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

+ LPA 316/2016

MAHESH KUMAR

..... Appellant

Through Mr. Satish Kumar Verma,
Advocate.

versus

PRATAP SINGH & ORS

..... Respondent

Through Mr. M. Sowri Dev, Advocate for
R-1.

Ms. Pooja Kalra, South Delhi Municipal
Corporation.

Mr. Sachin Nahar, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.08.2016

Appearance is made on behalf of respondent No.1, Pratap Singh.

With the consent of the learned counsel for the parties, the appeal is taken up for hearing and disposal.

The appellant is aggrieved by order dated 25th April, 2016, whereby the writ petition filed by the respondent No.1, Pratap Singh was allowed holding as under:-

“By this writ petition under Article 226 of the Constitution of India, petitioner has prayed that respondent no. 3 be directed to stop further illegal construction in the plot no. 47, Village Jasola, New Delhi and further that respondent nos. 1 and 2 be directed to demolish the illegal construction so raised in the said plot. Respondent no. 1 has filed an affidavit of Mr. R.C. Meena, Executive Engineer, Central Zone – II stating therein that the site in question was inspected on 6th November, 2015 when owner/builder was found carrying out unauthorised construction without any sanctioned building plan. A show cause notice dated 6th November, 2015 was served on the owner/occupier. Since no reply was received, demolition notice dated 16th November, 2015 was served on the owner/builder/Mahesh. It may be noted that Mahesh has been impleaded in this petition as respondent no. 4. Mr. R.C. Meena has further deposed in the affidavit that Station House Officer, Police Station Sarita Vihar has already been asked to stop the work at site. Letters for disconnection of electricity and water supply have also been sent to the BSES Rajdhani Power Ltd. and Delhi Jal Board, respectively. Order under Section 345-A read with Section 491 of the Delhi Municipal Corporation Act, 1957 for sealing of the unauthorised construction has already been passed. Demolition action was fixed for 23rd February, 2016 but could not be undertaken for want of sufficient police force. It was again fixed for 10th March, 2016 but could not be carried on due to non-availability of sufficient police staff. Further action has been scheduled for 14th April, 2016 but could not be undertaken as it was declared a holiday. Mr. Hukam Singh, Assistant Engineer (Building) is present in Court today and submits that demolition action would now be taken on 20th May, 2016. Station House Officer, Police Station Sarita Vihar is directed to provide adequate police force to the respondent no. 1 on 20th May, 2016 and thereafter, till the time demolition action is completed, in accordance with law. Demolition action should be completed in all respects and not a cosmetic one by puncturing the walls etc. Demolition action shall be taken on day-to-day basis from 20th May, 2016 onwards. Debris be also removed at the costs of owner/occupier/builder.

Compliance report be filed within eight weeks.

Writ petition is disposed of with the above observations.

Miscellaneous application is disposed of as infructuous.”

The grievance of the appellant and which is accepted is that the appellant was not served and was not heard before the impugned order dated 25th April, 2016 was passed. This factual position is accepted by the counsel for the respondent No.1 as well as the counsel appearing for the South Delhi Municipal Corporation.

In these circumstances, we have no option but to set aside the impugned order and remand the matter for fresh decision after hearing the counsel for the appellant.

In view of the statements made, the impugned order is set aside and the parties are directed to appear before the single Judge on 31st August, 2016, when a date of hearing will be fixed.

We clarify that we have not expressed any opinion on merits.

SANJIV KHANNA, J.

JAYANT NATH, J.

AUGUST 12, 2016

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