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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3664/2020 & CM APPL. 15529/2020 (By R-7 for
modification/clarification of order dated 22.06.2020)

MANVEEN KAPOOR & ANR.Petitioners
Through: Mr Sangeet Rai, Advocate.

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS. Respondents
Through: Mr Gaurang Kanth and Ms. Richa
Dhawan, SC for SDMC with Ms Biji
Rajesh, Advocate.
Mr. Kirti Uppal, Senior Advocate
with Mr. Aman Bhalla and Mr.
Aditya Awasthi, Advocates for R-3,
R-7 & R-8.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **31.08.2020**

The hearing was conducted through video conferencing.

1. This writ petition seeks the following relief(s):

- “...a) Grant ad-interim stay of the construction at the respondent's property, K-19, Jangpura Extension till disposal of the present writ petition;*
- b) Direct the respondent no. 1 to place the sanction plan in relation to the construction at the respondent's property, K-19, Jangpura Extension on record;*
- c) Direct the respondent nos. 1-2 to conduct an enquiry into the other violations of the statutory norms and sanction letter in relation to the construction at the respondent's property, K-19, Jangpura Extension and take necessary actions;*
- d) Declare the sanction given to the construction at K-19*

the respondent's property, K-19, Jungpura Extension as void due to violation of terms and conditions of the standard sanction letter and other statutory norms;

e) Direct the Respondent No 4 and 5 to ensure protection of the petitioners against any intimidation and threatening by the respondent no. 3, its directors, representatives and agents....”

2. The petitioners are aggrieved further by the large-scale construction of a building on the property adjoining theirs. They contend that their representation to the authorities concerned has gone unheeded, constraining them to file the present writ petition.
3. The status report filed by the SDMC states that the property in question was visited. The Court would note that the writ petition has been filed after the superstructure of the property had already been completely constructed. It is indeed at the finishing stages when the present petition came to be filed. It has been so noted in this Court's previous order, dated 22.06.2020. The relevant portion reads as under:

“...9. It is the petitioner's case that because of a four storeyed building being constructed by the Respondent Nos. 3, 7 and 8 in the land adjacent to the petitioners' property, extensive damage has been caused to their residential property. Photographs of the same have been annexed to the writ petition. It is the contention of the learned Senior Counsel for respondent nos. 3, 7 and 8 that entire structural construction work has been completed and currently only finishing work is being carried out, therefore, the present petition is belated. The photographs of the adjoining building have been shown by the learned counsel for the Respondent No.1/SDMC that shows that the structure of the building is complete.

10. The learned counsels for the respondents seek time to obtain

instructions. Be that as it may, the learned Senior Counsel appearing for the respondent nos.3, 7 and 8 submits, upon instructions, that without prejudice to their rights and contentions, as a good neighbourly gesture they will look into the grievances of the petitioners and undertake to readily rectify damages, as may have been caused to the petitioners" property on account of the construction of the new building. The repairs shall ensure that structural safety of the petitioners" property is neither compromised nor prejudiced. Let the aforesaid restoration of the petitioner" building be completed within a period of eight weeks from the date of receipt of a copy of this order...."

4. A Status Report filed by the SDMC states inter alia:

"...5. That, on inspection of the said subject property, it has been noticed that presently the construction of basement floor, stilt, ground, first, second and third floor has already been carried out by the owner/builder and the same is pursuant to the aforesaid sanction building plan as obtained by the owner/builder. The building is at its finishing stage. The photographs showing the present status of the said building are also annexed herewith as Annexure:B (Colly)..."

5. It is the case of the builder/R3 that the construction has been carried out as per the sanctioned building plan. The SDMC also states that the construction is as per the building plan.

6. On 27.08.2020, the following order was passed by this Court:

"...The hearing was conducted through video conferencing.

1. At this stage, Mr. Rai, the learned counsel for the petitioners, submits that the gate installed by the petitioners is now in conformity with the street's

alignment. Photographs shown to the court depict that the gate has been brought in line in terms of the extant building bye-laws. Let an affidavit be filed by the petitioners before the next date.

2. The Status Report filed by the South Delhi Municipal Corporation (SDMC) is lacking in particulars. Ms. Dhawan, the learned Standing Counsel for the Corporation, readily states that she would like to file another affidavit with better particulars, along with photographs depicting full compliance with all orders. Let it be so done before the next date.

