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

+ W.P (C) 2883/2015 & C.M. No. Nos. 5162/2015 & CrI. MA No. 1054/2017

HARSH VARDHAN NAYYAR

.....Petitioner

Through Ms. Manmeet Arora and Mr. Tarang
Gupta, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR. Respondents

Through Mr. Arjun Mitra, Mr. Abshishek
Misra and Ms. Jaskaran Kaur,
Advocates along with Mr. Om
Parkash (Sr. Asst.) for NDMC.
Mr. Anurag Alhuwalia, CGSC for
respondent No. 2 (UOI).

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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26.05.2017

C.M. No. 2257/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.M. No.2256/2017 (delay)

The present is an application under Section 5 of the Limitation Act, 1963, filed on behalf of the NDMC/respondent No. 1, seeking condonation of delay of 176 days in filing the review petition being C.M. No. 2255/2017 for recall of the order dated 15th July, 2016.

Notice.

Ms. Manmeet Arora, learned counsel appearing on behalf of the petitioner accepts notice and fairly does not oppose the application.

In view of the foregoing and for the reasons stated in the application, which is duly supported by an affidavit, the delay of 176 days in filing the review petition for recall of the order dated 15th July, 2016, is condoned.

The application is disposed of accordingly.

C.M. No. 2255/2017 (for recall of the order dated 15.07.2016)

The present application under Section 151 of the Code of Civil Procedure, 1908, has been filed on behalf of the NDMC, seeking recall of the order of this Court dated 15th July, 2016.

The solitary contention raised on behalf of the NDMC is to the effect that no lease deed has been executed in favour of the original allottee. The latter was merely a licensee and consequently no rights accrued qua the subject property in her favour which can enure to the benefit of the petitioner, who is a Class-II heir, by operation of law.

Ms. Manmeet Aora, learned counsel appearing on behalf of the original petitioner, disputes this submission, on the premise that, the writ petition itself was directed against the demand by the NDMC, requiring payment of unearned increase for transfer of lease hold rights, in her favour.

In other words, it is urged that the NDMC having made a demand for payment of unearned increase for transfer of lease hold rights is estopped from submitting that the original allottee was merely a licensee. It is,

therefore, submitted that the NDMC cannot be permitted to approbate and reprobate at the same time.

Be that as it may, it is evident from the above that, the present review petition assails the subject order as being erroneous, and not on account of any error on fact apparent on the record.

Consequently, no good ground for review is made out and the review petition is dismissed as being devoid of merits.

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The NDMC/respondent No. 1 is directed to comply with the order of this Court dated 15th July, 2016, forthwith. In this behalf, it is also observed that a plain reading of the order dated 24th October, 2016, by this Court shows that the NDMC has stated before this Court, on that day, the lease deed qua the subject property shall be issued in favour of the petitioner herein, within a period of six weeks from that day, in accordance with law.

With the above directions, the writ petition on disposed of, whilst reserving liberty to the petitioner to agitate the relief prayed for in prayer clause c and prayer clause d of the present petition, which constitute a separate cause of action independently, if so advised.

All pending applications are also disposed of.

Copy of the order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

SIDDHARTH MRIDUL, J

MAY 26, 2017/rs
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