CIRCULAR

No. 22 /2012

Sub:-Action by Police Stations to stop construction and seize construction material on directions by MCD u/s 344 (2) of DMC Act, 1957.

Pursuant to Court directions, a meeting was held with the Municipal Corporation of Delhi to workout the modalities of police action u/s 344 (2) of DMC Act, 1957. Minutes of the meeting, as well as a circular based on these minutes issued by MCD are enclosed at **Annexure 'A' & 'B'.**

2. During the meeting, the role of police vis a vis unauthorised and dangerous construction was clearly defined. It was agreed that the Police are not technically competent or qualified to assess the structural stability of a building or whether any person is deviating from the building plans or is constructing the building in a dangerous manner and posing a threat to his neighbours and therefore, cannot be tasked to identify such buildings or construction. This work should be left to the technically competent officers of the MCD. However, the SHOs of the Police Stations would provide all assistance to the MCD on matters related to the action u/s 344 (2) of DMC Act, 1957, provided all other legal formalities had been completed.

3. The role of police u/s 344 (2) of DMC Act would be as follows:-

(a) The MCD can issue directions to police u/s 344 (2) of DMC Act –

(i) to stop unauthorised construction at a particular place;

(ii) to remove the workmen;

(iii) to seize construction material including tools and machinery etc. involved in the work.

(b) The SHO to whom the letter is addressed has to take immediate action to stop this construction, remove the workmen and seize the construction material including tools and machinery.

(c) The construction material has to be handed over immediately to the concerned MCD officials for direct disposal.

4. The modalities for taking this action are described in the following paras:-

(a) While issuing Notice to the Police u/s 344(2) of DMC Act, 1957, MCD should ensure that directions to Police for stopping construction are sent only after notice is issued to the owner/ builder. This fact should also be mentioned in the notice issued to police. A copy of the revised format of the notice is enclosed at **Annexure 'C'**.

(b) It is clarified that powers u/s 344 (2) of DMC Act have been delegated by the Commissioner, MCD to the Zonal Assistant Engineers (Bldg.) who are legally empowered to sign and issue such letters to the Police authorities. SHOs should take cognizance of such letters, sent by the Zonal Assistant Engineers (Bldg.) and ensure compliance.

(c) Whenever such directions are issued u/s 344 (2) of DMC Act to the police, the SHO shall intimate the date, time and venue for the operation. The MCD shall depute staff for taking over the seized goods during the operation which shall subsequently be deposited with the concerned J.E. (Store). However, in case it is practically not possible for the Police Officer Incharge to give intimation in advance to MCD authority, the Police officer shall, after the seizure of the goods, intimate the MCD authority for taking over the said goods. The concerned MCD authorities in such cases shall depute staff within 24 hours to go to the Police Station for taking over the seized goods. Till such time, the seized goods would be in Police custody.

(d) The APRO Control Room of each MCD Zone will act as the Nodal Officer and will coordinate the matter even during odd hours. The seized material and equipment shall be got deposited in the Store of J.E. (Works) in each ward under the custody of J.E. (Works). The in-charge of the store shall get the seized items deposited; make inventory in the Register. The seized material shall be disposed off on the written orders of the Executive Engineer (Bldg./Works) etc. as the case may be. The Zonal Deputy Commissioner of MCD would issue necessary instructions for compliance by all concerned and a

list of stores along with locations, names & telephone numbers of the Nodal Officers (APRO Incharge/Control Room) shall be furnished to the concerned area Deputy Commissioners of Police.

The above instructions should be observed by all concerned while taking action u/s 344 (2) of DMC Act.

29/3/12

(B.K. GUPTA)
COMMISSIONER OF POLICE,
DELHI

No. 2101-2200 /Record Branch/PHQ dated Delhi, the 29/3/12

Copy forwarded for information and necessary action to: -

1. All Special Commissioners of Police, Delhi.
2. All Joint Commissioners of Police, Delhi.
3. All Additional Commissioners of Police including Principal/PTC, Delhi.
4. All Deputy Commissioners of Police, Districts/Units including FRRO, Delhi.
5. SO to CP, Delhi.
6. Addl. DCsP/PRO and I.T. Centre, PHQ.
7. Reader to CP, Delhi.
8. Librarian/PHQ.

