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

+ W.P.(C) 6226/2016

T.C.A. SRINIVASAN

.....Petitioner

Through: Mr. Ashish Tanwar, Mr. Ravinder Singh, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS

.....Respondents

Through: Mr. Mukesh Gupta, Ms. Shashi Gupta, Mr. Arnav Gupta, Mr. Sachin Singh S., Advocates for MCD.

Mr. Abhinav Sharma, Mr. Abhishek Shandilya, Advocates for R-2.

Mr. Shantanu Sagar, Mr. Anil Kumar, Mr. Gunjesh Ranjan, Mr. Abhishek K. Gupta, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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12.12.2024

1. By the order dated 30.11.2023, it was recorded as follows:

“1. The petitioner has filed this petition with regard to alleged unauthorised construction in Flat No. 38, DDS SFS Flats (Anupam Apartment), M.B. Road, Saket, Neb Sarai, District- South, New Delhi-68 [“the property”], carried out at the behest of respondent No. 4.

2. Mr. Mukesh Gupta, learned counsel for the Municipal Corporation of Delhi [“MCD”], submits that there is unauthorised construction in



the said property, in the sense of excess coverage against standard building plan of the Delhi Development Authority. However, it is submitted that the property of respondent No. 4 is protected by the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 and subsequent legislations.

3. Mr. P. Venkatesan, learned counsel for the petitioner, relies upon a judgment of this Court in Ravinder Kumar Makkar & Anr. vs. M.C.D. & Anr. [171 (2010) DLT 341], which interprets the NCT of Delhi Laws (Special Provisions) Second Act, 2009 and holds as follows:-

“20. That brings me to the second contention of the Counsel for the petitioner. The NCT of Delhi Laws (Special Provisions) Second Act, 2009 is not intended to suspend the statutory function of respondent MCD to ensure compliance of Building Regulations and to take action for its breach, in the entire city of Delhi. It is intended only for protection of that, policy with respect whereto and as defined in the Preamble to the Act, has not been finalized. The Preamble mentions housing for urban poor (who have formed unauthorized colonies, proposal for regularization whereof is underway), urban street vendors, village abadi areas, Jhuggi Jhopari colonies, farm houses etc. The house in question is situated in a posh colony of Delhi and can by no stretch of imagination fall within the ambit of the said Act. The said Act is not applicable to unauthorized constructions in regularized old established colonies of Delhi. There is therefore no merit in the said contention also.”

4. According to Mr. Gupta, provisions of the Special Provisions Act now in application are different from the provisions considered in the said judgment.

5. MCD is directed to place on record a compilation of the relevant provisions of the Special Provisions Acts, passed from time to time, and an affidavit stating its position in this regard within four weeks from today. The petitioner and respondent No. 4 may also file their respective affidavits on this aspect within the same period.

6. List on 04.03.2024.”

2. With regard to applicability of the moratorium imposed by the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 [“Act of 2011”] to “*posh colonies*”, this Court has since held that the Act of 2011 and subsequent legislations applied to all the areas in Delhi. Reference may be made to the order dated 20.11.2024 in W.P.(C)



9125/2022 [*Shakuntala Guliani & Anr. vs. North Delhi Municipal Corporation & Ors.*]. The judgment dated 09.08.2010 in W.P.(C) 130/2008 (*Ravinder Kumar Makkar & Anr. v. M.C.D. & Anr.*), has been distinguished on the ground that the statutory provision in the NCT of Delhi Laws (Special Provisions) Second Act, 2009 did not contain a residuary provision applying it to “*all other areas within the NCT of Delhi*”, which has been incorporated in Section 3(2)(iv) of the Act of 2011. Consequently, the contention of the petitioner recorded in the orders dated 19.05.2023 and 30.11.2023, is not accepted.

3. A question is then raised by learned counsel for the petitioner, as to whether the unauthorised construction in question in the present case, took place prior to 08.02.2007, which is the cut off date under the Act of 2011. As far as this aspect is concerned, the writ petition does not clearly state the date upon which the unauthorised construction is alleged to have taken place. The Municipal Corporation of Delhi [“MCD”], by an order dated 16.09.2016, passed under Section 345A of the Delhi Municipal Corporation Act, 1957, has noted the contention of the owner/occupant of the property that the construction was carried out in the year 1988-89. Based upon the property tax returns of the owner of the property, which reflects the same covered area as presently existing, MCD has come to the conclusion that the construction in the flat under reference is in existence since 1988. It has therefore held that the subject property is entitled to protection under the Act of 2011. The operative order is that the unauthorised construction in the subject property be sealed, but the sealing action was kept in abeyance until 31.12.2017. This factual position has not been controverted in these proceedings.



4. It is undisputed that the moratorium has been extended from time to time lastly by the NCT of Delhi (Special Provisions) Second (Amendment) Act, 2023, until 31.12.2026. Consequently, the relief sought in the writ petition cannot be granted at this stage, but MCD may take further action if and when the statutory moratorium is lifted.

5. The writ petition is disposed of with these directions.

PRATEEK JALAN, J

DECEMBER 12, 2024

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