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

+ **W.P.(C) 13001/2024 & CM APPL. 54141/2024**

BAL KRISHAN NAGPAL

.....Petitioner

Through: Mr. Javed Ahmad, Ms. Aakriti
Aditya, Advocates (M:9810518138)

versus

MUNICIPAL CORPORATION OF DELHI AND ORS

.....Respondents

Through: Dr. M. K. Pandey and Mr. Ashwinee
Singh, Advocates for MCD
Mr. P.C. Arya, Mrs. Parveen Arya,
Advocates for R-5 (M:9818119491)
Mr. Kushagra Kumar, with Mr. Amit
Acharya, Advocate for R-3
(M:9910770710)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

21.04.2025

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1. The present petition has been filed alleging encroachment upon public land, i.e., *Plot No. 442, Khalsa Barrack, Street No. 4, Anand Parbat Industrial Area, New Delhi*. There is a further prayer for directions to the respondent/Municipal Corporation of Delhi ("MCD"), to demolish the illegal and unauthorized construction carried out by respondent no. 5, in front of *Plot No. 442, Khalsa Barrack, Street No. 4, Anand Parbat Industrial Area, New Delhi*.

2. A short counter affidavit was filed by the MCD earlier, wherein, it had been stated, that the property in question, had been inspected on 09th October, 2024 and it was noticed that the unauthorized construction in the shape of ground floor (part), had been carried out.



3. It was further stated in the said Status Report that the said unauthorized construction, had been booked.

4. Subsequently, pursuant to the directions issued on the last date of hearing, i.e., 18th March, 2025, a compliance affidavit dated 08th April, 2025 has been filed on behalf of MCD, wherein, it is stated as follows:

“xxx xxx xxx

2. That during the inspection of the Plot/Barrack No.442, Khalsa Barracks, Street No.4, Anand Parvat Industrial Area, Delhi on 09.10.2024, some fresh unauthorized construction was noticed. It is submitted that accordingly, a Show Cause Notice bearing printed No. 13118 dated 09.10.2024 vide file No. 312/71/B/UC/EE(B)-I/CSPZU2024 dated 09.10.2024 under section 343 and 344 (1) of the DMC Act, was issued to Sh. Rajendra Kumar Nagpal, Owner/Occupier, calling upon him to Show Cause within 03 days as to why the orders as required under section 343 of the DMC Act be not passed in respect of the unauthorized construction in the shape of ground floor (part) in plot No. 442, Khasra Barrack Street No, 4, Anand Parvat Industrial Area, New Delhi 110005. It is submitted that in response to the show cause notice the owner/occupier submitted his reply dated 14.10.2024 stating therein some repair/maintenance work was carried out by him with a tin shed so that rain water could be diverted outside the premises and now the tin shed has been removed and premises is in old stage. Further, to verify the same personal hearing was granted to him. During the hearing he submitted relevant documents of the year 1965, 1976 etc. pertaining to property. It is further submitted that on 18.12.2024 the JE(B) further reported that the tin shed structure which was recently constructed has been demolished by the noticee and further the boundary walls were also curtailed to pre-existing height. It is further submitted that after carefully the examining the documents submitted by the owner/occupier it has been ascertained that the property is old and prior to the cut of date i.e. 07.02.2007 as such the protection under the National Capital Territory of Delhi Laws (Special Provision) Second Act 2021) was granted to the property vide order no. 1253/AE (Bldg.)-I/CSPZ/2024 dated 03.01.2025. A copy of order dated 03.01.2025 is annexed herewith as Annexure-A.

xxx xxx xxx”

5. Further, a demolition order dated 03rd January, 2025, issued by the Office of Executive Engineer (Bldg.)-I, City SP Zone, MCD has also been



placed on record, along with the compliance affidavit.

6. Attention of this Court has also been drawn to the said demolition order, wherein, it is stated as follows:

“xxx xxx xxx

AND WHEREAS, in response to the show cause notice dated 09.10.2024, Sh. R.K. Nagpal has filed a written reply on 14.10.2024 stating therein that repair and maintenance work was carried out in the property with a Tin Sheet so that rain water flow can be diverted outside the premises and now the tin sheet has been removed and the premises is in old state. Accordingly, in order to verify the contentions of the noticee and in the interest of natural justice, opportunities of personal hearing were afforded to the noticee on 06.11.2024, 13.11.2024, 20.11.2024, 28.11.2024 and 02.12.2024.

xxx xxx xxx

AND WHEREAS, on 18.12.2024, the concerned JE(B) reported that tin shed structure recently construction has been demolished and boundary wall also curtain to pre-existing height.

xxx xxx xxx

Further, the construction of temporary tin shed carried out by the owner has been removed by the owner himself which is also evident from the report dated 18.12.2024 of the concerned JE(B). Moreover, there is no material available in the official records regarding the reconstruction of the property.

AND NOW, THEREFORE, in view of the above, I, R.K. Garg, Assistant Engineer (Bldg.), City SP Zone in exercise of the powers delegated to me by the Commissioner, MCD under section 491 of the DMC Act, hereby order that construction of the property No. 442, Khasra Barrack Street No. 4, Anand Parvat Industrial Area, New Delhi-110005 is unauthorized, without any sanctioned building plan and is liable to be demolished. However, since the same existed prior to the cut of date i.e. 07.02.2007, is presently protected in view of provisions of “The National Capital Territory of Delhi Laws (Special Provision) Second Act, 2021” till the expiry of said Act.

xxx xxx xxx”

7. A perusal of the aforesaid clearly shows that it is the categorical stand of the MCD that the fresh construction carried out in the property in question, already stands removed.



8. However, learned counsel for the petitioner submits that unauthorized construction still exists in the property.
9. Learned counsel for the petitioner further submits that there is an encroachment on the land, which is owned by the Delhi Development Authority (“DDA”).
10. Considering the submissions made before this Court, and considering the affidavit filed on behalf of the MCD, this Court notes the clear stand of MCD that the fresh construction in the property in question, already stands removed.
11. Rest of the construction existing in the property in question, is stated to be protected in view of the provisions of ‘The National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2021’, which is in operation till 31st December, 2026.
12. Accordingly, if the petitioner is aggrieved by the aforesaid order passed by the MCD, liberty is granted to the petitioner to challenge the same, in accordance with law.
13. Needless to state that the present order is being passed on the basis of affidavit filed on behalf of the MCD. This Court has not expressed any opinion on the correctness of the order passed by the MCD.
14. Noting the aforesaid, the present writ petition, along with the pending application, is disposed of.

MINI PUSHKARNA, J

APRIL 21, 2025

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