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

+ LPA 131/2017

ROHIT VEDI Appellant

Versus

HARINDER KAUR & ORS Respondents

+ LPA 132/2017

ROHIT VEDI Appellant

Versus

RAKESH KUMAR GUPTA & ANR Respondents

Present:- Mr.Krishnaa Morthi, Adv. with Mr.Anil Goel,
Mr.Shwetank VEDI, Advs. for the appellant.
Mr.Gurmehar S.Sistani, Adv. for Respondent No.1.
Mr.Ajjay Aroraa, Standing Counsel for North MCD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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01.03.2017

C.M.No.8157/2017 (exemption) in LPA 131/2017

Allowed, subject to all just exceptions.

LPA No.131/2017 & C.M.No.8156/2017 (stay)

LPA No.132/2017 & C.M.No.7984/2017 (stay)

1. Order dated 01.12.2016 in W.P.(C) Nos.655/2016 and 684/2016 whereunder the learned Single Judge issued certain directions as an interim measure is impugned in these appeals.

2. The appellant before us is the respondent No.2 in both the writ petitions.
3. The facts in brief are as under:
- (i) The appellant (Rohit Vedi) is the owner of plot bearing No.1398 to 1403, Block-D, Naiwala, Karol Bagh, New Delhi.
 - (ii) Stating that the building standing thereon is in a dilapidated and dangerous condition and it is beyond repairs, the appellant (Rohit Vedi) made the application dated 13.12.2010 requesting the North Delhi Municipal Corporation (NDMC) to take the necessary steps for demolition of the building.
 - (iii) According to the appellant (Rohit Vedi), a portion of the building collapsed and that he got the building inspected by the Structural Engineers approved by NDMC on 12.03.2015 and 24.08.2015 who gave a report stating that the building is in a dangerous condition and needs to be demolished.
 - (iv) The Superintendent Engineer of NDMC along with his team had also inspected the building on 30.12.2015 and found the same to be in a dangerous condition.
 - (v) On 14.01.2016, NDMC issued notices under Section 348 and Section 349 of the Delhi Municipal Corporation Act, 1957 (for short 'the DMC Act') calling upon the occupants to vacate and demolish the building and the same was served on the appellant (owner) as well as the tenants who are in occupation.
 - (vi) Aggrieved by the same, the tenants of Shop No.1402 filed W.P.(C) No.684/2016 with a prayer to quash the notices dated 14.01.2016 and

to restrain the respondents i.e. NDMC and the owner (Rohit Vedi) from acting upon the said notices.

- (vii) The tenant of Shop No.1400 filed a similar writ petition being W.P.(C) No.655/2016.
- (viii) Both the petitions were heard together and by order dated 25.01.2016 the learned Single Judge directed inspection of the building in question by a Structural Engineer to be appointed by the Director, IIT Delhi on 28.02.2016 and submit his report within two weeks. While recording the undertaking of the writ petitioners i.e. the tenants of the two shops to vacate the building within 3 days, the learned Single Judge also directed that NDMC shall seal the whole building.
- (ix) In terms thereof, the report of the Structural Engineer, IIT was submitted to this Court and after considering the same, the learned Single Judge passed the order dated 01.12.2016, the operative portion of which reads as under:

"XXXX

XXXX

XXXX

Noting the above submissions and counter submissions of the parties, this Court notes that as an interim measure, in the first instance, in terms of the report of the IIT Engineer permission be afforded to the petitioners to repair / restore the shops (i.e. shop no. 1400 and 1402) in terms of the direction of the IIT Engineer as noted in his report dated 27.05.2016. The building will be desealed by respondent no. 1 for the aforementioned purpose. It is made clear that these shops will not be occupied / use till further directions by this Court, necessarily after a further inspection by a qualified Engineer. The petitioner shall also file an affidavit in terms of the submission noted supra which will be to the effect that in this intervening period if there is any loss to the life/property the same

shall be the whole and sole responsibility of the petitioner. The said affidavit be filed within two weeks from today. List for further orders/directions of this Court on 27.01.2017."

