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

\+ W.P.(C) 5968/2025 & CM APPL. 27361/2025, CM APPL. 27362/2025, CM APPL. 27363/2025

CHIRANJEET SHAH & ORS. .....Petitioners

Through: Mr. Ajay Verma, Sr. Advocate with Mr. Dinesh Kumar, Mr. Himanshu Sablania, Advocates
Mob: 9899393364
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versus

MUNICIPAL COPORATION OF DELHI .....Respondent

Through: Ms. Akanksha Gupta, Advocate for MCD along with Mr. P.K. Jindal, AE
Mob: 9013799111
Mr. Raj Kumar, Mr. Rajesh Pandey and Mr. S.K. Mohan, Advocates for R-2 to 5.
Mob: 9717940440
Email: newtonslab@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **08.05.2025**

1. Pursuant to the directions on the last date of hearing, amended memo of parties has been filed.

2. Learned counsel appearing for the respondent nos. 2 to 5, is present before this Court.

3. Learned Senior Counsel appearing for the petitioners has handed over a copy of a plan drawn by an architect in which the construction, which is

non-compoundable in nature, has been marked clearly.

4. Learned Senior Counsel appearing for the petitioners, on instructions, submits that the petitioners along with the respondent nos. 2 to 5, shall demolish the non-compoundable portions of the building.

5. The aforesaid statement is taken on record.

6. Learned counsel appearing for respondent no. 1-Municipal Corporation of Delhi ("MCD"), submits that the regularization application filed on behalf of respondent nos. 2 to 5 was rejected, on the ground that the proper title documents were not submitted by the said respondents, despite opportunity given by the MCD.

7. This Court notes that the present petition pertains to property bearing no. *36, Shyam Nagar, Kalkaji, New Delhi*.

8. The aforesaid property has been subject matter of litigation pertaining to partition of the said property by one Mr. Mukesh Saini, who is the eldest son of the original owners of the property in question.

9. A suit being *CS(OS) 1169/2014,* titled as *Mukesh Saini Versus Madan Lal Saini & Ors.,* was filed by with respect to the property in question, wherein, *vide* order dated 10th July, 2018, the following order came to be passed:

> "*xxx xxx xxx*
>
> *1. Further to the order dated 09th July, 2018, the parties have reverted with the instructions. The Plaintiff insists that the Defendants and contemnors should not be allowed to raise any construction or go further with the transaction as per the agreement to sell dated 27th January, 2014. The Defendants however submit that they are willing to go ahead with the transaction, though the same was entered into in 2014.*
>
> ***2. The Plaintiff, at best, if he succeeds in the suit, would be entitled to 1/5th share in the property. The agreement to sell was executed prior to the filing of the suit i.e. on 27th January, 2014. The sale***

transaction, as per the agreement to sell dated 27th January, 2014, is consented to by all the coowners except the Plaintiff. The order dated 28th April, 2017 was passed at the ex-parte stage when parties were yet to put in their appearance.

3. It is clear that except the Plaintiff, all other co-owners wish to go ahead with the sale transaction. The proposed purchasers were given possession of the suit property prior to the filing of the suit and they were raising construction. They have also paid a substantial sum of Rs.50 Lakhs out of the agreed sale consideration of Rs.2.4 crores. Further, the agreement to sell has various consequences in case the sale deed is not executed and the same could lead to multiplicity of litigations.

4. Learned counsel for the Plaintiff submits that the Plaintiff is not interested in money but would be praying for partition/physical possession. The Plaintiff's rights are yet to be established in the suit and at this stage, when the agreement to sell has already been entered into prior to the filing of the suit and possession has already been handed over, not permitting the parties to go ahead with the sale transaction, would result in liabilities being created against all the parties concerned, inasmuch as Rs.50 Lakhs has already been paid by the proposed purchasers.

5. Under such circumstances, the order that would balance the equities between all the parties concerned, would be to secure the interest of the Plaintiff by directing the Defendants to deposit 1/5th of the sale consideration in the Court. ***The Defendants are permitted to execute the sale deed in favour of the proposed purchasers, as, if the sale transaction is not given a closure, there would be higher liabilities fastened upon the Defendants. The sale deed and other documents etc. shall be executed in favour of the proposed purchasers within a period of six weeks upon receipt of the complete consideration. The proposed purchasers shall make a deposit of Rs. 48 lakhs with the Registrar General of this Court, in order to safeguard the interest of the Plaintiff. The amount so deposited shall be kept in an FDR by the Registrar General of this Court. The sale deed shall not be executed by the parties until the said deposit is made in this Court. The remaining sale consideration shall be paid to the Defendants. The deposit of Rs. 48 lakhs shall abide by the final decision in the suit.***

xxx xxx xxx"

(Emphasis supplied)

10. Perusal of the aforesaid order dated 10th July, 2018, shows that this Court had recorded that the agreement to sell had already been executed by the original owners, i.e., parents of the said plaintiff in the suit, i.e., Mr. Mukesh Saini, before filing of the suit.