Annexure - A

MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE SUPERINTENDING ENGINEER (BLDG)HQ
8TH FLOOR, DR. SHYAMA PARSHAD MUKHERJEE CIVIC CENTRE
JAWAHAR LAL NEHRU MARG
NEW DELHI 110 002

No. D/_____/SE(Bldg)/2012 Dated: _____

MINUTES OF THE MEETING HELD ON 23/02/2012 AT 0400 PM IN THE CHAMBER OF COMMISSIONER M.C.D.- REGARDING JUDGEMENT DATED. 31.12.2011 IN THE MATTER OF 'STATE VS. JALALUDIN' IN THE CASE FIR NO. 86/2011

A meeting on the above subject was held on 23.02.2012 at 04.00 PM, wherein officers of Police Department as well as officers from City Zone and HQ M.C.D. were present The list of officers present in the meeting is enclosed.

2, During the course of meeting, the order dated 31.12.2011 passed by the Hon'ble Court in the case titled as "State Vs Jalaluddn' in the case FIR No. 86/2011 u/s 304/341PC was discussed at length. As the order entails directions to the M.C.D as well as Police Authorities, the relevant aspects were deliberated upon. The Addl. Commissioner (Engg), M.C.D., informed that following measures in order to prevent mishap / unsafe construction have been initiated by the MC.D.

(i) In the recent past, in pursuance of directions of Hon'ble Lt. Governor, it has been made mandatory to leave 2.0 mts. space from adjoining property for construction of Basements in residential properties. The D.D.A. has also been directed by the Hon'ble Lt. Governor to carry out necessary amendment in the Master Plan2021.

(ii) A proposal has been sent to the Ministry of Urban Development for necessary amendment in the DMC Act, 1957 Section 348 — (removal of dangerous building) like the provisions of Mumbai Municipal Corporation Act (Section 353(B) to the Government of NCT of Delh / Ministry of Urban Development with the suggestion that 'the owner (s) or occuper Cs) of the building Cs) falling in the area prescribed by the commissioner will submit a annual statement in the month of April that building is not more than 30 years or submit the structural stability certificate of the building signed by the Technical Expert / agency as prescribed by the Commissioner".

(iii) In a meeting held on 24/10/2011 under the chairmanship of Hon'ble Lt. Governor, and subsequent meeting held under the chairmanship of V.C. National Disaster Management Authority (NDMA) on 01/01/2011, It was decided that the NDMA would organize a training programme to impart training to the officers of MCD. on the issues relating to rapid visual survey of buildings in order to identify dangerous buildings and to handle such emergent situations, and take necessary preventive measures efficiently and effectively, with circumspection, in order to preclude any possibility of mishap / loss of lives or property. Accordingly, a list of officers of MCD has already been sent to the NDMA and the training shall be fixed and conducted by the National Institute of Disaster Management (NIDM).

3. (a) While issuing directions to Police under Section 344(2) of DMC Act, 1957, it should be ensured that the direction to the concerned police officers is sent after issuing direction to the owner / builder and notice to

Contd.,.2.

the police should incorporate the information of the notice having been issued to the owner / builder and the format of the notice being issued under Section 344(2) be accorded amended appropriately A copy of the revised format is enclosed.

(b) On the issue of signing of such Notices under Section 344(2) by the Zonal Assistant Engineers (Bldg), the Police Officers present in the meeting expressed that the Zonal Assistant Engineers are not empowered to sign / send such letters. The position was clarified during the discussions, and it was informed to them that necessary powers under the Section 344(2) have been delegated by the Commissioner, M.C.D., under Section 491 of the DMC Act, 1957 to the Zonal Assistant Engineers (Bldg) vide Office Order dated 02/06/1997, and thus, they are empowered to sign and send such letters to the Police Authorities, Therefore, exercising of such powers by the Zonal Assistant Engineers (Bldg) under the said Section is valid. It was emphasised that the directions may be issued by the Commissioner of Police to the concerned Station House Officers to take cognizance of such letters, whenever sent to them by the Zonal Building Department to ensure its compliance.

