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

Judgment delivered on: 5th May, 2015

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CONT.CAS(C) 363/2015

SALEEM

..... Petitioner

Represented by: Mr.Hasibuddin, Advocate.

Versus

JAIN (AE) & ORS.

..... Respondents

Represented by: Ms.Shubhra Parashar and
Mr.V.P.S.Charak, Advocates
for Respondent No.1/SDMC.
Mr. Anuj Aggarwal, Advocate
for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM No.8277/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CONT.CAS(C) 363/2015

1. Vide the present petition, the petitioner seeks directions thereby to initiate contempt proceedings under Sections 11 and 12 of the Contempt of Courts Act, 1971, against the respondents for wilful violation of orders dated 19.01.2015 and 02.02.2015 passed in W.P.(C) No. 506/2015.

2. Vide order dated 19.01.2015, the aforementioned petition was disposed of by this Court on the statement made by counsel for the respondent/South Delhi Municipal Corporation (SDMC), who appeared on advance notice and on instructions, submitted that the unauthorized construction qua properties bearing H. No. 23, Joga Bai Extension-II, Jamia Nagar, New Delhi and H. No.161/A, Joga Bai, Jamia Nagar, New Delhi, was booked on 13.01.2015 and the respondent No.1/SDMC was in the process of taking necessary action in accordance with law.

3. Accordingly, the respondent Corporation was directed to ensure the action by taking photographs of the premises in question on the said date itself.

4. Since the aforesaid order was not complied with by the respondent Corporation, the petitioner filed an application bearing CM No.1663/2015.

5. While disposing of the same on 02.02.2015, this Court directed the respondent Corporation to take action within a period of six weeks from the said date. The respondent No.2/SHO, PS Jamia Nagar, was also directed to provide necessary police assistance to enable the respondent/Corporation to complete the action as warranted.

6. It is noted that thereafter the petitioner filed a petition bearing Cont.CAS (C) No.157/2015 before this Court seeking compliance of the aforesaid orders dated 19.01.2015 and 02.02.2015. Though the same was pre-mature, while disposing of the same vide order dated 27.02.2015, this Court directed the respondent Corporation to carry out

the demolition on 03.03.2015 and 04.03.2015 by taking police assistance from the Deputy Commissioner of Police, South-East District, New Delhi, and comply the orders dated 19.01.2015 and 02.02.2015 in a time bound manner.

7. Ms.Shubhra, learned counsel appears on behalf of the respondent No.1/SDMC on advance notice and submits that on 03.03.2015, the demolition action was taken vide which large numbers of panels were cut-down at the ground floor of property No.23A, Joga Bai, Jamia Nagar, New Delhi. Thereafter, vide letter dated 13.03.2015, respondent Corporation requested the SHO, PS Jamia Nagar, to keep watch and ward of the property in question and also not to allow any unauthorized construction in the same.

8. She further submits that vide letter dated 17.03.2015, the Deputy Commissioner of Police, South East District, Sarita Vihar, New Delhi, was requested to provide police assistance for the demolition action fixed for 24.03.2015. However, on the said date the demolition was postponed as the concerned SHO shown his inability to provide adequate security for the reason whenever demolition action is carried out in the said case, more than 100 persons gathered over there. Hence, the respondents were unable to execute the directions passed by this Court.

9. Learned counsel for the respondent Corporation also submits that further demolition action qua the properties in question is to be carried out on 08.05.2015 and 27.05.2015 for which police assistance has

already been requisitioned by the Corporation vide its letter dated 28.04.2015.

10. In view of the above noted facts, it is established that respondent No.1/Corporation has taken all due care and passed necessary orders to comply with the orders passed by this Court.

11. In such eventuality, proviso attached to Section 12 of the Act is relevant, which reads as under:-

“Section 12:- Punishment for Contempt of Court:-

PROVIDED that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.”

12. Moreover, the Supreme Court in the case of ***Jiwani Kumari vs. Satyabrata Chakraborty, AIR 1991 SC 326*** held that a party (or person) can be committed for contempt only owing to any willful or deliberate or reckless disobedience of the order of the Court.

13. In view of the above discussion, settled law and the action being taken by the respondents, it is established that in the present case, the respondent has not committed any willful or deliberate disobedience of the order or direction of this Court, therefore, I am not inclined to pass any order against the respondent in this petition.

14. However, I hereby make it clear that on the aforementioned dates, i.e., 08.05.2015 and 27.05.2015, respondent No.1/Corporation shall execute

the demolition action and the SHO of the concerned Police Station is directed to provide adequate security to enable completion of the action as warranted, failing which, concerned SHO shall be held liable for Contempt of Court under the Act.

15. In view of the above observations, the instant petition is disposed of.

16. A copy of this order be given *dasti* to the learned counsel for the parties under the signatures of the Court Master.

**SURESH KAIT
(JUDGE)**

MAY 05, 2015
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