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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 1058/2019

DESH RAJ

.....Petitioner

Through: Mr. N. Prabhakar and Mr. Uday
Sharma, Advocates.

versus

GYANESH BHARTI & ORS

.....Respondents

Through: Ms. Beenashaw N. Soni, SC for MCD
with Ms. Ann Josephand Ms. Katyani
Malhotra, Advocates with Mr. Nalit
Goyal, Executive Engineer, Building,
South Zone.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

20.04.2026

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 12 of the Contempt of Courts Act, 1971 seeks the following prayers: -

“A. initiate civil contempt proceedings against the contemnners jointly and severally for willful non compliance of the order dated 13th August 2019 in the Civil Writ Petition No. 8752/2019 titled Desh Raj Vs South Delhi Municipal Corporation in respect of demolishing of entire construction at 99A Masjid Moth;

B. pass any other order/direction as this Honourable Court deems just and appropriate in the facts and circumstances of the case.”

3. *Vide* order dated 13.08.2019, learned Single Judge of this Court while disposing of W.P.(C) 8752/2019 passed the following order:-

“The challenge in this petition is to an order dated March 31, 2019 passed by the respondent SDMC. The ground being that respondent Corporation is not taking any action against the property No. 99-A,



Masjid Moth, South Extension Part-II, New Delhi on the purported ground that the property is protected under the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011.

Mr. Sandeep Bajaj, learned counsel appearing for the respondent Corporation states, the very basis on which the petition has been filed is unsustainable inasmuch as at page 43 of the paper book wherein a categorical stand has been taken by the Corporation that the property is not eligible for relief under the National Capital Territory of Delhi Laws (Special Provision) Act, 2011. In other words, the order dated January 31, 2019 shall be taken to its logical conclusion. In fact, he states, a demolition is scheduled on August 23, 2019 with respect to the entire property.

If that be so, Mr. N. Prabhakar, learned counsel appearing for the petitioner states, nothing further survives in the petition and the petition be disposed of. Ordered accordingly.”

4. Learned counsel appearing on behalf of the petitioner submits that despite the categorical directions passed by learned Single Judge in W.P.(C) 8752/2019, MCD did not take any action against the subject property. It is further submitted that the said directions were not brought to the notice of learned ATMCD, when the protection was granted to the occupiers of the subject property.

5. Status report dated 27.08.2020 has been filed on behalf of the respondent/ MCD, wherein it has been recorded as under:-

“3. That the Hon'ble High Court vide its order / impugned order dated 13/08/2019, passed the following directions in Writ Petition bearing Civil No. 8752 of 2019:-

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The challenge in this petition is to an order dated March 31, 2019 passed by the respondent SDMC. The ground being that respondent Corporation is not taking any action against the property No. 99-A, Masjid Moth, South Extension Part-II, New Delhi on the purported ground that the property is protected under the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011.

Mr. Sandeep Bajaj, learned counsel appealing for the



respondent Corporation states, the very basis on which the petition has been filed is unsustainable inasmuch as at page 43 of the paper book wherein a categorical stand has been taken by the Corporation that the property is not eligible for relief under the. National Capital Territory of Delhi Laws (Special Provision) Act, 2011. In other words, the order dated January 31, 2019 shall be taken to its logical conclusion. In fact, he states, a demolition is scheduled on August 23, 2019 with respect to the entire property.

If that be so, Mr. N. Prabhakar, learned counsel appearing for the petitioner states, nothing further survives in the petition and the petition be disposed of Ordered accordingly."

Copy of order / impugned order dated 13/08/2019 in this regard is already attached along with the instant petition at page 20-21.

4. That it is also pointed out here that pursuant to order dated 13/08/2019 of this Hon'ble High Court the Building Department-I of South Zone /SDMC has taken / carried out the demolition action on 23/08/2019, vide same 02 RCC panels have been cut down at Fourth floor of the subject property with the help of gas cutter, upon availability of police force.

