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

Judgment delivered on: 15th January, 2015

+ CONT.CAS(C) 693/2012

SURENDER KUAR MANGAL Petitioner
Represented by: Mr. S.C. Singhal, Adv.

versus

SANJEEV KUMAR & ORS Respondents
Represented by: Mr. Sunil Satyarthi, Adv.
for R1.
Mr. Shekhar Nanavaty, Adv. for R2.
ASI Prabhakaran, PS-Delhi Cantt. for R3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. No. 16513/2013 (for Restoration)

1. Vide the instant application, applicant / petitioner seeks recalling of order dated 30.09.2013 whereby the present petition was dismissed in default.
2. Keeping in view the averments made in the instant application and submission of Id. Counsel for the applicant, order dated 30.09.2013 is recalled.
3. Consequently, the petition is restored to its original number.

+ **CONT.CAS(C) 693/2012**

1. With the consent of the parties, present petition is taken up for final disposal.

2. Vide the present petition, petitioner seeks directions thereby punishing the respondents in accordance with law for violating the order dated 24.07.2012 passed by this Court as under:

“Since the factual aspect are required to be established, therefore, it is deemed appropriate to dispose of this petition in limini with directions to the first Respondent to decide petitioner’s Representation of 19th July, 2012 (Annexure P-6) objectively uninfluenced by the partisan attitude alleged against it by the petitioner and till Representation of 19th July, 2012 (Annexure P-6) is decided, with intimation to the petitioner, status quo as of today in respect of the subject premises be maintained. SHO of the concerned Police Station is directed to ensure the compliance of this order.”

3. Mr. S.C. Singhal, Id. Counsel appearing on behalf of the petitioner submits that the petitioner made complaints to the Chief Executive Officer, Delhi Cantonment Board, Delhi Cantt and the SHO, PS-Delhi Cantt, New Delhi regarding illegal and unauthorized construction in property no. II/46/1, Sadar Bazar, Delhi Cantt and demolition of common staircase between property no. II/46/1 and II/45/1, Sadar Bazar, Delhi Cantt.

4. Since no action was taken by the authorities mentioned above, the petitioner was constrained to file a Writ Petition being no. 4403/2012 wherein owner of property no. II/46/1 as mentioned above was respondent no. 2, Prem Lata. Accordingly, this Court vide order dated 24.07.2012, directed the respondents to maintain *status quo* till the disposal of the representation dated 19.07.2012.

5. Mr. Singhal further submitted that the respondents mischievously disposed of the aforesaid representation vide order dated 10.09.2012 and informed the petitioner as under:

“ *Reference your complaint dated 19.07.2012.*

In this connection it is to inform that you Delhi Cantonment Board has initiated following actions against the unauthorized construction done by Sh. Sudhir Sugandh, S/o, Late Sh. Babu Lal Sugandh at II/46, Sadar Bazar, Delhi Cantt.

- 1. Cantonment Board has issued two demolition notices under section 248 of Cantonment Act dated 21.07.2012 and 24.07.2012 against which Sh. Sudhir Sugandh has preferred appeal under section 340 of Cantonment Act 2006.*
- 2. Sh. Sudhir Sugandh, S/o, Late Sh. Babu Lal Sugandh has been prosecuted under section 247 of Cantonment Act on 21.07.2012 and 24.07.2012.*
- 3. Letter to SHO with copy to DCP, South West for seizing the construction material and for deputing a police officer so that no unauthorized construction takes place under section 239 (2) and 239 (4) of Cantonment Act 2006 were written on 21.07.2012 and 24.07.2012.*

6. Ld. Counsel further submitted that the unauthorized construction was being carried out by owner of the property, i.e., Prem Lata, whereas her son namely Sudhir Sugandh has been prosecuted on 21.07.2012 and 24.07.2012 under Section 247 and

248 of the Cantonments Act. Thus, the respondents instead of prosecuting Prem Lata, the owner of the property, have deliberately prosecuted her son Sh. Sudhir Sugandh just to save her. Moreover, the action against Sh. Sudhir Sugandh was taken on 21.07.2012 and 24.07.2012, whereas this Court directed to maintain *status quo* vide order dated 24.07.2012. Therefore, they have violated the orders dated 24.07.2012 and accordingly action should be taken against them.

7. Ld. Counsel for the petitioner has submitted that even after 10.09.2012, unauthorized construction was going on in the property in question. To the said effect he made a complaint to the concerned authority, however no action has been taken on the said complaint.

8. On the other hand, Mr. Sunil Satyarthi, Id. Counsel appearing on behalf of respondent no. 1 submits that on 10.09.2012, it was conveyed to the petitioner that pursuant to order dated 24.07.2012, respondent no. 1 has initiated action as noted above. Thus, the representation of the petitioner has been disposed of and there is no violation from their side.

9. It is further submitted that under Section 247 of the Cantonments Act any person, who is carrying out the unauthorized construction can be prosecuted under Section 247 and 248 of the Act. Since, on the property in question, Sh. Sudhir Sugandh, S/o Prem Lata was carrying out the construction, accordingly, he has

been prosecuted under Section 247 and 248 of the Cantonments Act, 2006.

10. As far as the complaint of the petitioner is concerned, it has been intimated to him vide communication dated 10.09.2012 that action against Sh. Sudhir Sugandh, who was carrying out the unauthorized construction has already been initiated. It is not the case of the petitioner that from the date of order, i.e., on 24.07.2012 passed by this Court till disposal of the complaint on 10.09.2012, any construction was carried out.

11. In view of above, I am of the considered opinion that no contempt has been committed by the respondents. Therefore, I am not inclined to pass any order against them.

12. Accordingly, the petition is dismissed.

13. Consequently notices of contempt are discharged.

14. Needless to state that petitioner is at liberty to take steps if any further unauthorized construction is carried out by any person in the property in question.

SURESH KAIT, J

JANUARY 15, 2015

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