

Mr. Ranjan Balhara vs South Delhi Municipal Corporation & Ors on 10 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) 6033/2022

MR. RANJAN BALHARA

Through: Mr. Gaurav Chauhan, Advoc

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Mr. Arjun Mahajan, Standi

with Ms. Apoorv U, Advocate for MC

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% 10.11.2022 CM APPL. 48090/2022 (for direction by the petitioner)

1. By way of the present application filed under Section 151 CPC, the petitioner has sought direction to respondent Nos.1-4 for immediate action against the illegal and unauthorised construction stated to be carried out at property bearing No. C-26 and C-27, Freedom Fighters Enclave, IGNOU Road, Neb Sarai, New Delhi-110062 by respondent Nos.5 and 6.

2. With the consent of the parties, the petition itself is taken up for hearing today.

3. The application stands disposed of.

W.P.(C) 6033/2022

1. A Status Report on behalf of the Corporation has been placed on record wherein it is stated as follows:-

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"2. That concerning the role of the answering respondent / MCD, in order to ascertain the status of the subject Writ properties i.e. bearing No. C-26 and C-27, Freedom Fighter Enclave, IGNOU Road Neb Sarai, New Delhi, the same has been got inspected through the area field staff of Building Department-II of South Zone / MCD and as well as referred to the record available with the

department in this regard.

On inspection and referring to the record, the property wise status of the subject referred properties as noticed / observed are entailed herein below:-

A. Property No. C-26, Freedom Fighter Enclave, IGNOU Road, Neb Sarai, New Delhi.

i) As per record, this subject property has been identified as Property bearing No. C-26 Adjacent (C-24 & 25), Freedom Fighter Colony, New Delhi. On noticing the unauthorized construction in the shape of brick work and raising column at Second floor (front portion), back portion at Second floor and Ground floor and First floor old and occupied, the Building Department-II of South Zone /MCD booked and initiated the necessary demolition proceedings u/s 343/344 of DMC Act, for taking the necessary demolition action. Further the reply as submitted by one Sh. Raj Kumar Bhardwaj, has been considered, in the Interest of the Justice, as requested for, upon extending the personal hearings, the Competent Authority i.e. Asst. Engineer Building South Zone has also passed a detailed order / demolition order, mainly observing the following:

" _____ WHEREAS, adhering with the principle of natural justice, opportunity of personal hearings was granted for 13/05/2022 and 23/05/2022. It has been contended that the existing construction in its present form is about 24 years old and only repair / renovation was being done. In support of his version the noticee has relied upon on electricity bill and IGL Invoice. On bare perusal of the electricity bill it has been found that the Digitally Signed By:SANGEETA ANAND Signing Date:14.11.2022 12:42:38 date of energisation/ electrification is shown as 04/09/2010, whereas no such date is mentioned on IGL invoice. Even otherwise these bills bear no significance, as the same do not indicates towards existence of the construction / area details, in its present form. On the other hand it has been reported by the Jr. Engineer (Bldg.) concerned that the contention raised/expressed by the owner/builder w.r.t. existence of construction at site about 24 years back is not sustainable, as contrary to the averments of the reply or statement tendered by the noticee, on inspection, as was conducted on 31/03/2022 there found unauthorized construction in the shape of brick work and raising column at second floor (front portion), back portion at second floor and ground and first old and occupied. Thus, on account thereof action u/s 343 & 344 of DMC Act has been initialed vide file No.170/UC/B-II/SZ/2022 dated 31/03/2022. It has further been reported that undoubtedly on comparing the photographs taken at the time of initiation of action u/s 343 & 344 of DMC Act as well as photographs showing the present site position make it clear that it is a new/ fresh construction or addition alteration in old existing building. Apparently, these photographs are irrefutable evidence in itself to make the entire scenario, as clear as crystal that the construction so raised cannot be termed or qualified under the definition of repair/renovation. It is purely unauthorized construction, in the shape of additions/alteration in old existing building, as the

contents of booking file indicates.