5. That further on being aggrieved with the demolition order dated 31/01/2019 as passed in respect of the subject property and the above demolition action , the owner / occupier preferred an appeal vide bearing No. 495/2019, before the Hon'ble ATMCD. The copy of demolition order is also attached along with the instant petition at page 53-56.

6. That the Hon'ble ATMCD vide its order / directions dated 06/09/2019 has been pleased to restrained the respondent /SDMC from taking any demolition action in respect of subject property bearing No. 99-A, Masjid Moth, New Delhi. The copy of said order is annexed herewith as Annexure -A for kind reference of this Hon'ble court.

7. That it submitted that the said appeal is now listed on 18/09/2020 for further proceedings. Hence, in view of the same further action in respect of the subject property will be taken / carried out upon final outcome of the said appeal, as per law."



6. During the pendency of the present proceedings, a further status report dated 07.02.2023 was filed on behalf of the MCD and it was pointed out that the learned ATMCD has disposed of an appeal *vide* order dated 04.11.2022. Following paragraphs of the said status report are relevant for the purposes of the petition:-

“4. That in compliance of the aforesaid order/ directions the Hon'ble Appellate Tribunal /MCD has been apprised about the order dated 13/08/2019, as passed by this Hon'ble Court. Further it is submitted that the Hon'ble Appellate Tribunal /MCD vide its order dated 04/11/2022 has been pleased to allow the said appeal filed by the appellant and set aside the impugned demolition order dated 31/01/2019 as passed in respect of subject property i.e. bearing No. 99-A, Masjid Moth, New Delhi. The Hon'ble ATMCD remanded the matter back to the Quasi-Judicial- Authority with the following main directions:

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11. In view of the above facts and circumstances, the appeal filed by appellant is allowed. The impugned demolition order dated 31.01.2019 is set aside. The matter is remanded back to the Quasi-Judicial Authority for deciding the same afresh.

12. The appellant shall appeal before the Quasi Judicial Authority 18.11.2022 at 02.00 PM. The Quasi Judicial Authority shall provide an opportunity to appellant to submit an additional reply, if any and also grant him personal hearing.

13. The Quasi-Judicial Authority thereafter shall pass a speaking order after dealing with all the submissions, pleas and defences raised by the appellant and shall communicate the said order to appellant. All the proceedings shall be completed by the Quasi Judicial Authority within a period of 1 month from the date of commencement of hearing.

14. The appellant shall however not raise any unauthorized construction in the said property.

15. The file of the respondent be send back alongwith copy of this order. Appeal file be consigned to record room after due compliance.

The Copy of said order is also annexed herewith as Annexure-A.”



5. That pursuant to aforesaid order of the Hon'ble Appellate Tribunal MCD, on extending the personal hearing and considering the response/ reply/ allied documents, a detailed Speaking Order has been passed and duly communicated vide No. D/2910/AE(B)/SZ/2023 dated 27/01/2023 by the Competent Authority i.e. the Assistant Engineer (Bldg)-I of South Zone/MCD, mainly observing therein as follows:-

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Whereas the matter has been got examined. The site has also been got inspected. Earlier, the Department had booked the unauthorized construction in the property on two occasions, as revealed from the record. From the demolition order, which has been set-aside and allied records, it has been observed that

1. In the initial booking dated 25.10.2010, the unauthorized construction of ground floor and first floor was booked;
2. In the file dated 28.10.2014 - the unauthorized construction of fourth floor was booked;
3. In an other booking dated 23.04.2018 of property having same address, the unauthorized construction of second floor and third floor was booked.

There appears to be bonafide error, happened due to identification or asymmetry in address of property since there are two separate properties with the same address situated side-by-side. Moreover, residents of this area tend to change the address of their properties on their own, which generates state of ambiguity in proper identification of property. Hence, for the instant case relating to the appellant, the present proceedings are being confined to the his property No. 99-A, Masjid Moth Village, New Delhi i.e. unauthorized construction booked vide File dated 28.10.2014 and 23.04.2018, WHEREAS the property booked on 25.10.2010 is separate and different property situated adjacent to property under reference not Included in the present proceedings.

