



\$~J-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 09.08.2024

+ **W.P.(C) 3759/2024 & CM APPL. 15452/2024**

SMRITI BHATIA

..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate
along with Ms. Parul Tuli, Mr.
Shaunak Kashyap, Ms. Nistha Gupta,
Mr. Ahmar Shad, Mr. Sumer Dev
Seth and Ms. Anu Panwar,
Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS. ... Respondents

Through: Mr. Ajjay Aroraa, Mr. Kapil Dutta,
Mr. Vansh Luthra and Ms. Simran
Arora, Advs. for MCD.
Mr. Mohd. Irshad, ASC (GNCTD)
along with Mr. Nasreen, Mr. Kunal
Raj and Mr. Shailesh Chauhan, Advs.
for R-2 and R-3.
Mr. Satyakam, ASC, GNCTD along
with Mr. Pradyut Kashyap, Advs. for
GNCTD.
Mr. Balendu Shekhar, Adv. along
with Mr. Raj Kumar Maurya and Mr.
Krishna Chaitanya, Advs. for R-4.
Mr. Sanjeev Sindhvani, Sr. Adv.
along with Mr. Virender Mehta, Mr.
Aseem Chaturvedi, Mr. Kunal Mehta
and Mr. Milind Jain, Advs. for R-5.
Mr. Akshay Makhija, Sr. Adv.
alongwith Ms. Kanika Agnihotri,
Adv. for R-6.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA



JUDGMENT

1. The present petition has been filed by the petitioner seeking directions to the respondent(s) authorities to take appropriate action with regard to the illegal construction on land described in the petition as No.5, Grand Westend, Rajokri, New Delhi-110038. The land in question, on which unauthorized construction is stated to be subsisting, admeasures approximately 7.5 acres and includes various khasra numbers. A site plan of the land/premises has been annexed along with the petition. The petitioner is stated to have made various representations to the MCD with regard to the subsisting and ongoing unauthorized construction, but in vain.

2. A demolition order dated 01.09.2023 is also stated to have been passed in respect of the unauthorized construction. The same reads as under:-

*“MUNICIPAL CORPORATION OF DELHI
BUILDING DEPARTMENT*

*Order of Demolition of Building under Section 343 of DMC Act, 1957
(66 of 1957)*

*Unauthorized Construction File No. 390/UC/B-II/52/2023 Date
01/09/2023*

Whereas you Shri Owner/Builder S/o --- R/o Farm No-5, Grand Westend, Rajokri have started/completed/carried out the unauthorized construction work, as given hereinunder, in Property No. Farm No.-5, Grand Westend, Rajokri, Vasant Kunj, New Delhi without obtaining necessary permission as required under Section 332 of the Delhi Municipal Corporation Act (DMC), 1957, or in contravention of sanction as granted under Section 336 of the Act.

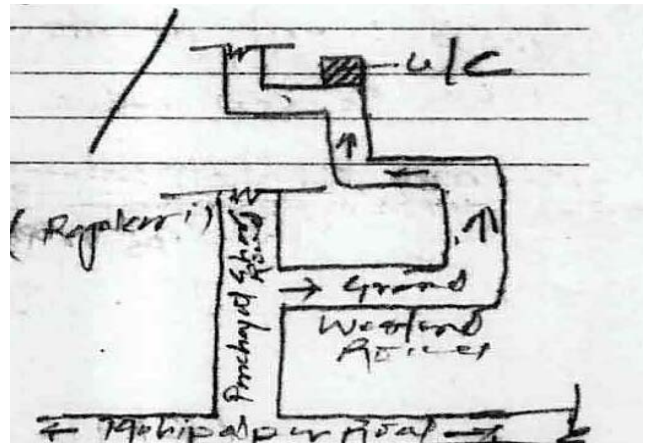
*Details of unauthorised construction: U/C in the shape of raising
columns on the ground floor.*

