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

+ LPA 199/2016, CM No. 10959-10960/2016

NEELAM NANDA & ORS

..... Appellants

Through: Mr. Ravi Gupta, Sr. Advocate
alongwith Mr. Arun K. Sharma and
Mr. Bharat Sharma, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through: Mr. Vikas Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **22.03.2016**

The present appeal is directed against the order dated 29.02.2016 whereby the Single Judge dismissed the appellant's application for stay of demolition.

The appellant had filed the writ petition contending that the proposed demolition of the building and construction carried on in property no. J-3/60, Khirki Extension, Malviya Nagar, New Delhi (hereinafter referred as "the suit property") had been acquired by them earlier in 2014. They contended that the proposed demolition action was not in accordance with the provisions of the Delhi Municipal Corporation Act. After some hearing, the writ petition was permitted to be withdrawn by an earlier order dated 21.12.2015. In another public interest litigation, the Division Bench issued orders to the Municipal Corporation to carry out demolition and continue. The

Single Judge however directed the MCD-after recording the withdrawal of the writ petition to carry out demolition. In the course of these proceedings when the MCD sought to demolish the appellant's property, it moved an application with CM No. 10301/2016 which was rejected in the following terms:-

“On an application filed by the petitioners, writ petition has already been disposed of as withdrawn vide order dated 21st December, 2015. However, it appears that further date was fixed only to monitor the action taken by the respondent no.1. On 21st December, 2015 itself, learned counsel for the respondent no.1 had stated that the demolition action was scheduled for 30th December, 2015. Respondent no.1 was directed to file the status report. On 8th February, 2016, it was informed that demolition action could not be taken in absence of adequate police force. Matter was re-notified. On 29th February, 2016, it was informed that demolition action could not be completed and further action was fixed for 21st March 2016. Accordingly, it was ordered that demolition action be completed on day to day basis.

Now this application has been filed for staying the demolition. This application appears to have been filed as an afterthought. Learned Senior Counsel submits that under Section 3(1) of the National Capital Territory of Delhi Laws (Special Provisions) Bill, 2011, property is protected. In my view, this provision deals with encroachment or unauthorized development in the form of encroachment by slum dwellers and jhuggi jhopri clusters, hawker and urban street vendors, unauthorized colonies, village abadi area etc. only, which is not the case here.

Application is dismissed.”

It is submitted that barring the exception carved out in Section 4,

demolition at least during the existence of and operation of the enactment is prohibited.

Learned counsel for respondent/MCD contends that the record clearly discloses that the petitioner had acquired the properties after the previous transferee had purchased them in December 2013. That could not have been disputed that unauthorised constructions beyond the second floor were carried out after the cut off date i.e. 01.06.2014. Furthermore, learned counsel importantly urged that since the status quo itself was altered, the petitioners lost the entitlement to claim protection under the Special Provisions Act of 2011 and the MCD was entitled to proceed with the demolition action in respect of the entire construction.

During the course of submission, it was suggested that since the factual matrix as to whether the petitioner constructed upon any portion after acquiring rights over the property or whether there was any pre-existing construction and if so to what extent, was not gone into, given that the plea with respect to the applicability of the Special Provisions Act, viz-a-viz the petitioner's property was not in issue in the previous writ petition. It would be in the fitness of things that the Tribunal constituted under provisions of Section 347 (d) of the Delhi Municipal Corporation Act is approached for this purpose.

Counsels for the parties were agreeable to this course. In these circumstances, the petitioner is at liberty to approach the Tribunal/appropriate authority under Section 347(d) of the Delhi Municipal Corporation Act within two weeks from today.

The appeal shall clearly state the existing constructions on

01.06.2014 with supporting documentary evidence, photographs etc and also make clear averments as to what was the nature of the construction and its extent when the petitioners acquired the property. It is clarified that the limited scope of the Tribunal would be to decide as to the extent of the property and whether the constructions carried out *per se* amounted to violation of the status quo as being contended by the MCD as in this case. A further action viz-a-viz the petitioner's property shall not be taken by the MCD for a period of four weeks. In the meanwhile, it is open to the Tribunal to decide – entirely uninfluenced by the orders of this Court or even the interim order whether to continue with the status quo, modify it or vacate it altogether having regard to the material before it.

The Tribunal shall also not feel bound by the observations of the Single Judge that the constructions are not *prima facie* covered by provisions of the Special Provisions Act; specific findings in this regard viz-a-viz the facts of this case would be rendered.

This is subject to the appellants cooperating with the MCD and that the complete demolition is ensured with respect to all the constructions above the second floor in the property.

Appeal is disposed of in the above terms.

Order *dasti*.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 22, 2016

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