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

% **Date of decision: 21st April, 2025**

+ W.P.(C) 8347/2021 & CM APPL. 25858/2021, CM APPL. 42400/2021, CM APPL. 12139/2022, CM APPL. 18216/2022, CM APPL. 35857/2022, CM APPL. 43928/2022, CM APPL. 61979/2024

PARVEEN KUMARPetitioner

Through: Petitioner in person
M: 9868013891

versus

DELHI CANTONMENT BOARD & ANR.Respondents

Through: Mrs. Avnish Ahlawat, SC, GNCTD
with Mr. Nitesh Kumar Singh, Mr.
Ankur Mishra, Mr. Tarveen
SinghNanda, Ms. Laavanya Kaushik
and Ms. Aliza Alam, Mr. Mohnish
Sehrawat and Mr. Amitoj Chadha,
Advs. for R-1

M: 8851273736

Email: avnishahlawat@associates.in

Mr. Rakesh Kumar, CGSC with Mr.
Tanveer Singh Nand, GP and Mr.
Sunil, Adv. for UOI

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CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J (ORAL)

1. Present writ petition has been filed seeking quashing of the order dated 05th April, 2021, *vide* which, the building plan of the petitioner was rejected.



2. During the pendency of the present petition, *vide* order dated 21st December, 2021, this Court had directed the petitioner to make a representation to the respondent no.1. The respondent no.1, i.e., Delhi Cantonment Board was directed to give an opportunity of personal hearing to the petitioner and decide the representation.

3. The order dated 21st December, 2021 passed by this Court, reads as under:

“xxx xxx xxx

1. *Learned counsel appearing for the respondent - Delhi Cantonment Board submits that the representation of the petitioner with regard to mutation as well as determining the proportionate house tax is under active consideration of the competent authority.*

2. **Perusal of the petitions show that petitioner has a grievance with regard to the deferment of the sanction of the building plan and sealing of his property.**

3. **Petitioner, who appears in person, submits that the property of the petitioner falls in a market place as defined under the Cantonment Act, 2006 and the setback and building byelaws as referred to in the impugned order are not applicable. He submits that a detailed representation shall be given to the respondents, without prejudice to his rights and contentions, and respondents may consider the same.**

4. **In view of the above, petitioner is permitted to give a representation to the respondents within three days. Thereafter, respondents shall grant an opportunity of personal hearing to the petitioner and decide his representation. It is clarified that this would be without prejudice to the rights and contentions of the parties.**

5. List on 25.01.2022.

xxx xxx xxx”

(Emphasis Supplied)

4. Pursuant to the aforesaid order, a representation was submitted by the petitioner, which came to be decided *vide* order dated 28th February, 2022.



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By way of the order dated 28th February, 2022, the respondent no.1 categorically stated that the deficiencies, as mentioned earlier by the Delhi Cantonment Board, had still not been rectified/attended to. The order dated 28th February, 2022, reads as under:



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दिल्ली छावनी परिषद
Delhi Cantonment Board
सदर बाजार, दिल्ली छावनी 10 -
Sadar Bazar, Delhi Cantt - 10.
Tel. No. : 25693837, 25695450
Email : ceodelhicantt@gmail.com
Website : www.delhi.cantt.gov.in



ANNEXURE P-12

8

No. DCB/8/Engg/Blg plan/ 2021-22

Dated: 28 February, 2022

To

Sh. Praveen Kumar S/o Late Sh. Ram Kishan
WZ-167A, Village Naraina.
New Delhi- 110028.

Sub: Building application for property bearing No. CB- 97& 97A, Village Naraina, Delhi Cantt.

Reference following correspondence/ letters.

- (1) Your letter No. Nil dated 08.10.2020,
- (2) DCB letter No. DCB/8/Engg/Misc/2020-21 dated 10.11.2021
- (3) Your letter No. Nil dated 17.02.2021,
- (4) DCB letter No. DCB/8/Engg/Blg plan /2020-21 dated 05.04.2021
- (5) Your letter No. Nil dated 24.12.2021,
- (6) Your letter No. Nil dated 27.01.2021.
- (7) Your letter No. Nil dated 17.02.2022,

2. On preliminary scrutiny of the building application submitted by you vide your letter dated 24.12.2021 and revised plans dated 27.01.2021 and 17.02.2022 it is seen that following deficiencies as mentioned in this office letter No. DCB/8/Engg/Blg plan/ 2020-21 dated 05.04.2021 have still not been rectified/ attended to.