Sanctioned Building Plan/Online ID No., if any -----



S.No.	Floors	Details of Unauthorized Construction/Deviation from Sanctioned Building Plans
1-	Ground Floor	U/C in the shape of raising columns on Ground Floor

Rough Sketch Plan of Site and Unauthorized Construction:



Latitude 28.515793°
 Longitude 77.110876°

Whereas a show cause notice was served upon you vide No.5185 dated 21/8/2023 to stop the work and to submit your reply within 03 days, as to why orders of demolition as required under Section 343 of the Act should not be passed in respect of the unauthorized construction already carried out and the unauthorized construction, if any, carried out after the issue of this show cause notice. You were also given an opportunity to submit a formal application within ---- days for regularization of permissible/compoundable construction after demolition of non-compoundable deviation.

And, whereas, you have neither submitted your reply nor the unauthorized construction has been demolished. Moreover, any proposal for regularization has not been submitted within the stipulated period.

Therefore, you are, hereby, directed to demolish the above-mentioned unauthorized construction and unauthorized construction, if any, carried out after the issue of the show cause notice within 06 days from date of receipt of this order. You are also informed that in case you do not comply with the orders; Municipal Corporation of Delhi may by itself initiate action for demolition of above construction and expenditure so incurred for carrying out the demolition would be recovered from you as per provisions of DMC Act,



1957.

To

*Shri Owner/Builder
Farm No.-5, Grand Westend, Rajokri
Vasant Kunj, New Delhi.*

*Sd/-
Name Kushant Kumar
Assistant Engineer (Bldg.)
South Zone
New Delhi*

*WASCOE on Answer-Telg
TE (B)*

3. It can be seen that the demolition order under Section 343 of the Delhi Municipal Corporation Act, 1957 (hereafter referred to as ‘the DMC Act’) refers to the unauthorized construction in the shape “raising columns on ground floor”. An order under Section 345-A of the DMC Act is also stated to have been issued on 09.10.2023 by the MCD. A work-stop order is also stated to have been issued on 01.09.2023, which reads as under :-

*“MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE EX. ENGINEER (BLDG.)-II,
SOUTH ZONE, GREEN PARK, NEW DELHI.*

No. 1600AE(B)/SZ/2023

Dated: 01/9/23

*The Station House Officer
Police Station, **Vasant Kunj (South)**,
New Delhi.*

Sub: Stoppage of unauthorized construction in Ward No.156 (Vasant Kunj) u/s 344 (2) of DMC Act,1957.

Sir.

Unauthorized construction of following property has been noticed, in this regard, your kind attention is drawn towards Section 344(2) of the DMC Act., which stipulates the following: -

<i>S. No.</i>	<i>U/c File No.</i>	<i>Date</i>	<i>Name of owner/occupier</i>	<i>Property No. & Address</i>	<i>Extent of unauthorized construction</i>



1.	390/UC/B-II/SZ/2023	21/08/2023 3	Owner/Builder	Farm No.5, Grand Westend, Rajokari, Vasant Kunj (Lat. 28.515793, Long. 77.110876)	U/C in the shape of raising columns of Ground Floor.
----	---------------------	-----------------	---------------	---	--

"If an order by the Commissioner under Section 343 or sub-section (1) of this Section directing any person to stop the erection of any building or execution of any work is not complied with, Commissioner may require any police officer to remove such person and all his assistants and workmen from the premises or to seize any construction material, tools, machinery, scaffolding or other things used in the erection of any building or execution of any work within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly".

It, is therefore, requested that action may be taken under the provisions of Section 344(2) of the DMC Act and the aforesaid unauthorized construction activities may be stopped by the police immediately and workmen present in the premises be removed and construction material including the tools, machinery, etc. be also seized. You are also requested to direct the concerned beat staff to keep strict watch and ward over this property, so that the Owner/Builder of this property may not be able to carry out further unauthorized construction.

Yours faithfully.

