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

+ **W.P.(C) 9581/2018 and CM APPL.37340/2018**

SH. FATEH CHAND

..... Petitioner

Through: Mr. S. D. Ansari, Adv. along with Mr.
I. Ahmed, Advs. along with petitioner
in person.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Mr. Ajjay Arora, Mr. Kapil Dutta,
Mr. Vansh Luthra, Mr. Simran Arora
and Ms. Nidhi Sharma, Advs. for
MCD.

Mr. Lalit Gupta and Mr. Aditya
Dhankar, Advs. for R-3 and 4
(through v/c)

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

29.04.2024

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1. The present petition has been filed by the petitioner raising a grievance as regards alleged unauthorized construction in property bearing No.5094, Rui Mandi, Sadar Bazar, Delhi.

2. A status report has been filed on behalf of the MCD wherein it has been *inter-alia* stated as under:

“4. That the deponent most respectfully state that the records regarding unauthorized constructions in respect of the subject property i.e. bearing no. 5094, Rui Mandi, Sadar Bazar, Delhi-110006 has been requisitioned and it is noticed that the unauthorized constructions at the property in question in the shape of a hall and stair case at second and third floor and one room, WC, toilet. Kitchen and mumty at fourth



floor was initially booked under Section 343/344 of the DMC Act, 1957 on 12.04.2004 having raised without permission /sanction building Plan which has been booked vide UC File no.349/B/UC/SPZ/2004 Dated 12.04.2004(Page 54 to 60 of the paper O book). The said facts have also been admitted by the petitioner in Para 5 of the Writ petition. Thereafter, the owner/Builder namely Shri Sunil Kumar Gupta and Shri Sushil Garg has applied for regularization of booked unauthorized construction at the property in question which was considered and regularized subject to demolition of the yellow portions shown in the regularization plan issued vide Regularization File No.R-69/EE(B)/SPZ Dated 24.08.2010 and deposit of Regularization fee of Rs.1,58,347/- conveyed vide Regularisation letter No. D-785/EE(B)/SPZ/10 dated 29.10.2010. It is pertinent to mention that the aforesaid regularization fee has been deposited vide G8 Receipt No. AG 28470 Dated 29.10.2010. The photocopy of the Regularization letter dated 29.10.2010 is annexed herewith as Annexure R-1.

*5. That the deponent further states that there is an inter se dispute between the petitioner and the private respondents qua the existing plot adjoining to the site and they have indulged in multifarious litigations, as can be seen from the averments as stated in the writ petition and the annexure appended therewith. Therefore, confining the status report qua the unauthorized constructions existing at the site, even after regularization in the form of deviations i.e. yellow portions existing at the site, which has not been demolished by the owner/occupiers, the answering Respondent again issued notice under Section 343/344 of the DMC Act, 1957 vide U/c File No.440/80-N/B/UC/EE(B)-I/CSPZ/18 Dated 12.09.2018. It is stated that in response to the show cause notice dated 12.09.2018, the reply of the owner/builder was received which was examined. The owner/Builder has sought personal hearing which was afforded and during the course of hearing, the owner/builder stated that no unauthorized construction existed at the property and heavily relied upon the regularization done on 29.10.2010. **The quasi judicial authority i.e. AE(B)/CSPZ, after considering the totality of the facts and circumstances of the case came to the conclusion that the yellow portion of the construction as indicated in the regularization plan, which was required to be demolished has not been demolished passed the demolition order in respect of the yellow portions i.e. non-compoundable deviations but the execution of the same has been protected till December, 2020 owing to the operation of the Delhi Special Laws,2017 vide Speaking order No. AE***



(B)/CSPZ/2018/D-2200/CSPZ dated 10.12.2018. The photocopy of the speaking order is annexed herewith as Annexure R-2.”

3. It is submitted that the “yellow portion” referred to in the above status report is non-compoundable. However, requisite action has not been taken by the MCD since the said construction was stated to be protected under the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2017.
4. It is noticed that para-4 of the status report refers to the fact that the property was booked on 12.04.2004, when construction in the shape of a hall and stair case at second floor and one room, WC, toilet, kitchen and mummy at fourth floor were found to be constructed.
5. Necessarily, it is only the said construction which was existing prior to the relevant cut off date under the NCT (Special Provisions) Act, which is protected. Learned counsel for the MCD submits that in case any additional construction is found to be subsisting, over and above the construction noticed at the time of booking the property in question on 12.04.2004, the protection under the NCT (Special Provisions) Act, would no longer be available and the MCD would be free to take demolition action *qua* the property in question in accordance with law.
6. Learned counsel for the MCD submits that the property in question shall be inspected expeditiously to ascertain the status of the construction at present *vis-à-vis* the construction noticed at the time of booking of the property on 12.04.2004.
7. In case any unauthorized construction is found to be subsisting, which is not protected by the NCT (Special Provisions) Act, 2017, appropriate action in accordance with law shall be taken for demolition of the same. The



same shall be necessarily subject to the statutory rights of the owner/occupier of the property in question.

8. With the aforesaid directions, the present petition stands disposed of.

9. Let a compliance affidavit be filed by the MCD within a period of eight weeks from today.

SACHIN DATTA, J

APRIL 29, 2024/cl