Whereas the appellant, in his reply dated 16.11.2022, has taken the following contentions:

1. The property No.99-A is a three-storyed building consisting of stilt, ground floor, upper ground floor, first floor and second floor.
2. The property was gifted to him by his mother by way of registered Gift-Deed dated 06.12.2013, which mentions about the said property admeasuring 75.25 sq.mt. and gift under plinth area as 75.25 sq.mt., comprising of stilt/ ground floor, upper



ground floor, first floor and second floor. He has further stated that this Gift Deed specifically clarifies the registration of property till second floor, which is situated in the Abadi of Lal Dora for Village Masjid Moth.

3. The property is ancestral property, and the electricity connection was energized on 27.03.2014.

4. The appellant has claimed relief under The National Capital Territory of Delhi Laws (Special) Provisions Second Amendment Act, taking the plea that the property was constructed prior to 01.06.2014.

5. In Para-9 of his reply, the appellant has stated that the Property, having number as 99-A, are three buildings, joined together with separate entrance and difference walls, different owners/ occupiers. While one portion admeasures the area as 75.25 sq.mt. belonging to him, second portion and third portion are different and separate from his portion. According to him, second portion with same property number belongs to one Shri Tek Chand, which was booked by the M.C.D. and sealed on 27.10.2010.

6. The appellant further states about the difference in floor, stating that second floor owned by him is physically third floor, and third floor mentioned on record is actually physically fourth floor.

As has been observed and reported upon inspection of site, there are two separate properties with identical No. as 99-A, situated side by side, having different built up structures, which led to confusion in the earlier proceedings. The appellants' property stands booked twice vide File No 353/B-1/UC/SZ/2014 dated 28.10.2014 for unauthorized construction at fourth floor; and again vide File No. 124/UC/B-I/SZ/2018 dated 23.04.2018 for unauthorized construction of second floor and third floor.

Whereas the property, having area as 69 sq.mts. (app.), comprises of ground floor, first floor, second floor, third floor and fourth floor and there is no stilt (as mentioned in the Gift-Deed dated 06.12.2013). In the present proceedings, the floors are being reckoned accordingly, not taking into consideration the floors mentioned in the said Gift-Deed, and moreover, there is no term as 'upper ground floor' in the Unified Building Bye- Laws-2016 and Master Plan-2021. The appellant has also not submitted any cogent document to indicate valid status of booked unauthorized construction i.e. sanctioned building plan or regularization plan etc. Hence, the construction, as has been booked



by the Department, is unauthorised However, during the hearing proceedings, the appellant reiterated that the construction in the property is old, ie. prior to 01.06.2014, with a view to availing relief upto 31.12.2023 under The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, with following documents supporting his contentions:

1. The Gift Deed quoted by the appellant was executed on 06.12.2013 showing the entire second floor, irrespective of its period;
2. The Sale-Deed dated 16.12.2013 executed by Smt. Bimla Devi in favour of M/s. Kiran Raj shows the sale/purchase of entire first floor with entire terrace rights over and above the second floor.
3. Electricity bills, water bills, property tax documents etc submitted during earlier proceedings.

It is relevant to mention that this Act grants relief upto 31.12.2023 in respect of those constructions, which have been in existence prior to 01.06.2014 in respect of such category of colonies, as in the instant case, subject to maintaining the To claim such relief under the said Act, the appellant needs to establish the existence of construction prior to the cut-off While the unauthorized construction at fourth floor was booked on 28.10.2014.. after the said cut- off date, the unauthorized construction of second floor and third date i.e. 01.06.2014. floor was booked on 23.04.2018, thereby implying that the construction upto third floor was in existence prior to 01.06.2014. Thus, the construction upto third floor is eligible for relief upto 31.12.2023 under the aforesaid Act, whereas fourth floor is liable for demolition action under Section 343 of the DMC Act-1957 for the aforesaid reasons,