*Assistant Engineer (Building)-
South Zone"*

4. It is the case of the petitioner that despite the aforesaid, unauthorized construction continued unabated, and that too on a massive scale. In this regard, the petitioner has placed on record the photograph/s depicting the unauthorized construction being carried out. The same is reproduced hereunder :-



5. Confronted with a situation where no action was being taken by the MCD with respect to the unauthorized construction despite issuance of the aforesaid demolition order and the sealing action under Section 345-A of the DMC Act, the petitioner filed a civil suit being CS No.1084 of 2023 titled as “*Smriti Bhatia v. Radha Bhatia & Ors.*” seeking an injunction *qua* the ongoing unauthorized and illegal construction. The same was, however, withdrawn inasmuch as the premises in question was beyond the jurisdiction of the Dwarka District Court. Thereafter, the petitioner filed another civil suit being CS No.1205/2023 before the Patiala House Court.

6. In the meantime, an appeal was also filed by the owner/occupier of the property in question before the Appellate Tribunal of the MCD (hereinafter referred to as ‘the ATMCD’) under Section 343 (2) of the DMC Act, challenging the demolition order dated 01.09.2023.

7. In the status report filed on behalf of the MCD in the concerned Court seized of the aforesaid civil suit, it was, *inter alia*, submitted that there was



some confusion as regards the khasra numbers on which the unauthorized construction in question was subsisting.

8. The appellate proceedings, pending before the ATMCD against the demolition order dated 01.09.2023, were disposed of *vide* Order dated 18.01.2024 with the following directions :-

“A.No. 627/23

M/s Heavenly Farms Pvt. Ltd. Vs Municipal Corporation of Delhi
18.01.2024

Present: Sh. Prashant Mendiratta and Sh. Kunal Mehta, Ld counsels for the appellant.
Sh. Ashutosh Gupta, Ld counsel for the respondent.
Sh. Adab Singh Kapoor, Ld. counsel for intervener, filed an application under order 1 Rule 10 CPC.

Status report under the signature of EE(B) has been filed. Copy supplied.

As per the status report, the order appears to have been passed in violation of principles of natural justice, therefore, respondent is desirous of giving an opportunity of personal hearing to the appellant before passing any fresh order.

This appeal has been filed against the demolition order dated 01.09.2023, which has been passed on the basis of the show cause notice dated 21.08.2023.

The main plea of the appellant before the court is that the demolition order has been passed without affording an opportunity of being heard as no show cause notice was served upon them before passing the said demolition order, therefore, the order is in violation of the principles of natural justice.

The said plea of the appellant appears to have been accepted by the respondent.

As per the status report, the respondent is ready to provide hearing to the appellant afresh and decide the matter afresh after providing personal hearing.

In view of the above facts and circumstances, and particularly in view of status report dated 18.01.2024, the appeal filed by the appellant is allowed. The impugned demolition order dated 01.09.2023 is set aside.

The matter is remanded back to the Quasi Judicial Authority for deciding the same afresh.



The appellant shall appear before the Quasi Judicial Authority on 29.01.2024 at 02:00 p.m. The Quasi Judicial Authority shall allow the appellant to submit reply and also grant them personal hearing and thereafter shall pass a speaking order dealing with all pleas and contentions raised by the appellant.

All the proceeding shall be completed within a period of one month from the date of commencement of hearing.

The application filed under Order 1 Rule 10 CPC filed on behalf of the intervener is disposed off as respondent has sought withdrawal of the demolition order due to non-service of show cause notice. The intervener shall be, however, at liberty to take appropriate legal remedy as per law.

The record of the respondent, if any, be returned along with copy of this order and appeal file be consigned to record room.”

9. It can be seen that while remanding the matter to the MCD, the ATMCD specifically directed the MCD to grant a hearing to the appellant/owner i.e. M/s. Heavenly Farms Pvt. Ltd. (respondent no.5 herein) within a period of one month from the date of commencement of hearing. It appears that the said time limit was not adhered to. Eventually, a fresh demolition order was passed by the MCD on 26.03.2024 against which, again, an appeal was filed before the ATMCD which is stated to be still pending.

