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

Date of Decision: 30.06.2020

\+ WP (C) No. 2160/2010

USHA DEVI SHARMA ..... Petitioner

Through : Mr. O. N. Sharma, Adv.

versus

MCD & ORS. ..... Respondents

Through: Mr. Ajjay Aroraa, Adv. for SDMC.

\+ WP (C) No. 1033/2017

USHA DEVI SHARMA ..... Petitioner

Through : Mr. O. N. Sharma, Adv.

versus

SOUTH DELHI MUNICIPAL CORP. ..... Respondent

Through: Mr. Pratap Singh and Mr. Navneet Tripathi, Advs. for SDMC.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ANUP JAIRAM BHAMBHANI, J.

The petitioner claims to be the owner, in occupation of the Second Floor (Rear Portion) of property bearing No. K-1 Kailash Colony, New Delhi. The contesting respondent is the Municipal Corporation of Delhi (MCD), which after its trifurcation, is now the South Delhi Municipal

Corporation (SDMC). Other State and private respondents, though impleaded as parties in one of the writ petitions, are pro-forma parties since no relief has been prayed against such respondents.

2. The petitioner's grievance is that on 13.03.2010 the respondent has demolished the Third Floor built on top of the Second Floor (Rear Portion) of property bearing No. K-1 Kailash Colony (the Third Floor being hereinafter referred to as the "subject property"), which action, according to the petitioner, is unlawful. In this backdrop the petitioner has made the following prayers in WP(C) No. 2160/2010 :

> *"a) pass a writ of mandamus, order, direction of like nature directing the MCD to pay compensation towards the costs of such construction of third floor to the tune of Rs.10,00,000/- for unlawfully demolishing the entire third floor of the petitioner and further humiliation caused to the petitioner;*
>
> *b) pass such order directing appropriate legal action against the errant MCD as well as police official guilty for unlawfully demolishing the third floor of the petitioner;*
>
> *c) pass a writ of mandamus, order or direction of like nature directing MCD to grant sanction of the site plan submitted to MCD vide dated 12.04.2007 in accordance by laws MPD 2021;*
>
> *d) pass a direction to MCD as well as the respondent No.3 to allow the petitioner to construct her third floor in accordance of law;*
>
> *e) pass order or direction set aside the order of the MCD demanding demolition charges vide order dated 18.03.2010;*

f) pass any other further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice."

3. The petitioner has also filed another petition, being WP(C) No. 1033/2017, seeking essentially the same relief, in which the prayers made are the following :

"a) Allow the writ petition and pass a writ of mandamus or any appropriate writ/directions/orders as may deem fit and proper directing the SDMC to sanction the proposed building plan of petitioner on terrace of 2nd floor portion in conformity of Building Bye laws without insisting for NOC from owners of other floors of K-1 Kailash Colony New Delhi, in the interest of justice.

b) Any other or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be passed/issued in the interest of justice."

Since the reliefs sought in the two writ petitions are essentially the same, both writ petitions are being disposed of by this common order.

Petitioner's contentions :

4. In support of the prayers made in the two writ petitions, Mr. O.N. Sharma, learned counsel appearing for the petitioner states that the genesis of the matter is a complaint made by the residents of the first floor of the building in relation to alleged unauthorised construction of the third floor; which led to the filing of a suit titled *Chander Prakash vs. Usha Devi & Ors.*: CS No. 414/2008 in the court of the learned Additional Senior Civil

Judge (South), New Delhi claiming certain reliefs. In this suit an order dated 11.02.2010 was made, pursuant to which the respondent's officials inspected the subject property on 22.02.2010 and filed a status report dated 03.03.2010 before the court. In the status report it was said that upon inspection conducted on 22.02.2010 and after perusal of the official record it was found that the owner/occupier had carried-out unauthorised construction on the terrace above the second floor, which may be treated as third floor, by constructing a verandah and one room without seeking prior permission from the competent authority i.e. MCD.

5. In status report dated 03.03.2010 it was further observed that the records of the respondent show that the said unauthorised construction had been booked *vide* file No. 10/B/UC/CZ/2010 dated 18.01.2010 and after following the due process of law, demolition orders were passed and further action was contemplated.

6. Counsel for the petitioner states that the contents of status report dated 03.03.2010 are in themselves a giveaway, inasmuch as it is evident from a perusal thereof that the alleged unauthorised construction had been *booked on 18.01.2010* whereas inspection of the subject property was conducted *on 22.02.2010,* that is *after* the date of booking of the alleged unauthorised construction. This, counsel submits, speaks of the *mala fides* on the part of the respondent in initiating action against the subject property.

7. Mr. Sharma further submits that subsequent to filing of status report dated 03.03.2010 the learned Civil Judge passed the following order:-

"Counsel Ms. Savitri Kasana for Defendant No.2.

Status report in respect of suit property K-1, Kailash Colony filed by Defendant No.2, accompanied by affidavit of AE concerned and videography. It shows the property has been booked under provisions of DMC Act and the demolition order has been passed.

AE Mr. B. S. Meena ensures placing of ATR after taking necessary action as per provisions of law against the alleged construction.

Be put up for placing of ATR positively before/on NDOH."

8. Against order dated 03.03.2010 made by the Civil Judge the petitioner filed a petition under Article 227 of the Constitution being CM(M) No. 354/2010 titled ***'Usha Devi Sharma vs. Chander Prakash Kumra & Ors***.' The petitioner contends that the petition was filed on 09.03.2010, with an advance copy having been served upon all respondents, including the MCD. This petition came to be listed before a learned single Judge of this Court, who made the following order on 16.03.2010:

"It is submitted by counsel for the petitioner that the property in question was substantially demolished on 13th March, 2010 without giving any opportunity to the petitioner of hearing.

The present petition under Article 227 of the Constitution of India is limited to assailing an order of the trial court directing MCD to take action as per law. The present petition is hereby dismissed having become infructuous. However, the petitioner would be at liberty to avail remedy in case MCD has acted contrary to law.

Dasti."

9. Mr. Sharma contends that despite an advance copy of the above referred CM(M) petition having been served upon the respondent on 09.03.2010, as an evidently *mala fide* and preemptive act, the respondent partially demolished the subject property on 13.03.2010. Counsel further points-out that, as a matter of fact, 13.03.2010 happened to be a second Saturday i.e. a government holiday and yet the respondent took demolition action against the subject property on that day.

10. It was in this backdrop and as a consequence of order dated 16.03.2010 that the WP(C) No. 2160/2010 came to be filed before this Court, seeking compensation and other reliefs against, what the petitioner contends, was unlawful demolition of the subject property.

