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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7653/2013

JITENDER JAIN & ORS

..... Petitioners

Through Mr.Rajshekhar Rao and
Mr.K.Harshvardhan, Advocates.

versus

GOVT. OF NCT, DELHI & ORS

..... Respondents

Through Mr.Rahul Sharma and Mr. C.K.Bhatt,
Advocate for R-1 and R-4.
Mr.Arjun Pant and Mr.Mayank
Mukherjee, Advocates for R-2/DDA.
Mr.Parvinder Chauhan, Advocate for
R-3/North DMC.
Ms.Madhu Goel, Advocate for R-5,
R-7 and R-8.
Mr.Mithun Verghis, Advocate for R-
6.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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27.07.2016

On 24.5.2015 the following orders had been passed by the
Predecessor Bench of this Court.

“The learned counsel for respondent No.1 has filed a status report which indicates that the meeting of the Religious Committee is scheduled to be held on 29.04.2015. It is stated that the issue regarding unauthorized religious structures in question would be considered by the said Committee on that date. The report also indicates that the respondent No.1 had sought a factual report with regard to the actual measurement of the said structures. However, the same has not been

received. Learned counsel for respondent No.1 states that the following information would be required by the committee: a) Actual measurement of the area encroached by the religious structures; b) The dates or the period when this was constructed. He submits that if the aforesaid information is provided, the Religious Committee would be in a position to take an informed decision. In so far as the measurement of the area of the structures is concerned, the respondent corporation, North Delhi Municipal Corporation, is directed to forthwith cause the measurement of the religious structures to be taken and provided to respondent No.1 with a copy to the Religious Committee on or before 28.04.2015. In so far as the date of the construction of the religious structures is concerned, it is asserted that the same were constructed during the period 1993-1995. The same is not disputed by any of the parties and the religious committee shall proceed on the said basis. In so far as the office of the Management Committee of the society is concerned, the learned counsel for respondent Nos. 5,7 & 8 states that no specific permission for construction of the management office was taken. He contends that permission for construction of certain number of flats were granted and the office in question is housed in the stilt portion of the building. He states that no such permission for construction of the office is required. Learned counsel for the respondent-corporation disputes this contention. It is apparent from the above that the management office is not a part of the sanctioned development. The learned counsel for the corporation states that a part of the stilt portion of the building, which was meant for parking, has been converted as an office. In the circumstances, it is apparent that the same is completely unauthorized. In my view, the contention that the office in the stilt portion is protected under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 as amended on 29.12.2014 is without any merit. In the present case, it is the members of the society who have approached this Court pointing out that the stilt portion of their building is being usurped. Thus, the nature of encroachment is materially different from the one as contemplated under the aforesaid Act. The encroachment is on the land allotted to the society

itself and since the members of the society are objecting to the same, the nature of lis is entirely different. The corporation would therefore be obliged to assist the members of the society in ensuring that their area is not encroached upon by unauthorised construction. Thus, in the given circumstances, the respondent-corporation is directed to take necessary action for removal of the said office if respondent Nos. 5, 7 and 8 fail to do so. Let a fresh status report be filed on or before the next date of hearing. The time provided to the religious committee of the Government of NCT to take a decision is extended by a further period of six weeks.

Renotify on 01.09.2015.

Dasti under the signature of Court Master.”

Learned counsel for the petitioner submits that this order although admittedly had confined itself only to the removal of the management office yet a report had also been sought from the Religious Committee of the Government of NCT to take a decision.

The Religious Committee of the Government is represented by respondent no.1. They have filed a counter affidavit. Their submission that this is a private land and the Religious Committee of the Government of the NCT of Delhi has no say in the aforementioned matter. The stand of respondent no.3 MCD had also been sought for. Respondent no.3 submits before this Court that the aforementioned construction i.e. the religious temples at the site are protected by the National Capital Territory Laws (Special Provisions) Second Act, 2011 as amended in 2014. Submission in the counter affidavit being that these three aforementioned religious structures were built up in the year 1993-95. These unauthorised constructions being adequately protected under the aforementioned Act up to 31.12.2017; no action can be

taken in the aforementioned matter. Attention has been drawn to Section 2 (1) of the said Act as also the definition of “encroachment” and “unauthorized construction” as contained in Section 2(1)(c) and (j) of the said Act. This Court has additionally been informed that a suit inter se respondent no.5 and respondent nos.2,3,6 and 7 is also pending before a competent Civil Court. The petitioners are at liberty to get themselves impleaded in that suit, if they so desire.

This Court is thus of the view that in view of the consistent stand adopted by respondent nos.1 and 3 (the contesting parties) and the stand of respondent no.1 being that the Religious Committee has nothing to do with the aforementioned disputed construction as it is on a private land as also the stand of the Municipal Corporation which at the cost of repetition is that the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 protects this site, no further orders can be passed beyond the orders passed by this Court on 24.5.2015.

Petition disposed of in the above terms.

INDERMEET KAUR, J

JULY 27, 2016

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