



2025:DHC:11054



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 06<sup>th</sup> December, 2025**+ **W.P. (C) 700/2025 & CM APPL. 77189/2025****ATUL SHARMA****.....Petitioner**

Through: Mr. Sufian Siddique, Adv. with Mr.  
Rakesh Bhugra and Mr. Md.  
Niyazuddin, Advs.

**versus****MUNICIPAL CORPORATION OF DELHI & ANR.....Respondents**

Through: Mr. Manu Chaturvedi, SC with Mr.  
Ahmed Jamal Siddiqui, Mr. Kshitiz  
Kishor Rai and Mr. Madhav Tripathi,  
Advs. for MCD alongwith Anil  
Kumar, AE and Jasbir Singh, JE  
Mr. Vinod Dahiya, Mr. Chirag Singal  
and Mr. Bharat Bagga, Advs. for R-2

**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J. (ORAL):**

1. The present writ petition has been filed seeking directions to respondent no. 1, i.e., Municipal Corporation of Delhi ("MCD"), to recall the impugned order dated 06<sup>th</sup> January, 2025, passed under Section 343(1) of the Delhi Municipal Corporation Act, 1957 ("DMC Act"), whereby, the respondent no. 1 had directed that all construction beyond the Sanctioned Building Plan in the property in question, i.e., *Plot No. J-28, Udyog Nagar, Rohtak Road, New Delhi – 110041*, is not amenable to any protection from any punitive action under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 ("Delhi Special Laws"), and is liable



to be demolished.

2. Learned counsel for the petitioner submits that the petitioner is in lawful possession and the operator of the factory situated in the property in question and that the said property has been operating since the year 1995, after procuring all the necessary licenses from the competent authorities.

3. It is submitted that the property in question is an industrial plot admeasuring 800 sq. mts., out of which, the deceased petitioner, now represented through his son, i.e., Mr. Animesh Sharma, is in possession of 200 sq. mts. of the factory premises and 103 sq. mts. of the mezzanine floor and that the petitioner is a statutorily protected tenant.

4. It is further submitted that there was an earlier round of proceedings between the parties herein, in respect of the unauthorised construction in the property in question, wherein, on 01<sup>st</sup> November, 2021, a notice was sent by the Assistant Engineer, (BLDG – II), Rohini Zone, MCD, to the petitioner stating that the property in question was old and may require retrofitting to make it seismic compliant. Subsequently, on 12<sup>th</sup> August, 2022, a show cause notice was jointly served to the petitioner and his father, and thereafter, a notice dated 14<sup>th</sup> September, 2022 was affixed on the outside wall of the property in question.

5. In light of the foregoing, the petitioner herein, filed a writ petition against the aforesaid notices, bearing W.P.(C) No. 13502/2022, titled as “*Atul Sharma Versus Municipal Corporation of Delhi & Anr.*”, wherein, this Court *vide* order dated 16<sup>th</sup> September, 2022, directed the MCD that the proceedings in pursuance of the show cause notices, shall be conducted after giving personal hearing to the petitioner.

6. Thereafter, the MCD issued a demolition order dated 19<sup>th</sup> October,



2022, thereby, directing demolition of a tin shed alongside the mumty at the terrace and a toilet at the front setback of the ground floor. Aggrieved by the said demolition order, the petitioner approached the Appellate Tribunal MCD (“ATMCD”) in *Appeal No. 286/2022*. However, the said appeal was dismissed for non-prosecution, as petitioner himself had removed the unauthorised construction and chose not to pursue the appeal.

7. Since there was a dispute between the deceased petitioner, i.e., Atul Sharma and his father, i.e., Shri Ramesh Chandra Sharma, the father of deceased petitioner sold the property to respondent no. 2, i.e., Deepak Aggarwal in March, 2023.

8. Learned counsel for the petitioner further submits that on 10<sup>th</sup> October, 2024, a group of 30 people, including, officials of the MCD, also visited the factory premises without any prior notice or demolition order, and attempted to carry out demolition activities. Moreover, no inspection was carried out by the MCD and rather the officials of the MCD had come with all the instruments for the purposes of taking demolition action, without any show cause notice or a demolition order. However, after showing all the relevant documents, the said officials left the premises without carrying out any demolition in the property in question.

