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

+ W.P.(C) 7267/2022 & CM APPLs. 22265/2022, 43058/2022,
43086/2022 & 59434/2023

KAMLESH VASHISTH

.....Petitioner

Through: Mr. Avadh Bihari Kaushik with
Ms. Saloni Mahajan and Mr. Rishabh
Kumar, Advocates with
petitioner in person.
(M): 9811455431
Email: avadhkaushik@gmail.com

versus

NORTH DELHI MUNICIPAL CORPORATION &
ORS.

.....Respondents

Through: Mr. Vikas Chopra, SC, MCD.
(M): 9212036118
Email: chopra.company@gmail.com
Ms. Ira Singh, SPC for respondent no.
3/Delhi Police.
(M): 9818117987
Email: irasingh10@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
27.03.2025

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1. The present writ petition has been filed with the prayer for directions to the respondent -Municipal Corporation of Delhi ("MCD") to demolish the unauthorised construction by respondent nos. 4 and 5, which is stated to be in violation of the order dated 08th August, 2007, passed in W.P.(C) 3587/1994, titled as "**Upper Flat Residents Association Versus MCD**".



2. Learned counsel appearing for the respondent MCD draws the attention of this Court to the affidavit filed on behalf of the MCD, wherein, it has been stated as follows:

“xxx xxx xxx

3. *That it is respectfully submitted that the present petition filed by the petitioner alleging unauthorized construction/encroachment on the government land thereby raising side wall and pucca floor around flat no. 23, Nimri Colony, Ashok Vihar, Ph-IV, Delhi-52 and a collapsible door at the entrance of the gali.*

4. *That it is respectfully submitted that the property was inspected by the concerned official of the answering respondent and it was found that the property in question does not exceed more than 100 Sq. Mtr. The photographs taken during inspection are annexed herewith as **Annexure-‘A’ (Colly)**.*

5. *It is further submitted that Writ Petition bearing No. 3587/1994 seeking orders for removal of encroachment/unauthorized construction carried out by the ground floor flats. The MCD filed an affidavit for seeking orders for constitution of a committee to go into all the issues raised in the said writ petition and give recommendations. It is in this regards, the committee submitted following recommendations:*

xxx xxx xxx

*The copy of Resolution Item No. 12 (Recommendation) & Order in WPC No. 3587/1994 are annexed herewith as **Annexure-‘B’ (Colly)**.*

6. *It is further submitted that the issue involve i.e. the land in and around the corner nuts of Nimri Colon) was considered by the department and vide resolution no. 166 passed by the standing committee, it was decided that the land adjoining to the corner flats which are inside the boundary wall, the same may be transferred to the flats owner. Thus, from the above, it is clear that the present writ is devoid of any merit. The copy of resolution is annexed herewith as **ANNEXURE-‘C’**.*

xxx xxx xxx”

3. A perusal of the aforesaid affidavit filed on behalf of MCD shows that it is the clear stand of the MCD that the area in question, wherein encroachment has been alleged by the petitioner, has been transferred to the property owner, as per the committee’s decision.



4. The aforesaid fact is also recorded in the order dated 26th November, 2024, wherein, it has been stated as follows:

“xxx xxx xxx

2. *Mr. Vikas Chopra, learned Standing Counsel for the Municipal Corporation of Delhi [“MCD”], points out that the writ petition has been filed on an allegation of unauthorised construction/encroachment around property bearing No. Flat No. 23, Nimri Colony, Ashok Vihar, Phase-IV, Delhi-110052, but the alleged encroachment is actually on land which was transferred to the owner of the said property. The affidavit filed by MCD on 06.09.2023 states that a committee was constituted, pursuant to orders passed by this Court in W.P.(C) 3587/1994 [Upper Flat Residents Association vs. MCD], which inter alia permitted such transfer. Paragraph 6 of the affidavit reads as follows:-*

“6. It is further submitted that the issue involved i.e. the land in and around the corner flats of Nimri Colony was considered by the department and vide resolution no. 166 passed by the standing committee, it was decided that the land adjoining to the corner flats which are inside the boundary wall, the same may be transferred to the flats owner. Thus, from the above, it is clear that the present writ is devoid of any merit. The copy of resolution is annexed herewith as ANNEXURE-C.”

xxx xxx xxx”

5. This Court notes that the aforesaid fact is disputed by learned counsel appearing for the petitioner, as he submits that no documentary evidence with regard thereto, has been filed before this Court.

