

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

% *Order delivered on: July 31, 2013*

+ CM(M) No.589/2013 & C.M. No.8787/2013 (for stay)

NEW DELHI MUNICIPAL COUNCIL Petitioner
Through Ms.Madhu Tewatia, Adv. with
Ms.Sidhi Arora, Adv.

versus

DEEPAK JAIN Respondent
Through Mr.Mohit Gupta, Adv. with
Ms.Ushma Malik, Adv.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. By order dated 11th September, 2012, the Presiding Officer of Appellate Tribunal, MCD, allowed the Appeal No.323/AT.M.C.D./12 and quashed the impugned demolition order passed by the petitioner. The matter was remanded to the petitioner for a fresh decision in terms of the said order. Directions were passed that the proceedings be conducted Chairperson herself or by any other senior officer duly appointed by her but above the rank of Superintendent Engineer. The status quo order was also passed with regard to the construction activity in the property in question.

2. The respondent namely Deepak Jain who was not a party in the appeal filed the contempt petition before the Appellate Tribunal on 19th March, 2013, inter alia, alleging that the petitioner and the adjudicating authority

were unnecessarily and deliberately prolonging the matter and they are committing contempt of the orders of the Tribunal.

3. By order dated 18th April, 2013, the Appellate Tribunal, MCD, issued notice to the Chairperson directing her to file a reply and specify what steps were taken by her to supervise the remand back proceedings as was directed by it by order dated 11th September, 2012. It also asked the Chairperson that how many times she had dealt with the file personally as per directions. It was directed that in case the reply would not be found satisfactory then she may be called in future to appear personally.

4. By order dated 2nd May, 2013, the learned Presiding Officer, Appellate Tribunal, MCD, on being informed that the remand back proceedings were in process, directed that the mere pendency of the contempt application should not be treated as a stoppage of those proceedings. In compliance of order dated 11th September, 2012, by order dated 16th May, 2013 the petitioner, inter alia, came to the following conclusion:

“construction cannot be termed illegal. It is a fact that the re-construction of the canopy of this Petrol Pump by the DMRC is without approval, but, HPCL has applied for regularization, the undersigned does not find any merit in declaring the structure illegal. M/s. HPCL will get the structure regularized as soon as the Development Control norms and design for these petrol pumps are finalized. Till then, the structure should not be demolished, nor will they be allowed any additional construction.”

5. In the present petition, the petitioner has assailed the order dated 18th April, 2013 passed by the Appellate Tribunal, MCD, wherein the directions were issued against the Chairperson.

6. Ms.Madhu Tewatia, learned counsel appearing on behalf of the petitioner, submits that the Appellate Tribunal is likely to take the contempt proceedings against the Chairperson of the petitioner. Her submission is that the petitioner has already passed a speaking order on 16th May, 2013 in view of the order passed by the Appellate Tribunal on 18th April, 2013. It is open to the respondent to challenge the same in the Court of law. As regards the appearance of respondent No.2 for the purpose of contempt proceedings, her submission is that the said proceedings have to be referred to the Superior Court, as power has not been given to the subordinate judiciary. She relied upon a decision of the Supreme Court in the case of ***Ranveer Yadav vs. State of Bihar***, reported in (2010) 11 Supreme Court Cases 493, para-19 which reads as under:-

“19. This Court, therefore, holds that Section 2(c)(ii) has been enacted to protect apart from sanctity, the regularity and purity of a judicial proceeding. This, we repeat, is based on the principles of high public policy. That is why contempt power is said to be an inherent attribute of a superior court of record. This power has not been given to the subordinate judiciary, but in an appropriate case, the subordinate judiciary can make a reference to the High Court under Section 15(2) of the Act, as has been done in this case.”

7. After having heard the learned counsel for the parties, this Court is of the view that in case the respondent is aggrieved by order dated 16th May, 2013, he may take recourse to challenge the same in accordance with law. As far as directions issued by the Appellate Tribunal, MCD, in order dated 18th April, 2013 are concerned, in case after passing of order dated 16th May, 2013, the Tribunal feels that the said directions are not complied with, then in view of the settled law in the case of ***Ranveer Yadav*** (supra), the Tribunal

has got the power to make a reference to the High Court under Section 15(2) of the Act.

8. I agree with the submission of Ms.Tewatia, learned counsel for the petitioner, that no orders in contempt proceeding can be passed by the Tribunal in view of the judgment of the Supreme Court in the case of ***Ranveer Yadav*** (supra). No further orders are required to be passed in the present petition. The same is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 31, 2013