9. It is further submitted that the MCD had issued another show cause notice dated 05<sup>th</sup> November, 2024, whereby, the MCD booked the entire property in question including the petitioner’s portion of the property. Aggrieved by the same, the petitioner herein had preferred another writ petition, i.e., *W.P.(C) No. 15652/2024*, titled as “*Atul Sharma Versus Municipal Corporation of Delhi*”, which came to be disposed of by this Court *vide* order dated 11<sup>th</sup> November, 2024, by granting the liberty to the



petitioner to file a reply thereto and by directing the MCD to take further action only after considering the reply submitted by the petitioner.

10. The petitioner, therefore, in response to said show cause notice dated 05<sup>th</sup> November, 2024, submitted a reply dated 14<sup>th</sup> November, 2024, along with requisite documents, clearly detailing that the judgment dated 13<sup>th</sup> November, 2024 passed by the Supreme Court in the case of ***In Re : Directions in the Matter of Demolition of Structures, 2024 SCC OnLine SC 3291***, needs to be complied with.

11. Consequent thereupon, after affording personal hearings to the petitioner, the MCD passed the impugned demolition order dated 06<sup>th</sup> January, 2025.

12. Learned counsel appearing for the petitioner submits that although a personal hearing was granted to the petitioner before passing the impugned order, however, various material submissions and contentions, as raised by the petitioner in the detailed reply and during the time of personal hearing, were not taken into account by the MCD. Further, the impugned order dated 06<sup>th</sup> January, 2025 passed by the MCD, is conspicuously silent on various pivotal aspects.

13. Learned counsel appearing for the petitioner further submits that the impugned order dated 06<sup>th</sup> January, 2025, has been passed by the MCD against the mandatory directives of the Supreme Court, passed in the case of ***In Re : Directions in the Matter of Demolition of Structures, 2024 SCC OnLine SC 3291***.

14. Thus, it is the case of the petitioner that the impugned order dated 06<sup>th</sup> January, 2025, i.e., the final demolition order passed by the MCD, is bad in law and against the tenor of the judgment passed by the Supreme Court, on



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account of which, the petitioner herein has approached this Court.

15. Learned counsel for the petitioner submits that since the MCD sought to take demolition action, a fresh application being *CM. APPL. 77189/2025*, has also been filed by the petitioner before this Court to direct the MCD to desist from carrying out any demolition activity in respect of the property in question.

16. It is further submitted that part-demolition action has been taken by the MCD, yesterday, i.e., 05<sup>th</sup> December, 2025, wherein, a brick guardroom and the toilet were demolished by the MCD. The photographs, as attached in the application being *CM. APPL. 77189/2025*, showcasing the said demolition action undertaken by the MCD, are reproduced as under:





17. Learned counsel for the petitioner submits that after the removal of earlier unauthorised construction by the petitioner himself, no fresh construction has been carried out by the petitioner. Rather, respondent no. 2, who is in possession of another part of the property in question, has carried out certain unauthorised construction in the front yard, on account of which, now the whole property has come to be booked by the MCD.

18. He further submits that the petitioner herein has not carried out any fresh construction and the property in possession of the petitioner exists for a very long time, since as mentioned aforesaid, the factory is being run since



the year 1995.

19. Learned counsel for the petitioner further submits that the action has been taken by the MCD at the behest of the new purchaser, i.e., respondent no. 2.

20. Learned counsel for the MCD vehemently denies the aforesaid submissions. He draws the attention of this Court to the order dated 16<sup>th</sup> September, 2022, passed in *W.P.(C) 13502/2022*, titled as “*Atul Sharma Versus Municipal Corporation of Delhi & Anr.*”, and submits that, as per the petitioner’s own case, the earlier show cause notices were issued in the year 2022, while the respondent no. 2 has purchased the property only in March, 2023. Therefore, it is wrong to suggest that the action was taken by the MCD at the behest of any party.