6. Learned counsel appearing for the petitioner also draws the attention of this Court to the order dated 19th January, 2012, passed by the Division Bench, in W.P.(C) 3587/1994, titled as **“Upper Flat Residents Association Versus MCD”**, wherein, it has been stated as follows:

“xxx xxx xxx

3. *The manner in which the flats were constructed originally and sold to these occupants, the sewerage and other pipelines of the upper flats laid alongside the outer walls of the ground floor flats and were going to main sewerage system therefrom. After the ground floor Flat owners were allowed to carry out construction in the manner mentioned above, these*



pipelines are now falling within the premises belonging to the ground floor flat owners. The grievance, raised on this basis by the petitioners, is that whenever there is any repairs needed and even the replacement of these pipes is needed which have become old and are corroded, the ground floor flat owners are not allowing the petitioners to access to that area which now falls within the houses of the ground floor flat owners and it is causing grave inconvenience to the upper flat owners.

4. We find that the aforesaid grievance of the petitioners is Justified and this problem can be tackled by re-laying these pipes in a manner that they are laid outside the extended boundaries of the ground floor flat owners. Learned counsel for the petitioners submits that upper flat Owners would be willing to do so in case the ground floor flat owners cooperate with them in this exercise.

5. For this purpose, MCD shall take necessary exercise by preparing layout plans/designs and earmark the areas from where these pipelines can now be laid. The engineers of MCD, for this purpose, survey the area and complete the necessary exercise within a period of three months and provide those drawings to the petitioners. The MCD shall also ensure that when the upper flat owners re-lay the pipelines on the basis of revised layout plans prepared by the MCD, ground floor flat owners shall cooperate and shall not cause any hindrance and if needed, police assistance can also be taken. The MCD, while preparing the said layout plans, may take the help and cooperation of the Delhi Jal Board, if required and on MCD approaching the Delhi Jal Board, it shall extend all cooperation.

xxx xxx xxx”

7. By referring to the aforesaid judgment, it is the case of the petitioner that requisite action for laying down of pipelines has not been taken by the MCD.

8. This Court notes that the present petition has been filed with the prayer for demolition of unauthorised construction by respondent nos. 4 and 5 and for removal and demolition of the unauthorised construction carried out by respondent nos. 4 and 5 in a time bound manner. Thus, the issue with respect to laying down of pipelines, is not the subject matter of the present petition.



9. This Court also takes note of the submission made by the learned counsel appearing for the MCD that the construction of walls by the respondent nos. 4 and 5, was proper and lawful, as only the existing walls, which were old, were demolished, and in its place, a new wall was constructed. Attention of this Court has been drawn to the photograph attached with the petition, which is reproduced as under:



10. Thus, it is the submission on behalf of the MCD that no encroachment or unauthorised construction has been carried out by respondent nos. 4 and



5.

11. Accordingly, no further orders are required to be passed by this Court in the present petition.

12. With respect to the contention of the petitioner with regard to disputing the factum of the transfer of the land to the private owners, the petitioner is at liberty to seek remedies, as per law.

13. As regards the issue with respect to the laying of pipelines, the petitioner is directed to make a representation to the MCD, as well as to the Delhi Jal Board, in that regard.

14. Upon receipt of representation from the petitioner, the MCD and the Delhi Jal Board shall consider the matter and expeditiously take steps with respect to the laying down of water and sewer pipelines, in terms of the directions of the Division Bench, as passed *vide* order dated 19th January, 2012, in *W.P.(C) 3587/1994*.

15. In case, the petitioner is aggrieved by any non-action on the part of the MCD or the Delhi Jal Board, the petitioner is at liberty to seek his remedies, in accordance with law.

16. With the aforesaid direction, the present writ petition, along with the pending applications, stands disposed of.

17. A copy of this order shall be sent to CEO, Delhi Jal Board for necessary compliance.

MINI PUSHKARNA, J

MARCH 27, 2025

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