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

+ W.P.(C) 16247/2024 & CM APPL. 68408/2024

SMT. RENU TOMAR

.....Petitioner

Through: Ms. Ekta Gambhir and Mr.
Sandeep Sharma, Advocates.

versus

MUNICIPAL CORPORATION
OF DELHI & ANR.

.....Respondents

Through: Ms. Shivangi Kumar, Advocate for
MCD.
Mr. Arun Srivastava, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

22.11.2024

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1. The petitioner has filed this writ petition, under Article 226 of the Constitution, for initiation of action by the Municipal Corporation of Delhi ["MCD"] against unauthorised construction of a lift by respondent No. 2 in the property in question [*DDA Flat Nos. 4042 – 4049, Sector B, Pocket 5 & 6, Vasant Kunj, New Delhi – 110070*] in which both the petitioner and the respondent No. 2 are residents.
2. The petitioner is a resident of *Flat No. 4048, Sector B, Pocket 5 & 6, Vasant Kunj, New Delhi-110070* whereas respondent No. 2 is the resident of *Flat No. 4049* in the same block.
3. The petitioner first instituted a civil suit before the District Court,



Patiala House for the following reliefs:

“(a) pass a decree of permanent injunction, thereby restraining the Defendant No. 1 from using and operating the lift as the same is constructed on the common area of the said Flats No.4042 to 4049, till the final disposal of the present suit;

(b) Pass decree for Mandatory injunction in favour of the plaintiff and against defendant No.2 thereby directing the defendant No. 2 to make a thorough Inspection of the site where the lift Is Installed, can the lift travel upto the roof of the building (as the same is against the approval), all the approval and sanction so granted by it may be cancelled immediately.

(c) pass such other/further order which this Hon'ble Court may deem fit and proper under the circumstances of the case in favour of the Plaintiff and against the Defendants.”

4. During the pendency of the suit, the MCD filed a status report dated 07.05.2024 in which it is stated as follows:

“That the instant report is being filed pursuant to order dated 30/01/2024 of this Hon'ble Court.

That in pursuant to orders dated 05/10/2023, as passed by this Hon'ble Court, it is submitted that consequence upon revocation of permission granted for installation of lift, on account of unauthorized construction / installation, the Building Department-II of South Zone / answering defendant - MCD has initiated the necessary action and the alleged unauthorized construction / installation of lift has been booked vide U/c File No. 06/UC/B-II/SZ/2024 dated 03/01/2024 in the shape of deviations against permission for installation of common lift and connecting bridge vide file No. 32/AE(B)/SZ/2019 dated 12/09/2019 (NOC / Permission revoked vide order No. D/4454/EE(B)-II/SZ/2023 dated 27/02/2023), for taking the necessary demolition action u/s 343/344 of DMC Act, 1957. Upon following due process of law, the necessary demolition order has also been passed by the Competent Authority i.e. Assistant Engineer (Bldg)-II of South Zone - MCD vide dated 18/01/2024.

Moreover, it is also submitted here that sealing proceedings u/s 345-A of DMC Act - 1957 has also been initiated and after following due process of law, the necessary sealing order has also been passed by the Competent Authority i.e. Deputy Commissioner of South Zone - MCD vide dated 11/03/2024.

Further action in respect of the alleged unauthorized construction will be taken / carried out in due course of time, as per



law.”

5. In view of the above status report, the petitioner has withdrawn the civil suit on 11.11.2024, with liberty to take alternative proceedings before this Court. It is, in these circumstances, that the present writ petition has been filed, seeking action in terms of the demolition order which the MCD claims to have passed on 18.01.2024.

6. Ms. Shivangi Kumar, learned counsel for MCD, who appears on advance instructions, states that demolition proceedings have been scheduled for 25.11.2024, subject to availability of police force and lifting of Graded Response Action Plan-IV restrictions on construction and demolition of property.

7. Mr. Arun Srivastava, learned counsel for the respondent No. 2, submits that the aforesaid demolition order and sealing order, have not been served upon respondent No. 2. It is stated that the copies of the said orders were also not filed before the District Court.

8. In view of these averments, I am of the opinion that the appropriate course at this stage is to permit the respondent No. 2 to challenge the aforesaid orders in accordance with law, without prejudice to the rights and contentions of the parties on limitation and on merits. To enable respondent No. 2 to do so, the parties are directed to maintain *status quo* with regard to the impugned construction for a period of 10 days from today.

9. In view of the above, and with the consent of learned counsel for the parties, the writ petition, alongwith the pending application, stands disposed of with the following directions:

a. Copies of the orders dated 18.01.2024 and 11.03.2024, referred to



in the status report filed by MCD before the District Court, will be supplied to learned counsel for the petitioner and respondent No. 2 in the course of the day.

- b. Respondent No. 2 is at liberty to challenge the said orders before the Appellate Tribunal for MCD [“ATMCD”] in accordance with law.
- c. All rights and contentions of the parties including on limitation and merits are left open.
- d. The parties will maintain *status quo* as to the impugned construction for a period of 10 days from today, and will thereafter be bound by any directions that the ATMCD may pass. In the absence of any stay by ATMCD, MCD will be free to take action in accordance with law pursuant to the aforesaid order.

10. While taking action, MCD will act strictly in accordance with law, and after compliance with all statutory formalities, and will also bear in mind the judgment of the Supreme Court dated 13.11.2024 in *In Re: Directions in the matter of demolition of structures* [W.P.(C) 295/2022 and connected matters].

11. In the event the petitioner has any further grievance with regard to unauthorised construction, she is at liberty to approach the Special Task Force [“STF”], constituted by the Supreme Court vide orders dated 24.04.2018 and 18.07.2018 in W.P.(C) 4677/1985 [*M.C. Mehta vs Union of India & Ors.*]. This direction is made with reference to the decisions of the Division Bench in *Devender vs. Govt. of NCT of Delhi and Ors* [order dated 20.09.2018 in W.P.(C) 1807/2018], *Sneh Lata & Anr. vs. North Delhi Municipal Corporation & Anr.* [order dated 08.04.2019 in



LPA 245/2019], *Fazruddin vs. DDA & Ors.* [order dated 23.04.2019 in WP (C) 4649/2017], and in *Himanshu vs. East Delhi Municipal Corporation & Anr.* [order dated 31.07.2023 in W.P.(C) 8104/2022], and decisions of coordinate Benches in *Abdul Gaffar vs South Delhi Municipal Corporation & Ors.* [order dated 28.02.2019 in W.P.(C) 1773/2019] and *Rashiduddin Malik vs. MCD & Ors.* [order dated 02.09.2024 in WP (C) 12102/2024].

PRATEEK JALAN, J

NOVEMBER 22, 2024/MR/Kb/