21. Learned counsel appearing for the MCD also vehemently denies the submission of the petitioner that the MCD sought to carry out any demolition action on 10<sup>th</sup> October, 2024. He submits that the MCD fixes the demolition programmes in various properties, in a particular area. Therefore, the staff of the MCD carried the instruments for demolition, since there was demolition action fixed in the area in question. It is further pointed out that no demolition action was taken by the MCD on the property of the petitioner on 10<sup>th</sup> October, 2024.

22. Learned counsel appearing for the MCD also draws the attention of this Court to the order dated 23<sup>rd</sup> October, 2024, passed in *W.P.(C)14568/2024*, titled as “*Atul Sharma Versus Municipal Corporation of Delhi & Anr.*”, wherein, it has been clearly recorded that the MCD shall carry out a fresh inspection of the property on 25<sup>th</sup> October, 2024, and issue a show cause notice, in case any unauthorised construction is found, and



thereafter, pass a requisite order. By relying upon the said order, learned counsel for the MCD also submits that the petitioner had been directed to approach the ATMCD in case of any grievance.

23. Learned counsel for the MCD also relies upon order dated 11<sup>th</sup> November, 2024 passed in *W.P.(C) 15652/2024*, to submit that petitioner herein was directed to seek appellate remedies, in accordance with law. He, thus, submits that present petition would not be maintainable.

24. Having heard learned counsel for the parties, this Court notes that there have been multiple rounds of litigation by the petitioner previously. Earlier, when MCD issued show cause notices dated 12<sup>th</sup> August, 2022 and 13<sup>th</sup> September, 2022 with respect to unauthorised construction in the property in question, the writ petition being *W.P.(C) 13502/2022*, titled as *Atul Sharma Versus Municipal Corporation of Delhi and Another*, came to be filed challenging the said Show Cause Notices. The said petition was disposed of with directions that proceedings in pursuance to the said notices shall be conducted after giving personal hearing to the petitioner. The said writ petition was disposed of *vide* order dated 16<sup>th</sup> September, 2022, in the following manner:

“1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner is aggrieved by the Show Cause Notices dated 12.08.2022 and 13.09.2022 stated to be issued on behalf of Corporation/respondent No.1 under Sections 344(1) and 345A of the DMC Act respectively with respect to subject property i.e., J-28, Udyog Nagar, Industrial Area, New Rohtak Road, New Delhi.

2. Learned counsel for the petitioner while referring to the notice dated 01.11.2021 issued by respondent No.1 submits that construction in the subject property is old and stands protected.

3. Issue notice.





4. Ms. Saroj Bidawat, learned Standing Counsel for respondent No.1/Corporation accepts notice and submits that the impugned show cause notices have been issued as certain complaints have been received with respect to unauthorised construction having been carried out at the subject property. She submits that in pursuance to the show cause notices though the petitioner filed a reply but failed to provide the sanctioned building plan. She further submits that so far only show cause notices have been issued and no orders have been passed.

5. At this stage, learned counsel for the petitioner, on instructions, submits that petitioner or his authorised representative shall appear before the Corporation/respondent No.1 on 28.09.2022 at 2:00 pm with all the documents showing proof of construction.

6. In view of the above, present petition is disposed of with the directions to Corporation/respondent No.1 that the proceedings in pursuance to the impugned aforesaid notices shall be conducted after giving personal hearing to the petitioner. It is further directed that in case any order for sealing or demolition is passed, the same be not given effect to for a period of two weeks to enable the petitioner to seek appropriate remedy in accordance with law. Miscellaneous applications are disposed of as infructuous."

(Emphasis Supplied)

25. Pursuant thereto, a demolition order dated 19<sup>th</sup> October, 2022, was issued by the MCD directing demolition of a tin shed alongside mumty at the terrace and a toilet in the front set back at the ground floor of the property. The said order was challenged by the petitioner before the ATMCD. However, the appeal was dismissed for non-prosecution, as according to the petitioner, he had removed the unauthorised construction himself.

26. Since there was dispute between the deceased petitioner, i.e., Atul Sharma and his father, i.e., Ramesh Chandra Sharma, the father of the deceased petitioner sold the property to respondent no. 2. Thus, the property was purchased by respondent no. 2, in March, 2023.

