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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8627/2024, CM APPL. 35326/2024 & CM APPL.
35327/2024

ANIRUDDHA DESHMUKH

.....Petitioner

Through: Mr. V.K. Garg, Senior Advocate with
Mr. K.S. Rekhi, Advocate along with
Petitioner in person (Through VC)
M: 8376011490
Email:
chambers.deshmukh@gmail.com

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Mr. Anubhav Gupta, ASC for MCD.
M: 9910623535

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

27.03.2025

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1. The present writ petition has been filed against the Municipal Corporation of Delhi ("MCD") to stop the respondent MCD from demolishing the construction in the residence of the petitioner.
2. It is the case of the petitioner that the petitioner is a resident of ground floor in the property bearing no. *B-55, Manas Vihar Apartments, located at Plot No. 22, Mayur Vihar Extension, New Delhi-110091.*
3. Attention of this Court has been drawn to the writ petition being *W.P.(C) 6253/2024*, on the basis of which, the MCD sought to take action against the property of the petitioner.



4. The Memo of Parties in the said writ petition, as filed by the Manas Vihar CGHS Limited, is reproduced as under:

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY CIVIL WRIT JURISDICTION
CIVIL WRIT PETITION NO. OF 2024

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IN THE MATTER OF :-

Manas Vihar CGHS Ltd.

..... Petitioner

Versus

MCD & Ors.

.... Respondents

MEMO OF PARTIES

MANAS VIHAR COOPERATIVE
GROUP HOUSING SOCIETY LTD.,
THROUGH ITS MANAGING COMMITTEE,
PLOT NO. 22, MAYUR VIHAR
PHASE-1 EXTENSION,
DELHI-110091.

..... PETITIONER

VERSUS

1. MUNICIPAL CORPORATION OF DELHI,
THROUGH THE DEPUTY COMMISSIONER,
SHAHDARA SOUTH ZONE, 419, UDYOG
SADAN, PATPARGANJ INDUSTRIAL AREA,
DELHI-110096.
2. THE REGISTRAR COOPERATIVE SOCIETIES,
GOVERNMENT OF NCT OF DELHI,
OLD COURT BUILDING, PARLIAMENT STREET,
NEW DELHI – 110001
3. MS BINA MATHUR,
W/O LATE R.B.L MATHUR,
R/O FLAT NO. 1, MANAS APARTMENTS,
MAYUR VIHAR PHASE-1 EXTENSION,
DELHI-110091

.... RESPONDENTS

Delhi
Dated: 16.04.2024

Through

Secretary

PETITIONER

(S.GHOSH)

Advocate

true copy Asd



5. Reading of the aforesaid clearly shows that the petitioner herein was not a party in the said writ petition. Further, this Court also takes note of the prayer made in the said writ petition filed by the Manas Vihar CGHS Limited, which is reproduced as under:

(a) issue a writ, order or direction in the nature of mandamus or any other appropriate writ, thereby directing Respondent No. 1 to conduct a survey and inspection of the unauthorized encroachment put up by Respondent No. 3 and to demolish the said structure as per law;

(b) issue a writ, order or direction in the nature of certiorari or any other appropriate writ, thereby directing Respondent No. 2 to produce the record of the pleadings filed before the said Authority, leading to the Order Nos. F.No. 000635428/RCS/S-4/2023/514, dated 17.08.2023 and F.No. 000635428/RCS/S-4/2023/567, dated 27.10.2023, to quash the same and to declare that the petitioner was entitled and duly authorized to impose penalty on the defaulting members of the society for the entire duration of the unauthorized encroachments/constructions,

(c) direct that the cost of litigation in the present petition be borne by the respondents,

(d) pass any other or further order or direction that may be deemed proper and necessary for the adjudication of the case and in the interest of justice.

Delhi
Dated: 16.04.2024

Through
True copy Asst

PETITIONER
Secretary
(S.GHOSH)
Advocate

6. Reading of the aforesaid clearly shows that no objection has been raised with regard to any construction in the flat of the petitioner.

7. It is pointed out that on the basis of the orders passed by this Court in the aforesaid writ petition, wherein, the petitioner was not even a party and



no relief was sought against the flat of the petitioner herein, the MCD sought to take action against the flat of the petitioner, which was stopped only in terms of the interim directions passed by this Court, *vide* order dated 12th June, 2024.

8. This Court notes the Status Report filed by the MCD, wherein, it is stated as follows:

“xxx xxx xxx

4. That, Manas Vihar CGHS Limited filed a Writ Petition vide No. 6523/2024 before the double bench of Hon'ble High Court of Delhi, praying therein to direct Respondent No. 1 i.e. Municipal Corporation of Delhi to conduct a survey of the Society and inspection of unauthorized encroachment put by Respondent No. 3 i.e. Ms. Bina Mahtur, R/o Flat No. 1, Manas Apartment, Mayur Vihar Phase-1, Extension, Delhi-110091 and to remove the said structure as per law.