11. Mr. Sharma submits that although in status report dated 03.03.2010 it was stated that :

> *"The officials of MCD have initiated the legal action as provided under the DMC Act and the same unauthorised construction has been booked vide file No. 10/B/UC/CZ/2010 dated 18.01.2010 and after following the due process of law demolition order has also been passed, further action is under contemplation."*

however in para 4 of counter-affidavit dated 27.04.2010 filed in the present matter, the respondent has contradicted itself by stating as follows:

> *"That the owner/occupier of the suit property has carried out unauthorised construction at third floor and the same has been booked vide file No. 10/B/UC/C2/10 dated 18.01.2010 U/S 343 & 344 of DMC Act 1957 and after following due process of law, the demolition order was passed by the competent authority on 03.02.2010."*

12. Counsel for the petitioner further submits that on 07.04.2010 the petitioner preferred an application under the Right to Information Act, 2005 ("RTI Act") making certain queries to which a response dated 29.04.2010 was furnished by the respondent to the following effect :

Point No.	***Reply of the Building Department, Central Zone***
1.	*Requisite information sought by the applicant through this point is not available with this office on record.*
2.	*As per record, show cause notice and demolition notice were served upon Smt. Usha Devi on 18.1.2010 and 25.1.2010 respectively by pasting at site.*
3.	*As per record, show cause notice dated 18.1.2010 is issued only to Smt. Usha Devi. Reasons for not issuing the said notice to Sh. Anil Wahi are not available on record.A notice to deposit demolition charges amounting to Rs.26250/- was issued to Smt. Usha Devi on 13-03-2010.*
4.	*Information sought by the applicant though this point is neither available on the record of this office, nor any record, received in this office from South Zone in this regard.*
5.	*-do-*

13. Mr. Sharma contends that, as is evident from the aforesaid response, a show-cause notice and a demolition notice dated 18.01.2010 and 25.01.2010 respectively, were issued to the petitioner by pasting these at the site, namely on the subject property. It is Mr. Sharma's contention that a 'demolition notice' dated 25.01.2010 could not have been issued if, as stated

in the counter-affidavit, a 'demolition order' was passed only on 03.02.2010. This, according to counsel, is again evidence of *mala fides* on the part of the respondent. In making the foregoing submission, counsel evidently assumes demolition order to be the same as a demolition notice, as is discussed later in this judgment.

14. Counsel further contends that on the respondent's own statement, show-cause notice dated 18.01.2010 and demolition notice dated 25.01.2010 were never attempted to be *served* upon the petitioner *by post* but were straightaway pasted on the subject property. It is further submitted that on point of fact, no such notices were brought to the attention of the petitioner, whether by pasting or otherwise; and the respondent has not produced any proof even of pasting of the notice/s on the subject property such as photographs etc. on record.

15. Counsel further points-out that in response dated 22.06.2010 furnished by the respondent to another RTI application dated 02.06.2009 made on behalf of the petitioner, the respondent furnished the following reply:

> *"As per record, Shri Daya Shankar, JE (Bldg.) pasted the show cause notice issued on 18-1-2010, on 20-1-2010, and demolition order issued on 25-1-2010 was also pasted on 28.1.2010 in the presence of S/Shri V. D. Vashist and Santosh Meena, JEs (Bldg.), vide file No. 10/B/UC/CNZ/2010 Rest of the information is not available with this office on record."*

16. It is contended, that while on the one hand the respondent states that "demolition order issued on 25-1-2010 was also pasted on 28.1.2010",on the

other hand, the respondent contradicts itself inasmuch as the 'demolition order' is supposed to have come to be passed only on 03.02.2010. Counsel further contends that while in the RTI response received from the respondent it is stated that two Junior Engineers (Building) by name S/Shri V.D. Vashist and Santosh Meena were present when the demolition order was pasted on the subject property, as a matter of fact there was no such demolition order.

17. On point of law, it is contended on behalf of the petitioner that the power to demolish a building has been contemplated under section 343 of the Delhi Municipal Corporation Act, 1957 ('DMC Act', for short), according to which the power is exercisable *only* by the Commissioner of the Municipal Corporation; and that considering the grave consequence of exercise of this power, there is no provision for the Commissioner to delegate such power to any subordinate officer. It is further contended that the first proviso to section 343 of the DMC Act reads as under :

> *"*Section *343: Order of demolition and stoppage of buildings and works in certain cases and appeal.*
> *(1) xxxxx*
> *Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:"*
>
> (Emphasis supplied)

18. However, the petitioner alleges that the show-cause notice contemplated in the first proviso extracted above was never 'served' upon the petitioner in the manner contemplated in law. In this regard, counsel

draws the attention of the court to section 27 of the General Clauses Act, 1897 which reads as under :

> *"**27. Meaning of service by post**.–Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. "*
>
> (Emphasis supplied)

arguing thereby, that there was no other manner stipulated for service of such notice in the DMC Act ; and therefore the Commissioner was required to effect service as per the mode of service envisaged in section 27 of the General Clauses Act. It is also Mr. Sharma's contention that there is no document or other evidence on record to show service of any show-cause notice for demolition upon the petitioner.

19. Mr. Sharma attempts to find support for his foregoing arguments in a decision rendered by a learned single Judge of this court in ***Mahinder Singh & Ors. vs. Municipal Corporation of Delhi*** reported as (1988) 34 DLT 118, in para 6 of which judgment the single Judge has held as under :

> *"6. However, counsel for the respondent has vehemently argued that no prejudice has been caused to the petitioners for want of service of show cause notice in their names*

inasmuch as it was one of the petitioners who had actually received the show cause notice although it was issued in the name of his father, Sh. Khem Chand and it was one of the petitioners who participated in the proceedings before the Zonal Engineer and so, the show cause notice is a valid one. I am afraid that this contention cannot be accepted. The service of the show cause notice on the person concerned before passing the demolition order is mandatory. There is no question of any prejudice being caused or being caused or not being caused when a mandatory provision has not been complied with. In case the Zonal Engineer was of the view that it was Khem Chand who had erected the unauthorised construction, then the demolition order should have been passed against Khem Chand, but that is not the position here. The demolition order admittedly had been passed against the petitioners and not against Khem Chand. So, the law required that before passing the demolition order against the petitioners show cause notice ought to have been issued in their names and served on them. As it has not been done, it must be held that the whole proceedings regarding passing of the demolition order are illegal and on this ground alone the impugned demolition order and the appellate order are liable to be set aside. "

(Emphasis supplied)

20. Another submission made on behalf of the petitioner is that, other things apart, the subject property (i.e. the third floor) was not unauthorised at all, since the petitioner had applied for sanction for construction of a second floor-third floor duplex ; which plan was submitted to the MCD on 12.04.2007 ; consequent thereupon, on 12.07.2007 the petitioner's husband

had addressed a letter to the MCD stating the following :

> *"I here with submit that I submitted the plan on 12.4.2007 and it is more than 3 months have already passed I heard nothing from you as per by law it is deemed to sanction. (sic)"*
>
> (Emphasis supplied)

21. It is the petitioner's contention that after he submitted letter dated 12.07.2007, he did not hear from the respondent in relation to construction of the subject property ; that the petitioner commenced construction of the subject property after sending letter dated 12.07.2007 ; and that therefore the subject property is *deemed* to have been sanctioned and was therefore validly constructed.

