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

+ W.P.(C) 12941/2022

PREM PRAKASH SHARMA

.....Petitioner

Through: Mr. Vikram Nandrajog, Mr. Kartik
Wadhwa, Advocates (M:9810097083)

versus

MUNICIPAL CORPORATION OF DELHI & ORS. ...Respondents

Through: Ms. Arti Bansal, ASC with Ms. Shruti
Goel, Advocate for MCD
(M:9999442349)

Mr. Bhagvan Swaroop Shukla, CGSC
with Mr. Sarvan Kumar, Mr. Satyam
Singh, Advocates for Delhi Police
Mr. Gandharv Anand, Advocate for
R-3 (M:7020589021)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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09.04.2025

1. The present writ petition has been filed seeking directions to restrain the respondent no. 3 from carrying out illegal and unauthorized construction in the property bearing no. 1170, *Kucha Mahajani, Chandni Chowk, Delhi-110006*, which has been done without any sanction/permission from respondent no. 1.
2. Learned counsel for petitioner submits that *vide* order dated 07th September, 2022, Local Commissioner was appointed, who filed the report.
3. Attention of this Court is drawn to the report of the Local Commissioner, wherein, the Local Commissioner has referred to the construction of the basement by respondent no. 3.



4. Learned counsel for the petitioner also relies upon the photographs filed along with the report of the Local Commissioner, to submit that basement has been constructed by respondent no. 3.
5. He also relies upon the compliance affidavit filed on behalf of Municipal Corporation of Delhi (“MCD”) on 06th January, 2024, wherein, it has been stated that there is no sanctioned building plan in respect of property of respondent no. 3 in the records of MCD.
6. Learned counsel for the petitioner also relies upon the Status Report of the MCD dated 11th August, 2023, wherein, it has been stated that there is unauthorized construction in the shape of basement and amalgamation with adjacent property.
7. The relevant paragraph of the Status Report of MCD dated 11th August, 2023, reads as under:

“xxx xxx xxx

5. That it is respectfully submitted that after scrutinizing the report of Local Commissioner, an independent inspection was carried out on 20.02.2023 by the field staff of the answering respondent wherein no fresh construction was found at site, however unauthorized construction in the shape of basement and amalgamation with adjacent property was noticed in property bearing no.1170 (Neha Jewellers), Kucha Mahajani, Chandni Chowk, Delhi-110006 and as the construction was without any sanctioned building plan, action under section 343 & 344 of the DMC Act was initiated against the property in question vide file no.37/UC/74/B-II/CSPZ/2023 dated 20.02.2023 and a show cause notice dated 20.02.2023 was issued to the owner namely Smt. Sadhna Aggarwal to show cause as to why demolition order be not passed in respect of aforesaid unauthorized construction.

xxx xxx xxx”

(Emphasis Supplied)

8. Per contra, learned counsel appearing for respondent no. 3 draws the attention of this Court to the order dated 13th June, 2023, passed by the



office of Executive Engineer, MCD Delhi, and in particular to the following paragraphs:

“xxx xxx xxx

And whereas, the undersigned have gone through the inspection report and material available in the file, it is apt to mention herein that the booked construction in form of unauthorized construction of basement and amalgamation with adjacent property booked vide file No. 37/UC/ 74/B-II/CSPZ/2023 dated 20/02/2023 was only for amalgamation with Property No.1240, Kucha Mahajani, Chandni Chawk, Delhi. The undersigned perused the documents submitted during hearing i.e. copies of electricity bill having energization date as 08/04/1999, 21/05/2009, 30/08/1996, copy of Membership Certificate for the year 2023, Inspection Report of Property Tax Department dated 01/04/2002 having details of ground floor and mezzanine floor, copy of notice issued by Property Tax Department deciding the rateable value of the property w.e.f. 01/04/2002, copy of issuance of Sale Tax Number by Sales Tax Department, copy of Annexure 'D' dated 30/03/2003, Legal Notice dated 03/10/2022, copy of Sale Deed dated 25/04/2022, order of National Company Law Tribunal, New Delhi dated 24/12/2020, payments receipts of Property Tax Department of various years and photographs of the property. It is Imperative to note that all the documents submitted by the owner is for Property No.1170/II, Kucha Mahajanl instead of Property No.1170, Kucha Mahajani. Perusal of the documents submitted by the owner of the property and Inspection Report of the JE(B) concerned it is evident that the owner has not constructed the basement in the property and has done amalgamation in the property and hence the same is liable to be demolished.

And now, therefore, In view of above, I, Abdul Majid, Assistant Engineer (Bldg.); Building Department-II, City-S.P. Zone, MCD In exercise of the powers delegated by Commissioner, MCD under Section 343(1) read with Section 491 of Delhi Municipal Act, 1957, order Ms. Sadhna Rani, w/o Shri Sanjeev Kumar Aggarwal, to demolish/remove “amalgamation in Property No.1170, Kucha Mahajani with Property No.1240, Kucha Mahajani” in Property No. 1170, Kucha Mahajani, Chandni Chowk, Delhi-110006 within six days of the receipt of this order, failing which the same will be demolished at your risk & cost and demolition charges will be recovered from the owner of the property as per rules. Regarding unauthorized construction of basement as booked vide file No.37/UC/74/B-II/CSPZ/2023 dated 20/02/2023, I am of the view the same is Lower Ground Floor instead of basement, duly established



on the basis of documents submitted by the owner of the property as well as Inspection Report of the Junior Engineer (Bldg.)-II, City SPZ.

xxx xxx xxx”

(Emphasis Supplied)

9. By referring to the aforesaid order, it is the case of respondent no. 3 that no basement has been constructed by respondent no. 3. Rather, the same is in the nature of Lower Ground floor, as recognized by the MCD.
10. Learned counsel for respondent no. 3 submits that pursuant to the aforesaid order dated, 13th June, 2023, a sealing order had been passed by the MCD, which has been challenged by respondent no. 3 before the Appellate Tribunal MCD (“ATMCD”). He further submits that the petitioner herein has already been granted liberty by the learned ATMCD to make his submissions before the said Authority.
11. Learned counsel for respondent no. 3 further submits that construction in the property of respondent no. 3 has been in existence since the year 2002. He, thus, submits that the same is protected under The National Capital Territory of Delhi Laws (Special Provisions) Act, 2017.
12. Responding to the aforesaid submissions, learned counsel for the petitioner submits that findings given by the MCD in the order dated 13th June, 2023, are completely wrong and in contravention to the earlier Status Report filed on behalf of the MCD.
13. He submits that the Status Reports filed by the MCD, as well as report of the Local Commissioner, points out to the existence of a basement.
14. Be that as it may, once MCD has already given a finding with regard to the construction in the nature of Lower Ground Floor and not basement, in case, the petitioner is aggrieved by the said findings, the petitioner is at



liberty to challenge the same, as per law.

15. Considering the fact that on the basis of the aforesaid order dated 13th June, 2023, passed by the office of the Executive Engineer (Building)-II, MCD, the MCD has already initiated action against the property of the respondent no.3, which is now the subject matter of an appeal before learned ATMCD, this Court is of the view that no further orders are required to be passed, in the present proceedings.

16. With the aforesaid directions, the present petition is disposed of.

MINI PUSHKARNA, J

APRIL 9, 2025

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