27. Furthermore, upon inspection of the property by the MCD on 10<sup>th</sup>



October, 2024, certain ongoing construction was found in the said property. Thus, MCD issued a work stop notice to the concerned Station House Officer (“SHO”) on 21<sup>st</sup> October, 2024.

28. This led to another writ, *W.P.(C) 14568/2024*, being filed by the petitioner, which was disposed of *vide* order dated 23<sup>rd</sup> October, 2024. In the said order, this Court clearly recorded that respondent no. 2 herein, claimed to have purchased the property, whereas, the petitioner claimed possession of part of the property which is being used as a factory, including the following:

- I. One small room and front yard passage on the front side, which included one small toilet,
- II. A tin shed area at the backside of the ground floor,
- III. The entire mezzanine floor, which comprises one hall, five rooms, and a passage, and
- IV. The entire terrace area, including an open space, one tin shed room, and a mumty above the staircase.

29. Further, the aforesaid order dated 23<sup>rd</sup> October, 2024, recorded the undertaking of the petitioner and respondent no. 2 that they will carry out the construction, only after obtaining sanction from the MCD, in accordance with law. The said order dated 23<sup>rd</sup> October, 2024, passed in *W.P.(C) 14568/2024*, reads as under:

**“1. The petitioner has approached this Court under Article 226 of the Constitution for a direction against the Municipal Corporation of Delhi [“MCD”] from taking any coercive action in respect of his portion of factory premises located at plot No. J-28, Udyog Nagar, Rohtak Road, New Delhi-110041. The petitioner also seeks a direction that the MCD take action in respect of alleged illegal construction in the front portion of the premises.”**



2. The petitioner claims to be in possession of part of the subject property which is being used as a factory, including the following:

- “i) One small room and front yard passage on the front side, which included one small toilet,
- ii) A tin shed area at the backside of the ground floor,
- iii) The entire mezzanine floor, which comprises one hall, five rooms, and a passage, and
- iv) The entire terrace area, including an open space, one tin shed room, and a mumty above the staircase.”

3. **It appears that there were some disputes between the petitioner and his father, and respondent No.2 claims to have purchased the entire factory premises from the father of the petitioner. According to the petitioner, this sale was in violation of an order of status-quo passed in a civil suit between the petitioner and his father.**

4. There was an earlier round of proceedings in respect of unauthorised construction in the subject property, which resulted in a demolition order dated 19.10.2022, issued by MCD, directing demolition of a tin shed alongside mumty at the terrace and a toilet in the front setback at ground floor of the property. The order was challenged before the Appellate Tribunal for MCD [“ATMCD”], but the appeal was dismissed for non-prosecution as, according to the petitioner, he had removed the unauthorised construction himself.

5. **At this stage, Mr. Ajjay Aroraa, learned counsel for the MCD who appears on advance notice, states that upon inspection it was found that construction was ongoing at the premises, for which no permission from MCD had been taken. He states that MCD has, therefore, issued a stop work notice to the Station House Officer [“SHO”] on 21.10.2024. As far as this aspect is concerned, Mr. M. Sufian Siddiqui, learned counsel for the petitioner, and Mr. Nitesh Gupta, learned counsel for respondent No.2, who also appears on advance notice, states that neither of them has engaged in any construction activity at the premises, and that they will carry out any construction only after obtaining the sanction of MCD in accordance with law. The petitioner and respondent No.2 are bound down to this statement. They will both file affidavits of undertaking before the Court to this effect within three days from today.**

6. **As far as the allegation of demolition of unauthorised construction on the petitioner’s part of the premises is concerned, Mr. Aroraa states that action for demolition will be taken only after inspection of the property and issuance of a show cause notice to the owners/occupants of the property.**

7. **There is a suit for possession, which has been filed by respondent No.2 and remains pending in the District Court, Tis Hazari. In order**



obviate any internecine dispute between the petitioner and respondent No.2, vis-a-vis the proposed action by MCD, it is directed that MCD will inspect the property on 25.10.2024 at 11:00 AM. In the event any unauthorised construction is found, MCD will issue a show cause notice addressed both to the petitioner and respondent No.2 as well as any other owners/occupants of the property. The show cause notice will be served upon the petitioner and respondent No.2 through their counsel in these proceedings. After considering the replies, if any, received from any of the owners/occupants of the property, including the petitioner and respondent No.2, MCD will take such further action as available to it in law. In the event a demolition order is passed, that will also be served upon both the petitioner and respondent No.2 through their counsel and any other owners/occupants of the property. A demolition order may be implemented after a passage of 10 days from service thereof to enable any aggrieved party to take their appellate remedies before the ATMCD.

