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

+ W.P.(C) 15652/2024 & CM APPLs. 65620-65621/2024

ATUL SHARMA

.....Petitioner

Through: Mr. M Sufian Siddiqui, Mr.
Rakesh Bhugra and Md.
Niyazuddin Advocates.

versus

MUNICIPAL CORPORATION
OF DELHI & ANR.

.....Respondents

Through: Mr. Ajjay Aroraa and Mr. Kapil
Dutta, Advocates for MCD.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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11.11.2024

1. The petitioner has filed this writ petition challenging a show cause notice dated 05.11.2024, by which respondent no. 1 has directed the owners/occupants of a factory premises, i.e. *J-28, Udyog Nagar, Rohtak Road, Paschim Vihar, New Delhi - 110041*, to show cause as to why action should not be taken in respect of unauthorised construction in the property as follows:

“U/C in shape of Basement G.F. Mezanine floor and Mumty, two toilet one guard room & Truss structure from front set back to side set back & rear set back along with tin shade.”

2. Learned counsel for the petitioner draws my attention to an order dated 23.10.2024 passed in W.P. (C) 14568/2024, which also arose out of



action proposed by the Municipal Corporation of Delhi [“MCD”] in the said property. The order records the submissions of MCD that unauthorised construction was found to be ongoing, as a result of which a stop work notice was issued to the concerned Station House Officer. The submission of learned counsel for the petitioner and for respondent no. 2 herein was noted, that they are not engaged in any construction activities at all, and will not carry out any construction without due permission of MCD. The Court also noticed the pendency of civil proceedings between the petitioner and respondent no. 2.

3. MCD was directed to inspect the property on 25.10.2024, and to issue show cause notices to the petitioner, respondent no. 2 as well as any other owners/occupants of the premises in the event of any unauthorised construction. The operative portion of the the said order reads as follows:

“7. There is a suit for possession, which has been filed by respondent No.2 and remains pending in the District Court, Tis Hazari. In order obviate any internecine dispute between the petitioner and respondent No.2, vis-a-vis the proposed action by MCD, it is directed that MCD will inspect the property on 25.10.2024 at 11:00 AM. In the event any unauthorised construction is found, MCD will issue a show cause notice addressed both to the petitioner and respondent No.2 as well as any other owners/occupants of the property. The show cause notice will be served upon the petitioner and respondent No.2 through their counsel in these proceedings. After considering the replies, if any, received from any of the owners/occupants of the property, including the petitioner and respondent No.2, MCD will take such further action as available to it in law. In the event a demolition order is passed, that will also be served upon both the petitioner and respondent No.2 through their counsel and any other owners/occupants of the property. A demolition order may be implemented after a passage of 10 days from service thereof to enable any aggrieved party to take their appellate remedies before the ATMC.

8. In the event construction is found to be ongoing, MCD may take



the assistance of the concerned SHO to ensure that no further construction takes place.

9. Subject to the above, MCD is at liberty to take action in accordance with law after following the due procedure, without prejudice to the rights and contentions of the petitioner and respondent No.2 in the pending civil suit.”

4. The petitioner has approached this Court at an intermediate stage, when the MCD has issued a show-cause notice. The contention of learned counsel for the petitioner is that proceedings were earlier commenced in respect of unauthorised construction on the premises, but were limited to certain elements of the alleged unauthorised construction. It is concluded that this aspect has been overlooked in the impugned show cause notice.

5. Having regard to the aforesaid facts, particularly the mechanism laid down in the order dated 23.10.2024, I am of the view that it is not appropriate to exercise jurisdiction under Article 226 of the Constitution of India at this stage. The aforesaid order already grants the owners/occupants of the property, including the petitioner herein, an opportunity to respond to the show cause notice and directs MCD to take further action only after considering the reply submitted. The parties have also been protected from coercive proceedings pursuant to any demolition order for a period of ten days after service thereof, to enable them to take appellate remedies if necessary.

6. I am of the view that these directions adequately protect the petitioner. The petitioner can respond to the show cause notice, giving the background of the previous proceedings initiated by MCD, and MCD will take a decision thereafter.

7. The writ petition along with pending applications is disposed of,



with the aforesaid observations.

NOVEMBER 11, 2024
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PRATEEK JALAN, J