



2025:DHC:9711



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

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Date of Decision: 04.11.2025

+ W.P.(C) 18029/2024 & CM APPL. 76665/2024, CM APPL. 76666/2024

PREETI PAHWA AND ANR.

.....Petitioners

Through: Mr. Sanjeev Ralli, Senior Adv. with
Mr. Samman Vardhan Gautam, Mr.
Prabhav Ralli, Ms. Khushi Sharma,
Mr. Priyam Tiwari, Mr. Dev Vrat
Arya, Mr. Praful Nawani, Mr. Ravi
Kant Yadav and Ms. Anshika
Priyadarshini, Advs.
Mob: 7717730165 & 9999249666
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versus

MCD & ORS.

.....Respondents

Through: Mr. Rakesh Malhotra, Mr. Bharat
Malhotra, Ms. Smritika Kesri and Ms.
Gayatri Bhatia, Advs. for R-MCD
Mob: 8447151507
Email: bharatmal2@gmail.com
Mr. Sanjeev Sabharwal, SPC for R-
UOI
Mob: 9810031680
Email: solicitor6@gmail.com
Ms. Shraddha Bhargava, Adv. for R-3
& 4, along with respondent nos. 3 & 4
in person.
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shraddhabhargava07@gmail.com



CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed seeking directions to the Municipal Corporation of Delhi ("MCD") to take action against the illegal construction undertaken by respondent nos. 3 and 4 on the subject property, i.e., *R-104, Greater Kailash-1, New Delhi-110048*, on the ground floor.
2. Learned Senior Counsel appearing for the petitioners submits that the respondent nos. 3 and 4 are in occupation of the basement, second floor and an area of the third floor of the property in question. He submits that since illegal construction was being undertaken by respondent nos. 3 and 4 in the property in question, the present writ petition came to be filed.
3. This Court notes that a Status Report dated 08th January, 2025, has been filed on behalf of the MCD, wherein, it is stated that a decision dated 07th January, 2025, has been taken by the MCD, after hearing both the parties, in the following manner:

"xxx xxx xxx"

DECISION:

On referring to various contentions and pleas taken by both the parties, the site has been got inspected. As far as repair and renovation work is concerned, the bye-law No. 2.0.1(d) of the Unified Building Bye-Laws-2016 mandates about permissibility of certain repairs / renovations / works, for which no notice and building permit which do not otherwise violate any provisions regarding building requirements, structural stability, fire safety requirements and involve no change to the cubic contents or to the built-up area of the building as defined in the bye-laws, in respect of categories, as specified in the said provision.

On re-inspection of site as per orders of Hon'ble High Court, it was found that the Respondent has carried out certain repair and renovation work recently, which is presently lying stopped at site. In basement, there are visible signs of seepage and leakage at some points. Since the Petitioners are heavily relying on the Structural Health Assessment Report of Structural Engineer, thus, considering the age of existing construction in the property, it is felt appropriate on the part of Respondent to get the structural safety examined, more specific on the issues contained in the structural-related report filed by the Petitioners and if recommended by him, the Respondent may take necessary preventive measures accordingly. Moreover, the Department, at its level, does not have any such mechanism to assess the structural safety or vulnerability of any building and sole reliance is made on the certification/Structural Stability Certificate.



submitted by the owners / applicants. However, the Department has empanelled such professionals, the details of which are available on its website, for availing their services by the intending owners / applicants. Till such time the structural safety of the property is got done by the Respondent, further work be stopped and be not carried out by him.

In terms of above decision, the complaints filed by the Petitioners stand disposed-of.