- (xi) Challenging the said order dated 01.12.2016, these two appeals came to be filed on 17.02.2017 by the owner of the building (Rohit Vedi) in which notice was ordered on 21.02.2017 to the respondents, returnable by 24.04.2017.
- (xii) In the meanwhile, the following order came to be passed by the learned Single Judge on 21.02.2017 in W.P.(C) No.684/2016:

"The affidavit of the petitioner in terms of the direction contained in the order dated 01.12.2016 is on record.

The petitioner is aggrieved that inspite of a specific direction that this property be desealed by the respondent/NDMC in order that the necessary repairs/renovation of the shops (shops no. 1400 and 1402) could be carried out. The said direction has not been complied with.

Counsel for the respondent undertakes and ensures to this Court that this desealing shall be positively effected on or before 26.02.2017 in order that the directions contained in the earlier order dated 01.12.2016 are implemented.

Counsel for the petitioner submits that a lot of malba/debris is collected on the roof top of the shops which may also be permitted to be removed. The said permission is granted to him. He may remove the malba / debris which has collected on the roof top of the afore noted two shops (i.e. shops no. 1400 and 1402). After the repairs are carried out by the petitioner (which the petitioner undertakes to complete within a period of one week) the shops will again be sealed by the respondent / NDMC.

List for further consideration on 27.03.2017.

Order dasti under signatures of Court Master."

(xiii) Identical order came to be passed on 21.02.2017 in W.P.(C) No.655/2016 also.

(xiv) The appellant therefore moved fresh applications being CM Nos.7984/2017 and 8156/2017 bringing to the notice of this Court the subsequent orders dated 21.02.2017 passed by the learned Single Judge and seeking stay of operation of the said orders.

4. We have heard Shri Krishnaa Morthi and Shri Gurmehar S.Sistani, the learned counsels appearing for the appellant and the respondents/writ petitioners respectively. We have also heard Shri Ajjay Aroraa, the learned Standing Counsel for NDMC.

5. As noticed above, this is a matter where NDMC issued notices for vacating the building in question and demolition of the same in exercise of the powers conferred under Sections 348 and 349 of the DMC Act. Shri Aroraa, the learned Standing Counsel for NDMC would submit that the said notices have been issued by the Competent Authority after being satisfied that the building in question is in a dangerous condition. The learned Standing Counsel has drawn our attention to the notice dated 14.01.2016 wherein it was recorded as under:

"The structure of the old property is more than 80 years old and is in dangerous condition because roof of the Second Floor fall down on the First Floor Chajjas and Parapets are falling down and huge cracks developed in the all load bearing outers walls of Ground Floor to Second Floor and also major cracks developed in the foundation and all floors from GF to Top

Floor and main/major load bearing arch of the main structure is split/cracked and opened at First Floor and the whole structures is tilting and settled down on right direction from front side and building is also leaving its original place from the side building and can collapse any time."

6. However, the Structural Engineer, IIT New Delhi who inspected the building in pursuance of the order of the learned Single Judge dated 25.01.2016 observed in his report:

"3. The Shop No.1 earlier occupied by Mr. Gurmeet Singh Sethi was inspected from inside and this shop is in a better condition and no signs of any cracks or seepage is noticed on the internal walls in this shop. A reinforced cement concrete column and a huge beam which appears to have been constructed at a later stage. Few cracks can be seen at the bottom.

4. The Shop No.2 was in the possession of the owner is in a deteriorated condition as a result of the demolition of a portion of brick wall connecting the rear portion and the debris of upper floors of the building. A mezzanine floor was constructed with a stair case for access to the mezzanine floor from Shop No.2 as well as from the rear side.

5. The third shop earlier occupied by Mr. Rakesh Kumar Gupta was inspected and noticed that there were no visible cracks in the inside walls.

