

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

Date of decision: 1st April, 2011.

+ W.P.(C) 1878/2010 & CM No.3762/2010 (for stay)

% SAVITA RANI JAIN **..... Petitioner**
Through: Mr. Raman Duggal, Advocate

Versus

MCD & ORS. **..... Respondents**

Through: Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates along with Mr. P.K.
Rastogi, AE (Central Zone), MCD.
Mr. I.S. Chauhan & Mr. Manoj
Kumar, Advs. for R-2.
Mr. Nikhil Singla, Adv. for R-3.

AND

+ **W.P.(C) 1932/2010 & CM No.3845/2010 (for stay)**

RAMESHWAR DASS AGGARWAL **Petitioner**
Through: Mr. Raman Duggal, Advocate

Versus

MCD & ORS. **..... Respondents**

Through: Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates along with Mr. P.K.
Rastogi, AE (Central Zone), MCD.
Mr. I.S. Chauhan & Mr. Manoj
Kumar, Advs. for R-2.
Mr. Nikhil Singla, Adv. for R-3.

AND

+

CONT.CAS(C) 240/2011

% **RAMESHWAR DASS AGGARWAL** **Petitioner**
Through: Mr. Raman Duggal, Advocate

Versus

MCD & ANR. **Respondents**
Through: Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates along with Mr. P.K.
Rastogi, AE (Central Zone), MCD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported
in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. The two writ petitions have been preferred impugning the notices dated 8th March, 2010 under Section 345A of the Delhi Municipal Corporation Act, 1957 calling upon the petitioner in each case to stop misuse of property known as 1, Shiv Mandir, Taimoor Nagar, New Delhi within 48 hours and threatening sealing of the property upon failure to so stop the misuse.

2. The petitions came up first before this Court on 18th March, 2010 & 19th March, 2010 respectively when while issuing notice to the respondent MCD, the order dated 24th February, 2010 of the Nodal Steering Committee appointed by this Court in ***Kalyan Sanstha Social Welfare Organization Vs. Union of India*** and pursuant whereto the action of sealing against the properties of the petitioners was threatened, was stayed with the clarification that the stay would not operate against any order passed by the Monitoring Committee appointed by the Supreme Court. The petitioners were also restrained from carrying out any additions, alternations, renovations, repair work in the properties.

3. Counter affidavits have been filed by the respondent MCD.

4. It was the contention of the respondent MCD during the hearing on 3rd December, 2010 that these writ petitions are not maintainable for the reason of the alternative remedy of appeal under Section 347B (m) of the Act being available to the petitioners. The counsel for the petitioners had then sought time to argue on the aspect of maintainability of the writ

petitions.

5. The counsel for the petitioners has today urged that appeal is provided against the “order” of sealing and not against the notice under Section 345A impugning which these writ petitions have been preferred. He thus contends that the writ petitions would be maintainable.

6. The counsel for the respondent MCD in its counter affidavit / status report has *inter alia* stated that the order of demolition of unauthorized construction and of sealing with respect to the said properties had been made as far back as in the years 2003 & 2006 respectively and part demolition action was also taken with respect to the property but demolition could not be effected fully owing to the law and order problem created at the site.

7. The counsel for the respondent MCD today clarifies that in pursuance of the notices dated 8th March, 2010 impugned in these petitions, no order of sealing has been passed as yet. It is stated that pursuant to the said notices and the reply of the petitioners thereto, the matter will be

considered and the order if any of sealing will be passed. It is however clarified that the said order will be in pursuance to the directions of the Nodal Steering Committee appointed by this Court and would be without prejudice to the order of demolition and sealing passed in the year 2003 and 2006 and against which no appeals whatsoever have been preferred.

8. The counsel for the respondent No.3 Residents Welfare Association (RWA) of D Block, New Friends Colony, New Delhi contends that the land underneath the property aforesaid is Mandir land and could not have been sold and purchased and should be given back to the Mandir.

9. The counsel for the petitioners in rejoinder states that the respondent no.2 New Friends Cooperative Building Society Ltd. had filed a suit with respect to the said land and which suit and the appeal thereagainst were dismissed.

10. However, all the aforesaid matters need not deflect the attention from the issue as to the maintainability of the writ petitions.