10. In the meantime, the present writ petition came to be filed. *Vide* order dated 18.03.2024, this Court observed and directed as under :-

“1. Respective senior counsel for the parties have been heard both on the aspects of maintainability and merits of the present petition.

2. List for pronouncement of order(s) on 01.04.2024.

3. During the course of hearing, Mr. Sandeep Sethi, learned senior counsel for the petitioner submits, on instructions, that in view of the developments that have taken place after filing of civil suit bearing no.1205/2023, the petitioner (plaintiff therein) shall take steps to withdraw the said civil suit.



4. *Let the MCD file an affidavit, within a period of one week, placing on record whether any unauthorized construction took place in the property in question, (i) during the period between 01.09.2023 [when the demolition order under Section 343 of the DMC Act and also an order under Section 344 (2) of the DMC Act came to be passed] and 18.01.2024 (when the Appeal No.627/2023 was disposed of by the ATMCD); and (ii) during the period, after 18.01.2024 till the date of the filing of the present petition.*

5. *The concerned SHO is also directed to file an affidavit as to the steps taken by it after receipt of the order dated 01.09.2023 passed under Section 344 (2) of the DMC Act and as to the steps taken to ensure that no unauthorised construction has been carried out after 18.01.2024. Let the same also be filed within a period of seven days from today.*

6. *The above affidavits have been called for since this Court is concerned with allegations regarding the lackadaisical and partisan approach of the MCD in the matter. The statutory obligation of the MCD to take action qua any unauthorized construction is not dependent whether the petitioner is able to succeed in any civil proceedings qua thereto. In the present case, the Court is concerned with the fact that it is the stand of the MCD itself that large scale unauthorized construction has taken place, in the absence of any sanctioned plan. Yet, from the status of the construction as depicted in the photographs placed on record, it is doubtful whether any vigilance was exercised to ensure that unauthorized construction is ceased, at least after the issuance of the demolition order. Further, even after the matter was disposed of by the ATMCD on 18.1.2024, directing the MCD to pass a fresh order within one month thereof, the said time limit has not been adhered to by the MCD. The lack of alacrity on the part of the MCD in this particular case, is somewhat disturbing. Without expressing any final opinion on these aspects, the above affidavits have been called for to allay these concerns.*

7. *Learned counsel for the MCD submits and assures, on instructions, that till the next date of hearing, status quo as regards the construction shall be maintained in the property in question. Learned counsel for the concerned SHO submits, on instructions, that necessary assistance shall be provided to the MCD for the said purpose.*

8. *List on 01.04.2024, in the category of “Supplementary Matters”.*”

11. Pursuant to the aforesaid order, the civil suit filed by the petitioner is stated to have been withdrawn.

12. As stated in the order dated 18.03.2024, this Court entertained the



present writ petition in view of serious allegations to the effect that the MCD has been recalcitrant in taking requisite action *qua* the unauthorized construction in question, so much so, that the unauthorized construction has continued unabated, even after demolition order dated 01.09.2023 came to be passed and during the subsistence of the proceedings before the ATMCD, and even after the matter was remanded to the MCD by the ATMCD. It has been strenuously alleged that the MCD, as also the concerned police authorities, have not acted with the alacrity that was required *qua* the unauthorized construction, as a result of which, the unauthorized construction has been allowed to be raised with the tacit connivance of the concerned officials.

13. It was in this background that this Court, *vide* order dated 18.03.2024, issued directions that affidavit/s be filed, placing on record whether any unauthorized construction took place in the property in question :-

- (i) During the period between 01.09.2023 [when the demolition order under Section 343 of the DMC Act and also an order under Section 344 (2) of the DMC Act came to be passed] and 18.01.2024 [when the Appeal No.627/2023 was disposed of by the ATMCD]; and
- (ii) During the period, that is, after 18.01.2024 till the date of the filing of the present petition.

