

# Lata Sharma vs North Delhi Municipal Corporation on 2 November, 2022

**Author: Manoj Kumar Ohri**

**Bench: Manoj Kumar Ohri**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(C) 7817/2021 and CM APPL. 24317/2021  
LATA SHARMA

Through: None

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent  
Through: Ms. Namrata Mukim, Stand  
(through VC)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI  
ORDER

% 02.11.2022

1. Present none for the petitioner.

2. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks following relief:-

"issue a writ of Prohibition in favour of the petitioner and against the respondent, thereby restraining the respondent and its officials from demolishing or taking any other coercive action against the property bearing No. 4028, Gali Ahiran, Pahari Dheeraj, Delhi-06 without due process of law."

3. Ms. Namrata Mukim, learned Standing Counsel for MCD, submits that a Status Report in the form of affidavit has been placed on record. The same reads as under:-

"3. That it is submitted that as per record, unauthorised construction in the shape of entire second floor and third floor (ground floor and first floor is old and occupied) in the property bearing no.4028, Gali Ahiran, Pahari Dheeraj, Delhi-06 was Digitally Signed By:SANGEETA ANAND Signing Date:03.11.2022 16:41:29 booked under section 343 & 344 of DMC Act vide file no.95/80- N/B/UC/CSPZ/2018 dated 06.03.2018 and a show cause notice dated 06.03.2018 was issued to owner/land lord/ Lata Sharma to show cause as to why demolition order in respect of aforesaid

unauthorised construction be not passed. It is submitted that after following the due process of law, demolition order dated 16.03.2018 was passed thereby directing the noticee to demolish the aforesaid unauthorised construction within 06 days. A copy of show cause notice dated 06.03.2018 and demolition order dated 16.03.2018 are annexed herewith as Annexure -A & B respectively.

4. That it is respectfully submitted that Smt. Lata Sharma carried out further unauthorized construction in the shape of room at fourth floor in the property in question and as such the same was also booked under section 343 & 344 of the DMC Act vide file no.82/80-N/B/UC/EE(B)-I/CSPZ/2021 dated 14.07.2021 and a show cause notice dated 14.07.2021 was issued to Smt. Lata Sharma to show cause as to why demolition order be not passed against the said unauthorized construction. It is submitted that after following the due process of law, demolition order dated 23.07.2021 was passed thereby directing the noticee to demolish the said unauthorized construction within 06 days. A copy of show cause notice dated 14.07.2021 and demolition order dated 23.07.2021 are annexed herewith as Annexure-C & D respectively. It is submitted that a civil suit no.206/2018 titled Radhika Sharma Vs. North DMC & Ors. in respect of property of the petitioner is also pending adjudication before the Court of Sh. Ajay Kumar Malik, ASCJ, Central Delhi and now fixed for hearing on 15.01.2022.

5. That it is respectfully submitted that Appeal bearing no.620/ATMCD/2019 titled Lata Sharma Vs. North DMC has been filed against the demolition order dated 16.03.2018. The said Appeal is still pending adjudication before the Appellate Tribunal, MCD. It is submitted that the said appeal came up for hearing on 22.06.2021 wherein the Ld. Tribunal summoned the concerned EE(B) with ATR for 30.07.2021. It is submitted that Digitally Signed By:SANGEETA ANAND Signing Date:03.11.2022 16:41:29 in view of the orders dated 22.06.2021 of Appellate Tribunal, MCD, demolition action in execution of demolition order was taken by the answering respondent on 23.07.2021 with the help of police force, P.S. Bara Hindu Rao. It is submitted that during the said action, roof of second floor and third floor were partially demolished as the property was found residentially occupied. It is submitted that action taken report was submitted before the Appellate Tribunal, MCD on 30.07.2021 whereafter the matter was fixed for hearing on 15.11.2021. It is respectfully submitted that the Appellant (petitioner herein) didn't appear before the Appellate Tribunal, MCD on 22.06.2021 and 30.07.2021 for the reasons best known to her. A copy of orders dated 22.06.2021 and 30.07.2021 of Appellate Tribunal, MCD are annexed herewith as Annexure-E(Colly).