11. The contention of the counsel for the petitioners that the writ remedy

can be availed of by impugning the show cause notice and then contending that no appeal thereagainst is provided for and the appeal provided is only in pursuance to the order if any to be passed pursuant to the said show cause notice cannot be accepted. Rather, I am of the opinion that ordinarily a noticee of a show cause notice is not entitled to impugn the show cause notice itself and can only respond thereto and the challenge, if any, has to be, only to the order passed in pursuance of the show cause notice. The Division Bench of this Court in ***Hindustan National Glass & Industries Vs. UOI*** 132 (2006) DLT 454 held that statutory proceedings pending at the stage of show cause notice ought not to be interfered with in exercise of discretionary jurisdiction under Article 226 of the Constitution and which ought not to be permitted to be bypassed by resorting to writ petitions under Article 226. Another Division Bench in ***Pepsico Restaurants International (I) (P) Ltd. Vs. MCD*** 1995 (35) DRJ 616 had also reiterated that the High Court would not entertain a writ petition against a mere show cause notice except in the case of patent lack of jurisdiction in the authority issuing the notice or violation of principles of natural justice. It was held that the High Court should leave such a hasty

petitioner to pursue the remedy of showing cause against the notice raising all his contentions for the consideration of the statutory authority and then taking the appropriate remedy in the event of the result going against him.

12. In this regard, it may also be mentioned that the Legislature while introducing Section 345-A in the Act has not expressly provided for the issuance of any show cause notice before sealing the property. However, this Court in *Ahuja Developers (P) Ltd. Vs. MCD* 42 (1990) DLT 474 (DB) followed also in *Shrimati Shamim Bano Vs. MCD* 2007 VIII AD (Delhi) 304 has read the issuance of such a show cause notice in Section 345-A of the Act. The notices in the present petitions are nothing but such notices which this Court required to be issued prior to effecting the sealing. The petitioners will have to await the order, if any, of sealing in pursuance to the said show cause notice.

13. As far as the contention of the counsel for the respondent MCD of the respondent MCD being entitled to take action including of sealing, against the property in pursuance of the earlier order of demolition / sealing of the year 2003 & 2006 is concerned, now that the matter is to be decided

by the MCD, it is appropriate that the same be not given effect to till decision in pursuance of the show cause notices aforesaid. MCD having already waited for five to seven years to implement the said orders cannot be said to be in any hurry to execute / implement the same now.

14. The counsel for the respondent MCD however seeks clarification that in the aforesaid proceedings, the earlier orders of demolition / sealing are not to be re-opened. The counsel for the petitioners contends that they have no knowledge of any demolition / sealing order with respect to the properties of the petitioners and deny that any such orders were made with respect to the properties of the petitioners.

15. In view of the said position, it is not deemed expedient to in these proceedings make any observations with respect thereto.

16. Accordingly, the writ petitions are disposed of with the following directions:

- (i) The writ petitions be considered as the reply of the petitioners to the notices dated 8th March, 2010.

- (ii) The petitioners to appear before the Deputy Commissioner, Central Zone of the MCD on 7th April, 2011 at 1500 hours and on such subsequent dates as may be deemed necessary.
- (iii) The Deputy Commissioner, Central Zone of the MCD to pass an order in pursuance to the show cause notices aforesaid, on or before 15th May, 2011.
- (iv) Till the making and communication of the said order to the petitioners and for a period of four weeks thereafter, no action be taken with respect to the properties of the petitioners not even in pursuance to the earlier demolition order / show cause notices. However, after the four weeks aforesaid, if there is no stay from any of the Courts / foras, the MCD shall be entitled to seal the property and / or take action for demolition including in pursuance to the earlier orders aforesaid.
- (v) The respondent No.3 RWA of D Block, New Friends Colony, New Delhi shall be entitled to participate in the aforesaid

hearing before the MCD and if the petitioners prefer any other proceedings with respect to the sealing / demolition order with respect to the property then the petitioners shall implead the said respondent also as a party thereto and the said respondent shall have a right of hearing in opposition thereto.

- (vi) Owing to the report of the earlier law and order problem in execution of the demolition / sealing orders, the petitioners are directed to in future cooperate in respondent MCD implementing any orders which have attained finality and which are not under stay from any Court / fora.
- (vii) Both the parties shall have remedies in accordance with law.
- (viii) It is however clarified that the mere fact that the implementation of the earlier orders stated to have been made has been directed to be kept in abeyance would not tantamount to this Court having interfered with the same in these petitions.

(ix) The amounts deposited by the petitioners in this Court in pursuance to the order dated 3rd December, 2010 together with interest accrued thereon be refunded to the petitioners.

(x) The petitioners shall not raise any additions, alterations, constructions and shall not carry out any repairs in the property till aforesaid.

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In view of the aforesaid, the counsel for the relators / petitioners does not press this petition, reserving the right to take up the matter, if necessary at an appropriate stage. It is ordered accordingly.

No order as to costs.

Dasti.

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 01, 2011

‘gsr’