

Mohd Abrar vs North Delhi Municipal Corporation & Ors on 20 March, 2023

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

\$~36

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2696/2021, CM APPL. 8000/2021 (Interim Reli
CM APPL. 4603/2022 (early hearing)
MOHD ABRAR

Through:

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

Through: Mr. Anand Prakash, Standing
for MCD with Ms. Varsha Arya and Ms.
K., Advocates
Mr. Lalitaksh Joshi, Advocate for res
No.4 and 9
Mr. Rajiv Mishra, Advocate for DJB
Mr. Arjun Pant, Advocate
Ms. Kamna Singh Advocate, Counsel for
respondent No. 7
Mr. Dalip Rastogi, Mr. Ajay Gupta and
Gupta, Advocates for respondent No.10

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 20.03.2023

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner who claims himself to be a law abiding and peace loving citizen has made grievance that when he goes to offer prayers, he has noticed illegal and unauthorised construction stated to be carried out by respondent No.10 at property bearing No. 152 to 158 Main Bazar, Ajmeri Gate, Delhi-110006 (hereinafter referred as to as the 'subject property').

Digitally Signed By:NIJAMUDDEEN ANSARI Signing Date:27.03.2023 15:01:52

2. The petitioner has stated that the said construction had begun somewhere around January, 2019. It was claimed that the subject property was 150 years old building structure where construction in the shape of Second & Third Floor was carried out without obtaining any sanctioned building plan.

It was also claimed that since the subject property is within the definition of 'Prohibited Area' and 'Regulated Area' as per Section 2 of Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as 'AMASR Act, 1958'), no construction, renovation, re-construction could be carried out.

3. Learned Standing Counsel for MCD has referred to the affidavit dated 07.09.2021, wherein it has been stated as under:-

"3. That it is respectfully submitted that upon receiving the information regarding unauthorized construction in the property no. 152 to 158, Main Bazar, Ajmeri Gate, Delhi the same was inspected by the field officials of answering respondent on 10.12.2020 & 11.03.2021 and upon inspection, it was found that the property consists of ground floor, first floor, second floor and third floor which is commercially occupied. It is submitted further that at the time of inspection, no new construction activity was found in progress.

4. That it is respectfully submitted that a civil suit no.CS- 241/2020 titled Mohd. Hussain Vs Ram Charan Chopra & Ors alleging unauthorized construction in the property in question is also pending adjudication before the Court of ASCJ, Delhi in which the answering respondent has also filed written statement on 03.02.2021. It is submitted that the next date of hearing in the said suit is 09.09.2021. A copy of order dated 03.02.2021 of Ld. ASCJ, Delhi is being filed herewith as Annexure-A.

5. That it is respectfully submitted that as the property in question is old and commercially occupied and upon inspection on two occasions neither any new construction activity was Digitally Signed By:NIJAMUDEEN ANSARI Signing Date:27.03.2023 15:01:52 found in progress nor any building material found stacked at site and as such no action is warranted at the end of the answering respondent at this stage. It is pertinent to mention here that the answering respondent shall take action against any new unauthorized construction in accordance with law as and when the same is noticed."

4. Learned Standing Counsel for MCD has handed over a copy of the Status Report which is taken on record. The same reads as under:-

"3. That it is respectfully submitted that the property bearing no.152 to 158, Main Bazar, Ajmeri Gate, Delhi was inspected by the field officials of answering respondent on 14.03.2023 and upon inspection, it was found that no new construction activity was found in progress.

4. That it is respectfully submitted that during inspection on 14.03.2023 photographs from inside and outside of the property in question have been taken to show the present status of the property in question which are annexed herewith as Annexure-A(Colly).

5. That it is respectfully submitted that a civil suit no.CS- 241/2020 titled Mohd. Hussain Vs Ram Charan Chopra & Ors alleging unauthorized construction in the property in question has been rejected under order 7 Rule 11 (d) CPC vide detailed orders dated 24.11.2022 passed by the Court of Sh. Anuj Kumar Singh, ASCJ (Central), Delhi. A copy of said order dated 24.11.2022 of Ld. ASCJ, Delhi is being filed herewith as Annexure-B."

5. Learned Standing Counsel for MCD thus submits that the petitioner's allegation that the alleged construction began in the month of January, 2019 is not substantiated.

6. Learned counsel for respondent No. 10 submits that the answering respondent has taken eviction proceedings against the erstwhile tenant and Digitally Signed By:NIJAMUDEEN ANSARI Signing Date:27.03.2023 15:01:52 the present petition is nothing but an off shoot of those proceedings, where eviction order has been passed against that tenant. He submits that the present petition is motivated.

7. At this stage, learned counsel for the petitioner has referred to the counter affidavit filed on behalf of respondent No.7 wherein it has been mentioned that on receipt of complaint, the STF had issued a work stop notice as well as forwarded the complaint to respondent No.3.

In response, learned counsel for respondent No.7 submits that on receipt of the complaint, the same was forwarded to the concerned officer.

9. Considering that it has been stated repeatedly by MCD that during various inspections, no further construction was found to be going and in view of the fact that the earlier construction has been opined to be old and occupied, no further orders are required to be passed. Accordingly, the present petition is disposed of alongwith the pending applications.

MANOJ KUMAR OHRI, J MARCH 20, 2023 na Digitally Signed By:NIJAMUDEEN ANSARI Signing Date:27.03.2023 15:01:52