4. It was suggested that in view of the request that the tools and equipments seized from the site of construction are required to be deposited in the nearby Municipal Store, MCD should identify such Stores and list of the same should be sent to the concerned area Deputy Commissioner of Police. It was decided that the APRO Control Room of each Zone will act as the Nodal Officer and will coordinate the matter even during odd hours, The seized material / equipment shall be got deposited in the Store of J.E.,(Works) in each Ward under the custody of J.E,(Works). The Incharge of the Store shall get the seized items deposited; make inventory of the same in the Register and the same shall be disposed off as per the written orders of the Executive Engineer concerned (Building / Works etc), as the case may be. The Zonal Deputy Commissioner of MCD would issue necessary instructions for compliance by all concerned and a list of Stores alongwith location, and name & telephone number of the Nodal Officer (APRO-Incharge/Control Room) shall be furnished to the concerned area Deputy Commissioner of Police,

5. With a view to ensuring that there is no loss of human lives and property, the occupants of any dangerous building shall be issued vacation notice under Section 349 of the DMC Act 1957 and a copy of the same shall be endorsed to the Police Department. The Police Department will provide necessary assistance in getting the premises vacated, The Deputy Commissioner of Zone (MCD) in liaison with the Divisional Commissioner shall ensure that after vacation of the premises, the occupants and their baggage / belongings etc, are shifted to a relief centre,

6. Whenever directions for seizure of goods are issued under Section 344(2) to the Police, the concerned SHO or his officer shall intimate to the concerned officer in MCD (who has issued the 344(2) notice the date, time and venue for the operation The MCD concerned authority shall depute staff for taking over the seized goods during the seizure operation which shall subsequently be deposited with the concerned J,E.(Store). However, in case it is practically not possible to the Police Officer n-charge to give advance intimation to MCD authority, the Police Authority shall, after the seizure of the goods, intimate to the MCD authority for taking over the said goods. The concerned MCD authorities in such cases shall depute staff within 24 hours to the Police Station for taking over the said seized goods. Till such time, the seized goods would be kept under the Police custody.

7. It needs to be ensured that any claim of structural stability of a building should be ascertained by the competent authority and any unscrupulous elements are not allowed to carry out unauthorised construction n the garb of structural safety.

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8. The Special Commissioner of Police, Law and Order, Delhi, stated that the police are not technically competent or qualified to assess the structural stability of a building or whether any person is deviating from the building plans or is constructing the building in a dangerous manner and posing a threat to his neighbours and therefore, cannot be tasked to identify such buildings or construction. This work should be left to the technically competent officers of the MCD. However, the SHOs of the Police Stations would provide all assistance to the MCD on matters related to action under Section 344(2) and 349 of the DMC Act, 1957, provided all other legal formalities had been completed.

9. The meeting ended with a vote of thanks to the Chair.

Superintending Engineer(Bldg)HQ

All concerned

MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE COMMISSIONER
Dr. SP Mukherjee Civic Centre (4th Floor), JLN Marg, New Delhi-110002

No.PSC/...135...../2012 Dated : 27.03.2012

CIRCULAR

Pursuant to an Order passed by Hon'ble High Court of Delhi in a case titled as "State Vs. Jalaludin" and subsequent deliberations held with the senior officers of Police Department regarding unauthorized/unsafe constructions the following instructions are issued for strict compliance by all concerned :

1. In the recent past in pursuance of directions of Hon'ble Lt. Governor it has been made mandatory to leave 2.0 mts. space from adjoining property for construction of basements in residential properties. A Circular bearing No.D/485/Addl.Cm.(Engg)/ Bldg.HQ/2011 dated 26/12/2011 to this effect was issued for implementation/ compliance by all concerned.

2. The Zonal Building Departments are sending letters to the Police Authorities under Section 344(2) of the DMC Act, 1957 for stoppage of work, removal of workmen and seizure of construction material including the tools, machinery etc. involved in execution of the work, in respect of cases of unauthorized construction/ deviations against Sanctioned Building Plans. The following instructions be followed for sending letters to the Police Authorities under the said Section:

i) The format has been partly modified as annexed herewith which incorporates the information of the Notice having been issued to the owner/builder by the Zonal Building Department. Henceforth the enclosed format be adopted for sending letters to the Police Authorities under the said Section.

ii) The tools and equipments seized from the site of construction are required to be deposited in the nearby Municipal Store and therefore the Deputy Commissioner of the Zone should identify such Stores and notify them to all concerned.

iii) The APRO Control Room of each Zone will act as the Nodal Officer for receipt of seized material and will coordinate the matter even during odd hours.

iv) The seized material/equipment shall be deposited in the Store of J.E.(Works) in each Ward under the custody of J.E.(Works). The Incharge of the Store shall get the seized items deposited; make inventory of the same in the Register and the same shall be disposed off as per the written orders of the Executive Engineer concerned (Building / Works etc) as the case may be in the manner specified in Section 326 of DMC Act 1957.

