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

+ WP(C) 7132/2016 & C.M. No. 29355/2016

SHRI SHEEL CHANDRA & ORS. Petitioners

Through: Mr.N.S.Vasisht and
Mr.M.P.Bhargava, Advocates

versus

UNION OF INDIA & ANR. Respondents

Through: Ms.Kanika Singh Assistant Standing
Counsel and Mr.Rishi Vohra, Advocates for
R-2/NDMC

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
24.10.2016

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1. The present petition has been filed by the petitioners praying *inter alia* for the following reliefs:-

(i) Issue a writ, order and direction, in the nature of certiorari and/or any other writ, order or direction, quashing the terms of Condition-V of the letter dated 26.6.1985 issued by the Respondent No.2 and the item No.3 of the letter dated 27.5.1994 requiring the handing over of possession of 1727.14 sq. yds, of land from the Property No.34, Feroze Shah Road, New Delhi free of cost as a pre-condition for the grant of completion certificate.

(ii) Issue a writ, order and direction, in the nature mandamus and/or any other similar writ, order or direction, directing the Respondent No.2 to return and deliver to the Petitioners the possession of 272.708 sq. yds of land in the front portion and 1454.44 sq. yds of land in the back portion of the property No.34, Feroze Shah Road, New Delhi, illegally and unauthorisedly taken over by the respondent No.2.

2. At the outset, learned counsel for the respondent, who appears on advance notice, states that the present petition is not maintainable for the reason that the earlier hereto, the petitioners had filed a writ petition asking for almost similar relief, registered as WP(C) No.231/1996.
3. Incidentally, the aforesaid writ petition was dismissed in default on 15.10.2003. The petitioners in the said writ petition have recently filed an application for restoration of the said petition and for condonation of delay of 4680 days, on which notice was issued on 23.8.2016, returnable for 24.10.2016, i.e., today. The respondents have entered appearance in the said petition and sought time to file replies in opposition.
4. Learned counsel for the respondents submits that in view of the fact that the petitioners are seeking restoration of the earlier writ petition which was dismissed in default on 15.10.2003 and the reliefs in both the petitions are almost identical, the present petition is not maintainable on the analogy of Order II Rule 2 CPC and on the ground of *res judicata*.
5. At this stage, learned counsel for the petitioners seeks leave to withdraw the present petition while reserving the right of the petitioners to seek their remedies against the respondent/NDMC in accordance with law in the event, the applications of restoration of WP(C) No. 239/1996 and condonation of delay are rejected.
6. Leave, as prayed, for is granted. The present writ petition is dismissed as withdrawn, along with the pending applications.
7. It is however clarified that in the event the applications for restoration and condonation of delay filed by the petitioners in WP(C) No.239/1996 are

dismissed and they elect to file a fresh petition for the same relief, then the respondents shall be entitled to oppose the same on the ground of maintainability and on all other grounds as may be available to them, both in law and on facts.

HIMA KOHLI, J

OCTOBER 24, 2016

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