and disposed of by MCD, the parties will maintain *status quo* with regard to the construction in the flats.
- d. The MCD may inspect the flats at any stage, and issue show cause notices, if any construction is found to be ongoing, apart from the action taken for violation of the order of this Court.
- e. The rights and remedies of the parties, to approach AT&MCD against orders passed by MCD, including orders of demolition of any property, sanction of building plan and decisions on regularization applications, remain reserved.

10. The MCD is directed to act after compliance of all statutory formalities and bearing in mind the precautions laid down in the judgment of the Supreme Court delivered yesterday, i.e., 13.11.2024 in *In Re: Directions in the matter of demolition of structures* [WP (C)



295/2022 and connected matters].

NOVEMBER 14, 2024
“SV/AD”/

PRATEEK JALAN, J