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

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Date of Judgment: 12.3.2012

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CM(M) 2743/2005

AMRIK SINGH LYALLPURI

..... Petitioner

Through: None.

versus

MAHINDER KUMAR NIGAM & ORS.

..... Respondents

Through: Mr.O.P.Verma, Advocate for R-1.
Mr. Ajay Arora, Advocate for the
MCD.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned is dated 27.01.2004; the petitioner was appearing in person. In spite of the matter having been called twice he has not appeared.

2. Petitioner is aggrieved by the findings returned by the AT-MCD whereby his application filed under Order 39 Rule 2-A of Civil

Procedure (hereinafter referred to as the 'Code') had been dismissed.

3. Briefly stated the facts are that the petitioner is a journalist; he was aggrieved by the huge unauthorized construction raised by the unscrupulous builder i.e. Mahender Kumar Nigam (hereinafter referred to as the 'builder'); this unauthorized construction was raised in his vicinity i.e. 1300-13B, Bara Bazar, Kashmeri Gate, Delhi. This was in active connivance with the staff of the MCD as also the police officials of Police Station Kashmere Gate. Demolition orders had been passed against the illegal construction raised by the builder; appeals have been preferred by the said builder; the officials of the MCD and the builder had connived with one another to secure favourable orders in favour of the builder; contention being that on 27.4.2002, the appeals filed by the builder were dismissed in default and thereafter his application seeking restoration of the said appeals was filed; it was in these proceedings that the petitioner had moved an application seeking intervention. Admittedly his prayer was not allowed.

4. Present application was filed under Order 39 Rule 2-A of the Code seeking initiation of appropriate proceedings against the builder and the officials of the MCD who had violated the various orders passed

by the Court whereby he had been enjoined from carrying out any further illegal construction. This submission of the petitioner did not find favour with the ATMCD who had vide impugned order dismissed his application under Order 39 Rule 2-A of the Code.

5. Order 39 Rule 2-A of the Code reads as under:-

“[2A. Consequence of disobedience or breach of injunction

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]”

6. This provision is contained in Chapter XXXIX of the Code; this provision had been introduced by the amending Act of 1976; prior to the introduction of this Rule 2-A, the trial Court before whom a suit is

pending had no jurisdiction to punish the defendant if the interim order of injunction passed by it under Rules 1 or 2 was not obeyed by the defendant. A bare perusal of this provision would show that this provision is attracted only in case of disobedience of order of injunction or any other order made under Rule 1 for breach of the terms on which the injunction was granted or order was made. It is only a party to the suit who can relegate himself and resort to this provision. The party complaining disobedience must be a party to the suit. It is only when the party against whom the temporary injunction is issued, willfully disobeys it an action is called under this provision. It would only be against a temporary injunction and not against a permanent injunction.

7. In the present case, while disposing off the appeals, the AT-MCD had directed the builder to maintain status quo in respect of the structure and possession of the property in dispute; this was a final order which had been passed while disposing of the appeal. The procedure under Order 39 Rule 2-A of the Code could not have been resorted to. The applicant was admittedly not a party in the proceedings before the Tribunal which were proceedings pending before the ATMCD against certain demolition orders passed against the builder by the MCD. The

locus standi of the petitioner to agitate his cause had not been explained.

8. This Court on 03.8.2006 had in fact noted that the order passed by the Appellate Tribunal cannot be faulted with. However, since the contention of the petitioner before the AT(MCD) was of unauthorized construction going on in spite of said order having been passed by the concerned court, the report of the Nodal Steering Committee of the MCD had been called. This report is on record and is dated 27.8.2009. The conclusive portion of the said report reads herein as under:

- “1. That no doubt such a massive unauthorized construction could not have come up without the connivance of the zonal staff of the building department but action in this regard has already been taken.*
- 2. That there is no force in the contentions that no action has been taken against the unauthorized construction. In fact out of the 250 shops (approximately), there exists only 80 shops (approximately) and the remaining have already been demolished between 22.3.2003 to 12.08.2005. The fact of the matter is that demolition actions, numbering more than 30 have been already taken.*
- 3. That whatever remaining un-demolished construction still exists on the property is protected under the MPD 2021, no action is warranted against this portion at present in view of matter being subjudice before Supreme*

Court however if at any stage the Hon'ble Supreme Court is of the view that action be taken against the properties lying in Special Areas as defined in MPD 2021 even on the ground of misuser, then the MCD should immediately take appropriate legal action against the remaining shops without any delay. The action against these structures is not being directed by the Committee at this stage, only because as per the stand of the department, the matter is subjudice before the Hon'ble Supreme Court."

9. In this back ground the impugned order dismissing the application of the petitioner under Order XXXIX Rule 2A of the Code suffers from no infirmity. As noted supra the petitioner has also not appeared. Petition is dismissed on merits as also for non-prosecution.

INDERMEET KAUR, J

MARCH 12, 2012

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