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

+ W.P.(C) 8977/2017 (*Disposed of case*)

SH. ASHOK KUMAR KHANNAPetitioner

Through: Mr. Deepak Agarwal, Advocate.

versus

SMT. RUBY AND ORS.Respondents

Through: Ms. Abha Malhotra, SCGC with
Ms. Ramya Tiwari, Advocate for
R-3 and 6.

Mr. Sunil Goyal, ASC with Mr.
Nitin Kala, Mr. Rachit Gupta,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **24.12.2024**

CM APPL. 76104/2024 (for modification of order dated 02.12.2024)

1. The petitioner has filed this application for the following reliefs:

“i. Modify / clarify the order dated 02.12.2024 to the extent that the removal of encroachment is with regard to the lane ‘behind’ Shop No. 33, New Market, Timarpur, Delhi-110054 and not ‘at’ Shop No. 33, New Market, Timarpur, Delhi-110054.

ii. Pass any other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The writ petition was disposed of by the order dated 02.12.2024, recording the contents of a status report dated 02.12.2024 handed up by the Municipal Corporation of Delhi [“MCD”]. The order reads as follows:

“1. By way of this present petition, under Article 226 of the



Constitution, the petitioner seeks action by respondent-Municipal Corporation of Delhi [“MCD”], in respect of the unauthorised construction/encroachment behind Shop/House No. 33, New Market, Timarpur, Delhi-110054 [“subject property”], which is the residence/shop of the petitioner.

2. At the very outset, Mr. Deepak Agarwal, learned counsel for the petitioner, points out that an inadvertent error has occurred in paragraph 1 of the order dated 25.09.2024, to the extent that the petitioner’s allegation is of unauthorised construction/encroachment “behind” the subject property, and not “at” the subject property. The order dated 25.09.2024 is corrected accordingly.

3. In the said order, MCD was directed to file an updated status report with regard to the encroachment in the land behind the subject property. A status report dated 02.12.2024 is handed up in Court, the relevant paragraphs of which read as follows:

“3. That the lane behind the shop no. 33 was inspected on 30.11.2024. Upon inspection it was noticed that owner/occupier of the property/shop bearing no 33 has encroached upon public land by raising monolithic structure from ground floor to third floor which is liable to be removed u/s 321 & 322 of DMC Act.

4. That due to GRAP applicable presently, no encroachment/demolition action could be taken. After lifting of the GRAP ban, action will be taken by the department to remove the encroachment raised by owner/occupier of shop no. 33, New Market Timarpur. The photographs taken at the time of inspection are enclosed herewith as "Annexure A".”

4. Mr. Sunil Goyal, learned counsel for MCD, states that further action in respect of the encroachment will be taken by MCD within a period of eight weeks from today, subject to lifting of the Graded Response Action Plan – IV restrictions and availability of police assistance.

5. In view of the aforesaid submission, Mr. Agarwal does not seek any further orders in the writ petition, but requests for liberty to approach the Special Task Force [“STF”] or any other forum, if his grievances persist.

6. The STF was constituted by the Supreme Court by an order dated 24.04.2018 and 18.07.2018 in W.P.(C) 4677/1985 [M.C. Mehta vs Union of India & Ors.]. It is headed by the Vice-Chairman of the DDA, and comprises of representatives of all the concerned agencies. The request of Mr. Agarwal is in consonance with the judgments 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].

7. The writ petition is disposed of on account of the aforesaid submissions of MCD, and with liberty to the petitioner to approach the STF or any other forum, in the event any necessity arises.

8. It is made clear that this order is passed without prejudice to the rights and contentions of owners/occupants of the allegedly encroaching structure. MCD is directed to act strictly in accordance with law, and in terms of the judgment of the Supreme Court dated 13.11.2024 in In Re: Directions in the matter of demolition of structures [WP (C) 295/2022 and connected matters].

9. Accordingly, the writ petition is disposed of with liberty as aforesaid.”

3. The contention of the petitioner in this application is that MCD is proceeding against alleged unauthorised construction in *Shop No. 33* (which is the petitioner’s property) instead of ‘*the lane behind Shop No. 33*’, which was the subject matter of the petition. According to learned counsel for the petitioner, this error arises because of an inadvertent error in the prior order of the Court dated 25.09.2024, which was clarified in paragraph 2 of the order dated 02.12.2024.

4. I do not find any merit in this contention. Paragraph 3 of the status report clearly refers to “*the lane behind the Shop No. 33*”. MCD is entitled to act in respect of any unauthorised construction/encroachment in accordance with law. Paragraph 8 of the order dated 02.12.2024 also makes it amply clear that the order has been passed without prejudice to the rights and contentions of the owners/occupants of the alleged



encroaching structure. MCD has been directed to conform with all statutory formalities and also take note of the safeguards outlined in the judgment of the Supreme Court dated 13.11.2024 in *In Re: Directions in the matter of demolition of structures* [WP (C) 295/2022 and connected matters]. All rights of the petitioner or other owners/occupants of the property with respect to any alleged encroachment or illegal encroachment have already been protected.

5. I am of the view that no further directions or modifications of the said order are required in this application. The application is disposed of.

PRATEEK JALAN, J

DECEMBER 24, 2024

“Bhupi/JM”/