In view of above, I, Amit Kumar, Assistant Engineer (Bldg.), South Zone vested with the powers of the Commissioner, SDMC under Section 343 (1) read with Section 491 of DMC Act, hereby direct to demolish the unauthorized construction under notice within six days from the receipt of this order, falling Digitally Signed By:SANGEETA ANAND Signing Date:14.11.2022 12:42:38 which it will be demolished by the MCD at your risk and cost. "

The said order has also been communicated to the Noticee / Owner / Occupier vide bearing No.949/AE(B)/SZ/2022 dated 15/06/2022, Copy of the same is annexed as herewith as Annexure-A.

ii) Furthermore, a letter bearing No.201/AE(B)-II/SZ/2022 dated 21/04/2022 u/s 344 (2) of the DMC Act, has also been sent to SHO, PS. Mehrauli, New Delhi with the request that the said unauthorized construction be stopped immediately and workmen present at site / property in question be removed and construction material including the tools, machinery, etc. be seized. Copy of letter as sent in this regard is annexed herewith as Annexure - B.

iii) Besides this letter for disconnection of Electricity and Water supply from the aforesaid property has also been sent to the concerned authorities vide letter No.208/AE(B)-II/SZ/2022 dated 21/04/2022. Copy of letter as sent in this regard is annexed herewith as Annexure - C.

iv) Moreover, a letter bearing No. 209/AE(B)-II/SZ/2022 dated 21/04/2022 has also been sent to the Sub-Registrar with the request not to register this subject property under Indian Registration Act, 1908. Copy of letter as sent in this regard is annexed herewith as Annexure - D.

v) Moreover, Prosecution Action u/s 466-A of DMC Act, has also been initiated against the owner / occupier and a complaint bearing No.D- 297/Prosecution /DC/ EE (B)- II/SZ/2022 dated 02/05/2022 thereof has also been sent to concerned SHO, PS Mehrauli, New Delhi. Copy of the said complaint is also annexed herewith as Annexure-E.

vi) Apart from this, Sealing action u/s 345-A of DMC Act, 1957 has also been initiated in respect of this property.

Digitally Signed By:SANGEETA ANAND Signing Date:14.11.2022 12:42:38 B. Property No. C-27, Freedom Fighter Enclave, IGNOU Road, Neb Sarai, New Delhi.

i. As per record, the subject property has been identified as Property bearing No. C-27 Adjacent (C-26), Freedom Fighter Colony, New Delhi, which also stands booked for unauthorized construction vide U/c File No. 17/IUC/B-II/SZ/2022 dated 31/03/2022, in the shape of Second Floor (Ground Floor and First Floor old & occupied), for taking necessary demolition action. Upon following due process of law in this regard, the necessary Show Cause Notice bearing Serial No. 26935 dated 31/03/2022 u/s 343/344 of DMC Act, has been issued and served upon the owner /

occupier of the subject property. Upon following the due process of law in this regard and considering the reply as submitted by one Sh. Ajit Sharma and also upon extending the necessary personal hearings, the necessary demolition order has been passed by the Competent Authority i.e. Asst. Engineer Building of South Zone / MCD observing therein mainly as follow:

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WHEREAS, taking note of his submissions and adhering with the principle of natural justice, opportunities of personal hearings were extended to the noticee. The hearing proceedings were held on 02/05/2022 and 18/05/2022. On 18/05/2022, the noticee has submitted his reply along with electricity bill dated 08/07/2013 (showing energisation date for electricity of FF as 23/03/2007) and LPG gas connection for 2nd floor dated 08/01/2011. In addition, the noticee has also submitted Mutation /Sub Division of property No. C-27, issued by Property Tax Department / SDMC on 14/12/2015, letter dated 15/01/2016 got received Property Tax Department, copy of GPA dated 14/01/2015 (showing construction upto second floor), documents pertaining to Property Tax department dated 22/01/2001 & 12/08/2015 (indicating construction of entire second floor), Digitally Signed By:SANGEETA ANAND Signing Date:14.11.2022 12:42:38 electricity bill dated 31/08/2020 and property tax paid receipts. Since, the noticee had nothing else to put forth the hearing proceedings were accordingly concluded with the directions to the concerned Field Staff / Jr. Engineer (Bldg.) to inspect the site and put up detailed report.

