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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1375/2017**
RASHID KHAN AND ANR

..... Petitioners

Through Mr.Hameed S.Shailkh and Mr.Amar
Pal and Mr.Pramod Kumar,
Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION AND ORS

..... Respondents

Through Mr.Kapil Dutta, Advocate for SDMC.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **17.02.2017**

C.M. No.6347/2017 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

W.P.(C) 1375/2017 & C.M. No.6346/2017 (stay)

Petitioners are aggrieved by the sealing of their premises which has been effected by the officials of the respondent-Department on 06.02.2017. Their submission is that this sealing order qua their premises (E-12, Rani Garden, Shankar Sambhu Wali Gali, Shastri Nagar, Delhi) was without notice to them. They had moved an application for the de-sealing of the premises but to no avail. They

pray that the premises be de-sealed.

On advance notice, learned counsel for respondent/EDMC has put in appearance. His submission is three fold. His first submission is that the property had been sealed for the alleged illegal deviation/unauthorized construction in the property; a civil suit qua this issue is pending before the competent Civil Court. His second submission is that since the contention of the petitioners is that there are perishable items lying in the property, the Department would have no objection to de-seal the property in the interregnum period of two for 5-6 hours in order that the petitioners can remove their perishable /edible items from the property. His third submission is that an alternate remedy is available to the petitioners to approach the ATMCD under Section 347B of the DMC Act, this petition is not maintainable.

Learned counsel for petitioners submits that in view of the judgment of the Apex Court reported as AIR 2003 SC 2120 Harbanslal Sahnia and Anr. Vs. Indian Oil Corporation Ltd. if there is a travesty of justice a writ petition would be maintainable. The judgment has been perused. In that case the arbitration clause inter se the parties was the subject matter of discussion. The Court had noted three contingencies; the Court was of the view that even where an arbitration clause was available to the parties a writ petition would be maintainable. This Court is of the view that this judgment is not applicable to the facts of the instant case. In this case there is a statutory alternate which is provided against a sealing order; the petitioner having an alternate efficacious remedy may approach the

ATMCD against the sealing order. That apart submission of the petitioner that there has been a failure of natural justice and a show cause notice had not been given to them before the sealing action is taken is belied; a show cause notice has been issued by the Department to the petitioner on 06.9.2016 pursuant to which the property was booked and thereafter a demolition order was passed on 10.10.2016; sealing order was passed subsequently on 09.12.2016.

Noting these submissions and counter submissions of the parties, this Court is of the view that this writ petition is not maintainable. This petition is dismissed.

Liberty is granted to the petitioners to approach the ATMCD against the sealing order dated 19.12.2016 as permitted under law.

Noting the submission of the petitioners that there are certain perishable / edible items lying in the sealed premises, the Department is directed to de-seal the premises between 10.00 a.m. to 5.00 p.m. tomorrow i.e. on 18.02.2017 in order that the petitioners can remove their goods/edible items from the said premises.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

FEBRUARY 17, 2017
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