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

+ CONT.CAS(C) 153/2008

JAWAHAR LAL DUDEJA Petitioner
Through: Mr. Atul Buchar, Advocate.

versus

M.C.D. & ORS. Respondent
Through: Ms. Mini Pushkarna, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

% **ORDER**
21.11.2011

1. This contempt petition under Sections 11 and 12 of the Contempt of Courts Act, 1971 has been preferred by the petitioner against the respondents, who are officers of the MCD alleging willful disobedience of the order passed on 09.01.1992 by the Division Bench of this Court in W.P(C) 2190/1991. That order reads as follows:-

"C.W. 2190/91 & C.M. 3720/91

It would be appropriate if the Municipal Corporation proceeds in accordance with law, as contained in section 343 of the Delhi Municipal Corporation Act. Meanwhile, there will be no demolition.

After giving notice and taking proceedings in accordance with law, the Corporation may take demolition activity. In view of this order, nothing survives in this petition. Civil Writ is disposed of accordingly."

2. The case of the petitioner is that on 19.01.2008 the respondents proceeded to carry out demolition of the property in question without

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notice or hearing to the petitioner, and thereby deliberately and willfully breached the aforesaid order.

3. The submission of learned counsel for the respondent is that the petitioner is a rank encroacher on public land, having no semblance of title. At the relevant time when the said order came to be passed, the predecessor-in-interest was holding a coal licence for running a coal depot. This coal licence was not even in the name of the petitioner. This coal licence, in any case, was not renewed after the year 1995. She submits that after the said coal licence had lapsed, there was no legitimacy attached to the occupation of the public land in question by the petitioner. The petitioner is neither the lessee nor the licensee/Tehbazari holder of the said land. Learned counsel for the respondent submits that no notice is required to be given for removing encroachment from public land or public street. In this regard, she places reliance on Sections 320, 321 and 322 of the Delhi Municipal Corporation Act, 1957 (DMC Act), which read as follows:-

"320. Prohibition of structures or fixtures which cause obstruction in streets

(1) No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street or upon or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank.

(2) Nothing in this section shall apply to any erection or thing to which clause (c) of sub-section (1) of section 325 applies.

321. Prohibition of deposit, etc., of things in streets.—

(1) No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street, or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon.

(2) Nothing in sub-section (1) applies to building materials.

322. Power to remove anything deposited or exposed for sale in contravention of this Act

The Commissioner may, without notice, cause to be removed—

(a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon, **from or to any place in contravention of this Act;**

(b) any article whatsoever hawked or exposed for sale on any public street or **in other public place in contravention of this Act and any vehicle, package, box or any other thing in or on which such article is placed.**" (emphasis supplied)

4. She submits that on a plain reading of the aforesaid provisions, particularly Sections 321 and 322 of the DMC Act, 1957 along with the definitions "public place" and "street" contained in Sections 2(42) and 2(57) of the said Act, it is clear that no prior notice is required to be given to a rank trespasser for removal of encroachment on public land/street. She also places reliance on the decision of this Court in **Smt. Shehzadi Begum & Ors. V. MCD** in R.S.A.No. 132/2007

decided by the learned single Judge on 26.11.2007 as also the decision in **Asharfi Lal & Ors. V. UOI & Ors.** in W.P.(C) 699-712/06 decided on 14.07.2009 by this Court. She points out that Section 343 of the DMC Act falls in Chapter XVI which deal with 'Building Regulations' whereas Sections 320 to 322 fall in Chapter XV which deal with 'Streets'. She further submits that on 19.02.2008, the petitioner had himself undertaken to remove all its materials from the premises. She submits that the petitioner has, in fact, not removed its materials and continues to occupy the public place.

5. Learned counsel for the petitioner submits that the respondent cannot breach the order of this Court which specifically required that before undertaking demolition, the respondent was required to give notice under Section 343 of the DMC Act to petitioner's predecessor-in interest. He submits that by resort to Sections 320 to 322, the respondent could not have violated the Court's order. She submits that Section 343 does not draw a distinction between construction raised on land owned by the person or on encroached land. He submits that the petitioner and his fore-fathers have been in occupation of the land since 1951.

6. Having heard learned counsel for the parties, in the facts of this case I am not inclined to proceed any further in this matter. When the order dated 09.01.1992 was passed, the petitioner was still running a coal depot under a duly obtained licence. There was some semblance

of legitimacy attached to the occupation of the public place by the petitioner. The petitioner was then serving a public purpose. That is not the case now.

7. The notice was required to be given to the predecessor of the petitioner under Section 343 of the DMC Act i.e. to question the construction/extent of construction raised by the petitioner on the ground of it not being according to sanction obtained under the Act, or in violation of the Building Byelaws. However Sections 320 to 322 of the DMC Act, which deal with "streets" and "public places" shows that the MCD is entitled to remove encroachments from public land without notice. This is the view of the Court in the aforesaid decisions as well.

8. When the order dated 09.01.1992 was passed by the Division Bench, the Court did not take away the right of the MCD to remove encroachment even after the coal licence granted in favour of the petitioner's predecessor-in-interest had lapsed.

9. In view of the aforesaid position, I am not inclined to take any action on this petition. Dismissed.



VIPIN SANGHI, J

NOVEMBER 21, 2011

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