AND WHEREAS, on inspection, the Jr. Engineer (Bldg.) concerned has reported that at the lime of inspection, as was conducted on 31/03/2022, there found construction activity, in the form of additions/ alterations on second floor, whereas access to the terrace of second floor found locked. However, considering the submission made by the noticee he was asked to let the terrace be inspected. On inspection the mummy portion found repaired/renovated and also there found one room set, in rear portion of the terrace of second floor, which is hardly visible from ground level or outer of the building. It has further been reported that on the basis of documents put forth and site position, on its face the property appears old and occupied from ground floor to second floor, whereas w.r.t. portion raised on terrace of second floor the noticee is squarely failed to put forth any supporting documents and tried to hide the site position, in its reply dated 20/04/2022.

In view of above, I, Amit Kumar, Asstt. Engineer (Bldg.), South Zone vested with the powers of the Commissioner, MCD u/s 343 (1) read with Section 491 of DMC Act, am of the considered view that the entire existing construction is without having any legal sanctity. However, on the basis of documents put forth, on its face or prima facie, it appears that the construction from ground to second floor (except portion on terrace of second floor) is constructed prior to 01/06/2014. Hence, in terms of immunity provided under the Moratorium Gazette Notification viz. Delhi Digitally Signed By:SANGEETA ANAND Signing Date:14.11.2022 12:42:38 Laws (Special

Provisions) Act (as extended from time to time), the present demolition order will be kept in abeyance or remain under suspension till 31/12/2023 or subsequent notifications in this regard. Furthermore, during the intervening period the owner(s)/ noticee(s) will have to maintain sanctity of the provisions contained in the aforesaid Act. Thus, it is hereby directed to demolish/remove the unauthorized construction, on terrace of second floor within six days from the receipt of this order, failing which it will be demolished by the MCD at your risk and cost.

The said order has also been communicated to the Noticee / Owner / Occupier vide bearing No. 1469/Bldg.- II/SZ/2022 dated 28/07/2022. Copy of the same is annexed as herewith as Annexure-F. ii. Besides this, a letters for disconnection of Electricity and Water supply from the aforesaid property have also been sent to the concerned Authorities vide letters dated 29/07/2022. Copy of letters as sent in this regard are annexed herewith as Annexure -G. (Colly).

iii. Moreover, a letter dated 29/07/2022 has also been sent to the Sub-Registrar with the request not to register this subject property under Indian Registration Act, 1908. Copy of letter as sent in this regard is annexed herewith as Annexure -H. iv. Apart from this sealing action u/s 345-A of DMC Act, 1957 has also been initiated in respect of this property.

3. That moreover, pursuant to aforementioned demolition orders already stands passed in respect of both the above referred properties, the department also tried to take the necessary demolition action vide dated 19/09/2022 and 20/09/2022, but the same could not be materialized due to shortage of time as the action was taken on some other properties.

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4. That it is pertinent to point out here that presently due to severe air quality index in Delhi & NCR Region, the construction and demolition activity have been ban vide order bearing No.120017/27/GRAP/2021/ CAQM/9709-9857 dated 29/10/2022, except few category of projects as mentioned therein. Considering the same the necessary demolition action in respect of the subject property will be taken / carried out upon vacation / withdrawal of the ban as imposed, by fixing the necessary demolition action programme, in due course, as per law. The copy of the order dated 29/10/2022 is also annexed herewith as Annexure-I for record and kind reference of this Hon'ble Court."

2. Learned Standing Counsel for Corporation, on instructions, submits that in view of the order dated 29.10.2022 issued by GNCT of Delhi, the construction/demolition activity has been suspended for the time being. However, as soon as the said ban is lifted, requisite demolition action would be carried out expeditiously in accordance with law.

3. Considering the Status Report as well as the statement made on behalf of the Corporation, the present petition is disposed of with a direction to the respondent(s) to take requisite action within

four months from today. In case the petitioner remains aggrieved hereinafter, he shall be at liberty to approach this Court in accordance with law.

MANOJ KUMAR OHRI, J NOVEMBER 10, 2022 na Digitally Signed By:SANGEETA ANAND
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