14. The concerned SHO was also directed to file an affidavit as to the steps taken by it after receipt of the work stop order dated 01.09.2023, passed under Section 344 (2) of the DMC Act.

15. It was also observed by this Court, *vide* order dated 18.03.2024, that the statutory obligation of the MCD to take action *qua* any unauthorized construction is not dependant on whether the petitioner is able to succeed in



any civil proceedings *qua* thereto. This Court expressed concern with the fact that it was the stand of the MCD itself that large scale unauthorized construction had taken place in the absence of any sanctioned plan and in the teeth of its demolition orders. Yet, from the status of the construction as depicted in the photographs placed on record, it was evident that the unauthorized construction continued unabated, even after the issuance of the demolition order dated 01.09.2023.

16. *Vide* order dated 18.03.2024, it was also noticed that even after the matter was disposed of by the ATMCD on 18.01.2024, directing the MCD to pass a fresh order within one month thereof, the said time-limit was not adhered to by the MCD.

17. It was in these circumstances that this Court entertained the present writ petition despite a civil suit having been filed by the petitioner and also considering the statement on behalf of the petitioner that the said civil suit would be withdrawn.

18. Thus, in the present case, the Court was confronted with a situation where :-

- i. Large scale unauthorized construction has taken place as per the MCD itself;
- ii. The unauthorized construction continued unabated despite the demolition order dated 01.09.2023 passed by the MCD and despite the work-stop notice issued by the MCD;
- iii. There are serious allegations that MCD has acted in collusion with the offending persons who have raised unauthorized construction and that there has been serious lack of diligence on the part of the MCD.



19. In the above backdrop, this Court does not find any merit in the objections raised by the respondents as regards the maintainability of the present writ petition, and consequently, rejects the same. This Court cannot permit a situation where rampant unauthorized construction continues to be raised with impunity, and the municipal authority fails or is unable to take requisite action and, is thereby, virtually reduced to a hapless spectator.

20. It is trite that there is no limitation on this Court to exercise jurisdiction under Article 226 of the Constitution of India in a situation of the present kind, where there is evident abdication by the MCD of statutory obligations. In this regard, reference may be made to the observations made by a Division Bench of this Court in **Rajiv Kumar v. Government of India and Ors.**, 2021:DHC:2315-DB, the relevant part of which reads as under :-

“27. However, the jurisdiction under Article 226 of the Constitution of India permits this Court to, (a) grant relief, even if does not find any right in the petitioner/s thereto, but nevertheless finds the grant of the relief to be necessary to serve the ends of justice and in the particular facts and circumstances; and, (b) to refuse relief, even if the petitioner is found entitled thereto in law. Of course, the said discretion has to be exercised with care and does not vest a magician's wand in the hands of the Court, permitting the Courts to pass any order. A discussion, supported with precedents, in this regard is to be found in Bessy Edison Vs. Indira Gandhi National Open University (2011) 176 DLT 335 and in Gurmeet Singh Vs. DDA MANU/DE/2951/2011 and in Amandeep Singh Vs. University of Delhi MANU/DE/2194/2015. Supreme Court, in Shangrila Food Products Ltd. Vs. Life Insurance Corporation of India (1996) 5 SCC 54, Dwarka Nath Vs. Income Tax Officer, Special Circle, D-Ward, Kanpur AIR 1966 SC 81, Life Insurance Corpn. of India Vs. Asha Goel (2001) 2 SCC 160 and Union of India Vs. R. Reddappa 1993 (4) SCC 269. It has been held that Article 226 is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Court to reach injustice wherever it is found. The High Court is empowered to mould the relief to meet the peculiar and complicated requirements of this country. The Constitution does not place any fetters on the exercise of the extraordinary jurisdiction of the High Courts under Article 226. It is left to the discretion of the High Court. This Court can, in exercise of such jurisdiction, take cognizance of the entire facts and



circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. Once this Court is satisfied of injustice or arbitrariness, then the restrictions on the exercise of power, self imposed or statutory, stand removed and no rule or technicality, on exercise of power, can stand in the way of rendering justice.”