22. Next, Mr. Sharma attempts explains a communication dated 24.08.2007 issued by the respondent, a copy of which has been filed alongwith their counter-affidavit, which appears to say that the building plan in respect of the second floor, rear portion of the subject property has been *rejected* by the MCD. The reason for the said rejection as cited in communication dated 24.08.2007 is the non-compliance of the petitioner with a notice "IN dt.6/6/07 & 25/7/07", which is a reference to two notices dated 06.06.2007 and 24/25.07.2007 issued by the respondent to the petitioner listing-out certain pending compliances, before the building plans for the subject property could be processed. Mr. Sharma points-out however that in complete contradiction to what is stated in the said communication dated 24.08.2007, in response dated 24.07.2009 to an RTI query made by the petitioner's husband *vide* an RTI application dated 06.07.2009, the MCD

responded as follows :

> *"Subject noted ID application has been submitted under right to information Act-2005 and applicant has sought various information regarding policy of BBL with regard to entire Delhi and Kailash Colony, demolition of shop in set back of K-1, Kailash Colony, New Delhi height of said building etc.*
> *In this connection, point wise reply of the RTl application is as under:-*
> *1. As per record of this office, there is no specific policy for individual plot or man (sic) or home in Kailash Colony, New Delhi.*
> *2. What is sought by the applicant through this point is not information as per clause 2 (f) of the RTI Act 2005.*
> *3. This point is not clear.*
> *4. Building plan in respect of P. No.K-1, Kailash Colony, which was sanctioned by MCD by South Zone, MCD has **not** been rejected by this office. However, as per MPD-2021, permissible height of building is 15 mtrs. As per record of this office, no person is influencing this office in the matter under reference."*
>
> (Emphasis supplied)

23. Counsel contends that the MCD has admitted that the building plan in respect to the subject property, which was sanctioned by the MCD South Zone, has not been rejected. He contends that thereby what is stated in communication dated 24.08.2007 issued by the respondent is belied. To be sure however, the RTI application dated 06.07.2009 to which response was given by the MCD on 24.07.2009 has not been placed on record by the petitioner. Furthermore, it is not clear from a perusal of response dated

24.07.2009 as to *which portion* of the property at K1 Kailash Colony, is the subject matter of the response given by MCD.

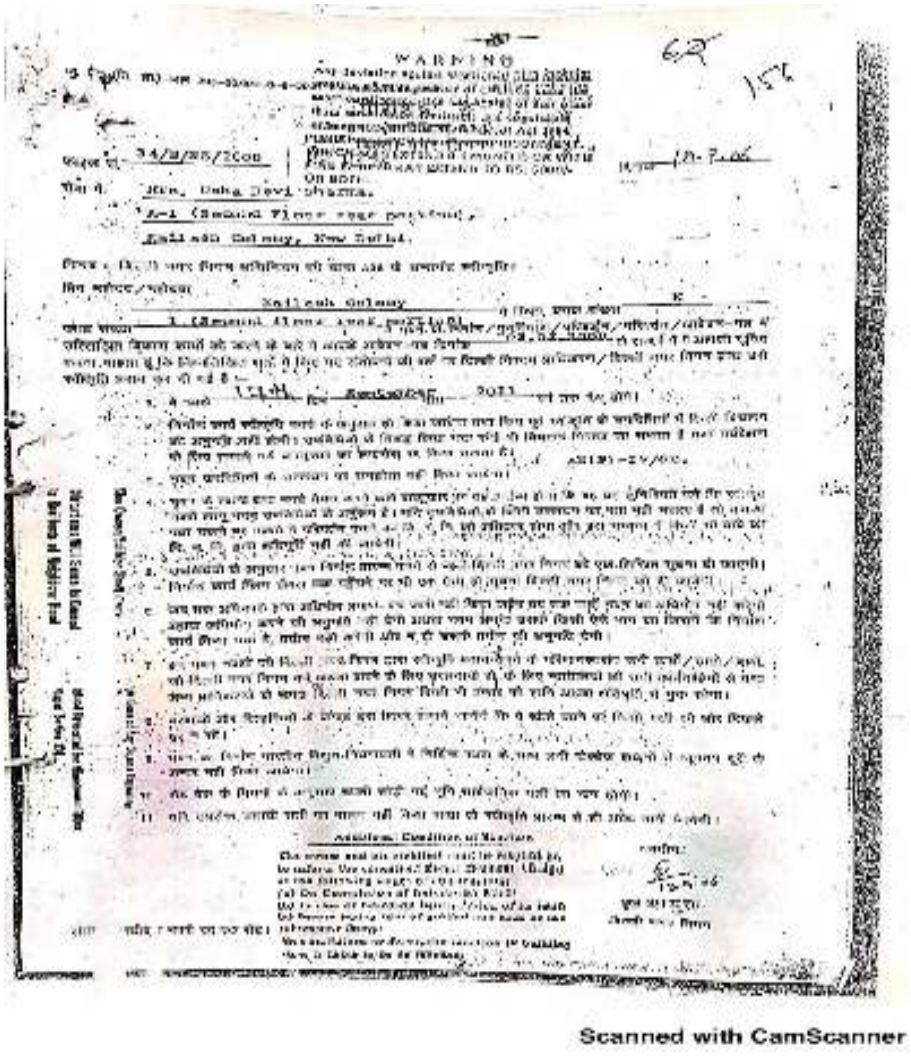
24. Counsel for the petitioner further points-out that *vide* response dated 19.10.2007 received to another RTI query raised by the petitioner *vide* application dated 13.09.2007, MCD had responded as follows :

> *"In this connection, it is submitted that earlier area of Kailash Colony was under the jurisdiction of South Zone. Building Plan file of this property has not so far been received by building Department Central Zone from the South Zone. Report regarding unauthorised construction at ground floor and first floor can be given by south Zone, as record of the same has also not received from the South Zone. As regards sanctioned of building plan for portion on roof of second floor, applied on 12 April 2007, factual position in this regard can also be given by South Zone whether the same has sanctioned or not."*
>
> (Emphasis supplied)

25. It is contended therefore, that the Central Zone of MCD itself admits that they had not, up until 19.10.2007, received the building plan file relating to the subject property from the South Zone of the MCD ; and that the South Zone of the MCD can give the factual position as to whether the building plan for the portion on the roof of the second floor, applied for on 12.04.2007, has been sanctioned or not. It is accordingly contended that since, by its own admission, the Central Zone of MCD did not even have the building plan file of the subject property, how then could the Central Zone have rejected the building plan as they have stated to have done *vide*

communication dated 24.08.2007. Yet again however, the petitioner has not placed on records the RTI application, to which response dated 19.10.2007 has been received.

26. Mr. Sharma contends that the subject property was duly sanctioned by the MCD as evidenced by sanction letter dated 18.09.2006 which is scanned below :



Scanned with CamScanner

27. Mr. Sharma states that the entire issue has needlessly arisen by reason of a complaint made by one Mr. Prem Das Mehta, who is stated to be

neighbour and owner of the ground floor portion of the same property; and who is also one of the plaintiffs in CS No. 414/2008 titled ***Chander Prakash. vs. Usha Devi & Ors.*** filed in the court of the Additional Senior Civil Judge, Delhi. It is further submitted that while proceedings arising from the civil suit are pending in appeal and though the portion occupied by the said neighbour is itself unauthorised, which though booked by the MCD has not yet been demolished, the petitioner's portion has already been demolished. This, according to counsel for the petitioner is proof positive of the *mala fides* on the part of the respondent *vis-a-vis* the petitioner.

