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

+ **W.P.(C) 4562/2018 & CM APPL. 17704/2018**

AJAY

.....Petitioner

Through: **Mr. Ajay Sharma, Adv.**

versus

**NORTH DELHI MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER**

.....Respondent

Through: **Mr. Mukesh Gupta, SC with Mr.
Shashi Gupta and Mr. Arnav Gupta,
Advs. for MCD.**

**Mr. Sanjay Kumar Pathak, SC with
Mrs. K. K. Kiran Pathak, Mr. Sunil
Kumar Jha and Mr. M. S. Akhtar,
Advs. for R-4.**

**Mr. Sanjeev Ralli, Sr. Adv. with Mr.
Chetanya Baweja, Mr. Shubham
Yadav, Mr. Ravikant Yadav and Mr.
Praful Nawani, Advs. for R-5.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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12.08.2024

**CM APPL. 42539/2024 (filed on behalf of respondent No.5 for bringing
on record legal heirs of late Shri Surender Kumar)**

1. Since respondent No.5 has expired, the application for impleadment of his legal heirs is allowed.
2. Legal heirs of respondent No.5 stand impleaded in the instant petition. The amended memo of parties be taken on record. Let the same be placed



immediately after the main memo of parties.

3. The application stands disposed of.

W.P.(C) 4562/2018 & CM APPL. 17704/2018 (for interim relief)

4. The petitioner who claims to be residing at House No. 3395-3397 Gali Lallu Missar, Qutub Road, Sadar Bazar, Delhi-110006 has filed the instant writ petition stating that he, along with the other residents of Sadar Bazar, are facing the brunt of unauthorised construction, allegedly carried out by respondent No.5 in collusion with respondent Nos.1 to 4.

5. On notice being issued, the first status report came to be filed on 28.08.2018 by the respondent-Corporation. The respondent-Corporation in its first status report stated that the subject property being property No. 3381-3387, Gali Lallu Missar, Sadar Bazar, Delhi-06 is an old property and on the date of physical inspection i.e., 01.05.2018, no ongoing construction was found. It has also been stated that the site was further re-inspected by the Building Department and the property was found to be old and occupied. It was further noted that no building material was seen over the site in question.

6. The status report on behalf of respondent No.2-Delhi Development Authority has also been placed on record which states that the dispute relates to Khasra no. 295/1/4 in the Revenue Estate Sadar Bazar, Janubi and on inspection, no unauthorized construction was found at the site in question.

7. Respondent No.5 has also filed his counter affidavit and has controverted the submissions made in the instant writ petition. There also appears to be status report filed by respondent No.3-Station House Officer and the counter affidavit by the Government of NCT of Delhi.

8. On 10.01.2024, the Court directed for joint inspection of the property



in question and to file a status report. Thereafter, the matter was taken up for hearing on 10.07.2024 and the Court directed to place on record the joint inspection report and the parties were also granted liberty to file the objection(s) thereto.

9. In pursuance of the said order, the respondent-Corporation has placed on record the status report mentioning the outcome of the joint inspection, as was directed. Paragraph Nos.2 to 6 of the status report dated 09.07.2024 read as under:-

"2. That the present affidavit is being filed in compliance of orders dated 10.01.2024 of this Hon'ble Court in the present case whereby respondent no.1 & 4 were directed to jointly inspect the property in question i.e. 3381-3387, Gali Lallu Missar, Qutub Road, Sadar Bazar, Delhi-110006 and file a status report setting out the current status of the property and in case any unauthorized construction/encroachment is found, the action proposed to be taken with regard thereto.

3. That it is respectfully submitted that, in compliance of orders dated 10.01.2024 of this Hon'ble Court, vide letter dated 26.02.2024 the Deputy Secretary, Land & Building Department, Evacuee Property Cell, Vikas Bhawan, ITO, New Delhi was requested to depute the concerned officials for carrying out joint inspection of the property in question on 07.03.2024 at 11:00 A.M. however neither any response was received nor anyone attended the inspection.