v) The Zonal Deputy Commissioner of MCD would issue necessary instructions for compliance by all concerned and a list of Stores alongwith location, name & telephone number of the Nodal Officer (APRO-Incharge /Control Room) shall be furnished to the concerned area Deputy Commissioner of Police.

vi) Whenever directions for seizure of goods are issued under Section 344(2) to the Police, the concerned SHO or his officer shall intimate to the concerned officer in MCD (who has issued the 344(2) notice) the date, time and venue for the operation. The concerned officer of MCD shall depute staff for taking over the seized goods during the seizure operation which shall subsequently be deposited with the concerned J.E.(Store). However in case it is not possible for the Police Officer in-charge to give advance intimation to MCD information about the seizure of the goods on behalf of the MCD would be sent to the concerned officer as notified by MCD for taking over the said goods. The concerned officer of MCD shall depute officer/staff within 24 hours for taking over the said seized goods from the Police Station and till such time the seized goods would be kept under the Police custody.

3. With a view to ensuring that there is no loss of human life and property the occupants of any dangerous building shall be issued vacation notice under Section 349 of the DMC Act 1957 and a copy of the same shall be endorsed to the Police Department. The Police Department will provide necessary assistance in getting the premises vacated. The Municipal Deputy Commissioner of the Zone in liaison with the Divisional Commissioner/ Deputy Commissioner (Revenue) concerned shall ensure that after vacation of the premises the occupants and their baggage/belongings etc. are shifted to a relief centre.

4. Any claim of structural stability of a building be ascertained by the competent authority and it should be ensured that any unscrupulous elements are not allowed to carry out unauthorized construction in the garb of structural safety.

5. The concerned field staff of MCD would assess the structural stability of a building or whether any person is deviating from the building plans or is constructing the building in a dangerous manner and posing a threat to his neighbours. However the SHOs of the Police Stations would provide all assistance to the MCD on matters related to action under Section 344(2) and 349 and other related Sections of the DMC Act, 1957 provided all other legal formalities had been completed.

6. The Zonal Deputy Commissioners shall implement these instructions in letter and spirit.

27/3/2012

(K.S. MEHRA)
Commissioner
27/03/2012

Distribution :

1. All Zonal Deputy Commissioners
2. All Zonal Superintending Engineers
3. All Zonal Executive Engineers (Bldg)

Copy to:
- I) All Additional Commissioners
- II) Chief Vigilance Officer
- Iii) Chief Law Officer
- Iv) Engineer-in-Chief
- v) Chief Town Planner
- vi) Chief Director (IT) – To upload the Office Order on MCD's website.
- vii) All Chief Engineers

Copy for Information to:
- i) Principal Secretary (UD), GNCTD
- ii) OSD to Hon'ble Lt. Governor, Delhi
- iii) Shri Dharmendra Kumar, Spl. C.P.(Law & Order), Delhi Police HQ, MSO Bldg., IP Estate, New Delhi.

Annexure 'C'

MUNICIPAL CORPORATION OF DELHI
BUILDING DEPARTMENT
_____ ZONE: DELHI

No _____ Dated: _____

To

The Station House Officer
Police Station
_____
NEW DELHI

Sub: Unauthorised Construction in Property No. _____
- Action against the offenders under Section 344(2) of the DMC Act, 1957

Sir,

The owner / builder of the abovesaid property has carried out / is carrying out unauthorised construction without sanction / deviations against Sanctioned Building Plan. Inspite of our best efforts, the owner / builder has not stopped the construction activity at site. Necessary action under the provisions of Section 344(1) of the DMC Act has been initiated by the Department and a Notice under the said Section has been issued to the owner / builder. A copy of the said Notice is enclosed for ready reference.

You are, therefore, requested that action may kindly be taken under the provisions of Section 344(2) of the DMC Act and the aforesaid unauthorised construction activity be stopped by the Police immediately. The workmen present in the premises be removed and the construction material including the tools, machinery etc. involved in the execution of work may be seized forthwith, so that no further unauthorised construction can be carried out at site during holding and odd hours also.

Yours faithfully,

Encl: As above

Assistant Engineer (Bldg)
_____ Zone

Copy to:

1. Shri _____, Junior Engineer (Bdlg) - to keep strict watch over the above property and to ensure that no further unauthorised construction is carried out. He is further directed to take action as per Building Bye-Laws / DMC Act, 1957.

Assistant Engineer (Bldg)
_____ Zone