11. This Court had also noted in the aforesaid suit that the proposed purchasers had been granted possession of the property in question, prior to the filing of the said suit. Thus, in order to balance the equities between all the parties concerned, the Court had directed the defendants therein, i.e., the respondents 2 to 5 herein, to deposit 1/5th of the sale consideration in the Court, in order to secure the interest of Mr. Mukesh Saini, plaintiff in the said suit.

12. Further, the defendants in the aforesaid suit, i.e., the respondent nos. 2 to 5, had been directed to deposit a sum of Rs. 48,00,000/- with the Registrar General of this Court, in order to safeguard the interest of Mr. Mukesh Saini, i.e., the plaintiff in *CS(OS) 1169/2014*.

13. Against the aforesaid order dated 10th July, 2018, the said Mr. Mukesh Saini had filed an appeal before the Division Bench, which was dismissed. Subsequently, an appeal was also preferred before the Supreme Court, which also came to be dismissed.

14. Accordingly, *vide* Judgment dated 22nd January, 2024, in *CS(OS) 1169/2014*, in the suit filed by Mr. Mukesh Saini, it was held as follows:

> *"xxx xxx xxx*
>
> *8. As can be seen clearly from the above order, the Plaintiff's share in the suit property was recorded as being 1/5th and since the agreement to sell was entered into on 27th January, 2014 prior to the filing of the suit and a substantial amount of Rs.50 lakhs had been paid by the proposed purchaser to the father-Defendant No.1, the Court held that the purchase would be given effect to with 1/5th of the sale consideration being deposited before this Court with the worthy*

Registrar General. ***<u>The said order was challenged by the Plaintiff before ld. Division Bench which, vide order dated 7th March, 2019 held that the Plaintiff's interest was adequately protected by directing deposit of 1/5th of the sum. The observations of ld. Division Bench are set out below:</u>***

> ***<u>"3. We have heard learned counsel for the parties and we find that while dealing with the application under Order XXXIX Rule 2A CPC the interim protection granted by the learned Single Judge in Para 5 found that except the plaintiff herein all other co-owners want to go ahead with the same transaction. It is also found that the proposed purchaser has been given possession of the suit property much prior to filing of the suit and they have already started raising construction. A substantial sum of Rs.50 lakhs as agreed to out of the sale consideration of Rs. 2.4 crores have finally been granted. The learned Court found that the agreement to sell has various consequences in case the sale deed is not executed and the same would lead to further complication and multiplicity of litigation.</u>***
>
> *4. Taking note of all these circumstances, the plaintiff's interest has been adequately protected while granting injunction and the injunction has been granted in the following terms:*
>
>> *"5. Under such circumstances, the order that would balance the equities between all the parties concerned, would be to secure the interest of the Plaintiff by directing the Defendants to deposit 1/5th of the sale consideration in the Court. The Defendants are permitted to execute the sale deed in favour of the proposed purchasers, as, if the sale transaction is not given a closure, there would be higher liabilities fastened upon the Defendants. The sale deed and other documents etc. shall be executed in favour of the proposed purchasers within a period of six weeks upon receipt of the complete consideration. The proposed purchasers shall make a deposit of Rs. 48 lakhs with the Registrar General of this Court, in order to safeguard the interest of the Plaintiff. The amount so deposited shall be kept in an FDR by the Registrar General of this Court. The sale deed shall not be executed by the parties until the said deposit is made in this Court. The remaining sale consideration shall be paid to the Defendants. The deposit of Rs. 48 lakhs shall abide by the final decision in the suit."*

5. Taking note of the aforesaid circumstances and the fact that the learned Single Judge has already protected the interest of the plaintiff adequately and the sale has been made subject to final decision of the suit, it does not cause any prejudice to the appellant and therefore the discretion exercised in grant of injunction does not call for any interference.

