

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 13527/2009 & C.M. No.15075/2009

B.L. SHARMA

Through Mr.Raman Duggal, Ms.Aayushi Gupta and Mr.Arun Kumar Panwar, Advocates. Petitioner

versus

M.C.D AND ANOTHER

Through Mr.Ajjay Aroraa and Ms.Diksha Lal, Advocates. Respondent

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

%

02.12.2016

On 02.3.2015, the Predecessor of this Bench had passed a detailed order. After perusal of the record, the Court had noted that the demolition action carried out by respondent was without any adequate notice to the petitioner, however, an order permitting reconstruction of the premises may not necessarily follow; petitioner had sought time to produce relevant documents to show that his construction at the original instance was valid; vis-a-vis the respondent-Corporation had also sought time to take instruction as to whether the petitioner could be permitted to re-construct the portion of his demolished property; with a rider that the right of the

Corporation to take further action by treating the new construction as being of the same vintage as the demolished structure may also be permitted.

Learned counsel for respondent on this count submits that he would not be in a position to consent to this proposal. Petitioner on the other hand submits that he has no document to show that this property has been sanctioned as it was an old occupied property which at that time did not require a sanction.

Arguments have been heard and record has been perused.

Learned counsel for petitioner, in the course of his arguments, has drawn attention of this Court to a Show Cause Notice dated 23.3.2011 which has been issued by the Corporation to the petitioner. This notice was subsequently withdrawn. The reply to the Show Cause Notice had been given by the petitioner which was to the effect that this property was old and in existence since 1940. The Corporation while withdrawing this notice had noted that this property is in existence since 1972.

This Court notes these submissions and counter submissions. This Court also notes that the demolished structure would be half of an area measuring 4 feet 3 inches x 3 feet 6 inches which is clear from the report submitted by the Department to this Court on 26.5.2016 which was pursuant to an order passed by this Court. Half of this shop stands demolished. n

This Court is of the view that the action of the respondent in demolishing the structure was admittedly illegal and it had demolished the kiosk in question (half of the area measuring 4 feet 3

inches x 3 feet 6 inches being a part of property no.1850, Part-II, Hanuman Kachori, Jamuna Bazar, Delhi) without notice to the petitioner.

Permission is accordingly accorded to the petitioner to reconstruct this demolished portion at his own risk and peril with a rider that the respondent would have a right to take any further action in accordance with law with a understanding that this new construction will be treated as of the same year as the original demolished structure. This would be in the fairness of things and in the peculiar facts of this case as admittedly the date when this kiosk was demolished by the Department it had no legal sanction to do this act.

Ordered accordingly.

Petition disposed of in the above terms.

INDERMEET KAUR, J

DECEMBER 02, 2016
ndn