8. In the event construction is found to be ongoing, MCD may take the assistance of the concerned SHO to ensure that no further construction takes place.

9. Subject to the above, MCD is at liberty to take action in accordance with law after following the due procedure, without prejudice to the rights and contentions of the petitioner and respondent No.2 in the pending civil suit.

10. The petition is disposed of with these directions. Pending applications too stands disposed of.”

(Emphasis Supplied)

30. By the aforesaid order dated 23<sup>rd</sup> October, 2024 in W.P.(C) 14568/2024, the Court directed inspection of the property by MCD on 25<sup>th</sup> October, 2024 and to take requisite action accordingly. Further, the parties were granted liberty to approach ATMCD, if aggrieved by any order of the MCD.

31. Pursuant to the aforesaid order dated 23<sup>rd</sup> October, 2024, an inspection was carried out by the MCD on 25<sup>th</sup> October, 2024, which resulted in issuance of a show cause notice dated 05<sup>th</sup> November, 2024. The said show cause notice dated 05<sup>th</sup> November, 2024 was challenged by the petitioner in



W.P.(C) 15652/2024, titled as “Atul Sharma Versus Municipal Corporation of Delhi & Anr.”. Consequently, the order dated 11<sup>th</sup> November, 2024 came to be passed in the said writ petition, which is reproduced as under:

**“1. The petitioner has filed this writ petition challenging a show cause notice dated 05.11.2024, by which respondent no. 1 has directed the owners/occupants of a factory premises, i.e. J-28, Udyog Nagar, Rohtak Road, Paschim Vihar, New Delhi - 110041, to show cause as to why action should not be taken in respect of unauthorised construction in the property as follows:**

*“U/C in shape of Basement G.F. Mezanine floor and Mumty, two toilet one guard room & Truss structure from front set back to side set back & rear set back along with tin shade.”*

*2. Learned counsel for the petitioner draws my attention to an order dated 23.10.2024 passed in W.P. (C) 14568/2024, which also arose out of action proposed by the Municipal Corporation of Delhi [“MCD”] in the said property. The order records the submissions of MCD that unauthorised construction was found to be ongoing, as a result of which a stop work notice was issued to the concerned Station House Officer. The submission of learned counsel for the petitioner and for respondent no. 2 herein was noted, that they are not engaged in any construction activities at all, and will not carry out any construction without due permission of MCD. The Court also noticed the pendency of civil proceedings between the petitioner and respondent no. 2.*

*3. MCD was directed to inspect the property on 25.10.2024, and to issue show cause notices to the petitioner, respondent no. 2 as well as any other owners/occupants of the premises in the event of any unauthorized construction. The operative portion of the said order reads as follows:*

*“7. There is a suit for possession, which has been filed by respondent No.2 and remains pending in the District Court, Tis Hazari. In order obviate any internecine dispute between the petitioner and respondent No.2, vis-a-vis the proposed action by MCD, it is directed that MCD will inspect the property on 25.10.2024 at 11:00 AM. In the event any unauthorized construction is found, MCD will issue a show cause notice addressed both to the petitioner and respondent No.2 as well as any other owners/occupants of the property. The show cause notice will be served upon the petitioner and respondent No.2*



through their counsel in these proceedings. After considering the replies, if any, received from any of the owners/occupants of the property, including the petitioner and respondent No.2, MCD will take such further action as available to it in law. In the event a demolition order is passed, that will also be served upon both the petitioner and respondent No.2 through their counsel and any other owners/occupants of the property. A demolition order may be implemented after a passage of 10 days from service thereof to enable any aggrieved party to take their appellate remedies before the ATMCD.

8. In the event construction is found to be ongoing, MCD may take the assistance of the concerned SHO to ensure that no further construction takes place.