6. Accordingly, the appeal as well as the pending application stand disposed of."

9. The order of the ld. Division Bench was again challenged before the Supreme Court by the Plaintiff. In the said SLP No.10935/2019, the Supreme Court observed as under:

"Heard learned counsel for the petitioner. We are not inclined to interfere with the impugned judgment. The special leave petition is, accordingly, dismissed. However, dismissal of the special leave petition will not come in the way of the petitioner to give offer for buying out the share of the other coparceners which may be considered by the trial court on its own merits in accordance with law."

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14. Today, ld. Counsels for the parties have made their submissions. Ld. counsel for the Plaintiff submits that the Plaintiff is not in a position to buy out the share of the other Defendants i.e. the brothers. It also appears that the Plaintiff is clearly unable to buy out even the proposed purchaser. Under such circumstances, clearly, the case of the Defendants is that the proposed purchasers should be permitted to pay the interest in terms of the order passed by the Court and the sale deed ought to be executed in favour of the proposed purchasers. The proposed purchasers have also appeared before the Court and have submitted that the interest would be liable to be paid only from 1st September, 2019 to 31st October, 2022, in view of the fact that the proposed purchasers were always ready and willing to pay the said amount.

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19. Under these circumstances, and bearing in mind the facts narrated above as also the orders passed both in this case as also by the Ld. Division Bench and the Supreme Court, the following directions are issued:

i) the proposed purchasers shall now pay a sum of Rs.38,34,000/-

to the Defendant Nos. 2 to 4 within a period of two weeks, as requested. The sale deed for the suit property be executed in favour of the purchasers or their wives as their nominees within a period of four weeks after payment of the entire amount of Rs.38,34,000/- to the Defendant Nos. 2 to 4;

ii) On behalf of the Plaintiff, if the Plaintiff wishes to seek withdrawal of the sum of Rs.48 lakhs then the Plaintiff may also execute the sale deed, failing which, an official shall be nominated by the worthy Registrar General for executing the sale deed on behalf of the Plaintiff;

iii) Upon the sale deed being executed, the sum lying deposited in this Court to the tune of Rs.1,34,00,000/- (Rupees One Crore and Thirty Four lakhs) be released in favour of the Defendant Nos. 2 to 4 through ld. Counsels

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15. Perusal of the aforesaid judgment clearly shows that under the directions of this Court, sale deeds were executed in favour of respondent nos. 3 and 5 herein. In turn, the said respondent nos. 3 and 5, have executed an agreement to sell in favour of the petitioners herein.

16. This Court further notes that since Mr. Mukesh Saini had refused to sign on the sale deeds, this Court directed an official of this Court to sign on behalf of Mr. Mukesh Saini, in order to bring a quietus to the pending disputes, filed by Mr. Mukesh Saini.

17. Thus, in terms of the directions of this Court, sale deeds have been executed with respect to the property in question. Further, this Court notes the entire proceedings for conducting the sale of the property in question, has been done under the supervision of this Court.

18. Further, this Court also notes that a sum of Rs. 48,00,000/- stands deposited by respondent nos. 2 and 4 with this Court in favour of Mr. Mukesh Saini, who was held to be the owner of 1/5th of the property in

question.

19. Further, this Court also notes that since Mr. Mukesh Saini refused to execute the sale deed, an official was nominated by the Registrar General of this Court for executing the sale deed on behalf of Mr. Mukesh Saini.

20. This Court further notes that Mr. Mukesh Saini, had also filed a writ petition, i.e., *W.P.(C) 13339/2023*, for directions to demolish the unauthorized construction in the property in question.

21. The said writ petition came to be disposed on the first date itself vide order dated 10th October, 2023. The relevant portions of the order dated 10th October, 2023 in *W.P.(C) 13339/2023*, is extracted as below:

> *"xxx xxx xxx*
> *1. The petitioner has filed this petition under Article 226 of the Constitution complaining of alleged illegal and unauthorised construction in property No. 36, Sham Nagar, Kalkaji, New Delhi ["subject property"].*
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> *2. According to the petitioner, the alleged illegal and unauthorised construction in the subject property is being raised at the instance of respondent Nos. 5 to 7 herein; and respondent Nos. 8 and 9 are the subsequent purchasers of the subject property.*
>
> *3. Ms. Shilpa Ohri, learned counsel for Municipal Corporation of Delhi ["MCD"], who appears on advance notice, states that the property has been inspected and unauthorized construction has been found. The subject property has been booked today. Ms. Ohri submits that MCD proposes to take further action by issuance of show cause notices to the owners/occupants of the property; and proceed in accordance with law after receiving replies to the show cause notices, if any.*
>
> *4. In view of the aforesaid submissions on behalf of MCD, learned counsel for the petitioner does not seek further orders in this writ petition, which stands disposed of.*
>
> *5. It is made clear that the aforesaid submissions are recorded without prejudice to the rights and contentions of any owners/occupants of the subject property whose statutory remedies are reserved. The MCD is directed to take action strictly in accordance with law, and after complying with all statutory formalities.*