28. In conclusion, Mr. Sharma submits that the petitioner had obtained the required 'deemed sanction for construction' for the subject property; and there was no cause to demolish it. He submits that demolition, if any, of the third floor could only have been conducted in compliance with the procedural provisions contained in the DMC Act; that no show-cause notice for any alleged unauthorised construction of the third floor was ever served upon the petitioner by the MCD ; and that accordingly, the demolition of the third floor by the MCD is wholly illegal and unlawful; and the petitioner is entitled to be compensated for the same.

29. As far as quantification of the damages claimed by the petitioner is concerned, Mr. Sharma says that while he has not placed on record any document or material which may form basis for such quantification, it is the petitioner's contention that the portion constructed on the third floor ad-measures approximately 550 square feet ; that the court may take judicial notice of the fact that the approximate cost of construction is Rs.2,000/- per square foot in that colony, which would come to Rs.10,00,000/- (Rupees

Ten Lacs) for the entire third floor portion. It is this amount that the petitioner has claimed as damages in these proceedings.

Respondent's contentions :

30. At the outset, Mr. Ajjay Aroraa, learned counsel appearing for the respondent/SDMC points-out that as is evident from a perusal of the memorandum of parties of the petition, no officer or employee of the MCD has been named as a party-respondent; nor is there any specific allegation of *mala fides* or wrong doing against any such named official in the body of the writ petition. Counsel points-out that respondents Nos. 4, 5 and 6, who are the only named individuals, are all the petitioner's neighbours in the same building in which the subject property is situate. He contends that in any case, employees/officers of the MCD enjoy immunity from legal action in respect of anything done in good faith under the DMC Act in terms of section 477 of the DMC Act which reads as under :

> *"**477. Protection of action of the Corporation, etc.***
> *No suit or prosecution shall be entertained in any court against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, for anything which is in good faith done or intended to be done, under this Act or any rule, regulation or bye-law made thereunder."*

31. Counsel for the respondent contends that though in literal terms the protection afforded by the abovementioned provision is against any 'suit or

prosecution', such protection would necessarily have to be extrapolated even to proceedings under Article 226 of the Constitution, especially if the action impugned has been undertaken pursuant to court proceedings, in this case pursuant to proceedings in civil suit CS No.414 of 2008 before the Additional Senior Civil Judge.

32. Mr. Aroraa points-out that by way of prayer (c) made in the W.P.(C) No. 2160/2010 the petitioner is seeking issuance of a direction to MCD to grant sanction of the building plan submitted *vidé* letter dated 12.04.2007, which was a request for sanctioning a plan for construction on the second floor. It is contended that this prayer itself is an admission that the petitioner did not already have a sanctioned building plan for construction on the second floor ; and therefore the question of having a sanction for construction of the third floor did not arise. Moreover, in W.P.(C) No. 2160/2010, apart from claiming damages for illegal demolition of the subject property, the petitioner has also prayed that he be permitted to re-construct the third floor, in view of which this court passed order dated 10.11.2010 to say :

> *"The writ petition besides claiming damages of Rs.10 lac for illegal demolition of the third floor of the property of the petitioner, also seeks a direction to allow the petitioner to reconstruct the third floor in accordance with law. After hearing the counsels, it is directed that during the pendency of this petition, the petitioner shall be at liberty to apply to the respondent no.1 MCD for sanction of plans for construction of the third floor in accordance with law and the respondent no.1 MCD shall process the said plans in*

accordance with law and the same shall not come in the way of the petitioner claiming other reliefs in this petition."

(Emphasis supplied)

If the petitioner *already had* a sanctioned building plan for the third floor, there was no occasion for the court to have passed the above order; and for the petitioner to have accepted such an order without demur.

33. Subsequently the petitioner filed the connected petition being W.P.(C) No. 1033/2017, in which the principal prayer is:

"a) Allow the writ petition and pass a writ of mandamus or any appropriate writ/directions/orders as may deem fit and proper directing the SDMC to sanction the proposed building plan of petitioner on terrace of 2nd floor portion in conformity of Building Bye laws without insisting for NOC from owners of other floors of K-1 Kailash Colony New Delhi, in the interest of justice."

(Emphasis supplied)

Again therefore, the petitioner prayed afresh for sanctioning a *proposed* building plan, not for revalidation of any existing sanctioned plan ; implying that the petitioner never had an existing sanctioned building plan.

34. In relation to the petitioner's argument that she had obtained a deemed sanction, counsel for the respondent contends that the policy in relation to 'deemed sanction' is contained in section 337 of the DMC Act and clause 6.7.4 of the Building Bye-Laws1983, which provisions read as under :

Section 337 of DMC Act :

"337. When building or work may be proceeded with.—

(1) Where within a period of sixty days, or in cases falling under clause (b) of section *331 within a period of thirty days, after the receipts of any notice under* section *333 or* section *334 or of the further information, if any, required under* section *335 the Commissioner does not refuse to sanction the building or work or upon refusal, does not communicate the refusal to the person who has given the notice, the Commissioner shall be deemed to have accorded sanction to the building or work and the person by whom the notice has been given shall be free to commence and proceed with the building or work in accordance with his intention as expressed in the notice and the documents and plans accompanying the same:*

*Provided that if it appears to the Commissioner that the site of the proposed building or work is likely to be affected by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street, the Commissioner may withhold sanction of the building or work for such period not exceeding three months as he deems fit and the period of sixty days or as the case may be, the period of thirty days specified in this sub-*section *shall be deemed to commence from the date of the expiry of the period for which the sanction has been withheld.*

(2) Where a building or work is sanctioned or is deemed to have been sanctioned by the Commissioner under sub-

section *(1), the person who has given the notice shall be bound to erect the building or execute the work in accordance with such sanction but not so as to contravene any of the provisions of this Act or any other law or of any bye-law made thereunder.*

(3) If the person or anyone lawfully claiming under him does not commence the erection of the building or the execution of the work within one year of the date on which the building or work is sanctioned or is deemed to have been sanctioned, he shall have to give notice under section *333 or, as the case may, be under* section *334 for fresh sanction of the building or the work and the provisions of this* section *shall apply in relation to such notice as they apply in relation to the original notice.*

*(4) Before commencing the erection of a building or execution of a work within the period specified in sub-*section *(3), the person concerned shall give notice to the Commissioner of the proposed date of the commencement of the erection of the building or the execution of the work: Provided that if the commencement does not take place within seven days of the date so notified, the notice shall be deemed not to have been given and a fresh notice shall be necessary in this behalf. "*

(Emphasis supplied)