21. The affidavit that has come to be filed on behalf of the MCD and the concerned SHO, pursuant to directions contained in the order dated 18.03.2024, further validates the necessity to pass appropriate directions in exercise of powers conferred under Article 226 of the Constitution of India.

22. In the affidavit filed on behalf of the concerned SHO, it has been brought out that despite the demolition order having been passed on 01.09.2023 and work-stop letters having being issued by the MCD with regard to the property in question, unauthorized construction continued unabated. In this regard, it has been specifically stated in para 3 of the affidavit filed by the concerned SHO, which reads as under :-

“3. That it is submitted that P. S. Vasant Kunj (South) received the following ‘work stop’ letter on behalf of the MCD, South Zone w.r.t. the property in the question i.e. ‘Farm No. 5, Grand Westend Green, Rajokri, Delhi’ (Lat 28.515793 and Long. 77.110876) (hereafter referred to as “the subject property”).

- a) Letter bearing No. 1600/AE(B)/SZ/2023 dated 01.09.2023; and*
- b) Letter bearing No. 1747/Bldg-II/SZ/2023 dated 14.09.2023.*

Thereafter, Police action on the subject property was taken vide GD No. 174A dated 14.09.2023, GD No. 163A dated 19.09.2023 and GD No. 132 dated 03.01.2024. Intimation letter dated 15.10.2023 was also sent to the MCD regarding the subject property on 18.10.2023. The details of the action are as follows:

- a) Action dated 14.09.2023 (recorded vide GD No. 174A):
Unauthorized Construction was found ongoing. Six laborers were detained under the U/s 65 DP Act. The owner of the subject property was served with the stop work notice issued by MCD.*
- b) Action dated 19.09.2023 (recorded vide GD No. 163A):
Unauthorized Construction was ongoing. However, when the*



laborers saw the Police, they ran away from the site. The mixture machine was seized from the Construction site U/s 66.1B DP Act and the Owners were again warned to stop unauthorized construction immediately.

c) Action dated 03.01.2024 (recorded vide GD No. 132A):

Unauthorised Construction was ongoing. Four Labourers were detained u/s 65 of the DP Act. Some construction equipments were seized. Owners were again warned to immediately stop unauthorized construction.

True copy of the GDs (174A, 163A, 132A) and Intimation Letter dated 15.10.2023 qua the subject property are attached hereto and marked as ANNEXURE-R-1 (colly)."

23. The brazen conduct on the part of the owner/occupier of the property in continuing with unauthorized construction despite a demolition order and a work-stop notice, merited serious action on the part of the authorities. Unfortunately, the concerned authorities have been remiss in this regard.

24. In the affidavit filed on behalf of the MCD pursuant to the order dated 18.03.2024, it has been stated as under :-

"12. That pursuant to the directions of this Hon'ble Court dated 18/03/2024, as far as status of carrying out the construction during the period from 01.09.2023 (when the demolition order under Section 343 of the DMC Act-1957 and also a letter under Section 344(2) of the DMC Act-1957 sent and 18.01.2024 (when the Appeal No.627/2023 was disposed of by the ATMCD), no unauthorized construction was noticed by the area field staff. Further, regarding status of carrying out the construction after 18.01.2024, so as to ascertain the factual position, the inspection of site was again scheduled for 22/03/2024 under the due information to the owner / builder vide letter dated 20/03/2024, but the same was not allowed to be carry out by the owner /builder, however, to know the factual position, inspection of the site from outside by the raising the level of JCB to the possible extent, was carried out and it was noticed that after booking of construction, further work in the shape of shuttering for ground floor has been noticed despite sending of stop work letters dated 29/01/2024, 14/03/2024 and 15/03/2024 to the police authorities for stoppage of work u/s 344 (2) of DMC Act, 1957.