6. In the event, the petitioner has any further grievance, with regard to unauthorised construction, he may approach the Special Task Force ["STF"], constituted by the Supreme Court vide orders dated 24.04.2018 and 18.07.2018 in W.P.(C) 4677/1985 [M.C. Mehta vs Union of India & Ors.]. This direction is made with reference to the decisions 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 and connected matters], Sneh Lata & Anr. vs. North Delhi Municipal Corporation & Anr. [order dated 08.04.2019 in LPA 245/2019], and Himanshu vs. East Delhi Municipal Corporation & Anr. [order dated 31.07.2023 in W.P.(C) 8104/2022], and the decision of the learned Single Bench in Abdul Gaffar vs South Delhi Municipal Corporation & Ors. [order dated 28.02.2019 in W.P.(C) 1773/2019].

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22. Perusal of the aforesaid order shows that the writ court was informed by learned counsel appearing for the MCD that unauthorized construction had been found in the property in question. However, the writ court was not informed about the past history with regard to the case and the litigation that had been pending, with regard thereto.

23. Thus, the aforesaid order came to be passed by the learned writ court.

24. Further, this Court notes that a contempt petition being *CONT.CAS(C) 1827/2024*, titled as *Mukesh Saini Versus Aqil Ahmad and Ors.*, has been filed by the said Mr. Mukesh Saini, in which *vide* order dated 30th April, 2025, directions have been made for compliance of the order dated 10th October, 2023.

25. This Court notes that Mr. Mukesh Saini has suppressed the material facts before the Writ Court as well as the Contempt Court, with respect to the litigation that was initiated by him.

26. Accordingly, considering the aforesaid detailed discussion, it is apparent that Mr. Mukesh Saini, is abusing and misusing the process of the Court of law.

27. On one hand, being the eldest son, he filed a suit for partition against his own parents. Despite the fact that 1/5th share in favour of Mr. Mukesh Saini was granted by this Court in the suit proceedings initiated by Mr. Mukesh Saini, the said Mr. Mukesh Saini, in order to stall the sale proceedings executed by their parents, refused to execute the sale deed.

28. In those circumstances, this Court had to direct the Registrar General of this Court to nominate an official of this Court to sign on the sale deed on behalf of Mr. Mukesh Saini.

29. Thus, under directions of this Court, sale deeds have been executed in favour of the private respondents herein, who have subsequently executed an agreement to sell in favour of the petitioners herein.

30. This Court further notes that the proportionate share of Mr. Mukesh Saini for 1/5th of his share, lies deposited before this Court.

31. All these facts have not been brought forth by the said Mr. Mukesh Saini before the Contempt Court or the Writ Court. One person, by abusing the process of court law, cannot try to turn the clock back, and make the judicial orders passed by this Court, for the purposes of sale of the property in question, as non-est.

32. The judicial orders passed by this Court in the suit filed by Mr. Mukesh Saini, cannot be frustrated by Mr. Mukesh Saini, by the proceedings initiated before the writ court and the contempt court.

33. Accordingly, considering the submission made by learned Senior Counsel appearing for the petitioners and counsels for the private respondents, it is directed that the petitioners and the respondents shall demolish the non-compoundable portion of the property in question, within a period of four weeks from today.

34. After the demolition of the non-compoundable portion, the petitioners/respondents shall file a fresh application for regularization before the MCD, which shall be considered by the MCD, in accordance with law.

35. At the time of considering the application of the petitioners/respondents for regularization of the property in question, this Court shall take into account the order passed today, as well as the previous orders passed in the suit, i.e., *CS(OS) 1169/2014*.

36. With regard to the chain of title, the MCD shall refer to the judicial orders passed by this Court, since, the sale deeds with respect to the property in question, have been executed under the direction and supervision of this Court.

37. Accordingly, it is directed that upon the petitioners/respondents demolishing the non-compoundable portions of the property within a period of four weeks, and upon the said parties filing an application for regularization of the construction, no coercive action shall be taken by the MCD, during the pendency of the regularization application before it.

38. The order passed today shall be brought to the notice of the contempt court.

39. Accordingly, with the aforesaid directions, the present writ petition, along with the pending applications, stands disposed of.

MINI PUSHKARNA, J

MAY 8, 2025
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