

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 8249/2011 and CMs 18569-70/2011**

Decided on 23.11.2011

IN THE MATTER OF
RAVINDER GOYAL

..... Petitioner

Through: Mr. Ashish Bhagat, Advocate with
Mr. Abdhesh Chaudhary, Ms. Manisha
Suri, Mr. Dushyanth Arora and
Ms. Geetanjali, Advocates

versus

MCD

..... Respondent

Through: Ms. Shyel Trehan, Advocate

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

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| 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 |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner, a tenant of premises No.H-9, South Extension, Part-I, New Delhi, praying *inter alia* for setting aside the vacation notice dated 15.11.2011 issued by the respondent/MCD under Section 349 of the DMC Act, as also for directions to the respondent/MCD to regularize the subject premises in terms of the

application for regularization pending at the end of the respondent/MCD.

2. Counsel for the respondent/MCD, who appears on advance copy, states at the outset that the relief sought in the present petition *qua* disposal of the application for regularization is not maintainable inasmuch as the said issue has been already been agitated by the petitioner before the Appellate Tribunal, MCD. She draws the attention of this Court to the order dated 18.11.2011 passed by the Appellate Tribunal, MCD on the appeal preferred by the petitioner against the vacation notice dated 15.11.2011, which is the subject matter of the present petition (Annexure P-17). Besides the above, in the appeal, the petitioner had also sought directions to the respondent/MCD to dispose of his pending application for regularization of the subject premises. Pertinently, the owners of the subject premises were not impleaded in the aforesaid appeal. Vide order dated 18.11.2011, the Appellate Tribunal, MCD held that against a vacation notice, an appeal was not maintainable before the Appellate Tribunal, MCD and the same was liable to be dismissed. As regards the other relief for disposal of the pending application for regularization, directions were issued by the Appellate Tribunal, MCD to the MCD to inform the petitioner within three days as to the amount required to be deposited by him as compounding fee, if the regularization application was still pending with it. With the aforesaid order, the appeal was disposed of. It is stated by the counsel for the respondent/MCD that in view of the aforesaid order, an identical relief with regard to the pending

regularization application could not have been sought by the petitioner in a second round of litigation initiated within three days from the date of passing of the aforesaid order by the ATMCD.

3. Counsel for the respondent/MCD further states that apart from the aforesaid directions issued by the ATMCD, the relief sought by the petitioner regarding the disposal of the regularization application would not be maintainable inasmuch as the said application has not been filed by the petitioner, who is a tenant in the premises, but by the owners of the premises, who have not been impleaded in the present petition as well.

4. A perusal of the averments made in the petition reveals that the petitioner claims that he has himself approached the respondent/MCD for regularization of the construction on the subject premises. However, the said submission is not borne out upon a perusal of the application for regularization enclosed with the writ petition, which shows that it is the owners and not the petitioner who have submitted a request for regularization to the respondent/MCD. On a pointed query addressed to the learned counsel for the petitioner, he concedes that the signatories to the said letter are actually the owners of the said premises.

5. In view of the fact that the petitioner is not the applicant, who had filed the application for regularization of the existing construction in the subject premises before the respondent/MCD, any such relief sought by him as directions to the respondent/MCD for processing the application for

regularization is not maintainable as it is for the owners, who are the ones who have filed such an application with the respondent/MCD, to agitate their grievance against the respondent/MCD by taking appropriate steps in that regard.

6. There is also merit in the submission made by the counsel for the respondent/MCD that the Appellate Tribunal, MCD having already issued directions to the respondent/MCD vide order dated 18.11.2011, the relief sought at prayer (ii) of the petition is not maintainable and the petition *qua* the said relief is liable to be dismissed on this ground alone.

7. As far as vacation notice dated 15.11.2011 is concerned, counsel for respondent/MCD states on instructions from the Department that the subject premises is one of the 176 properties situated in South Extension, in respect of which a Public Interest Litigation (PIL) is pending before the Division Bench, registered as **W.P.(C) 4369/2001** entitled NDSE-I, Residents Welfare Assoc. Vs. Commissioner M.C.D. & Ors. She states that in the aforesaid PIL, the Division Bench has been passing orders from time to time, directing appropriate action to be taken as per law in respect of the unauthorized construction existing in different premises located in South Extension. She states that in view of the above, the present petition ought not to be entertained by this Court and if the petitioner has any grievance, he ought to have approached the Division Bench as regards the vacation notice, more so when the aforesaid PIL is listed as soon as on 25.11.2011.

8. In view of the fact that a Division Bench is seized of the aforesaid issue in a PIL, which is being monitored by it, judicial discipline demands that this Court refrains from passing any orders in respect of the subject premises. As a result, the relief against the vacation notice as sought in the present petition is declined. However, liberty is granted to the petitioner to approach the Division Bench for appropriate orders against the impugned vacation notice. Similarly, it is for the owners of the subject premises to approach the respondent/MCD directly with a request to process their applications for regularization of the subject premises or in the alternative, to approach the appropriate forum for their remedies against the respondent/MCD for not having processed their application for regularization of the subject premises till date.

9. The petition is disposed of alongwith the pending applications.

NOVEMBER 23, 2011
rkb

HIMA KOHLI,J