9. Subject to the above, MCD is at liberty to take action in accordance with law after following the due procedure, without prejudice to the rights and contentions of the petitioner and respondent No.2 in the pending civil suit.”

4. The petitioner has approached this Court at an intermediate stage, when the MCD has issued a show-cause notice. The contention of learned counsel for the petitioner is that proceedings were earlier commenced in respect of unauthorised construction on the premises, but were limited to certain elements of the alleged unauthorised construction. It is concluded that this aspect has been overlooked in the impugned show cause notice.

5. Having regard to the aforesaid facts, particularly the mechanism laid down in the order dated 23.10.2024, I am of the view that it is not appropriate to exercise jurisdiction under Article 226 of the Constitution of India at this stage. The aforesaid order already grants the owners/occupants of the property, including the petitioner herein, an opportunity to respond to the show cause notice and directs MCD to take further action only after considering the reply submitted. The parties have also been protected from coercive proceedings pursuant to any demolition order for a period of ten days after service thereof, to enable them to take appellate remedies if necessary.

6. I am of the view that these directions adequately protect the petitioner. The petitioner can respond to the show cause notice, giving the background of the previous proceedings initiated by MCD, and MCD will take a decision thereafter.



7. *The writ petition along with pending applications is disposed of, with the aforesaid observations.”*

*(Emphasis Supplied)*

32. A perusal of the aforesaid order shows that this Court reiterated its directions as issued in the earlier order dated 23<sup>rd</sup> October, 2024, thereby directing the parties to file reply to the show cause notice and protected the parties from any coercive proceedings pursuant to any demolition order, for a period of ten days to take appellate remedies, if necessary. Thus, the parties therein were granted limited protection so that they could avail their appellate remedies, if necessary, i.e., filing an appeal before the ATMCD.

33. The petitioner, subsequently, filed an appeal being *LPA No. 1159/2024*, wherein, the order dated 27<sup>th</sup> November, 2024 came to be passed, which is reproduced as under:

**“CM APPL. 69269/2024 (Ex.)**

*Allowed, subject to all just exceptions.*

*The application stands disposed of.*

**LPA 1159/2024 & CM APPL. 69268/2024 (Addl. Document) & CM APPL. 69270/2024 (Long Synopsis & List of Dates)**

**1. This appeal is directed against the judgment rendered by the learned Single Judge on 11 November 2024 and in terms of which the writ petition preferred by the appellant has come to be disposed of with directions to the respondents to conclude the Show Cause Notice [“SCN”] proceedings which had been initiated.**

2. The principal grievance of the writ petitioner/appellant before us is a failure on the part of the learned Single Judge to deal with prayer (c) in the W.P.(C) 15652/2024 and which reads thus: -

*“(c) Issue a writ of Mandamus or any other analogous Writ, Order, or Direction commanding the Respondent No.1 (MCD) to forthwith initiate a time bound, fair and impartial inquiry under the direct supervision of the MCD Commissioner into the unlawful and inscrutable conduct of the MCD officials involved in the attempted demolition of the Appellant’s factory premises on 10.10.2024, including their active collusion with respondent no.2 herein and issuance of impugned Show Cause Notice dated: 05.11.2024 being a gross abuse of the process of law,*



*issued in blatant disregard to the prior orders dated: 19.10.2022 passed by the AE, MCD and 25.10.2022 passed by the DC, MCD, in the previous round of litigation apropos the property in question, and consequently direct that the final inquiry report along with the action taken report be duly filed before this Hon'ble Court for judicial scrutiny and appropriate orders.”*

**3. In our considered opinion, the learned Single Judge has correctly desisted from retaining the writ petition for the purposes of considering relief (c) at this stage especially when the petitioner was being relegated to participate in the SCN proceedings and for that matter being decided in the first instance. It would thus be open to the appellant to canvass all issues emanating from relief (c) at an appropriate juncture.**

*4. We, consequently find no ground to interfere with the judgment handed down by the learned Judge. We only observe that the reliefs that were claimed in and stood comprised in clause (c) of the reliefs shall be open to be addressed subject to the outcome of the SCN proceedings.*