13. That as can be observed from the above explained position, the



Department has made incessant efforts in stopping the unauthorized construction in the subject property. However, there has been non cooperation from owner of the subject property, as and when the department tried to inspect the same.

14. That it has been observed during the hearing proceedings while passing the demolition (speaking) orders, the applicant M/s. Heavenly Farms Pvt. Ltd. has tried to mislead the Department under the pretext of address of property, with one version or the other.

But their contentions have not been found sustainable on merits.”

25. The stand of the MCD, that no unauthorized construction was noticed by the area field staff in the aftermath of 01.09.2023, is in direct contradiction to the affidavit filed on behalf of the SHO, PS Vasant Kunj who has affirmed that when police action was taken on 14.09.2023, 19.09.2023 and 03.01.2024, unauthorized construction was found to be ongoing.

26. An alarming fact which has been revealed in the aforesaid affidavit filed on behalf of the MCD is that the owner/occupier/builder of the property in question did not permit the MCD to carry out any inspection when the MCD sought to do so in the aftermath of 18.01.2024. It is the stand of the MCD that there has been non-cooperation from the owner of the subject property as and when an attempt was made to inspect the same. It was only when the MCD inspected the site from outside the premises by raising the level of JCB, it was noticed that unauthorized construction was continuing unabated. It is difficult to countenance the helplessness of the MCD in even getting access to the property for the purpose of inspecting the same and that too after the matter was remanded to the MCD by the ATMCD.

27. The abject failure on the part of the MCD to take effective action



against the onslaught of unauthorized construction is unfortunate, to say the least. It is also noted that the MCD did not adhere to the time-lines prescribed in the ATMCD's order dated 18.01.2024 in terms of which the MCD was directed to grant a personal hearing to the owner/occupier of the property in question and pass a fresh speaking order within a period of one month. It was not until 26.03.2024, that a fresh demolition order came to be passed by the MCD. Even thereafter, two appeals are stated to have been filed before the ATMCD in which some controversy has been sought to be raised as regards the property number *qua* which the demolition order has been passed.

28. The two separate appeals which are stated to have been filed before the ATMCD are, (i) Appeal No. 255/2024 titled as Heavenly Farms Pvt. Ltd.Vs. Municipal Corporation of Delhi with respect to farm no. 5 Grand Westend, Rajokri, New Delhi-110038; and (ii) Appeal No.238/2024 filed by Harvest Plantation Private Limited with respect to Farm no 3, Grand Westend, Rajokri, New Delhi-110038.The said entities are respondent nos.5 and 6 in these proceedings.

29. It was by order dated 14.03.2024 that the owner/s of the concerned property where unauthorized construction was being carried out, were directed to be impleaded as the respondents in the present case. Pursuant thereto, M/s Heavenly Farms Pvt. Ltd. was impleaded as respondent no.5 in these proceedings and an amended memo of parties was filed on 16.03.2024. Thereafter, vide order dated 23.04.2024, at joint request of the parties, M/s Harvest Plantations Pvt. Ltd. was also impleaded as respondent no.6 in the present petition.

30. This Court is unable to countenance a situation where the MCD is not



even in a position to identify the relevant khasra number/s of the land in question where rampant unauthorized construction is being raised. When an authority like the MCD professes to be either helpless or unable/unwilling to take action, the same lends credence to the allegations/ apprehensions of the petitioner regarding connivance of the MCD officials with the concerned owner/occupier/builder of the property in question. There is no justification whatsoever as regards the evident lack of ability/desire on the part of the MCD to take requisite action against the rampant unauthorized construction in the present case. It is incumbent on the MCD to ensure that any action *qua* the unauthorized construction in question is not impeded on any account, including any alleged difficulty in obtaining particulars of the khasra number/s of the land in question and/ or in identifying the owner/occupier/builder of the property in question.