- a) The balcony shown on both sides of building is not in conformity with clause the 70 (c) of applicable building Bye- Laws.
- b) As per table 4 of the applicable Bye- Laws the ground coverage is in excess of permissible 75% value.
- c) Front setbacks has not been provided as per provision given under table 2 of applicable Bye- Laws.

3. In view of above the building application dated 17.02.2022, for premises bearing number CB 97 & 97A, Village Naraina, Delhi Cantt is returned unactioned for necessary compliance as above.

(Rakesh Rana)
Assistant Engineer
For Chief Executive Officer
Delhi Cantonment Board
(Delhi Cantt.)

Encl: Building plan in original submitted
on 17.02.2022.

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5. This Court also notes that by a separate order dated 02nd February, 2022, all the issues with regard to the deficiencies in the building plan were dealt separately in a table. The petitioner herein was accordingly directed to



submit the building plan of the subject property after removing the deficiencies as mentioned therein. The order dated 2nd February, 2022, is reproduced as under:

“xxx xxx xxx

3. *Considering the submissions made by Sh. Parveen Kumar that he will submit the key plan, Service Plan, Structural design and drawings in compliance with Clause 7(a) to (j) of the Bye-Laws, 2002 issue No. C, E, P & G does not require any indulgence. Sh. Parveen Kumar is directed to submit the same within 02 weeks from the receipt of this order.*

4. *The point-wise findings on the remaining issues are mentioned below:*

a. **Issue No. A:** *The subject property is a residential building situated in a residential area. CB Naraina is a residential area and has not been recognized as market/bazaar area by Delhi Cantonment Board. Therefore, 3 metres of FRONT set back is mandatory as per provision given under table 2 of the Bye-Laws as the size of subject property is above 60 Sq. Mt. Therefore, I am of the view that building plan is in violation and deficient in this regard.*

b. **Issue No. B:** *The subject property has 100% ground coverage which is in violation of Table 4 of the Bye-Laws, 2002. I am in agreement with the department that the stair case as per the submitted plan is covered, therefore, not exempted as per Clause 3(20)(C) of the Bye-Laws, 2002. Further, the exemption claimed by Sh. Parveen Kumar under Clause 22(3)(d) the Bye-Laws, 2002 is misplaced as the same is in respect of Floor Area Ratio and Built-up Area Calculation and not in respect of round coverage. Therefore, I am of the view that building plan is deficient in terms of ground coverage.*

c. **Issue No. D:** *The Clause 70(c) of the bye-laws, 2002 mandates that the balcony shall be permitted to project in original open place of not less than 3 meters. Whereas, in the present case, the balcony is protruding on Government Land as the said premise is already on 100% ground coverage. Further, Sh. Parveen Kumar has done unauthorized construction on the said projection which is illegal and not permissible and the same is evident from the photographs placed on record. Further, the exemption claimed under Clause 3(20)(c) is misplaced as areas covered by balcony/chajja can only be exempted from covered area if the same is within one's own area which is not the case at hand. Therefore, I am of the opinion that building plan is in violation of Clause 70 (c) of the*



Bye-Laws, 2002.

d. Issue No. H: The submissions made by Sh. Parveen Kumar that exit door is not opening immediately upon a flight of stairs is accepted. Therefore, the deficiency marked in this regard is hereby deleted.

5. Accordingly, Sh. Parveen Kumar is directed to submit the building plan of the subject property after removing the deficiencies as mentioned above. In view of the above, the representation is disposed of.

xxx xxx xxx”

6. This Court notes that earlier the petitioner had approached the Supreme Court by way of SLP(C) 8866/2020, against the order dated 25th September, 2020, passed by the Division Bench of this Court. While disposing of the petition filed by the petitioner herein *vide* order dated 25th September, 2020, the Supreme Court had directed, as follows:

“xxx xxx xxx

12 Responding to the submission of the petitioner, Ms Nidhi Mohan Parashar, counsel for DCB submits that she has instructions from the Officiating Executive Engineer that the construction which has been carried out by the petitioner is not compliant either with the FAR norms or with set-back requirements. In view of the request which has been made by the petitioner, she has stated that if the Court would so direct, the application for sanction of the building plan would be considered by the DCB in accordance with law.

