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

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**LPA 523/2016 & CM Nos. 34567, 47096/2016, 3234,
13769, 14196/2017**

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Date of decision : 24th April, 2017

SOUTH DELHI MUNICIPAL CORPORATION

..... Appellant

Through: Ms. Mini Pushkarna, SC with
Ms. Vasundhara Nayyar and
Ms. Anushruti, Advs.

versus

LALIT MOHAN MADHAN & ANR Respondent

Through: Mr. Raman Kapur, Sr. Adv.
with Mr. Aviral Tiwari,
Adv.for R-1
Mr. Y.K. Gupta, Son of R-2 in
person

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The instant appeal has been filed by the South Delhi Municipal Corporation assailing the order dated 30th March, 2016 passed by the learned Single Judge in W.P.(C) No.6522/2010 whereby, inter alia, the learned Single Judge was pleased to direct the appellant to pass a formal order showing the portions of the property no.B-1/26, Vasant Vihar, New

Delhi described as the front and rear portions thereof which were compoundable/regularisable and to communicate the terms of regularisation to the respondents herein.

2. The property bearing no.B-1/26, Vasant Vihar, New Delhi has been the subject matter of much litigation between the two parties claiming rights in the front and the rear portion. The respondent no.2 is an original co-owner entitled to 50% share in this property whereas the respondent no.1 in this appeal claims to have acquired rights in the remaining 50% share from the original owner. As per these respondents, the leasehold rights in this property were acquired by the respondent no.2 and his brother who respectively constructed the front portion and the rear portion.

3. It appears that on account of assertion of rights and entitlement to conversion of the leasehold rights in the rear portion into freehold by the respondent no.1, the DDA has taken a position that the sub-division of the property was impermissible and has determined the lease. This aspect is in issue in litigation initiated by the respondent no.1 which has not attained finality.

4. In the meantime, respondent no.2 alleges that he has made complaints qua unauthorised construction in the rear portion of the said property and the Municipal Corporation initiated action in the provisions of the Delhi Municipal

Corporation Act, 1957 in respect of the same. A demolition order dated 20th August, 2009 as well as an order dated 30th August, 2010 became the subject matter of challenge before the learned Single Judge by way of W.P.(C) No.6522/2010.

5. After considering the above facts, the learned Single Judge noted in para 10 of the final order dated 30th March, 2016 that the South Delhi Municipal Corporation had, in its status report, disclosed the portions of the property which were compoundable/regularisable and had since demolished other portions of the property. In this background, the writ petition came to be disposed of by the impugned order directing the South Delhi Municipal Corporation to pass a formal order showing the portions which were compoundable/regularisable and the terms of regulation be communicated to the petitioner. This order is clearly in consonance of the provisions of the Delhi Municipal Corporation Act, 1957 and we fail to see any reason as to how the direction which was made, could be legally assailed. So far as the rights of the parties under the lease by the DDA are concerned, the parties would be required to abide by final adjudication in the pending litigation qua the same. The impugned order nowhere determines the impact of the lease cancellation nor does it adjudicate on the rights or claims of title of or by the respondents.

6. In any case, the parties are entitled to know the position

qua the construction which stands on the said plot especially the portions which were objected to by the MCD. The claimants to the portions of the property are entitled to know the terms on which the compounding of any unauthorised portion can be effected, especially in as much as the same may have financial repercussions.

7. It cannot be denied that it is not the portion over which rights are being claimed by the respondent no.1 only which is required to be inspected. Given the claims by the respondent no.2 as the lease not being severable, the construction on the entire property no.B-1/26, Vasant Vihar, New Delhi has to be inspected.

8. In view thereof, the present appeal is disposed of with the direction to the South Delhi Municipal Corporation to forthwith conduct an inspection of the entire construction standing on the property no.B-1/26, Vasant Vihar, New Delhi and to pass a formal order respectively showing portions of the front and the rear portion which are compoundable/regularisable as well as the terms of regularisation which shall be communicated to both the respondents who shall ensure compliance.

9. The respondents shall ensure that every cooperation is rendered to the officials of the SDMC who shall be permitted to conduct an inspection on a pre-informed date and time in writing to the parties.

10. It is made clear that the inspection and the communication of the terms of regularisation shall not impact the claimed rights, title and interest of the parties in the respective portions of the building.

In view of the above, no further directions are called for in all pending applications and the same are hereby disposed of.

Dasti to parties.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 24, 2017

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