Clause 6.7.4 of Building Bye-Laws, 1983 :

"6.7.4 If within 60 days of the receipt of notice under 6.1 of the Bye-laws, the authority fails to intimate in writing to the person, who has given the notice, of its refusal or sanction or any intimation, the notice with its plans and statements shall be deemed to have been sanctioned provided the fact is immediately brought to the notice of the authority in writing

by the person who has given notice and having not received any intimation from the Authority within 15 days of giving such written notice. Subject to the conditions mentioned in this bye-law, nothing shall be construed to authorise any person to do anything in contravention or against the terms of lease or titles of the land or against any other regulations, bye-laws or ordinance operating on the site of the work. "

(Emphasis supplied)

35. It is pointed-out that section 337 lays down a procedure and sets-down specific requirements of giving notices within specific timelines, which procedures and steps are an intrinsic part of the process for deemed sanction. According to the respondent however, none of these procedures and steps were complied with by the petitioner. Furthermore, it is pointed-out that as per Building Bye-law No. 6.7.4 of the Building Bye-Laws of 1983 which were prevalent in the year 2007, which is *in pari materia* to Building Bye-law No. 2.3.4 of the Unified Bye-Laws for Delhi 2016, there is also a mandate that immediately upon deemed sanction for construction fructifying, a party is obliged to inform MCD by notice of the fact that the applicant has not received any refusal or sanction or intimation from the MCD. Bye-law No. 6.7.4 also clarifies that nothing in the policy for deemed sanction shall be construed to authorise any person to do anything that is not in accordance with the terms of any lease or title of the land or is against any other regulations, bye-laws or ordinance applicable to the property. Mr. Aroraa contends that the petitioner did not comply with any of the foregoing provisions. It is Mr. Aroraa's contention that in the present case in fact, there was no application for sanction, and therefore, there was no question of any deemed sanction having been obtained by the petitioner.

36. Other things apart, Mr. Aroraa points-out that regardless of the provisions for deemed sanction under the DMC Act, *vidé* order dated 07.05.2007 made by the Supreme Court in **M.*C. Mehta vs. Union of India*** in W.P.(C) No. 4677/1985, grant of *permission for construction of additional floors*, in this case the third floor, has been prohibited by the Supreme Court; by reason of which there was no question of a deemed sanction having been granted to the petitioner in any case. The relevant portion of the Supreme Court order dated 07.05.2007 reads as under :

> *" ... It has been brought to our notice that during the pendency of this matter before this Court, the MCD is granting permission to construct additional floor. Such permission shall not be granted hereinafter. ... "*

37. It is Mr. Aroraa's contention that the aforesaid prohibition ordered by the Supreme Court completely bars the granting of permission for construction of any additional floor, whether by way of deemed sanction or otherwise, to any person; and therefore there was no question of the petitioner having proceeded on the basis of the so-called deemed sanction under the provisions of section 337 of the DMC Act read with clause 6.7.4 of the Building Bye-Laws, 1983.

38. It is further argued on behalf of the respondent that under the scheme of the DMC Act and the Building Bye-Laws, the following situations are contemplated for construction of property :

a. 'fresh construction' on a plot of land, which would require a party to obtain a sanction for construction from the MCD under section 333 of the DMC Act ;

b. ‘making additions, alterations or modifications’ in existing construction, which would again require permission for making such changes under section 334 of the DMC Act;

c. ‘regularisation’ of unauthorised construction that has already been made, which would require an application for compounding of the deviations from permissible construction as per the compounding provisions of the Building Bye-Laws.

39. It is submitted that the scheme for undertaking construction of a building is contained *inter alia* in sections 331, 332 and 333 of the DMC Act. Section 331 defines what it means ‘to erect a building’ ; section 332 prohibits erecting a building or executing any work without previous sanction of the Commissioner ; and section 333 prescribes the requirements for erecting a building. It may be useful to extract the relevant portions of these provisions :

> *“331. Definition.—In this Chapter, unless the context otherwise requires, the expression “to erect a building” means—*
> *(a) to erect a new building on any site whether previously built upon or not;”*
>
> *xxxxx*
>
> *“332. Prohibition of building without sanction.—No person shall erect or commence to erect any building, or execute any of the works specified in* section *334 except with the previous sanction of the Commissioner, not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works.”*

> *"333. Erection of building.—*
> *(1) Every person who intends to erect a building shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.*
> *(2) Every such notice shall be accompanied by such documents and plans as may be so prescribed."*

40. It is urged that as is evident from a perusal of section 333, a sanction for erecting a building is to be applied for at the stage when the person 'intends' to erect a building and such application is required to be accompanied by such documents and plans as may be prescribed.

41. It is pointed-out that as per the list of dates filed by the petitioner herself, on 25.01.2007 the MCD had already addressed a letter to the SHO PS: Greater Kailash for stopping construction that was being undertaken by the petitioner on the subject property ; whereas the so-called application for deemed sanction is said to have been made by the petitioner only on 12.04.2007. It is therefore evident that, even assuming an application for deemed sanction was made on 12.04.2007 as contended by the petitioner, unauthorised construction was already underway on the subject property as early as 25.01.2007. It is pointed-out that in the list of dates filed with the writ petition, the petitioner states that she had applied for deemed sanction on 12.04.2007 pursuant to a public notice that was published in the 'Times of India' newspaper *on regularisation of unauthorised construction*, which also shows that unauthorised construction on the second floor already existed or was underway by then.

42. It is further submitted that the discrepancies in some of the communications sent by the MCD to the petitioner, namely the floor that is referenced in such communications, has most likely crept-in because the petitioner had planned the third floor as part of a *second floor-third floor duplex unit*, as is evident *inter alia* from letter dated 09.03.2009, which is on record and which is also shown to the court from the original file. It is submitted that therefore, such discrepancies are irrelevant and it was always clear to the petitioner that the unauthorised construction referenced in the respondent's communications was the construction of the third floor i.e. the subject property.

43. It is contended that in the present case there already existed unauthorised construction of the third floor, which at best could have been 'regularised' ; and therefore there was no question of obtaining sanction for construction, much less any deemed sanction.