4. Perusal of the aforesaid decision dated 07th January, 2025, as filed along with the Status Report, clearly shows that it is the stand of the MCD that the respondent nos. 3 and 4 were carrying certain repair and renovation work in the property in question.
5. Learned counsel appearing for respondent nos. 3 and 4 submits that on account of the need for restoring the property in question for residential use, the respondent nos. 3 and 4 were carrying out only permissible repair and renovation work.
6. At this stage, learned Senior Counsel appearing for the petitioners draws the attention of this Court to the order dated 09th January, 2025, which reads as under:

“1. Status report is stated to have been filed on behalf of Respondent No.1/MCD but the same is not on record. Let the same be placed on record before the next date of hearing. Copy of the status report has been handed over in Court and is taken on record. Along with the status report, Respondent No. 1 has annexed copy of decision dated 07.01.2025 taken pursuant to order dated 30.12.2024 passed by this Court, relevant part of which is as follows:

“DECISION:

On referring to various contentions and pleas taken by both the parties, the site has been got inspected. As far as repair and renovation work is concerned, the bye-law No. 2.0.1(d) of the Unified Building Bye-Laws-2016 mandates about permissibility of certain repairs/ renovations/ works, for which no notice and building permit which do not otherwise violate any provisions regarding building requirements, structural stability, fire safety requirements and involve no change to the cubic contents or to the built-up area of the building as defined in the bye-laws, in respect of categories, as specified in the said provision.



On re-inspection of site as per orders of Hon'ble High Court, it was found that the Respondent has carried out certain repair and renovation work recently, which is presently lying stopped at site. In basement, there are visible signs of seepage and leakage at some, points. Since the Petitioners are heavily relying on the Structural Health Assessment Report of Structural Engineer, thus, considering the age of existing construction in the property, it is felt appropriate on the part of Respondent to get the structural safety examined, more specific on the issues contained in the structural-related report filed by the Petitioners and if recommended by him, the Respondent may take necessary preventive measures accordingly. Moreover, the Department, at its level, does not have any such mechanism to assess the structural safety or vulnerability of any building and sole reliance is made on the certification/Structural Stability Certificate submitted by the owners/applicants. However, the Department has empanelled such professionals, the details of which are available on its website, for availing their services by the intending owners / applicants. Till such time the structural safety of the property is got done by the Respondent, further work be stopped and be not carried out by him."

2. Respective parties to the lis join issues on the extent and nature of alleged construction/renovation by Respondents No. 3 and 4 in respect of property bearing No. R-104, Greater Kailash-I, New Delhi. After canvassing some arguments, it is agreed between the parties that before proceeding further, it would be appropriate if the subject property is inspected by an independent Structure Engineer from the panel maintained by the MCD.

3. Accordingly, with the consent of the parties, Sh. Shashi Chandra Upadhyay, R/o D-76 Chattarpur Enclave, New Delhi – 110074, Mobile Number: 8826516054, E-mail: erscupadhyay@gmail.com, is hereby appointed to carry out inspection of the subject property and submit his report. Sh. Chandra shall inspect the subject property on 15.01.2025 and 16.01.2025 and if the inspection is not complete on the said two dates, further inspection will be carried out on 17.01.2025. Inspection will be carried out on the following aspects:

(a) Whether any fresh construction has been carried out on the ground floor of the property and if so, when and its impact on the basement and/or the structural stability of the building;

(b) Whether any renovation or repair work has been carried out on the ground floor of the property and if so, when and its impact on the basement and/or the structural stability of the building;



(c) Whether any walls have been removed on the ground floor and if so, the details thereof and its impact on the structural stability of the building; and

(d) Whether the construction by the Petitioners on the terrace of the second floor has impacted the structural stability of the building.

4. While inspecting the building, Sh. Chandra would take photographs of the construction/renovation/repair carried out in the building, if any, including the photographs of the basement in view of the allegations of the Petitioners that on account of the alleged construction by Respondents No. 3 and 4 on the ground floor, there is seepage/dampness in the walls of the basement. The report shall be rendered within six weeks from today and will be sent in a sealed cover to the Registrar General of this Court positively before the next date of hearing. Fee of Sh. Chandra is fixed at Rs.1.5 lakh and shall be borne equally by the Petitioners and Respondents No.3 and 4.

