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

+ LPA 414/2016

BHISHAM KANAL

..... Appellant

Through Dr. Jose P. Verghese, Advocate.

versus

MCD & ORS.

..... Respondents

Through Mr. Mukesh Gupta, Advocate for South
Delhi Municipal Corporation.

Ms. Prabhsahay Kaur, ASC for respondent No. 2-
GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

01.08.2016

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The appellant, Bhisham Kanal, claims that he had purchased 100 sq. yards of property bearing house number 65-E, Gautam Nagar from his mother Koushilya Bai, who continues to remain the owner of the other 100 sq. yards.

The respondent, MCD, had initiated a demolishing action against unauthorised construction/encroachment on public land. The appellant and his mother had earlier filed a joint/common W.P. (C) No. 4261/2016 and then L.P.A. No. 321/2016. The L.P.A. was disposed of by order dated

12.05.2016 giving the present appellant and his mother liberty to approach the appellate tribunal within one week, and the appeal would be decided within 8 weeks. The eviction/demolishing order would not be executed for one week and the tribunal could vary/modify/vacate the said order after hearing and in the totality of circumstances.

Pursuant to the liberty, an appeal was filed before the appellate tribunal, who by the order dated 02.06.2016 had directed the parties to maintain the status quo. The appellants therein were directed to file an affidavit giving the details of the existing construction with site plans and measurements, within 5 days, failing which the status quo order would be vacated. The affidavit and site plans, along with measurements, were not filed within 5 days, but were filed belatedly on the next date of hearing. Noticing the said position, and that photos were not filed, the tribunal vide order dated 10.06.2016 vacated the direction to maintain status quo.

Koushilya Bai thereupon filed Civil Misc. (M) No. 624/2016 under Article 227 of the Constitution of India impugning order dated 10.06.2016 of the appellate tribunal. C.M.(M) No. 624/2016 was disposed of on 08.07.2016, recording that the appeal was likely to be heard on 28.07.16 and disposed of shortly. In these circumstances, the status quo order would

continue till the disposal of the appeal.

In addition to filing the Civil Misc. Application, Koushilya Bai and the appellant herein filed 2 separate writ petitions, W.P. (C) Nos. 5959/2016 and 5761/2016, under Article 226 of the Constitution.

Koushilya Bai's writ petition was disposed of on 08.07.2016 as infructuous. It was also noticed that Koushilya Bai challenged the vacation of the status quo order in the Civil Misc. (M) No. 624/2016.

The appellant's writ petition was listed before the same judge. By the order dated 08.07.2016, W.P.(C) No. 5761/2016 was disposed of, observing that C.M. (M) filed by Koushilya Bai, was listed before another bench. Reference was also made to order passed in the writ petition filed by Koushilya Bai.

Learned counsel for the appellant submits that the impugned order dated 8th July, 2016 passed by the learned single Judge in view of contemporaneous order of the same date passed in the case of Koushilya Bai, mother of the appellant, did not notice the factum that in the writ petition filed by the present appellant, Bhisham Kanal, he had also prayed for damages of Rs.20 lacs. To this extent the two writ petitions were different. Learned counsel for the appellant submits that the property in

question was partly demolished and, therefore, the appellant was/is entitled to claim damages. Learned counsel for the appellant further submits that the appellate tribunal by order dated 28th July, 2016 has quashed the demolition order.

It appears to us that the appellant herein did not press the prayer for damages. Copy of the Writ Petition (C) No. 5659/2016 filed by the Koushilya Bai, mother of the appellant, has also not been filed. However, we observe that Koushilya Bai and the appellant- Bhisham Kanal, i.e., the mother and the son, were represented by the same counsel, who has also appeared in the present appeal filed by Bhisham Kanal.

The learned single Judge was right and justified in disposing of the said writ petition filed by the appellant, as Koushilya Bai had filed Civil Miscellaneous Main No. 624/2016 under Article 227 of the Constitution of India, which was disposed of by order dated 8th July, 2016 extending the status quo order till the disposal of the appeal by the appellate tribunal.

We have also gone through the Writ Petition (C) No. 5761/2016 filed by the appellant before the learned single Judge. The appellant had not pleaded or asserted that the property was partly demolished. On the other hand, paragraphs 22 and 23 of the said writ petition indicate that the

appellant had apprehended that the property would be demolished.

Earlier, the appellant and the mother had filed a common writ petition before the High Court being Writ Petition (C) No. 4261/2016 and also filed a common LPA No. 321/2016. It does *prima facie* appear that the appellant and his mother have been filing multiple proceedings, for the same and identical reliefs. Be that as it may, in case the appellant has any cause or claim for damages and if he is so advised, he may file appropriate proceedings in accordance with law. The impugned order will not operate as *res judicata* and bar the said filing. We clarify that we have not expressed any opinion on merits. The respondents would be entitled to take all defences, except the plea of *res judicata* or bar to initiation of proceedings on the ground that W.P.(C) No. 5761/2016 stands dismissed.

With the aforesaid observations the appeal is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

**AUGUST 01, 2016
VKR**