*5. The appeal shall stand disposed of on the aforesaid terms.”*

*(Emphasis Supplied)*

34. Accordingly, proceedings under the aforesaid show cause notice dated 05<sup>th</sup> November, 2024 culminated in a fresh demolition order dated 06<sup>th</sup> January, 2025, which forms the subject matter of the present writ petition. The relevant paragraphs of the said demolition order, read as under:

“xxx xxx xxx

**Accordingly, in exercise of powers u/s 491 of the DMC Act, 1957 it is hereby directed that since, the owner/occupier has further carried out fresh new construction at the subject property and no documents have been submitted by Sh. Deepak Aggarwal (applicant No.1) & sh. Atul Sharma (applicant No.2) which could establish existence of toilet block & store room/guard room in front set back prior to year 2007, therefore, the protection accorded to the subject property gets null & void and the same is actionable as per provision of DMC Act, all the unauthorized construction beyond the sanctioned building plan/completion certificate is not amenable for protection from any punitive action under the provision Delhi Laws (Special Provision Act). The owner/ occupier is directed to remove, the details is as under:-**





*“The unauthorized construction at G.F. consist of two small toilet block and one guard room/store room (newly constructed) in the front court open, a truss structure pully mechanism to move heavy load /materials (from one place to another) starting from front open court through side open, till rear open court. The rear open court covered by truss & tin shade, the gate at the rear open to assess the service lane was also found dosed by brick wall, however, the work shop truss structure which was shown in sanctioned building plan was found replaced by RCC slab” within a period of 10 days vide Hon'ble High Court order passed in WPC No.14568/2024 dt.23.10.2024 failing which MCD will take action against the same at the cost to be paid by the owner/occupier of the subject property.*

*It is ordered accordingly.”*

*(Emphasis Supplied)*

35. A perusal of the aforesaid impugned order shows that it is the stand of the MCD that there exists fresh unauthorised construction that has been booked by the MCD and against which appropriate action has to be taken. Whereas, it is the stand of the petitioner that the fresh unauthorised construction has been carried out only by respondent no. 2, and further, no unauthorised construction has been carried out by the petitioner, including, the truss structure pulley mechanism to move heavy load/materials, which as per the petitioner, has been in existence since the year 1995.

36. This Court records the submission made by the learned counsel appearing for the petitioner that as the factory of the petitioner has been running since the year 1995, thus, the truss structure pulley mechanism to move heavy load/materials, has been in existence since the commencement of the factory premises, as the factory could not have run without the said pulley mechanism.

37. Clearly, there are disputed questions before this Court as to the extent of the new unauthorised construction. This Court will certainly not go into



all these disputed questions with regard to the extent of fresh unauthorised construction in the property in question.

38. This Court also takes note of the fact that there are civil disputes pending between the petitioner and respondent no. 2, since a suit filed by the petitioner herein, being *CS(COMM) 496/2025*, titled as “*Animesh Sharma Versus Deepak Aggarwal & Anr.*” is pending before this Court.

39. This Court takes note of the submission made by the learned counsel appearing for the petitioner that the petitioner has approached this Court only on account of the judgment passed by the Supreme Court, since the MCD has not complied with the various directions passed by the Supreme Court in the case of *In Re : Directions in the Matter of Demolition of Structures, 2024 SCC OnLine SC 3291*. The relevant portion of the said judgment passed by the Supreme Court, as relied by the petitioner, reads as under:

“xxx xxx xxx

#### **IX. DIRECTIONS**

**90.** *In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.*

**91.** *At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.*



## A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

- a. the nature of the unauthorized construction.
- b. the details of the specific violation and the grounds of demolition.
- c. a list of documents that the notice is required to furnish along with his reply.
- d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

## B. PERSONAL HEARING

i. The designated authority shall give an opportunity of personal hearing to the person concerned.

ii. The minutes of such a hearing shall also be recorded.