Whereas in the entirety of the issue, it has been observed that unauthorized construction, as has been booked by the Department, is without any sanctioned building plans/regularization plan, and hence, the same is unauthorized, and thus, is liable for demolition action under Section 343 of the DMC Act-1957. However, construction upto third floor is eligible for relief upto 31.12.2023 under The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act since the same has been shown in the Gift-Deed of the year 2013, whereas unauthorized construction at fourth floor is liable for action under Section 343, since there is no cogent document submitted with regard to its existence prior to 01.06.2014.

I. Rajbir Singh, Assistant Engineer- Building Department-South Zone, Municipal Corporation of Delhi, vested with the powers of the



Commissioner, M.C.D. under Section 343 read with Section 491 of the DMC Act, 1957 hereby order that the entire construction, as has been booked by the Department, is liable for action under the said Section of DMC Act-1957. It is, however, directed that

1. Keeping in view the relief available under The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, demolition action against the unauthorized constructions upto third floor shall be kept in abeyance upto 31.12.2023. In case any such directions relevant to the said Act are issued by the Government of India / competent authority, the same shall be liable to be followed by the appellant.

2. The appellant to demolish the unauthorized construction of fourth floor, as reflected in the Show-Cause Notice under reference, within 06 days of issue of this order. In the event of non-compliance, M.C.D. shall take action in accordance with law and at the risk and cost of the appellant.”

Copy of said Speaking Order is also annexed herewith as Annexure-B.

6. That as can be observed from the said Speaking order that presently the structure / subject property upto Third floor is protected till 31/12/2023 in light of the relief available under The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, however, the Fourth floor of the subject property is liable for action since not protected and accordingly 06 days time was given to the owner/occupier to demolished the same, failing which the same shall be demolished by MCD in accordance with law at risk and cost of the appellant /owner.

7. That it is further submitted that on inspection by the area field staff it has been noticed that the earlier demolished portion of the Fourth floor of the subject property which was demolished on 23/08/2019 i.e. prior to the ATMCD proceedings, is still lying demolished. The photographs showing the latest status in this regard are annexed herewith as Annexure-C (Colly).

8. That pursuant to the aforesaid passed fresh detailed Speaking order on noticing that the appellant / owner has not demolished the Fourth floor of the subject property himself as directed so regarding the Fourth floor of the subject property the department has now fixed the necessary demolition action programme for 16/02/2023 which will be taken / carried out upon availability of police force.”

7. The aforesaid Status report explains the change in the stand of MCD



with reference to protection under the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2023

8. Subsequently, *vide* order dated 09.05.2023 learned Predecessor Bench of this Court directed the MCD to clarify its stand with respect to the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and its applicability to the property bearing no. 99 A, Masjid Moth, New Delhi (subject property).

9. Pursuant thereto, status report dated 25.08.2023 has been placed on record by the MCD. In the said status report averments made in the previous status report have been referred and it has been further stated as under:-

“8. That from the aforesaid Speaking order as passed Quasi-Judicial Authority, it can be observed that presently the structure of subject property upto Third floor is protected till 31/12/2023 in light of the relief available under The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, however, the Fourth floor of the subject property is liable for action since not protected and accordingly 06 days time was given to the owner occupier to demolished the same, failing which the same shall be demolished by MCD in accordance with law at risk and cost of the appellant / owner.

9. That further *vide* another status report as filed on 08/05/2023 *vide* diary No. 792401/2023 it has also been placed before this Hon'ble Court that upon passing of the detailed demolition order, the department had also undertaken further demolition action on 16/02/2023 in respect of the subject property *vide* which partition walls between the room at the Fourth floor was demolished and after the said demolition action the current status of the subject property is "abandoned".

