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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CONT.CAS(C) 206/2020**

SURINDER SINGH

.....Petitioner

Through: Mr. Nishit Kush, Mr. Siddarth Sikri,
Ms. Kirti Singh and Ms. Kaniki Sinha, Advocates.

versus

PRAMOD RAI

.....Respondent

Through: Mr. Sanjay Shandilya, Mr. Shantanu
Awasthi and Mr. Shikhar Mittal, Advocates.

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+ **W.P.(C) 1907/2020**

SURINDER SINGH

.....Petitioner

Through: Mr. Nishit Kush, Mr. Siddarth Sikri,
Ms. Kirti Singh and Ms. Kaniki Sinha, Advocates.

versus

**COMMISSIONER, NORTH DELHI MUNICIPAL CORPORATION
& ORS**

.....Respondents

Through: Mr. Akshay Verma, Addl. Standing
Counsel for MCD.

Mr. Tushar Sannu and Mr. Shivam, Advocates for
DDA.

Mr. Sanjay Shandilya, Mr. Shantanu Awasthi and
Mr. Shikhar Mittal, Advocates for R-4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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19.02.2025

W.P.(C) 1907/2020 & CM APPL. 6663/2020, 7881/2020, 9125/2020

1. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India for a direction to MCD to stop and demolish and remove the illegal encroachment carried out by Respondent No. 4 on the balcony of Flat No. 151, SFS Flats, Mukherjee Nagar, Delhi.
2. While issuing notice in the writ petition on 19.02.2020, Court had



restrained Respondent No. 4 from carrying out any further construction in the subject property with a further direction to SHO PS: Mukherjee Nagar to ensure compliance of the interim order. Thereafter, Respondent No. 4 filed an application being CM APPL. 7881/2020 seeking vacation of the order dated 19.02.2020 and also seeking permission to construct and restore the boundary wall at the rear end of his residential premises as it existed before the construction commenced to ensure safety of the occupants of the building. On this application, Court passed the following order on 27.02.2020: -

“5. In view of the above, the applicant/respondent No.4 is permitted to reconstruct and restore the boundary wall of the rear end of his residential premises as is existed prior to the alleged unauthorised construction to ensure safety of the occupants of the same building. The applicant/respondent No.4 may also install a door in the wall and a 4 ft. height railing in the open courtyard.

6. Learned senior counsel for the applicant/respondent No.4 submits that in the meantime, the applicant/respondent No.4 will take steps to approach respondent No.1/North DMC for regularisation/permission for the alleged unauthorised construction.”

3. Number of status reports have been filed by MCD from time to time. As per the status report dated 10.09.2024, subject property was inspected on 10.09.2024 and neither any construction activity nor building material was found at the site. It is stated in the report that as per initial inspection/upon comparing surrounding properties, it was noticed that the rear courtyard available at ground floor in flat No. 149 had been covered by owner/occupier of flat Nos. 149 and 150 in vertical stack at ground floor and first floor respectively and on account of this, on the second floor level, on the terrace/open area, railing has been constructed upto a length of around three meter with height of 0.96 meter and remaining length of periphery is



covered by a brick wall. In the status report dated 13.09.2024, it is stated that as per fresh site inspection no construction other than the boundary wall/railing was found on the second floor. Learned counsel for MCD, on instructions, additionally states that as of today there is no unauthorised construction on the second floor, save and except, a railing which is below 4 feet height and is on the periphery of the open space.

4. Counsel for Respondent No.4 submits that there is no unauthorised construction in the balcony by Respondent No. 4, save and except, restoration of the rear end of the house within the same dimensions as existed prior to the restraint order passed by the Court. Further, in view of the express permission granted by the Court on 27.02.2020, Respondent No. 4 has only installed a three feet railing in the open courtyard, which is for the safety of the inhabitants and on account of the availability of the space due to construction by the occupants of the ground and first floors in the building. It is assured that on behalf of Respondent No. 4 that no construction other than the railing will be carried out, save and except, with the permission of MCD and as per applicable Building Byelaws.

5. Counsel for the Petitioner submits that *albeit* it is true that no room has been constructed by Respondent No. 4 in the open courtyard area but even the railing is beyond the permissible limits and therefore, Respondent No. 4 be directed to removed the existing railing and bring it within the permissible limit which is 5.8 ft. x 4.7 ft.

6. From the respective submissions of the parties, status reports filed by MCD and photographs on record, it clearly emerges that Respondent No. 4 has only restored the rear end of the subject property and installed the railing which is upto the permissible height. Respondent No. 1 will ensure that the



railing is placed at the permissible distance as per applicable building plan/bye laws. In case of any grievance on this aspect, Respondent No. 4 may approach MCD.

7. Writ petition along with pending applications is disposed of.

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8. In view of the order passed in W.P.(C) 1907/2020, no order is required to be passed in the contempt petition and the same is accordingly disposed of.

JYOTI SINGH, J

FEBRUARY 19, 2025/shivam