31. The present position, as it stands, is that the appeal against the demolition order dated 23.06.2024, bearing Appeal no. 255/2024 and Appeal No. 238/2024, are pending before the ATMCD. There is a subsisting interim order of the ATMCD in terms of which the MCD has been interdicted from taking demolition action *qua* unauthorized construction in question.

32. Needless to say, the pending appeals before the ATMCD shall be decided on their own merits and in accordance with law. However, it is incumbent on the MCD to ensure that any further unauthorized construction is not allowed to be raised and that any enforcement/demolition action *qua* the same, is not impeded on account of confusion created by the recalcitrant parties (who have carried out unauthorized construction) as regards the address/khasra numbers of the property in question.



33. The present case serves as an unsavory example of a situation where the Municipal Authorities had been found wanting at various levels to deal with the unscrupulous manner in which the unauthorized construction in question has been raised. Reference is apposite to the observations of a Division Bench of this Court in W.P.(C) 5607/2022 titled as ‘*Civilian Welfare Charitable Trust (Regd.) through its Chairman Mohd. Kamran Vs Union Of India & Ors.*’ (in order dated 30.01.2024), wherein it has been observed as under:

“This Court is not able to understand as to how after issuing/passing Show Cause Notice, Work Stop Notice as well as Demolition Order, construction is still continuing at the site in question. This Court is of the prima facie view that without the passive support of the MCD and police officers, construction at the site in question could not have been carried out beyond 04th January, 2024.”

34. Again, a Division Bench of this Court in W.P.(C) 638/2024 titled as ‘*Jamia Arabia Nizamia Welfare Education Society Vs Delhi Development Authority Through Its Vice Chairman & Ors*’ (in order dated 01.02.2024), has observed as under:

“This Court finds it surprising that encroachment of public land, illegal and unauthorised construction at such a massive scale has taken place in the heart of Delhi virtually under the nose of officials of the MCD, DDA, ASI and Police. This Court is of the prima facie view that the matter requires to be investigated by the Central Bureau of Investigation”

35. Given the erosion of the confidence in the MCD’s intent and ability to tackle the unauthorized construction which is the subject matter of the present petition, this Court deems it necessary to issue certain directions. Accordingly, it is directed as under:-



- (i) The MCD shall clearly identify the land on which the unauthorized construction in question has/is being raised and the concerned owner/occupier/builder;
- (ii) The MCD shall duly inspect the unauthorized construction in question to ascertain the extent thereof. The MCD shall also inspect the neighboring/ other properties in the locality to ascertain whether unauthorized construction (*viz.* any construction beyond the sanctioned building plan) has proliferated in the area. Requisite action, in accordance with law, shall be taken *qua* each and every unauthorized construction; it shall be ensured that effective action is not impeded on account of any confusion as regards the khasra number/s on which any unauthorized construction subsists.
- (iii) Immediate and effective steps shall be taken by the MCD as also the Police Authorities/SHO of PS Vasant Kunj to ensure that no further unauthorized construction is allowed to be raised in the area in question, and that any ongoing unauthorized construction is put to an immediate halt. Strict disciplinary action is directed to be taken against the concerned officials of the MCD/Police officials if they are remiss in implementing these directions.
- (iv) The ATMCD is requested to decide the pending appeals *qua* the unauthorized construction in question *viz.* Appeal No. 255/2024 & Appeal No. 238/2024 as expeditiously as possible, and preferably within a period of 08 weeks from today.

36. Let a copy of this order be sent to the Commissioner, MCD who is directed to ensure compliance with the above directions.



37. The present petition stands disposed of with the above directions. The pending application also stands disposed of.

38. Let a compliance affidavit be filed by the MCD within 10 weeks. List for reporting compliance on 18.10.2024.

AUGUST 09, 2024
r, at, dn

SACHIN DATTA, J