5. That, pursuant to this, Junior Engineer concerned carried out the survey of the apartment under reference and submitted the survey report wherein certain flats owner (s) /occupier (s) including Respondent No. 3 have carried out encroachment in the shape of planters, temporary iron grills/sheds etc.

6. That the department scheduled the encroachment removal program for 11.06.2024 only for removal of encroachments existing in the Manas Apartment, including the Flat No. B-55, Ground Floor, Manas Apartment, Mayur Vihar Extension, New Delhi-110091, but the department failed to execute the same on account of public hindrance.

xxx xxx xxx

10. That, the respondent/MCD has taken encroachment removal program from the common areas, as surveyed, on 30.07.2024 at Manas Vihar CGHS, Mayur Vihar, wherein temporary/permanent encroachment in the shape of planters, iron grill, sheds etc. were removed except of the Flat No. B-55, Manas Vihar Apartment, Delhi.

xxx xxx xxx”

9. Perusal of the aforesaid shows that the MCD sought to take action



against the encroachment in the shape of planters, temporary iron grill, sheds, etc.

10. The photographs of the house of the petitioner as filed by the MCD in its Status Report with the grill, is reproduced as under:



11. This Court further notes a subsequent report filed on behalf of the MCD dated 01st March, 2025, wherein, it has been stated as follows:

“xxx xxx xxx

3. That, this Hon'ble Court vide its order dated 06.11.2024 directed MCD to carry out a further inspection in the presence of the petitioner on 30.11.2024 at 11:30 AM and furnish a further report to the Court within four weeks thereafter. If it is the case of MCD that grill cannot be installed, as placed at present, the MCD will also suggest in its Status Report, any alternative mechanism for ensuring the safety of the Petitioner's property.



xxx xxx xxx

5. That, during the inspection, it has been observed that the Petitioner, owner of Flat No. B-55, Ground Floor, Manas Apartment, Mayur Vihar Extension, New Delhi - 110091 has carried out illegal encroachment in the shape of an iron grill /gate beyond the outer wall of his kitchen as well as outside the room. This area is a common area and seems to cater common services like drainage etc. as also seen in the photographs taken during the inspection. Photographs taken during the inspection are annexed as Annexure R-2(Colly).
xxx xxx xxx”

12. Perusal of the aforesaid report of the MCD shows that it is the stand of the MCD that the petitioner herein has carried out illegal encroachment in the shape of iron grill/gate, beyond the outer wall of the kitchen, as well as outside the room. As per the report of MCD, the same is a common area and caters to the common services like drainage, etc.

13. The photographs of the area in question, wherein, grill has been put, is reproduced as under:





14. This Court notes the submission made by learned Senior Counsel



appearing for the petitioner that the area which has been covered with the grill, is immediately outside the kitchen of the petitioner's house and within the constructed area of the petitioner. No further extension has been done by the petitioner on any common area of the society, except, covering the area outside the kitchen of the petitioner with a grill.

15. This Court notes that since flat of the petitioner is on the ground floor, and the area which is within the constructed premises of the petitioner has been covered with a grill, the same would not form any encroachment. This Court further notes the submission made by learned Senior Counsel appearing for the petitioner that the slab inside the area where grill has been put, has been existing since the year 1996.

16. This Court also takes note, of the Minutes of the Meeting of the Annual General Meeting ("AGM") dated 12th March, 2023, wherein, it has been resolved as follows:

"xxx xxx xxx

13. Memberships: Following Memberships/Joint Membership were approved by the General Body after due diligence & deliberations:-

.....

d S. L. Deshmukh, R/o B55, Membership No. 55-It was not approved in last AGM due to encroachment. This time it was put up after the resident removed the encroachment.

xxx xxx xxx"

17. Thus, it is manifest that whatever encroachment had been done by the petitioner, already stands removed, and the membership of the father of the petitioner, has been ratified by the society in its AGM.

18. Accordingly, this Court is of the view that mere putting of grill just



outside the kitchen area, within the constructed area of the petitioner, would not constitute encroachment.

19. The said grill has clearly been put by the petitioner in order to secure his premises, which cannot be considered to be an encroachment, since no extra area outside the already constructed area, has been encroached by the petitioner.

20. However, it is clarified that in case for the purposes of maintenance of any sewer lines, the area where the grill has been put, is needed to be accessed by any public authority, the petitioner shall not create any hindrance and shall cooperate with such statutory authority.

21. Accordingly, the present petition, along with the pending applications, stands disposed of, in terms of the aforesaid directions.

MINI PUSHKARNA, J

MARCH 27, 2025/kr