6. That it is respectfully submitted that so far as WPC No.3261/2019 titled Lata Sharma Vs. North DMC and contempt case no.336/2019 titled Lata Sharma Vs. Varsha Joshi & Ors. regarding unauthorized construction in property bearing No. 3965-67, Southern Side Portion, (Old Plot No. 4462), Mohalla Ahiran, Pahari Dheeraj, Delhi-06 is concerned, the answering respondent has already filed its reply in the said case pending before this Hon'ble Court. As a matter of fact, as per record, the department had received regularization application dated 14.10.2019 from Mrs. Meera Devi on 17.10.2019 in respect of property bearing No.3965-67, Southern Side Portion, (Old Plot No. 4462), Mohalla Ahiran, Pahari Dheeraj, Delhi-06. It is submitted that a invalid notice dated 19.11.2019 was issued to the applicant Smt. Meera Devi notifying discrepancies in her application

and directing to remove them within 15 days. It is submitted that in order to examine the ownership documents of the property in question, the matter was referred to the Law Department of City SP Zone, who observed that ownership is not in order as certain documents i.e. copy of deed of exchange etc. were not placed on file. It is submitted that vide another letter dated 20.02.2020, Smt. Meera Devi was requested to provide the complete chain of Ownership documents in respect of the property in question within 7 days. It is submitted that in Digitally Signed By:SANGEETA ANAND Signing Date:03.11.2022 16:41:29 the meanwhile on account of Covid-19, the national lockdown was announced in March, 2020. It is submitted further that after opening lockdown, the matter was examined and it was found that Smt. Meera Devi has not supplied documents as notified to her vide letter dated 20.02.2020 and as such the regularization application was rejected vide letter dated 01.06.2020. Copy of invalid notice dated 19.11.2019, copy of letter dated 20.02.2020 and copy of rejection letter dated 01.06.2020 are filed herewith as Annexure-F (Colly).

7. That it is respectfully submitted that in order to execute the demolition order dated 26.08.2019, demolition action was planned for 18.02.2020 wherein it was learnt that the owners of the property in question have already obtained completion certificate under section 346 of the DMC Act through online module vide file No. 10071626 dated 17.01.2020 and as such no action was taken. A copy of completion certificate under section 346 of the DMC Act vide file No. 10071626 dated 17.01.2020 is annexed herewith as Annexure-G.

8. That it is respectfully submitted that in the online module of North DMC for granting the completion certificate, no physical scrutiny is carried out and the completion certificate is issued online merely on the submission of required documents and undertaking of empanelled Architect. It is submitted that the entire responsibility of correctness as well as any concealment of facts lies on the empanelled Architect. It is submitted that the said online sanction of completion certificate is always subject to random scrutiny by the competent authority of answering respondent and upon finding any wrong statement or concealment of facts, consequent action in the matter may be taken in accordance with law.

9. That it is respectfully submitted that from the above facts it is clear that the answering respondent has not failed to take action in respect of contempt petition filed by the petitioner and against any other unauthorized construction in the neighbourhood of the petitioner. It is wrong and baseless to Digitally Signed By:SANGEETA ANAND Signing Date:03.11.2022 16:41:29 state that the answering respondent has initiated action against the petitioner solely on account of the fact that petitioner has filed WPC No.3261/2019. It is submitted that evidently the unauthorized construction in the property of petitioner was booked in the year-2018 and WPC No.3261 has been filed by the petitioner in the year-2019 and as such it is wrong and baseless to allege that as account of blast to writ petition and contempt petition, the action has been initiated against the petitioner. It is submitted that the petitioner is guilty of raising unauthorized construction which was booked under section 343 & 344 of the DMC Act twice and demolition action was taken in execution of the demolition orders passed by following the due process of law and in compliance of orders dated 22.06.2021 of Appellate Tribunal, MCD. The present petition is misdirected and not maintainable in view of the aforesaid true facts of the case and pendency of appeal no.620/2019 titled Lata Sharma Vs. North DMC before Appellate Tribunal, MCD."

4. Learned Standing Counsel for MCD further submits that the owner/occupant has already approached the Appellate Tribunal vide Appeal No.620/2019 which is pending consideration. In this regard, she has also referred to order dated 30.07.2021 passed by the Tribunal to the effect - 'ALO submits that the demolition action has been taken in the property in question'.

5. Considering the fact that the owner/occupant has already approached the Appellate Tribunal, MCD, the present petition is disposed of alongwith the pending application, with a direction to the respondent to ensure that no construction is carried out at the property in question unless in accordance with law.

MANOJ KUMAR OHRI, J NOVEMBER 2, 2022/na Digitally Signed By:SANGEETA ANAND  
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