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

+ W.P.(C) 5194/2015 and CM No.9421/2015 (stay)

RAM DAYAL & ORS.

..... Petitioners

Through: Mr. Ajay Veer Singh Jain, Mr. Atit Jain,
Ms. Divya Garg and Mr. Shakiq Ahmed,
Advocates

versus

STATE OF DELHI & ORS.

..... Respondents

Through: Mr. Peeyoosh Kalra, ASC with Mr.
Sudhindra Tripath and Ms. Sona Babbar,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

04.08.2015

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1. After some arguments, the learned counsel for the petitioner concedes that since an appeal is pending before the Dy. Commissioner (South) with regard to the demolition notice dated 06.08.2014 qua the structures said to have been situate at Khasra no.124, Village Jonapur, Block Mehrauli, Tehsil Hauz Khas, New Delhi (hereinafter referred to as the subject property), the petitioners would prosecute the said appeal.

1.1 Accordingly, the learned counsel for the petitioners seeks to withdraw the captioned petition subject to the protection being granted to the petitioners during the pendency of the appeal.

2. Mr. Kalra, who appears for the respondents, says that in so far as the petitioners before this court are concerned, possession has already been

taken since demolition was carried out on 06.08.2014 itself. It is Mr. Kalra's submission that consequently the petitioners' stand dispossessed.

2.1 This contention, however, has been refuted by the counsel for the petitioners.

2.2 I may only note that it is Mr. Kalra say that pursuant to the order of this court dated 22.05.2015, he has filed an affidavit alongwith photographs showing the position, as it obtains on the subject site. I am informed that the petitioners have also filed an affidavit with photographs. However, both the affidavits said to have been filed, are not on record.

2.3 Mr. Kalra has though, shown me, photographs filed alongwith the aforementioned affidavit which, clearly demonstrate that [in so far as the photographs appended as Annexure B (collectively) are concerned], there are some partially demolished structures standing, at site. Annexure B, according to Mr. Kalra, consists of a park. I must also note that it is Mr. Kalra's submission that photograph appended as Annexure A to the said affidavit pertain to the petitioners.

2.4 Mr. Kalra further says that the notice dated 18.05.2015 (see page 154 of the paper book) which, apparently, triggered the instant writ petition was not directed against the petitioners herein.

3. Having regard to the rival submissions, I am of the view that, as prayed, the petitioners ought to be permitted to withdraw the petition to prosecute the appeal pending before the Dy. Commissioner (South). Since, there is no clarity as to the state of the structures on the subject site, the Dy. Commissioner (South) will decide this aspect of the matter, as well.

3.1 However, pending the adjudication and the disposal of the appeal, the

respondents will maintain status quo as it obtains today. In case, the decision rendered by the Dy. Commissioner (South), in the appeal, is adverse to the interests of the petitioners, the petitioners will have liberty to take recourse to an appropriate remedy; albeit in accordance with law. The respondents will, however, give petitioners a leeway of atleast three weeks to take recourse to an appropriate remedy.

4. The Registry is directed to place the affidavits filed by the petitioners as well as the respondents on the court record.

5. With the aforesaid observations in place, the captioned petition and the pending application are disposed of.

CM No.13589/2015 (for impleadment)

6. In view of the fact that the petitioners have withdrawn the writ petition, no orders are called for in the captioned application, as it has been rendered infructuous.

7. The captioned application is accordingly disposed of.

RAJIV SHAKDHER, J

AUGUST 04, 2015

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W.P.(C) 5194/2015

page 3 of 3