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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 1109/2016 & CM Appl. 36826/2016

D S RAO

..... Petitioner
Through: Mr. Ankur Mahindro, Adv.

versus

CHAMAN LAL AND ANR

..... Respondents
Through: Mr. Mukesh Gupta, Adv. for R-1
with R-1 in person

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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07.10.2016

Present contempt petition has been filed alleging wilful disobedience of the order dated 23rd September, 2016 passed in W.P.(C) 8578/2016 whereby the notice under Section 349 of Delhi Municipal Corporation Act, 1957 was set aside and petitioner was directed to appear before the respondent no. 1 on 28th September, 2016 at 10.30 a.m. and respondent was directed to pass a speaking order. The Court further directed that if order passed by the respondent is against the petitioner, no coercive step will be taken against the petitioner for the next one week.

Learned counsel for the petitioner states that despite the aforesaid order having been passed in presence of respondent no.1, respondent no. 2 on 23rd September, 2016 around 3 p.m. commenced demolition work on the first floor of the property bearing no. Plot 5, Block No. 56, Desh Bandhu

Gupta Road, Delhi and it was stopped only at about 4:00 p.m.

Learned counsel for respondent no. 1 who appears on advance notice states that the matter was taken up for hearing on 23rd September, 2016 after 2.15 p.m. upon a special mentioning being allowed by the Division Bench.

He also states that respondent no. 2 is neither an officer of North DMC nor an authorised representative of respondent no. 1. Consequently, he states that for any action of respondent no. 2, respondent no. 1 cannot be held guilty.

Learned counsel for respondent no. 1 lastly points out that the only allegation against the respondents is that they removed a door and a window from the first floor – which portion of the premises is not even in the occupation of the petitioner.

In rejoinder, learned counsel for petitioner states that respondent no. 2 is a private contractor who was appointed by the respondent no. 1 to demolish the building in accordance with the order passed under Section 349 of the Delhi Municipal Corporation Act, 1957.

Having heard the parties, this court finds that the petitioner in the present writ petition has suppressed the fact that he is in occupation of only second floor of the premises and that the case was taken up for hearing after lunch on 23rd September, 2016 at about 2.30 p.m. It has also not been disclosed that respondent no. 2 was not even a party to the writ petition filed by the petitioner.

In the opinion of this Court, the facts not disclosed by the petitioner are very material and relevant inasmuch as if respondent no. 2 was not a party to the writ petition, he cannot be said to be aware of the order dated 23rd September, 2016 passed by the Court specially when no proof of service

of the order upon him has been annexed with the petition.

The fact that the writ petition was taken up for hearing post lunch is also very relevant as the time difference between the time the order was passed and the alleged demolition commenced is so small that this Court cannot presume that the order in writ petition would have been brought to the notice of MCD staff at ground level by 3:00 p.m. It is pertinent to mention that the demolition action even according to the petitioner was stopped at about 4:00 p.m.

Moreover, as only a door and window have been removed from the first floor which is not even in possession of the petitioner, this Court is of the view that no notice is called for in the present contempt petition. Accordingly, the contempt petition and application are dismissed. In fact, this Court has a 'lurking suspicion' that the present contempt petition has been filed only with intent to ensure that the MCD officials do not take action in accordance with law.

MANMOHAN, J

OCTOBER 07, 2016

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