

Israr vs Municipal Corporation Of Delhi & Ors on 3 March, 2023

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 17354/2022 and CM APPL. 55194/2022 (direction)
ISRAR Pe

Through: Appearance not given

versus

MUNICIPAL CORPORATION OF DELHI & ORS. Respondent
Through: Mr. Sanjeev Sabharwal, Standing
Counsel for MCD
Mr. Mohd. Irsad, ASC for respondent No.2
Mr. Prakash Deep, Advocate for respondent
Ms. Reema Roy, Mr. Md. Arif and Ms. Neeli
B., Advocates for respondent No.4

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 03.03.2023

1. By way of the present petition filed under Articles 226/227 of the Constitution of India, the petitioner is aggrieved by the illegal and unauthorised construction stated to be carried out at behest of respondent No.4 at property bearing shop No.36 Kabotar Market Ward No.39-E Welcome, New Delhi-110053 (hereinafter, referred to as the 'subject property').

2. The Status Report has been handed over in Court today which is taken on record. The same reads as under:-

"3. It is submitted that that the property in question i.e. Shop no.36 Kabootar Market, ward No.39-E, Welcome, Delhi- 110053 was inspected by the area JE on 28.12.2022. During the inspection it was noticed that the property in question is approx 15 sqr. Yards. It is further noticed that Sh. Sabadar Khan, Owner/Builder has carried the unauthorized Digitally Signed By:SANGEETA ANAND Signing Date:06.03.2023 15:09:58 construction in shape of ground floor, first floor, second floor, third floor and fourth floor with projection over the municipal land and same was booked vide unauthorized construction file No. 85/B-11/UC/SHN/2022 dated 28.12.2022. The copy of the FIR dated 28.12.2022 is annexed herewith as annexure R-1.

4. It is submitted that the show cause notice dated 28.12.2022 u/s 344 (1) & 343 of the DMC Act has been duly issued and served upon Sh. Sabadar Khan vide speed post dated 31.12.2022 with regard to

above said unauthorized construction. However, Sh. Sabadar Khan has not submitted reply to the above said notice within the stipulated period. The copy of the show cause noticed dated 28.12.2022 is annexed herewith as annexure R-2.

5. It is submitted that the matter has been further processed and the order of demolition of the Building dated 13.01.2023 u/s 343 of the DMC Act was duly issued and served upon the above Owner/Builder of the property by way of speed post dated 18.01.2023. Sh. Sabadar Khan neither complied with the above Order of Demolition nor filed any response to the same within stipulated period. The copy of the Order of Demolition Building notice dated 13.01.2023 is annexed herewith as annexure R-3.

6. It is submitted that the demolition action program has been fixed for 14.02.2023. The demolition action could not be executed as the property was found occupied. However the electricity connection of all the floors was disconnected by the BSES officials. The vacation notice dated 17.02.2023 u/s 349 of the DMC Act has been sent to SHO PS Welcome with request to get the property vacated so that the demolition program could be taken without any hindrance. The copy of the vacation notice dated 17.02.2023 is annexed herewith as annexure R-4.

7. It is submitted that the sealing proceedings against the above said unauthorized construction was also initiated. The Digitally Signed By:SANGEETA ANAND Signing Date:06.03.2023 15:09:58 sealing show cause notice dated 12.01.2023 u/s 345-A of the DMC Act was duly issued and served upon Sh. Sabadar Khan Owner/Builder by way of speed post dated 18.01.2023. However he has not submitted any reply for the same. Hence matter was further proceed and the matter was place before the Competent Authority i.e. Dy. Commissioner Shah North Zone for passing appropriate order u/s 345-A of the DMC Act. The competent authority after following due processed passed the sealing order u/s 345-A of the DMC Act. The copy of the sealing show cause notice dated 12.01.2023 and sealing order dated 13.02.2023 are annexed herewith as annexure R- 5 (Colly).

8. That the sealing action was fixed for 24.02.2023 and property was sealed in presence of police force at ground floor (two shops, three shutters, at six points). The further action could not be taken as there was mob which caused hindrance and police force was unable to get the remaining portion of the property vacated. The police vide letter dated 24.02.2023 was also requested to keep strict vigil & watch of the site. The photographs of the sealing action are annexed herewith as annexure R-6.

9. That further action was fixed for 01.03.2023 the same could not be taken as the occupier of the property locked the property from inside and the police was not able to get the property vacated. It is further submitted that the vacation notice was pasted at the property in question on the same day and further action will be taken against the unauthorized construction as per DMC Act as per schedule.

The status report is submitted accordingly."

3. Learned counsel for respondent No.4, on instructions, submits that the answering respondent undertakes not to carry out further construction at the subject property which is not in accordance with law. The statement is accepted and taken on record. He is made bound by the same. She further Digitally Signed By:SANGEETA ANAND Signing Date:06.03.2023 15:09:58 submits that the answering respondent intends to challenge the demolition notice by taking appropriate remedy as available under law. She prays that interim protection may be granted in order to enable the answering respondent to take the above steps.

4. Accordingly, in view of the above submissions, the present petition is disposed of alongwith the pending application with a direction that no precipitate action be taken against respondent No.4 in pursuance of the demolition notice/order for a period of three weeks from today to enable respondent No.4 to avail his remedy, failing which the respondent No. 1/MCD would take the requisite actions. The continuation of the interim protection, shall be sought by respondent No.4 in the proceedings filed, if any.

5. Learned Standing Counsel for MCD shall supply a copy of the petition as well as Status Report to the learned counsel for respondent No.4 within two days.

6. Needless to state, while disposing of the present petition, this Court has not gone into the merits of the respective contentions made on behalf of the parties, the same shall remain open.

MANOJ KUMAR OHRI, J MARCH 3, 2023 na Digitally Signed By:SANGEETA ANAND Signing Date:06.03.2023 15:09:58