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

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+ **CONT.CAS(C) 671/2012**

JAI CHAND GAUR

.....Petitioner

Through: Mr. Anand Yadav and Ms. Anita
Tomar, Advocates.

versus

MANISH GUPTA & ORS

.....Respondents

Through: Mr. Kapil Dutta and Mr. Vansh
Luthra, Advocates for MCD.

Mr. Niraj Kumar, Senior Central Government
Counsel for R-5.

Mr. Roopansh Purohit and Mr. Harsh Panwar,
Advocates for R-7 and R-8.

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+ **W.P.(C) 6051/2012**

JAI CHAND GAUR

.....Petitioner

Through: Mr. Anand Yadav and Ms. Anita
Tomar, Advocates.

versus

**SOUTH DELHI MUNICIPAL CORPORATION
AND ORS**

.....Respondents

Through: Mr. Kapil Dutta and Mr. Vansh
Luthra, Advocates for MCD.

Mr. Niraj Kumar, Senior Central Government
Counsel for R-5.

Mr. Roopansh Purohit and Mr. Harsh Panwar,
Advocates for R-7 and R-8.

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+ **CONT.CAS(C) 267/2019**

JAI CHAND GAUR (THROUGH LRS)

.....Petitioner

Through: Mr. Anand Yadav and Ms. Anita
Tomar, Advocates.



versus

SHIVHARI & ORS.

.....Respondents

Through: Mr. Kapil Dutta and Mr. Vansh Luthra, Advocates for MCD.

Mr. Niraj Kumar, Senior Central Government Counsel for R-5.

Mr. Roopansh Purohit and Mr. Harsh Panwar, Advocates for R-7 and R-8.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

15.01.2025

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W.P.(C) 6051/2012 and CM APPL. 18505/2018

1. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“a) Direct that enquiry be held by higher authorities against respondent no. 2, 3 and 5 that how and why respondents have permitted to continue illegal and unauthorise construction inspite of information to them, when the construction was started and even after restrain order dated 16.7.2012 has been passed by SDM (Vasant Vihar).

b) Direct the Respondents to immediately effectively seal illegal and unauthorise construction and also immediately stopped illegal and unauthorise construction on khasra no.1 etc./257 min. Village Shahbad Mohammadpur, Delhi.

c) Direct the Respondents to ensure and take effective steps that illegal and unauthorise construction on khasra no. 1 etc./257 min. Village Shahbad Mohammadpur, Delhi is not used or occupied by respondent no. 6 and 7 or any other person claiming on their behalf or through them.

d) Direct the Respondents to demolish illegal and unauthorise construction raised by respondent no. 6 and 7 on khasra no.1 etc./257 min. Village Shahbad Mohammadpur, Delhi to the ground.”

2. This writ petition is pending in this Court since 2012 and several orders have been passed by the Court from time to time. On 24.09.2012,



while issuing notice and directing MCD and Delhi Police to file counter-affidavits, Court directed the said Respondents to take immediate measures and have the ongoing constructions stopped if the construction was unauthorised and ensure that the building in question was not occupied, after following the due process of law and expeditiously. On 14.12.2012, this order was confirmed till the disposal of the writ petition, subject to variation at the instance of either party. On 10.10.2017, Respondents No.7 and 8 against whom allegations were made of unauthorised constructions, produced copy of communication dated 11.08.2017 purportedly issued by SDMC demanding deposit of certain charges as compounding fees for regularisation of the construction. Court directed SDMC to file an affidavit stating whether regularisation was permissible.

3. As the chronology goes, an affidavit was filed by MCD on 13.02.2018. It was stated that there was unauthorised construction at the subject property bearing Khasra No.257 left portion, Village Shahbad Mohammadpur, New Delhi and property was booked under Sections 343 and 344 of the Delhi Municipal Corporation Act, 1957 ('1957 Act') with regard to Ground Floor and First Floor vide order dated 01.10.2012 and demolition order was passed on 18.10.2012 followed by sealing order under 345-A of 1957 Act on 13.12.2012. Owner of the property had filed an appeal being Appeal No.58/13/AT/MCD.

4. It was further stated that AT/MCD quashed the sealing and the demolition orders and directed SDMC to de-seal the property within one week with a direction to the owner/Appellant not to raise any further construction or create third party rights till the matter was decided by the Deputy Commissioner, Najafgarh Zone and the officer was directed to grant



personal hearing to the Appellant therein. After granting personal hearing, a speaking order was passed by MCD on 10.11.2016. It is stated that the unauthorised construction was prior to 01.06.2014 and thus protected under The National Capital Territory of Delhi Laws (Special Provision) Second (Amendment) Act, 2017. Owner of the property applied for regularisation but when notice was sent, he did not file a reply and his request was rejected.

5. It is stated that after rejection of the case, the owner again sought re-opening of the case and at his instance and looking at the documents submitted with the reply, case for regularisation was sent to Town Planning Department (SDMC) for comments. Case was examined and site was inspected and the owner was directed to demolish the non-compoundable portion/excess coverage beyond permissible limit, which he did, as found on the next inspection. On payment of compounding fee as demanded by the department, regularisation order was passed by the Competent Authority in consonance with Building Bye-Laws and MPD-2021. In furtherance thereof, Mr. Kapil Dutta, learned counsel for MCD hands over copy of regularisation order dated 23.03.2018 along with regularisation plan with copy to Mr. Yadav, counsel for the Petitioner. Documents are taken on record.

6. Mr. Dutta submits that the subject property has been regularised and in case the Petitioner has any grievance, his remedy is to approach AT/MCD under Section 347B of 1957 Act and writ petition deserves to be dismissed. Mr. Yadav, learned counsel for the Petitioner opposes the objection and submits that this writ petition has been pending since 2012 and therefore, the validity of the regularisation order must be tested by this Court in writ jurisdiction under Article 226 of the Constitution. He further submits that



from time to time this Court has observed that there is unauthorised construction in the subject property and *de hors* these observations, MCD has illegally and arbitrarily proceeded to regularise the property.

7. Having heard learned counsels for the parties, this Court finds merit in the objection raised by Mr. Dutta on behalf of MCD. No doubt, this writ petition has been pending since 2012 and from time to time, orders have been passed noticing unauthorised construction in the subject property. However, MCD has now taken a categorical position that owner of the property has demolished the unauthorised portions/excess coverages and on inspection, having found the property to be within the permissible limits, regularisation order has been passed. Validity of the regularisation order needs to be tested before the AT/MCD in appeal under Section 347B of 1957 Act, a view taken by this Court in a number of orders passed earlier.

8. Accordingly, without entering into merits of the regularisation order, this writ petition is disposed of granting liberty to the Petitioner to take recourse to appropriate remedy in the appropriate Forum, if aggrieved and if so advised.

9. Pending application stands disposed of.

CM APPL. 52573/2024 (under Order VI and Rule 17 CPC) in W.P.(C) 6051/2012

10. This is an application preferred on behalf of the Petitioner under Order VI Rule 17 CPC seeking amendment of the writ petition to lay a challenge to the regularisation order passed by MCD in respect of the subject property.

11. In view of the order passed in the writ petition, no further order is



required to be passed in the present application and the same is, accordingly, disposed of.

**CONT.CAS(C) 671/2012 and CM APPL. 21457/2019 and
CONT.CAS(C) 267/2019**

12. Contempt petitions are closed as Petitioner has been unable to make out a case of wilful disobedience of any order of this Court and in light of regularisation order passed by MCD. Pending application stands disposed of.

JYOTI SINGH, J

JANUARY 15, 2025/shivam