44. In response to the petitioner's allegation that the demolition action was not taken by the Commissioner but by a subordinate officer, which is not the mandate of sections 343 and 344 of the DMC Act, Mr. Aroraa cites Office Order dated 02.06.1997, under which, in exercise of powers vested in the Commissioner MCD by section 491 of the DMC Act, various powers and functions under that statute have been delegated by the Commissioner *inter alia* to "All AEs (Bldg) of zones". Mr. Aroraa points-out that demolition order dated 25.01.2010 has been signed and issued by Mr. B.S. Meena, AE(B) i.e. Assistance Engineer (Building) in exercise of the power so delegated, which therefore answers the petitioner's said allegation. To answer the petitioner's allegation that demolition notices were never

"served" upon the petitioner but were straightaway pasted on the subject property, Mr. Aroraa draws attention to order dated 18.07.2018 passed by the Supreme Court in ***M.C. Mehta*** *(supra)* where the court has observed as under:-

> ***"****In our opinion and we direct accordingly, that the show cause notice be issued not giving more 48 hours time (excluding holidays) to the alleged defaulter to respond to the show cause notice. The learned Amicus agrees with this submission and submits that in appropriate cases the premises wherever unauthorised construction activity exists, the service of show cause notice should be made, if necessary, by affixation. We direct accordingly.*
>
> *After the show cause notice is served on the alleged defaulter and the response received within 48 hours (excluding holidays), necessary action should be taken most expeditiously in accordance with law. "*
>
> (Emphasis supplied)

45. In any case, Mr. Aroraa points-out that a reading of the service report written on the reverse of demolition order dated 25.01.2010 shows that an attempt to serve the notice upon the petitioner directly was made twice, first on 25.01.2010 and then again on 27.01.2010. When the first attempt failed, permission was sought from the superior officer for pasting the notice, which was declined in the first round with the comment: "Pl try again". However, after the second attempt to serve the petitioner failed, the superior officer namely the AE(B),gave permission to paste the notice by noting: "As proposed". The notation made on the demolition notice on 28.01.2010 shows that the notice was then pasted at the site in the presence of two officials. In these circumstances, it is urged that service of the demolition

notice upon the petitioner was in compliance with section 444(d) of the DMC Act and was complete. Section 444(d) reads as under :

> *"**444. Service of notices, etc**.—(1) Every notice, bill, summons, order, requisition or other document required or authorised by this Act or any rule, regulation or bye-law made thereunder to be served or issued by or on behalf of the Corporation, or by any of the municipal authorities specified in Section 44 or any municipal officer, on any person shall, save as otherwise provided in this Act or such rule, regulation or bye-law be deemed to be duly served—*
>
> *x x x x x x*
>
> *(d) in any other case, if the document is addressed to the person to be served and—*
>
> *(i) is given or tendered to him, or*
>
> *(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the Union Territory of Delhi or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or*
>
> *(iii) is sent by registered post to that person. "*
>
> (Emphasis supplied)

It is urged by Mr. Aroraa that even so, if the petitioner had any grievance against service of the demolition notice or demolition order, the appropriate remedy was to approach the Appellate Tribunal, MCD under section 347B of the DMC Act; which the petitioner failed to do; and only

after the subject property was demolished on 13.03.2010 did the petitioner choose to file the present petition on 23.03.2010, claiming damages for alleged unlawful demolition.

46. For the satisfaction of the court, the respondent has also produced the original 'Dispatch register/UPC register' pertaining to the Building Department (Central Zone) for the period 21.03.2007 to 18.09.2007 running into page Nos.1 to 354, which contains evidence of posting of various communications by the respondent to various persons. The court has examined this register and it is found that there is indeed an entry bearing serial No.3785 referring to a communication in the name of the petitioner Smt. Usha Devi Sharma addressed to K-1 Second Floor, Rear Portion, Kailash Colony, purportedly the letter rejecting sanction/regularisation, which has been dispatched Under Postal Certificate (UPC) on 27.08.2007 as evidenced by the stamp affixed by the postal department. Corroborating this is a notation on communication dated 24.08.2007, which is the letter rejecting sanction/regularisation of the subject property, in the original records of the respondent which bears the same serial No. 3785/UPC.

47. On the concept of deemed sanctioned, Mr. Aroraa cites the decision of the Supreme Court in ***Ansal Properties & Industries (P) Limited & Anr. Vs. Delhi Development Authority & Ors.*** reported as 1993 Supp (1) SSC 61, in which, while dealing with the issue of deemed sanction at the hands of the DDA, the Supreme Court has laid down the *sine qua non* for an application for deemed sanction. Counsel points-out that even though the authority concerned in that case was the DDA, since Buildings Bye-Laws for Delhi are common whether a property falls in an area under the DDA or

under any of the Municipal Corporations, the provisions for deemed sanction under the Buildings Bye-Laws are also the same. The following paragraphs of the judgment in ***Ansal Properties*** (supra) are relevant :

> *"14. The admitted facts of the case are that the building plans were submitted to the D.D.A. on August 12, 1985 and the D.D.A. had forwarded the plans for approval of Delhi Urban Arts Commission (DUAC) on September 13, 1985. ..... The DUAC by its letter dated September 18, 1985 sought certain clarifications from the appellant within ten days and again sent a reminder on September 24, 1985 but the appellants did not send any reply. On the other hand the appellant sent notice of commencement of construction on October 15, 1985 and on that basis is claiming that having not received any order of rejection of the plans within sixty days as contemplated under bye-law No. 6.7.4 the appellant had become entitled to deemed sanction. We find no force in this submission. As already mentioned above, it was necessary to obtain the approval of the DUAC and the DUAC by letters dated September 18, 1985 and September 24, 1985 were seeking certain clarifications from the appellant. Bye-law No. 6.7.4 of the building bye-laws, 1983 of the Delhi Development Authority reads as under:*
>
> *x x x x x x*
>
> *"15. According to the above provision the question of deemed sanction only arises if within sixty days of the receipt of notice under 6.1 of the bye-laws the authority fails to intimate in writing to the person, who has given the notice, of its refusal or sanction or any intimation. In the present case the D.D.A. had informed the appellant that the plans had been sent to DUAC for approval and the*

DUAC was also seeking some clarifications from the appellant by their letters dated September 18, 1985 and September 24, 1985. The further requirement as contemplated under bye-law 6.7.4 is that the fact of deemed sanction has to be immediately brought to the notice of the authority in writing by the person who has given notice and thereafter if no intimation is received from the authority within 15 days of giving such written notice the provision of deemed sanction comes into operation. In the present case the appellant only sent a notice for commencement of construction on October 15, 1985 and the same in our view does not fulfil the requirement of the notice which is contemplated under bye-law 6.7.4 inasmuch as intimation had already been given by DUAC seeking information. Apart from this the ban on the construction of multi-storeyed buildings came into operation from October 17, 1985 itself and in view of this circumstance also there was no question of the applicability of deemed sanction in the facts of this case. It is not in dispute that the building has been constructed without any sanction or permit from the D.D.A. as required under the building bye-laws and the building has been constructed at the risk of the appellant under the stay order of the High Court. ....”

(Emphasis supplied)

48. Mr. Aroraa points-out that unlike the above case before the Supreme Court, where the DDA had at least received a notice from the owner for commencement of construction, in the present case the petitioner had admittedly not issued any such notice to the respondent ; and *a-fortiori* therefore the petitioner could not have availed deemed sanction.