## C. FINAL ORDER

i. Upon hearing, the designated authority shall pass a final order.

ii. The final order shall contain:



- a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;
- b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons thereof;
- c. if the designated authority finds that only part of the construction is unauthorized/non-compoundable, then the details thereof.
- d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

**D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.**

- i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.
- ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.
- iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

**E. PROCEEDINGS OF DEMOLITION**

- i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and civil personnel that participated in the demolition process. Video recording to be duly preserved.
- ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

92. Needless to state that the authorities hereinafter shall strictly comply with the aforesaid directions issued by us.

xxx xxx xxx”

(Emphasis Supplied)



40. This Court also notes that learned counsel appearing for the petitioner relied upon the table provided in paragraph 2 of the present petition, to substantiate his contention and to show all the non-compliances of the mandatory directive provided by the Supreme Court, while passing of the impugned order by the MCD. The said table, as provided in the present writ petition, is reproduced as under:

<b>HON'BLE SUPREME COURT'S DIRECTIONS REPRODUCED IN VERBATIM</b>	<b>WHETHER COMPLIED WITH OR NOT BY MCD WHILST PASSING THE IMPUGNED ORDER</b>
<b>b. The contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;</b>	<b><u>NOT COMPLIED WITH-</u></b> The petitioner, in the opening paragraph of his reply to the Show Cause Notice, unequivocally emphasized that all future actions by the MCD must strictly comply with the binding directives of the Hon'ble Supreme Court's judgment dated 13.11.2024 in W.P. (C) No. 295/2022, In Re: Directions in the Matter of Demolition of Structures.  However, staggeringly, the petitioner's contentions in his detailed reply, has been completely ignored. The impugned order is conspicuously silent on this pivotal aspect, suggesting that Respondent No. 1 (MCD) either completely ignored the petitioner's reply or deliberately acted in willful disobedience of the Supreme Court's directives by brazenly disregarding them with impunity.
<b>b. As to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;</b>	<b><u>NOT COMPLIED WITH-</u></b> The impugned order lacks any mention of compoundability, leaving the critical issue unexamined and without reasoning, blatantly violating the Supreme Court's directive.
<b>c. If the designated authority finds that only part of the construction is</b>	<b><u>NOT COMPLIED WITH-</u></b> The impugned order makes absolutely no effort to identify if only a portion of the construction is non-



<b>unauthorized/non-compoundable, then the details thereof.</b>	<b>compoundable, further evidencing a mechanical and arbitrary approach thereby brazenly violating the Supreme Court's mandatory directives.</b>
<b>e. As to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.</b>	<b><u>NOT COMPLIED WITH</u>- The MCD in the impugned order has completely omitted any justification for why demolition is the only available recourse making it a gross violation of the Apex Court's directives.</b>

41. Clearly, all these issues with regard to various non-compliances by the MCD at the time of passing the impugned order dated 06<sup>th</sup> January, 2025, can be raised before the ATMCD and decided in the said forum.

42. On the basis of the documents on record, it is evident that the Court has not been presented with any cogent documents as regards the extent of the fresh unauthorised construction, except the impugned order dated 06<sup>th</sup> January, 2025, passed by the MCD.

43. It is not for this Court to assess as to whether any construction is new or old. Thus, it is for the MCD, as well as the petitioner, to establish as to whether such construction is old or new. Accordingly, it is not possible for this Court to express any opinion on the merits of the parties, which entail disputed questions.

44. This Court notes that there is already an alternate remedy available to the petitioner of approaching the ATMCD. This liberty has also been granted to the petitioner, on two occasions, in the earlier round of litigations as well.

45. Accordingly, it is directed that the petitioner shall approach the



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ATMCD and file an appeal thereto. For this purpose, the petitioner is granted time of four weeks.

46. Let appeal be filed by the petitioner before the ATMCD, within a period of four weeks, from today.

47. It is directed that till the appeal filed by the petitioner is taken up for hearing and considered by the ATMCD, no coercive action shall be taken against the premises of the petitioner.

48. It is clarified that this Court has not expressed any opinion on the merits of the case.

49. Rights and contentions of the parties are kept open.

50. Accordingly, with the aforesaid directions, the writ petition, along with the pending applications, stands disposed of.

51. The next date of 04<sup>th</sup> February, 2026 stands cancelled.

**MINI PUSHKARNA, J**

**DECEMBER 6, 2025**

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