10. That beside above, the Hon'ble Court has also been apprised about sending of letter dated 04/05/2023 to the concerned, authorities for disconnection of water and electricity supply of Fourth floor of the subject property.

11. That in light of the aforesaid facts and circumstances, the necessary action in respect of the subject property after 23/08/2019 could not be undertaken due to interim protection granted by Hon'ble ATMCD in Appeal No. 495/2019 against the demolition order dated 13/08/2019.

12. That thereafter, upon quashing of the impugned demolition order



dated 31/01/2019 and remanding back of the matter to the Quasi-Judicial Authority vide its order dated 04/11/2022 and further upon passing of the fresh detailed demolition order by the Quasi-Judicial Authority vide dated 27/01/2023 whereby protection was granted upto Third floor except Fourth floor, in respect of the subject property, the further demolition action was undertaken by the department in terms of the above. Presently, the Fourth floor which is liable for action has already been made uninhabitable and the same is lying abandoned. The photographs showing the latest status of the Fourth floor of the subject property are annexed herewith as Annexure-D.

13. That as regards, applicability of Delhi Laws Special Provision act, qua the subject property in view of the Ancient Monuments and Archeological Sites and Remains act is concerned, it is pointed out that the moratorium as enshrined under the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) act, 2021 in terms of the provisions as contained in its Section 3 is available and accordingly the same has been extended/provided upto Third floor of the subject property by the Quasi-Judicial Authority, upon considering the facts and circumstances of the matter as placed before it, in terms of its above detailed demolition order dated 27/10/2023.”

10. It is pointed out that *vide* order dated 30.08.2022, this Court had directed the MCD to apprise the learned ATMCD about the order dated 13.08.2019 and requested the learned ATMCD to dispose of the appeal expeditiously. Learned counsel appearing on behalf of the petitioner has handed up in Court today an order sheet dated 22.09.2022 whereby, it has been demonstrated that the said order was brought to the notice of learned ATMCD. The said order sheet is taken on record.

11. Learned counsel appearing on behalf of the MCD points out that the stand taken before learned Single Judge in W.P.(C) 8752/2019 with respect to the non-applicability of the provisions of National Capital Territory of Delhi Laws (Special Provision) Act, 2011 has been explained by way of the aforesaid affidavit. It is further pointed out that the matter was re-examined



on the directions of the learned ATMCD on the appeal filed by the occupiers of the subject property and after examining the records a speaking order as pointed out hereinbefore was passed.

12. Learned counsel appearing on behalf of the petitioner submits that the said speaking order is not in terms of the stand taken by the MCD before learned Single Judge in W.P.(C) 8752/2019 and therefore, a clear case of wilful disobedience has been made out. It is also submitted that order passed by the learned ATMCD will not override the directions passed by the learned Single Judge in the aforesaid petition.

13. Heard learned counsels for the parties and perused the records.

14. It is the case of the MCD that after passing of the order dated 13.08.2019, learned ATMCD had stayed the demolition orders and they were only complying with the aforesaid directions. It is further noted that the action with respect to the 4th floor of the concerned property has been taken. It is also a matter of record that on the directions passed by learned ATMCD the competent authority had passed the speaking order which had given protection to the ground floor, first floor, second floor and third floor under the provisions of The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2023. It is further pertinent to note that the direction given by learned Single Judge was on basis of a statement made on behalf of MCD. The speaking order explains the circumstances in which the protection, which was not granted earlier as recorded by the learned Single Judge, was subsequently re-examined and the same was extended in case of the subject premises.

15. In these circumstances, this Court is of the considered opinion that there is no wilful disobedience of the directions passed by learned Single Judge in



W.P.(C) 8752/2019 *vide* order dated 13.08.2019.

16. Accordingly, the present petition is disposed of with liberty to the petitioner to challenge the speaking order dated 27.01.2023 passed by the competent authority in accordance with law.

17. Pending application(s), if any, also stand disposed of.

18. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

APRIL 20, 2026/sn/sg