49. Mr. Aroraa also cites a decision of a single Judge of this court in ***Gyan Prakash Sharma vs. Delhi Development Authority & Anr.*** reported as 2002 SCC OnLine Del 270, in which the court has expatiated on the word 'immediately' appearing in Bye-Law No. 6.7.4 in the following words :

> *"40. The word "immediately" appearing in Bye-law 6.7.4 with reference to the 'deemed sanction' is of enormous importance. The bye-law provides that if within 60 days of the receipt of notice under Bye-law 6.1, the authority fails to intimate in writing to the person who has given the notice, of its refusal or sanction or any intimation, the application with its plans and statements shall be deemed to have been sanctioned provided this fact is "immediately" brought to the notice of the authority in writing by the person who has given notice of having not received "any intimation" from the authority within fifteen days of giving such written notice (sic). As per the dictionary meaning and even in common parlance the word 'immediately' means without pause or delay or doing thing at once or without delay.*
>
> *xxxxx*
>
> *"45. By no stretch of imagination the action after period of five months can be deemed as an action bringing "immediately" into the notice of the authorities that he has not received "any intimation" within 15 days of the notice under Bye-law 6.7.4.*
>
> *"46. In view of the grave and serious consequences flowing from the 'deemed sanction' the obligations cast upon the applicant by virtue of Bye-law 6.7.4 are of mandatory nature and have to be adhered to in letter and spirit as the main object of such a provision is only to*

make the authorities act upon the application forthwith and without delay and not to sleep over the matter and keep the applicant in suspended animation.

xxxxx

"48. In Ansal Properties and Industries (P) Ltd. v. Delhi Development Authority, (supra), the appellant had only sent a notice for commencement of construction on October 15, 1985 it was held that the same did not fulfil the requirement of the notice which is contemplated under Bye-law 6.7.4 inasmuch as intimation had already been given by DUAC seeking further information within 60 days from the receipt of the application. This observation leads to inference that once an intimation of any kind whatsoever except refusal or grant of sanction is sent to the applicant within 60 days the embargo of 60 days limit become inoperable."

(Emphasis supplied)

50. In the present case, the petitioner alleges that she gave notice under Bye-Law 6.1 on 12.04.2007; thereafter she waited for 90 days instead of the 60 days period contemplated under Bye-Law 6.7.4 ; and thereafter *vide* letter dated 17.07.2007, she gave to the respondent the intimation that is required to be given 'immediately', namely intimation of the fact that the petitioner had not received any sanction or refusal or other intimation from the authority in relation to the building plans submitted. The petitioner's contention is that within 15 days of the petitioner having given such intimation, deemed sanction would have fructified in her favour. Mr. Aroraa submits that the period of one month between 11.06.2007 (i.e. when the 60-day period after notice dated 12.04.2007 got over) and 17.07.007 when the petitioner intimated that she had not heard from the respondent on

the building plans submitted, would not qualify as giving notice 'immediately' as required under Bye-Law No. 6.7.4. It is Mr. Aroraa's contention that in any case, letter dated 17.07.2007 was not an intimation to the respondent for commencement of construction, which is what the law requires. Besides, it is argued that the entire series of correspondence sent by the petitioner to the respondent as late as in the year 2010 shows that even till 2010 the petitioner knew that she had not been accorded sanction for construction, since she kept inquiring about the status of such sanction.

51. It is submitted that in fact the entire process of application for deemed sanction was vitiated since the petitioner's so-called application dated 12.04.2007 was defective, not being in compliance with the requirements of section 333 of the DMC Act, by reason of which the 60-day period contemplated under section 337 for according deemed sanction did not even begin to run. It is further argued that within the time-frame of 60 days provided under Bye-Law No. 6.7.4, the respondent had issued intimation/letter dated 06.06.2007; and had subsequently even issued letter dated 24.07.2007 rejecting the sanction. It is pointed-out that the intimation/letter dated 06.06.2007 was within the 60 days' time-frame and thereby negated the entire process of deemed sanction as contemplated under Bye-Laws No. 6.7.4. It is reiterated that by reason of directions issued by the Supreme Court in ***M C Mehta*** (supra) on 07.05.2007, during the 60 day period when the petitioner's application dated 12.04.2007 was pending, it became impermissible to construct a third floor on the said premises. It is argued that the provisions for deemed sanction are intended only to expedite the process for grant of building sanction ; but that is not to say that deemed

sanction would authorise construction of portions in breach of the Buildings Bye-Laws, Rules and Regulations; or that it would amount to amnesty or immunity from complying with applicable Building Bye-Laws.

52. In support of its submissions, the respondent cites order dated 09.04.2008 made in W.P.(C) No. 8556/2007 in ***Sharan Kaur vs. MCD & Ors.*** where a single Judge of this court has observed as under :

> *"3. Learned counsel for the respondent/MCD has brought to my notice a Division Bench decision of this court in "Raghbir Singh and Others"reported in AIR 1982 Delhi 550 in which reference was made under* section *337 of the Delhi Municipal Corporation Act, 1957 and it was observed that deem sanction has serious implications and if the Corporation is to be tied down to* section *337, it is necessary for the party to substantially comply with provisions of* section *333, before any benefit can be taken.*
>
> *"4. In the present case, on 10th May, 2007, MCD had informed the petitioner that the application filed by the petitioner cannot be treated as per law and would not be entertained, until the petitioner files on record ownership documents, and clears the question of division of plot.It was also stated that the documents as submitted that were not signed by architect and the owner. It is clear from the above letter that building plans submitted by the petitioner as on 30.3.2007 did not comply with the statutory requirement of* section *333 of the Delhi Municipal Corporation Act, 1957. The said* section *requires that an applicant can apply for sanction of building plans or give notice in writing of his intention to the Commissioner in such form and containing such information as may be*

prescribed by the bye-laws made in this behalf. It also stipulates that such notice must be accompanied by documents and plans as may be prescribed. In view of the lapses pointed out in the letter dated 10.5.2007, it cannot be said that the petitioner had made substantial compliance with section *333 of the Delhi Municipal Corporation Act, 1957. I do not think in the present case, the petitioner is entitled to benefit of deem sanction.*

xxxxxx

"6. Learned counsel for the petitioner, however, submitted that the letter dated 10.5.2007 written by MCD was received by the petitioner on 8th August, 2007 and thereafter the petitioner made a representation and submitted the necessary documents on 22nd August, 2007. To my mind this aspect will not make any difference for the judgment of the Division Bench in the case of Raghbir Singh (Supra) makes it clear that to take benefit of deem sanction section *337(1), the condition precedent is substantial compliance with the provisions of* section *333 of the Delhi Municipal Corporation Act, 1957. The effect is that an application for sanction of building plans is deemed to be received only after substantial compliance is made with* section *333 of the Delhi Municipal Corporation Act, 1957 and till compliance is made, application is not treated to befiled. Till substantial compliance is made and the application complies with* section *333 of the Delhi Municipal Corporation Act, 1957, time period mentioned in* section *337 does not begin and start."*

(Emphasis supplied)

53. In this context, the respondent points-out that notice dated 06.06.2007 and 24/25.07.2007 (two notices) set-out the several deficiencies in the

application itself, whereby the very process of applying for deemed sanction did not 'kick-off' in accordance with the provisions of law.

54. Mr. Aroraa contends that in any event, if the petitioner was to seriously contest the issuance and receipt of the communications referred to by the respondent, that would involve detailed questions of fact that cannot be decided without a full-dressed trial; in which case, the petitioner would have to resort to the remedy of a civil suit.