*4. That it is respectfully submitted that vide another letter dated 20.03.2024, the Deputy Secretary was again requested to depute concerned officials for carrying out joint inspection on 28.03.2024 at 11:00 A.M. Copy of letters dated 26.02.2024 & Commission 20.03.2024 are annexed herewith as **Annexure-A (Colly)**.*

5. It is respectfully submitted that the joint inspection of the property in question was carried out on 28.03.2024 in the presence of officials of respondent no.4. During inspection it was noticed that there are 07 different properties and property nos.3382, 3383, 3384 & 3385 have been combined together at first floor and second floor. It is submitted that first floor and second floor of these combined properties was found locked during inspection. The details of 07 properties (which are old and occupied) alongwith extent of construction and use is as under:-



<i>S.No.</i>	<i>P.No.</i>	<i>Extend of construction</i>	<i>Use</i>
<i>1.</i>	<i>3381</i>	<i>Ground Floor only</i>	<i>Commercial</i>
<i>2.</i>	<i>3382</i>	<i>At ground floor individual shops however first and second floor of these shops have been combined.</i>	<i>Commercial at ground floor, First and second floor were found locked during inspection.</i>
<i>3.</i>	<i>3383</i>		
<i>4.</i>	<i>3384</i>		
<i>5.</i>	<i>3385</i>		
<i>6.</i>	<i>3386</i>	<i>Ground Floor only</i>	<i>Found locked during inspection</i>
<i>7.</i>	<i>3387</i>	<i>Basement, Ground, Floor, First Floor and Toilet at the roof of First Floor</i>	<i>Basement and Ground Floor are in Commercial use and first floor found locked.</i>

6. That it is respectfully submitted that during inspection and from local inquiry it was revealed that no construction work has been carried out in the properties in question in the recent past. As far as encroachment is concerned the same may be verified by respondent no.4 on the basis of allotment records including plan, if any, of the properties in question being its custodian. Photographs taken during inspection are annexed herewith as Annexure-B(Colly)."

10. Learned counsel appearing for the petitioner although has not filed any objection to the status report, however, he submits that respondent No.4 had earlier booked certain properties and the action in that regard was also initiated. He, however, appries the Court that some of the illegal constructions have not been taken to their logical end. He further submits that there still remains an encroachment in the form of *chabutra* and staircase.

11. I have considered the submissions made by learned counsel appearing for the parties and also perused the record.

12. A perusal of the status report filed by the respondent-MCD would clearly indicate that no construction work has been carried out over the



properties in question in the recent past. If there is any unauthorized *chabutra* or staircase etc., respondent No.4 can always take necessary steps after extending proper opportunity to the parties. However, in the instant case, the Court cannot be expected to conduct a roving enquiry and to issue a continuing mandamus with respect to the issue raised in the instant writ petition.

13. Recently, this Court *vide* order dated 29.07.2024 in W.P. (C) 4206/2024 titled as ***Jangpura Extension Residents Forum RWA v. Delhi Urban Shelter Improvement Board & Ors.***, while dismissing a petition seeking continuing mandamus has held as under:-

"6. It is well-established that while the Court is vested with extraordinary jurisdiction under Article 226 of the Constitution of India, the essence of the remedy of continuing mandamus lies in eliminating the uncertainties of adjudication. This remedy empowers courts to supervise, superintend, and intervene to actualize specific socio-economic rights and rectify administrative non-compliance.

7. Examining the prevailing jurisprudence, the remedy of continuing mandamus is invoked exclusively in exceptional circumstances where persistent executive recalcitrance obstructs the delivery of justice. In such instances, judicial follow-up becomes imperative in accordance with the Court's constitutional and moral obligations to uphold the rule of law.

8. In the present case, the respondent-MCD has taken adequate actions and has demonstrated compliance through Status Report, to which the petitioner has not raised any objections. Therefore, the Court is of the considered opinion that the facts and circumstances of this case do not warrant the issuance of a continuing mandamus, as the respondent's conduct has remained within the scope of their statutory duties and in compliance with the directions of this Court."

14. In any case, if the petitioner has any further grievance, he is always entitled to take up appropriate proceedings under the provisions of Bharatiya Nyaya Sanhita, 2023 or may file a civil suit against the private respondents. Besides that, there exists a Special Task Force constituted as per the



directions of the Supreme Court. The petitioner can very well approach the STF as well.

15. The Court, at this stage, does not find any grave violation of any extant rules and regulations and more so, nothing to that effect has been pointed out by the petitioner.

16. The petition is, therefore, disposed of alongwith the pending application.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 12, 2024/p