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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6509/2012

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Judgment dated 15.10.2012

MUKESH MOHAN GOEL AND ORS

..... Petitioner

Through: Mr.Vivek Sharma, Ms.Mamta Sharma, Adv

versus

ASSTT. ENGINEER (BUILDING) AND ORS

..... Respondent

Through: Mr.Gaurang Kanth, Adv. for the MCD.

Ms.Suman Kukerety, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

W.P.(C) 6509/2012 & CM.17242/2012

1. The petitioners are aggrieved by the vacation notice dated 03.10.2012 issued under Section 349 of the DMC Act, 1957.
2. Counsel for the petitioner submits that the vacation notice/ order dated 03.10.2012 issued by the respondent no.1 is illegal and the same has been issued without application of mind. As per the notice the petitioners have been given 24 hours to vacate the premises. It is contended that bare reading of the notice shows complete non-application of mind, as some of the noticees are inanimate objects such as Bus Parking Plot, Sports Jackets and Gloves, which have been asked to vacate the subject property, so that the same can be demolished. It is contended that the recitals in the impugned notice are factually incorrect in view of the fact that the same very issues raised

in the present notice, have already been decided against the respondents by judicial orders, which have attained finality and by interim orders passed against the respondents in proceedings which are still pending. It is submitted that the said property comprises of a piece of land bearing plot no.16-A at Bagh Chandiwala on Main Mathura Road, falling between Mathura Road and Arab Ki Sarai (Nizamuddin), Delhi which largely consists largely of of open land and on which semi pucca construction of various sheds with tin roofs has been constituted. It is also contended that the property measures approximately 6265 sq. yds. and is divided into several portions and sub-portions which are held by various petitioners. It is submitted that since the year 1960 the subject property has been predominantly used for parking of vehicles(buses and cars) belonging to different petitioners in connection with their family business of hiring cars and busses. The petitioner no.8 also has his residence in one portion of the subject property. It is also contended that in the year 1968, the Estate Officer had initiated proceedings against the petitioners. Appeals filed against the orders of the Estate Officer were allowed and the District Judge, Delhi held that the suit land was the Government land, but was a private land, owned by Mukh Ram and others and that the partnership firm was in lawful possession thereof. The writ petition filed by the Union of India were dismissed vide judgment dated 09.05.1991 and accordingly, the judgment passed by the learned District Judge dated 22.02.1979 has attained finality. The petitioners also filed a suit for mandatory and permanent injunction against the Archaeological Survey of India, before the Senior Civil Judge, wherein an interim order was granted on 23.10.2009 and thereafter the suit filed by the petitioner was dismissed the appeal filed by the petitioner was

also dismissed, however, in RSA No.100/2011 the suit was restored and remanded back and thus the interim order is still in force.

3. The petitioners have prayed that the impugned notice be quashed and the respondents be restrained *inter alia* from interfering in the possession of the petitioners as also for compensation.
4. I have heard counsel for the parties and also perused the notice of 03.10.2012, which is reproduced below:

“Whereas, it has been reported that Property Known as 16-A, Bagh Chandni Walla is occupied/ encroached upon by M/s.Goel Auto Technology, M/s.I.S. Goel & Company, Bus Parking, Sports Jacket and Gloves, Baker Smith, Mohan Bros Bus Co. in contravention of Section 346 of the DMC Act.

Whereas, Land & Building Department, MoUD, Government of India has claimed that land whereupon the aforesaid structures have come up belongs to them and stands allotted to ASI contiguous to the monument of Arab-ki-Sarai with the purpose of developing its as a Green Zone. The alleged structures stand sealed and also declared dangerous and are liable to be removed for which action is under contemplation.

Now, therefore, I Assistant Engineer (Bldg.) Central Zone, South Delhi Municipal Corporation u/s.349 of DMC Act, call upon the above mentioned occupiers/ encroachers to vacate the premises within 24 hours of the receipt of this order so as to enable this office to demolish the alleged structures. In case of non-compliance of order, demolition action shall be carried out at the risk and cost of above named occupiers/ encroachers.”

5. A bare perusal of the aforesaid notice shows complete non-application of mind. The notice does not clarify as to whether the property is occupied or encroached upon and the notice has been issued not only to companies but also to Sports Jacket and Gloves, Baker Smith, Mohan Bros Bus Co. and there is no clarity as to whether this is the name of a company, proprietorship or to whom this notice has been

addressed. The respondent has also not taken into consideration the pendency of the civil suit, which is pending before the trial court.

6. Counsel for the respondents was asked to explain as to how the notice could have been issued to Bus Parking, Sports Jacket and Gloves, however, but no satisfactory response was received. It is however, contended that the building has become dangerous and thus liable to be removed. It is not in dispute that the entry of the tin shed has been sealed by the respondent and also that none can reside in the tin sheds.
7. It is a trite law that the show cause notice must be specific and clear. It must not lack details. In the case of Commissioner of Central Excise, Bangalore vs. Brindavan Breweries (Pvt.) Ltd. & Others reported in 2007 (5) SCC 388, it was held as under:-

“13. We find that in the show cause notice, there was nothing specific as to the role of the respondents, if any. The arrangements as alleged have not been shown to be within the knowledge or at the behest or with the connivance of the respondents. Independent arrangements were entered into by the respondents with the franchise-holder (Sic –franchiser). On a perusal of the show cause notice, the stand of the respondents clearly gets established.

14. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show cause notice is the foundation on which the department has to built up its case. If the allegations, in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much

less any material has been placed on record to substantiate the stand of the applicant, the conclusions of the Commissioner as affirmed by CEGAT cannot be faulted.

8. Similar view was expressed by the Supreme Court in **Canara Bank & Others vs. Devasis Das & Others** reported in 2003 (4) SCC 557 wherein it was held – “ that notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. (Also see – (2001) 1 SCC 291 – **Food Corporation of India vs. State of Punjab & Others** & (2008) 13 SCC 506 – **Municipal Corporation, Ludhiana vs. Inderjit Singh & Others**.
9. Accordingly, the impugned notice dated 03.10.2012 is set aside. Liberty is granted to the respondent to issue a fresh notice, if so advised, in accordance with law. Keeping in view the pendency of civil proceedings in the trial court, all the issues raised by the petitioners and all the legal objections taken, are kept open. Writ petition and the application are disposed of. As prayed, liberty is also granted to the petitioners to take appropriate steps by filing a suit to claim damages for the illegal demolition, alleged to have been carried out.
10. DASTI.

G.S.SISTANI, J

OCTOBER 15, 2012
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