6. The fourth shop located in the building occupied by Mr. Jawahar Singh Saini was inspected and noticed the heaps of malba lying inside the shop suggesting the dismantling work carried out by the respondent/owner."

7. In conclusion, it was recorded in the said report:

"The Property No. 1398 – 1403, Naiwala, Karol Bagh, New Delhi-110 005 is in a poor state. The building is unsafe due to deterioration and the demolition of second floor and roof slabs of mezzanine & upper floors and also complete second floor and its roof slab of the building in question. The poor maintenance of the building has also led to the building being unsafe. The part of the structure that is damaged should be immediately repaired, rehabilitated & restored preferably by demolishing the older weathered portions of the building like the chajja projections and wooden sections by adopting standard construction techniques. Until structural safety of the entire property is fully ensured technically, upon undertaking above mentioned repairs, restoration and rehabilitation works, it is advisable not to use it."

8. Even from the above report, it is apparent that the building which was constructed 80 years ago is in a poor and dilapidated condition and not fit for use. However, the Structural Engineer, IIT opined that certain parts of the building which are damaged should be immediately repaired by adopting standard construction techniques and until structural safety of the entire property is fully ensured technically, it is advisable not to use it.

9. Apparently, the said report of the Structural Engineer, IIT is the basis for the order dated 01.12.2016 of the learned Single Judge permitting the writ petitioners/tenants to repair/restore their respective shops. It is no doubt true that it was only an interim order and the main writ petition is still pending. However, the question that needs consideration by this Court is as to whether the writ petitioners/tenants can be permitted to repair/restore their shops in terms of the report of the Structural Engineer, IIT, even before the validity of the notices dated 14.01.2016 issued by the statutory authority is decided and a finding is recorded that NDMC was not justified in directing demolition.

10. It may be true that there are disputes between the appellant (owner of the building) and the writ petitioners (tenants) and proceedings are also pending under the Delhi Rent Control Act. However, it is relevant to note that Section 348 of DMC Act which provides for removal of dangerous buildings and Section 349 which empowers to order such building to be vacated are aimed at public safety and therefore the justification/validity of any order passed in exercise of the said provisions cannot be examined with reference to private civil dispute, if any, between the individuals who are having conflicting interests. In our opinion, it is a statutory function which has to be discharged diligently by the competent authority to prevent all cause of danger from the building in dangerous condition keeping in view the public safety. That being the object of the statutory provisions, we are unable to appreciate the submission on behalf of NDMC before the learned Single Judge that the Corporation has no objection to allow the writ petitioners to proceed with the repairs provided an affidavit is given to the effect that in the intervening period if there is any loss to the property or life, the same shall be the responsibility of the writ petitioners.

11. In the facts and circumstances of the case, we are also of the view that by allowing the writ petitioners/tenants to proceed with the repairs by way of an interim order would virtually amount to nullifying the demolition notice issued by the Competent Authority in exercise of the powers conferred by Section 349 of the DMC Act. Such direction, in our considered view, would further complicate the issue and may lead to an irreversible situation.

12. We, therefore, consider it appropriate to direct that status quo obtaining as on today be maintained by all the parties till the disposal of the

main petitions.

13. We have also taken note of the fact that NDMC has not yet filed its response in the writ petitions. Similarly, the Corporation, owner of the building and the tenants are yet to file their objections to the report of the Structural Engineer, IIT.

14. We, therefore, direct NDMC to file its counter affidavit in the main petitions within two weeks from today. In the meanwhile, NDMC, the appellant/owner as well as the respondents/writ petitioners are at liberty to file their objections, if any, to the report of the Structural Engineer, IIT.

15. We request the learned Single Judge to decide the main petitions as expeditiously as possible. Till such time, the directions in the order dated 01.12.2016 and 21.02.2017 shall remain stayed and status quo obtaining as on today be maintained by all the parties in all respects. We also direct that the building shall be sealed by NDMC and neither the owner nor the tenants shall be permitted to deal with the same in any manner whatsoever.

16. Both the appeals are accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

MARCH 01, 2017

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