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

+ LPA 439/2016

BRIJ MOHAN DHAWAN Appellant
Through Mr. Ajay Malhotra, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS
..... Respondent
Through Ms. Monika Arora, Advocate for
North DMC.
Mr. Summet Pushkarna and Mr. Siddhartha
Nagpal, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER
% **07.09.2016**

Notice in this appeal was issued vide order dated 8th August, 2016,
recording as under:-

“Learned counsel for the appellant submits that he has not made any unauthorized or illegal construction in the portion in his occupation in property bearing number 478 – 479, Katra Ashrafi, Chandi Chowk, Delhi. He submits that the civil suit would not be maintainable in view of the provisions of the Delhi Municipal Corporation Act, 1957. Further, the interim injunction passed by the Civil Court restrains the respondent – NDMC from causing hindrance / obstruction in carrying out activities as per the Building Byelaws, and it would not permit the respondent no.3 – Anil Prasad from carrying out illegal construction in the garb of repairs etc. He

submits that the fact that the respondent – NDMC has issued a show cause notice under Ss. 343/344(i) of the NDMC Act would itself show that the building activities were contrary to the Building Byelaws. Issue notice to the respondent nos.3, 4 and 5, returnable on 23.08.2016.

We clarify that this order would not bar the respondent – NDMC for taking any action as per law.

Learned counsel for the appellant states that he would not withdraw the present appeal on the ground that he has compromised or settled with the third respondent.”

The contesting respondent i.e., respondent No.3 had entered appearance on 23rd August, 2016 and a request for adjournment was made on the ground that the arguing counsel was indisposed. Counsel appearing for the North Delhi Municipal Corporation had stated the counter affidavit would be filed during the course of the day.

The respondent-North Delhi Municipal Corporation has not filed counter affidavit as stated and directed. The counter affidavit, it is stated, was belatedly filed today morning in the Registry. We do not appreciate the aforesaid conduct of the respondent-North Delhi Municipal Corporation in not filing the counter affidavit within time and filing the same on the date of hearing itself. The counter affidavit is not taken on record, as there is an attempt to delay the proceedings, though the issue/question involved is very narrow and limited.

Counsel appearing for the respondent-North Delhi Municipal

Corporation has stated that after issue of show cause notice, two hearings have been granted to the respondent No.3 and action in accordance with law would be taken. She prays for 12 weeks' time for the said purpose. The time as prayed is abnormal and unacceptable. Already two hearings have taken place.

In these circumstances, it is directed that appropriate order will be passed by the competent authority on or before 23rd September, 2016.

Respondent No.3 would appear before the competent authority on 15th September, 2016 along with necessary papers and documents including photographs, which he wants to reply upon. Copy of this writ petition will be also placed before the competent authority.

We clarify that the civil proceedings would not obstruct or prevent the North Delhi Municipal Corporation from passing appropriate orders and taking action in accordance with law, in case there is unauthorized construction.

We also clarify that this Court has not expressed opinion or given any finding on whether there is any unauthorized construction.

The appeal is disposed of.

Dasti under the signature of the Court Master.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

SEPTEMBER 07, 2016
NA