5. It is pertinent to note that as per the status report, MCD has issued a work stop notice to Respondents No.3 and 4 and learned counsel representing the said Respondents fairly concedes that pursuant to the said notice, further work has been stopped.

6. List on 21.02.2025.”

7. Attention of this Court is also drawn to the Inspection Report dated 15th February, 2025, submitted pursuant to the order dated 09th January, 2025, relevant portions of which are reproduced as under:



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Shashi Chandra Upadhyay
EMPANELLED STRUCTURAL ENGINEER (M.C.D.)
M. Tech (Structural Engineering)
Chartered Civil Engineer, M.I.E (INDIA)

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Ref: W.P.(C) 18029/2024 and CM APPL.

New Delhi

Nos. 76665-76666/2024 HONOURABLE

Date: 15.02.25

MS. JUSTICE JYOTI SINGH'S

ORDER Dated 09.01.2025

INSPECTION REPORT

INTRODUCTION:

This report has been prepared by **Shashi Chandra Upadhyay, Empaneled Structural Engineer (M.C.D)** in compliance of the order passed by Hon'ble Delhi High Court in W.P. (C) 18029/2024 and CM APPL. Nos. 76665 - 76666/2024 Dated 09.01.25

PETITIONERS:

Mrs. PREETI PAHWA AND ANR.

Through: Mr. Sanjeev Ralli, Senior Advocate with Mr. Peeyoosh Kalra, Mr. Prabhav Ralli and Mr. Praful Nawani, Advocates.

VERSUS

RESPONDENTS

MCD & ORS.

Through: Mr. Rakesh Malhotra, Mr. Bharat Malhotra and Mr. Kushal Malhotra, Advocates for Respondent No.1/MCD.

Mr. Sanjeev Sabharwal, Senior Panel Counsel for Respondent No.2 and 5.

Ms. Shraddha Bhargava, Advocate for Respondents No.3 and 4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH



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**CONCLUDING REMARKS:**

The existing structure does not match with the submission drawing approved by M.C.D. Few examples are as follows:

- 1.0 Basement is larger than the approved one.
- 2.0 Rear Set back on each floor is lesser than the approved one. Please refer photograph no 7 & 8.
- 3.0 Open spaces have been reduced on each floors. Please refer photograph no 5 & 9.
- 4.0 Barsati Floor shown in submission drawing has been fully covered.
- 5.0 Almost 75% of the roof over second / barsati floor has been constructed. Please refer photograph no 15, 16, 17 & 18.
- 6.0 The existing structure is not a framed structure. It does not comply with the provisions of the latest Indian Standard Codes such as IS 1893 for Zone IV.

RECOMMENDATION:

A detailed structural audit through non-destructive tests and structural analysis for the whole building is required for the purpose of strengthening of the building under inspection. The structural stability of the building needs to be improved necessarily.

With the above best regards



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8. Perusal of the aforesaid Inspection Report shows that the Court appointed the Structural Engineer, has stated that the structural stability of the building in question, needs to be improved necessarily.

9. However, perusal of the decision of the MCD, as well as the Inspection Report of the Structural Engineer, clearly shows that it has not been stated anywhere that the building is in a dangerous condition.

10. Accordingly, considering the record before this court and the submissions made before this Court, it is directed that the respective parties are at liberty to carry out repair and strengthening work on the portions of the building in question occupied by them, in accordance with law.



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Wherever permission is required from the MCD for carrying out any rectification or renovation work for strengthening the building, requisite permission shall be taken by the respective parties for carrying out such strengthening work in the building in question.

11. As and when, any such application is received by the MCD from any party for carrying out any strengthening work in the property in question, the same shall be dealt by the MCD, on its merits and the MCD shall cooperate with the owners/occupiers of the respective portions of the building in question to ensure that requisite strengthening work is carried out by the parties in the portions occupied and owned by them.

12. With the aforesaid directions, the present writ petition, along with the pending applications, is accordingly disposed of.

MINI PUSHKARNA, J

NOVEMBER 4, 2025/SK