

\$~48

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

+ W.P.(C) 11129/2022

MANOJ KUMAR

..... Petitioner

Through: Mr. M. S. Jadhav, Advocate

versus

THE COMMISSIONER OF MCD & ORS.

..... Respondents

Through: Mr. Ajjay Arorra, Mr. Kapil Datta,  
Advocates for MCD

Mr. Sandeep Mahapatra, CGSC and  
Mr. Hilaf Haider, Government  
Pleader for UoI

Ms. Sangeet Bhagti, Standing  
Counsel for DJB with Ms. Malvi  
Balyan, Advocate for Respondent  
No.4

Mr. Sunil Fernandes, Standing  
Counsel for BSES-RPL with Mr.  
Shubham Sharma, Ms. Muskan  
Surana, Advocates for Respondent  
No.5

Mr. Sameer Vashisht, ASC Civil  
GNCTD with Ms. Sanjana Nangia,  
Advocate for Respondent No.6

Inspector Bharat Lal, PS Hauz Khas.  
Mr. G. S. Oberoi, Advocate for the  
owner of the property

**CORAM:  
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER  
27.07.2022**

%

1. The instant PIL arises out of an illegal and unauthorized construction/encroachment on the Government land in prohibited area, i.e. property No.105, Masjid Moth Village, New Delhi 110049 (*hereinafter referred to as 'the property in question'*) which is in the vicinity of a protected historical monument, i.e. Moth ki Masjid. It is stated in the PIL that without obtaining any NOC from the Archaeological Survey of India (*hereinafter referred to as 'the ASI'*), and without there being any sanctioned site plan from Building Department of Municipal Corporation of Delhi (*hereinafter referred to as 'the MCD'*) some people have started raising illegal construction in the property in question.

2. The Petitioner has prayed for the following reliefs:

*"1. To pass an order get demolished the illegal construction and unauthorised encroachment on government land in the prohibited area at the property bearing No. 105, Masjid Moth Village, New Delhi-110049 adjacent to the Protected Historical Monuments without taking permission/ NOC from the relevant authorities and the owners/ builders caused damaged and destroyed the beauty and safety of the Moth Ki Masjid and it materially affects the right of safety and security to the general public so the illegal construction and unauthorised encroachment needs to be get removed/ demolished with immediate effect in the welfare of public at large and in the interest of justice*

*2. To pass an order to initiate disciplinary/ vigilance enquiry to punish the corrupt officials of the respondents who have nexus with the encroachers/builders just to make illegal benefit which is prima facie dereliction of duty and involvement in wrongdoings criminal activities who failed to take action against the builders for illegal constructions and encroachment in the interest of justice.*

*3. To pass an order for disconnection of electricity supply and water supply as it is being misused by the unauthorised encroachers in illegal constructions without taking permission from relevant authorities in the interest of justice.*

*4. To pass an order against the officials of STF and the police officials of Hauz Khas, Police Station who failed to take action against the encroachers just to make personal profit in the interest of justice.*

*5. To pass any other order (s) or direction (s) as the Hon'ble Court may deem fit and proper in the facts and circumstances of the matter in favour of the petitioner in the interest of justice.”*

3. Learned Counsel appearing for MCD on advance notice submits that the alleged construction/encroachment was brought to the notice of MCD, pursuant to which action has been taken by the MCD. He submits that notice for sealing the property in question has been issued by the MCD on 13.07.2022 and they will ensure that no illegal/unauthorized construction takes place on the property in question.

4. Learned Counsel appearing for ASI on advance notice submits that no construction will be permitted adjacent to the protected historical monument and if there is any ongoing construction near the protected historical

monument, the same will be removed in accordance with law.

5. At this stage, Mr. G. S. Oberoi, learned Counsel appearing for the owner of the property in question, submits that the owner of the property in question has not been made a party to the instant petition. He further submits that only repair work is being carried out on the property in question for which due permission from MCD has already been taken.

6. The contention of the learned Counsel for the owner of the property in question has been opposed by the Learned Counsel appearing for the MCD who submits that the owner of the property was given permission only to carryout repair work/renovation on the property in question and not for demolition and re-construction.

7. In the considered opinion of this Court, the owner of the property in question is certainly a necessary party to the instant Writ Petition. The Petitioner is, therefore, directed to implead the owner of the property in question, by filing an appropriate application.

8. The MCD is directed to ensure that no construction/encroachment takes place in and around the protected historical monument. MCD is also directed to continue with the proceedings in respect of its Notice dated 13.07.2022. It is made clear that the pendency of the instant Writ Petition will not come in the way of MCD as well as ASI in proceeding ahead against the said illegal construction/encroachment. It is also made clear that the MCD and the ASI are free to take steps in respect of other constructions/encroachments in and around the protected historical monument, and to file a Status Report before the next date of hearing.

9. Learned ASC appearing for the GNCTD has very fairly stated that all possible logistical help including Police help will be provided to the MCD

and the ASI in taking steps against illegal constructions/repairs/encroachments in and around the protected historical monument.

10. List on 25.11.2022.

**SATISH CHANDRA SHARMA, CJ**

**SUBRAMONIUM PRASAD, J**

**JULY 27, 2022**

*Rahul*