3. The footpath and the street too shall be cleared of all encroachment, by way of removal of pots, stones and constructions which may have been placed on the roadside by the residents. The ramps created by the respondents no. 3, 7 and 8 on the road are liable to be removed and brought to the level of the footpath. If they so desire, they may construct a ramp inside their property. Simply because they have constructed stilt parking in their property does not give them a right to make a convenient access to the parking by altering the footpath height. The footpath is a part of the public street, over which the citizen/resident has no right, except free access to walk. It cannot be altered by ramps jutting out at various heights and in various types, at the fancy of property owners. Alteration of the road or footpath is impermissible by a private citizen. It can be done only by the road-owning agency i.e. the Corporation. The latter is expected to keep the street in a uniform level, especially so that wheelchair users, morning walkers, the elderly, children and indeed all pedestrians, could conveniently traverse the length of the colony streets on the footpath or by the side of the street, without fear of been injured by moving vehicular traffic.

4. List on 31.08.2020....”

7. An affidavit along with photographs, has been filed on behalf of the South Delhi Municipal Corporation (‘SDMC’). It shows that the gates

have been aligned with the line of buildings on the street. The other encroachments on the street have been removed. The ramp built by R-7 has been demolished and the street has been cleared-up to ensure its hindrance-free usability pedestrians, including wheelchair users, morning walkers, children, the elderly, etc.

8. Mr. Gaurang Kanth, the learned Standing Counsel for the Corporation assures the Court, that the concretization of the street, almost up to the trunk of the trees aligning the colony road, shall be removed forthwith, so as to bring it in conformity with the National Green Tribunal's ('NGT') Guidelines, laid down in *Aditya N. Prasad v. Union of India*, Application No. 82/2013, which state that “*no concrete or construction or repairing work [shall be done] within one metre radius of the trunk of trees*”. Let the same be done within a week from today and compliance report be filed along with photographs. List for compliance on 18th September.
9. Earlier in the proceedings, without prejudice to his rights and contentions, as a gesture to live peaceably as good neighbours the builder had offered to repair the alleged damage caused to the petitioners' property. However, degree of damage claimed and the extent of repairs sought by the petitioners, was considered unreasonable by R7 therefore the same was not carried out. Such claim insisted upon by the petitioners is a disputed question of a fact which cannot be adjudicated in writ proceedings.
10. As mentioned in para 3 of this order, the obvious unauthorized construction in the form of a ramp and other pillars, etc., was demolished. This was done by the builder itself, in terms of the

previous order dated 27.08.2020. As a consequence, the Corporation has not issued any notice apropos the alleged unauthorized construction, because no unauthorised construction was found upon inspection.

- 11.It is contended by the petitioners that the earth under their building was excavated by R-7, thereby causing extensive structural damage to their building. However. this allegation, is promptly refuted by Mr. Kirti Uppal, the learned Senior Counsel for R-7. He states that as noted hereinabove R-7 was ready to willing carry out repairs in terms of its offer recorded in the order dated 22.06.2020 as under:

“...10.The learned counsels for the respondents seek time to obtain instructions. Be that as it may, the learned Senior Counsel appearing for the respondent nos.3, 7 and 8 submits, upon instructions, that without prejudice to their rights and contentions, as a good neighbourly gesture they will look into the grievances of the petitioners and undertake to readily rectify damages, as may have been caused to the petitioners” property on account of the construction...”

- 12.However, of late the conduct of the petitioners towards R-7/the builder, has not been such what may be expected of reasonable immediate neighbours.
- 13.Apropos the complaint made by the petitioners to the police regarding threat to their life, limb and liberty; let the same be looked into by the appropriate authorities. Copy of the order be served upon the Standing Counsel (Criminal) GNCTD compliance. If the petitioners still have any grievance apropos the same, they are at liberty to pursue their remedies as per law.
- 14.The Corporation has taken action as per law and assures the Court of

further action as may be necessary, in case of breach of the building byelaws.

15. Since no further orders are required to be passed, the petition, along with the pending application, stands disposed-off.

16. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

AUGUST 31, 2020/rd