13 By the petitioner having accepted the jurisdiction of DCB over the land in question, the controversy which has been initiated by him would come to an end. The petitioner is at liberty to submit a building plan for sanction to DCB. Without this Court determining whether the building plan should be sanctioned, we direct the DCB to take a decision on the building plan to be submitted, within a period of four weeks from the date of its submission. The decision of the DCB shall be taken in accordance with law and the prevailing building regulations and bye laws. In the event that the petitioner applies for sanction within a period of two weeks from today, DCB shall not give effect to its notices of demolition until it communicates its decision in regard to the building plan of which sanction is sought by the petitioner.



xxx xxx xxx”

(Emphasis Supplied)

7. Pursuant to the aforesaid directions, the petitioner had approached the Delhi Cantonment Board by filing an application for sanctioning of building plan, which was rejected *vide* order dated 05th April, 2021, challenging which, the present petition had been filed.

8. Learned counsel appearing for respondent no.1, has brought the attention of this Court to Section 340 of the Cantonments Act, 2006, which provides that any person who is aggrieved by any order described in third column of Schedule V, may appeal to the Appellate Authority specified in that behalf, in the fourth column of the said schedule.

9. Schedule V of the Cantonments Act, 2006, details the authority before whom the appeal from the executive order has to be filed. In the present case, the application of the petitioner for sanction of the building plan has been rejected. The entry with regard thereto, in Schedule V of the Cantonments Act, 2006, reads as under:

*“SCHEDULE V
APPEALS FROM EXECUTIVE ORDERS
(See section 340)*



12.	238	(a) Refusal to sanction the erection or re-erection of a building in a civil area.	¹ [(a) Principal Director (b) Director (c) Joint Director, Defence Estates, the Command]	Thirty days from service of communication.
		(b) Refusal to sanction the erection or re-erection of a building in a Cantonment (Other than a civil area).	² (a) General Officer Commanding-in-Chief, the Command; (b) Military Officer holding the appointment of Major General Operational Logistics, Headquarters Command as additional Appellate Authority to hear the pending appeals as on date of promulgation of the Act. If Major General Operational Logistics is not authorised in Headquarter Command, in that condition Major General-Incharge-Administration act as additional Appellate Authority to hear the pending appeals as on date of promulgation of the Act.]	Thirty days from service of communication.

”

10. Perusal of the aforesaid Schedule of the Cantonment Act, shows that against an order refusing to sanction the erection or re-erection of the building in a Cantonment area (other than a civil area), the Appellate Authority, before whom an appeal has to be filed, is the General Officer Commanding in Chief, the command.

11. This Court further notes that the said appeal is to be filed within a period of thirty days from the service of communication.

12. Learned counsel appearing for the respondent no.1 has also drawn the attention of this Court to another writ petition, being *W.P.(C) 1564/2018*, titled as *Ram Kishan and Others versus Union of India and Others*, filed on behalf of the present petitioner, in his capacity as an advocate, with respect to an adjoining property. She submits that in the said writ petition, the petitioner herein has raised the same issues, on the basis of which the building plan has not been sanctioned by the respondent no.1 in favour of



the petitioner herein, in the present case. Thus, she submits that the petitioner himself being aware of the law, has taken a different stand in the present petition, which is contradictory to the stand taken by the petitioner in the other writ petition, i.e., *W.P.(C) 1564/2028*.

13. Learned counsel for Delhi Cantonment Board, further submits that the petitioner ought to file an appeal before the Appellate Authority in terms of the Cantonments Act, 2006.

14. Responding to the same, learned counsel appearing for the petitioner submits that the petitioner is not raising any questions of facts, and that he is raising only questions of law.

15. Having heard learned counsel appearing for the respondent, as well as the petitioner-in-person, this Court is of the view that once a statutory appeal is provided as per the Statute, then, the petitioner ought to approach the said Authority.

16. There is no bar to the petitioner in raising legal questions or any factual questions, before the Statutory Appellate Authority.

17. Accordingly, the following directions are issued:

- i. The petitioner shall file an appeal before the appropriate Authority in terms of Section 340 of the Cantonments Act, 2006, within a period of thirty days, from today.
- ii. Upon the petitioner filing the appeal before the Appropriate Authority within a period of thirty days from today, the issue of limitation, shall not come in the way of the petitioner and the appeal of the petitioner herein, shall be decided by the Appellate Authority, on merits, in accordance with law.



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iii. The Appellate Authority is directed to consider and dispose of the appeal of the petitioner herein, expeditiously, preferably within a period of three months, from today.

18. With the aforesaid directions, the present writ petition, along with the pending applications, is accordingly, disposed of.

MINI PUSHKARNA, J

APRIL 21, 2025/kr