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

+ **W.P.(C) 5146/2015 & CM No.9330/2015 (Stay)**

NAVEEN KUMAR

..... Petitioner

Through : Mr. Ankit Jain, Adv.

Versus

**SOUTH DELHI MUNICIPAL
CORPORATION & ORS**

..... Respondents

Through : Mr. Vikas Chopra, Adv. for R-1.
Ms. Pratishtha Vij, Adv. for Mr. Sanjay
Ghose, Adv. for R-2/GNCTD.
Mr. Naushad Ahmed Khan, ASC
(Civil), GNCTD with Ms. Neelam
Kholiya, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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19.04.2016

Petitioner claiming himself to be the neighbour of respondent nos.4 to 9 has filed this writ petition praying therein that respondent nos.1 to 3 be directed to take immediate steps to demolish the unauthorized construction raised by the respondent nos.4 to 9 over the land falling in Khasra No.131/53/2, 135/54 & 52/2 situated in Sarai Kale Khan, New Delhi; the respondent nos.1 to 3 be directed to take immediate steps to ensure that no further construction is carried out and the trees are not cut by the respondent nos.4 to 9.

Vide order dated 22nd May, 2015 concerned officer of the respondent

no.1 was directed to inspect the premises and file a status report. On 24th September, 2015, learned additional standing counsel for GNCT of Delhi/respondent no.3 submitted in the Court that Deputy Commissioner, South Delhi Municipal Corporation of Delhi had inspected the property on 30th June, 2015 and informed the respondent no.3 about the unauthorized construction, accordingly FIR No.503 dated 25th July, 2015 was registered at PS Sunlight Colony.

The respondent no.1 filed a status report on 17th September, 2015 stating therein that property falling in Khasra No.131/53/2, 135/54 & 52/2 situated in Sarai Kale Khan, New Delhi had been booked for unauthorized construction on the ground floor and part first floor, vide file no.536/B/UC/EE(B)-I/CNZ/2015 dated 15th June, 2015. Show cause notice under Section 344 (1) and 343 of the DMC Act was issued to the owner/occupier. Since no reply was received, demolition notice dated 30th June, 2015 was issued followed by the demolition order dated 10th July, 2015. Sealing proceedings under Section 345-A of the DMC Act were also initiated resulting in the passing of sealing order dated 12th August, 2015.

Subsequently, another status report has been filed by the respondent no.1 on 30th October, 2015 stating therein that demolition/sealing action was tried on 17th September, 2015, 30th September, 2015 and 15th October, 2015 but

could not be materialized due to non-availability of the police force.

It has been pointed out during the course of hearing that ATMCD has since set aside the demolition order as well as sealing order, on the ground that orders were passed without affording opportunity of hearing to the respondent nos.4 to 9 and the matter was remanded back. Learned counsel for the respondent no.1 has submitted that sealing order dated 11th March, 2016 and demolition order dated 28th March, 2016 have again been passed. However, respondent nos.4 to 9 have again challenged the said orders before the ATMCD and appeals are pending.

From the facts narrated above it is clear that action has been taken by the respondent no.1 against the unauthorized construction, in accordance with law. Accordingly, in my view no further orders are required to be passed in this writ petition. Law will take its own course. However, the respondent no.1 is directed to take action, initiated by it against the subject property, to its logical end, in accordance with law. In case no stay is granted by the ATMCD, the respondent no.1 shall execute the sealing/demolition orders. In such an eventuality, the respondent no.3 shall provide police force to the respondent no.1 to carry out the demolition/sealing action on necessary information from the respondent no.1.

On 1st March, 2016, petitioner raised a grievance that respondent nos.4

to 9 had damaged the trees, which were there in the compound of the property. Accordingly, Executive Engineer of respondent nos.1 & 2 and Tree Officer were directed to jointly visit the subject property and verify the spot as regards the safety of trees, more particularly shown in the photographs at page 33 of the paper book. Deputy Director (Horticulture) of the respondent no.2 was also directed to verify whether the breathing space around the trees on the ground and above was maintained in terms of the order of National Green Tribunal (NGT). It is reported that inspection has already been carried out. Joint inspection report is signed by the Deputy Director Horticulture SDMC, Deputy Conservator of Forest/Tree Officer and Deputy Range Officer (DRO). It is been stated therein that a joint inspection was conducted on 4th March, 2016, in compliance of the directions of this Court to verify the spot as to the safety of trees, more particularly shown in the photographs at page 33 of the paper book and all the trees were found healthy and no danger to their life was noticed.

Writ petition is disposed of. Miscellaneous application is disposed of as infructuous.

APRIL 19, 2016/dk

A.K. PATHAK, J.