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

+ W.P.(C) 5711/2019

RAJ SHEKAR RADHA KRISHNANPetitioner

Through: Mr. Saubhagya, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

.....Respondents

Through: Mr. Kapil Dutta, Advocate for MCD
(M:9811135509)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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22.04.2025

1. There is yet another request for adjournment on behalf of the petitioner.
2. This Court notes that on various previous dates, adjournments have been sought on behalf of the petitioner.
3. Learned counsel for respondent/Municipal Corporation of Delhi ("MCD"), submits that the unauthorized construction has already been removed and, thus, the present petition has become infructuous.
4. This Court notes that the present petition has been filed with a prayer for directions to respondent nos. 1 and 2, for restoration of retractable lift-able, open riser cat ladder chair ramp hoist system, installed by the petitioner for wheel chair ingress and egress to the first floor property of the petitioner, which is stated to have been illegally demolished by the said respondents.
5. Attention of this Court has been drawn to the affidavit of the MCD, wherein, it has been stated as follows:



“xxx xxx xxx

3. That it is respectfully submitted that a complaint was received from one Mr.Colonel Jaspal Singh (Retd.) resident of 381, Asian Games Village Khel Gaon Marg regarding the illegal encroachment and unauthorized construction on public land in KP Thakar Block, Asian

Game Village. The copy of the said complaint is annexed herewith as Annexure A.

4. That the said site was duly inspected on 10.10.2018 and upon the inspection carried out by the officials. It was found that there existed a temporary room and an iron ladder erected on the public/Govt. land.

5. That thereafter an encroachment removal programme was fixed for removal of the said illegal encroachment and unauthorized construction on 30.11.2018. The copy of the letter is annexed herewith as Annexure B.

6. That during the said encroachment removal programme a temporary room and an iron ladder was removed from the public/Govt. land with the help of local police. Photographs indicating the removal of the encroachment from the Govt./Public land are annexed herewith as Annexure C.

xxx xxx xxx”

6. A perusal of the aforesaid affidavit shows that the MCD took an action, as encroachment was found on the Government/public land.

7. Attention of this Court has been drawn to the order dated 13th January,



2021 passed by this Court, wherein, the following directions were issued:

“CM APPLN. 1284/2021 (Directions)

1. *The hearing was conducted through video conferencing.*
2. *By this application, petitioner seeks a direction to the respondents to withdraw the demolition notice dated 06.01.2021. Learned counsel submits that the demolition notice has been issued in view of the fact that certain orders have been passed in favour of the petitioner in this petition.*
3. **This is disputed by learned counsel for the respondents who submits that demolition order has been issued because some unauthorized construction was noticed in the subject property. He submits that order was passed after complying with the principles of natural justice and after affording an opportunity of hearing to the petitioner. Learned counsel submits that the remedy of the petitioner would be before the appellate tribunal-MCD and not by way of an application in these proceedings.**
4. **Learned counsel for the petitioner submits that the appellate tribunal-MCD is not functional at the moment, however, prays that some protection be granted to the petitioner to avail of remedies in accordance with law. She further submits that the petitioner was earlier granted protection by this Court by order dated 01.10.2020 in CONT. CAS. (C) 591/2020.**
5. **In view of the above, the application is dismissed as withdrawn with liberty to petitioner to avail of remedies in accordance with law. The demolition order dated 06.01.2021 shall be kept in abeyance for a period of three weeks from today.**
6. *Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.”*

(Emphasis Supplied)

8. A perusal of the aforesaid order shows that this Court had clearly directed that the demolition order dated 06th January, 2021, passed by the MCD, shall be kept in abeyance for a period of three weeks, for allowing the petitioner herein to file an appeal before the Appellate Tribunal MCD (“ATMCD”). However, as submitted by learned counsel appearing for MCD, no such appeal has been filed by the petitioner.



9. This Court notes that it is the case of the MCD that action for removal of the unauthorized construction was taken pursuant to the demolition order dated 06th January, 2021. Thus, in case the petitioner was aggrieved against the demolition order passed by MCD, an appeal in terms of liberty granted *vide* order dated 13th January, 2021, ought to have been filed by the petitioner herein.

10. Learned counsel for MCD submits that no appeal seems to have been filed by the petitioner before the learned ATMCD, as no such information is available with the MCD.

11. Till the demolition order dated 06th January, 2021, issued by the MCD, is declared as illegal, no directions can be made by this Court with regard to the prayer made by the petitioner for restoration of the retractable lift-able, open riser cat ladder chair ramp hoist system, which has been demolished and removed by the MCD.

12. Accordingly, no orders can be passed in the present petition, since the demolition order passed by the MCD, has neither been challenged, nor has it been declared as illegal. Thus, the demolition action taken by the MCD, in terms of the demolition order passed by it, is as per law, in the absence of any finding to the contrary.

13. The present petition is accordingly, disposed of, noting the aforesaid.

MINI PUSHKARNA, J

APRIL 22, 2025

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