55. In conspectus, Mr. Aroraa submits that demolition of the subject property comprising two rooms and a porta cabin on the third floor of the building was a culmination of various orders and directions made by the Civil Court in suit CS No. 414 of 2008, in compliance of which the respondent inspected the subject property on 22.02.2010, whereupon it was found that the entire construction of the third floor was without any sanction nor had it been regularised ; and was therefore wholly unauthorised. It is in this backdrop that the third floor was demolished. There is accordingly no merit in the petitioner's allegation that the demolition was illegal nor is there any substance in the petitioner's consequential claim for damages.

Discussion & conclusions :

56. I have given my anxious consideration to the submissions made on behalf of the parties. I have also carefully perused the record, including the original file of the subject property produced in court by the respondent. To begin with, it appeared that the petitioner was the victim of unilateral, arbitrary, vindictive and harsh action at the hands of the respondent by way of demolition of the subject property, without following the due process of law.

57. Upon a detailed consideration of the matter however, it transpires that the following aspects stand established from the record, without requirement of any evidence or further proof :

(i) that as early as on 25.01.2007 the respondent had addressed a letter to the SHO P.S.: Greater Kailash for stopping construction that was being undertaken by the petitioner on the subject property without sanction ;

(ii) that the petitioner made an application seeking ‘sanction’ for construction of the subject property only on 12.04.2007 pursuant to a public notice published in the 'Times of India’ newspaper, whereby the respondent had offered to ‘regularise’ existing unauthorised construction upon certain terms and conditions ;

(iii) that intimation/notice dated 06.06.2007 was issued by the respondent to the petitioner setting-out several deficiencies in the petitioner's application dated 12.04.2007 ; and this notice dated 06.06.2007 was issued within the 60-day period stipulated in section 337 of the DMC Act and Bye-Law 6.7.4;

(iv) that by letter dated 24.08.2007 the respondent expressly rejected the sanction for construction sought by the petitioner ; and evidently, the mis-description of the property in the rejection letter arose from communication dated 12.04.2007, in which the petitioner had sought sanction for construction of a ‘second floor/third floor duplex’ unit ;

(v) that the petitioner had not complied with the procedural requirements for availing deemed sanction, inasmuch as the petitioner had admittedly not issued notice to the respondent prior to commencing construction as required under section 337 of the DMC Act ;

(vi) that the objection raised by the petitioner as to the signatory of demolition notice/order dated 25.01.2010 is also without any substance inasmuch as section 491 of the DMC Act authorises the Commissioner to delegate his power in relation *inter alia* to take action for demolition ; and Office Order dated 02.06.1997 cited by the respondent shows that such power was indeed delegated by the Commissioner to the signatory of the demolition notice/order as permissible under section 491;

(vii) that from the record it is clear that show-cause notice was issued in respect of the subject property on 18.01.2010 ; thereafter a notice directing the petitioner to demolish the unauthorised construction was issued on 25.01.2010 ; and after that, demolition order was issued on 03.02.2010, which communications were in consonance with the requirements of law ;

(viii) that even if all other aspects are put aside, there was a complete prohibition of construction of any 'additional floors' in Delhi imposed by order dated 07.05.2007 made by the Supreme Court in ***M.C. Mehta*** (supra), which would override any other contrary provision of the DMC Act or of the

Building Bye-Laws which permit such construction, whether by way of deemed sanction under Section 337 or in any other manner, in view of the overarching powers of the Supreme Court under Article 142 of the Constitution;

(ix) that the petitioner's allegation that she had not received letter dated 24.08.2007 from the respondent is negated by the Dispatch Register/Under Postal Certificate (UPC) Register produced in original by the respondent, which cross-references the dispatch of letter dated 24.08.2007 rejecting the sanction/regularisation of the subject property ;

(x) that the pasting of demolition order dated 25.01.2010 on the subject property, after two attempts to serve the order upon the petitioner had failed, is sufficiently borne-out by the original record, including the notings of the steps taken prior to the pasting of the demolition order on the subject property. Furthermore, in my opinion, service of notice was in accordance with section 444(d) ; and is therefore valid in law;

(xi) that, to add to this, are the orders made by the civil court in Civil Suit No. CS No.414/2008**,** which bear-out the respondent's submission that there were in fact directions from the civil court to demolish the subject property.

58. At the risk of some repetition, it may be observed that the above factual matrix emerges from the submissions made by the petitioner herself,

without getting into any significant disputed questions of fact between the parties.

59. I am also constrained to observe that while there is every reason to encourage, support and further strengthen the provisions of Right to Information Act 2005, in certain cases it appears, whether inadvertently or otherwise, a web of confusion is woven by obtaining answers under the RTI Act to targeted questions made to various departments or sections of a department ; and by eliciting answers which, though technically correct, confuse matters to the benefit of an RTI applicant. Some of the answers elicited in the present case by the petitioner to her RTI queries, in my view, create exactly such confusion. Therefore, in deciding the present case, I have been cautious not to give weightage to the responses obtained under the RTI Act which, in my view, are being read without context or without due application of mind, with the intent to support a contention that is otherwise meritless.

60. On the basis of the foregoing discussion, this court is satisfied that there is no merit in the petitioner's contention that she had obtained or availed any 'deemed sanction' for construction of the subject property; or that the construction made was 'regularised' subsequently, under any provision of law. The entire construction *on top of the Second Floor (Rear Portion)* of property bearing No. K-1 Kailash Colony, New Delhi *namely the third floor*, was without sanction of law and therefore unauthorised.

61. This court is also satisfied that the respondent followed the steps and requirements of law before demolishing the subject property; and the action

for demolition of the unauthorised construction was therefore done in accordance with law.

62. That being the case, there is no basis to the petitioner's claim for compensation for demolition of the subject property. It may also be mentioned that other than her own *ipse dixit*, the petitioner has not cited any basis for the quantification of her claim for damage. The claim for damages is accordingly untenable and is rejected. The respondent is also at liberty to claim and recover from the petitioner demolition charges as may be due and payable, in accordance with law.

63. In the above view of the matter, W.P. (C) No. 2160/2010 is devoid of merit and the same is accordingly dismissed.

64. As for the prayer made in W.P.(C) No. 1033/2017, it appears from the record that no application has been made by the petitioner seeking sanction for construction on top of the Second Floor (Rear Portion) in property bearing No. K-1 Kailash Colony, New Delhi after the earlier construction of the third floor was demolished.

65. In the circumstances, there is no basis to issue the direction prayed for seeking sanction of the construction on the said portion. Suffice it to say, that subject to the provisions of law including those of the DMC Act and of the Unified Building Bye-Laws-2016 ; and subject to any orders made by the Supreme Court in ***M.C. Mehta*** (supra) or any other applicable court orders, the respondent may consider and decide such application, if and when made by the petitioner, in accordance with law. W.P.(C) No.1033/2017 is disposed of in the aforesaid terms.

66. Both petitions are accordingly disposed of ; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI, J.

June 30, 2020/SR/*uj*/j/Ne