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

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Date of Decision: 20th April, 2017

+ W.P.(C) 3298/2017 and C.M. Appl. 14393/2017

SURESH CHAND ARORA

..... Petitioner

Through: Mr. R.N. Dubey, Mr. M.N. Khan, Advs.

versus

EAST DELHI MUNICIPAL
CORPORATION AND ANR

..... Respondents

Through: Mr. D.K. Devesh, Adv.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

CM Appl 14394/2017

Allowed subject to just exceptions.

W.P.(C) 3298/2017

1. Issue notice. Learned counsel for the respondents accept notice.
2. The petitioner has challenged the demolition order dated 23rd January, 2017 on the ground that the petitioner was not served with the show cause notice dated 11th January, 2017.
3. Learned counsel for the respondents has produced the original record according to which the notice dated 11th January, 2017 was sent to the petitioner by speed post. There is no record of the service of the said notice on the petitioner. Learned counsel for the petitioner submits that the postal authorities maintain the record of service of speed post for a period of one month only.
4. Section 444(1)(d) of the Delhi Municipal Corporation Act, 1957

requires the show cause notice to be tendered to the person or if such person cannot be found, the notice is to be affixed on any conspicuous part of the last known place of residence or business or is to be sent by Regd. AD Post. However, the respondents did not send the show cause notice dated 11th January, 2017 by any of the three modes prescribed under Section 444(1)(d) of the Delhi Municipal Corporation Act, 1957.

5. Since there is no proof of valid service of the show cause notice dated 11th January, 2017 on record, the impugned demolition order dated 23rd January, 2017 and consequent vacation notice dated 3rd March, 2017 are set aside.

6. Learned counsel for the petitioner submits that the petitioner accepts the notice dated 11th January, 2017 today and the copy of this writ petition along with the annexures be treated as the petitioner's reply to the show cause notice.

7. In view of the statement made above, the copy of this writ petition along with the annexures are treated as the petitioner's reply to the show cause notice dated 11th January, 2017. The respondents shall afford an opportunity of hearing to the petitioner on 2nd May, 2017 at 3.00 pm in the office of Executive Engineer, Shahdara North Zone, Building Department of East Delhi Municipal Corporation. The respondents shall consider the petitioner's objections and pass a fresh order in accordance with law within a period of four weeks thereafter. The copy of the fresh order to be passed shall be sent to the petitioner by Regd. AD Post.

8. The writ petition is disposed of in the above terms. The pending application is also disposed of.

9. It is clarified that this Court has not examined the petitioner's

case on merits which shall be considered by the respondents.

10. This Court is of the view that in cases of unauthorised constructions, it would be appropriate for the competent authority to take the photographs of the unauthorised construction and in appropriate cases, also make a video recording at the time of inspection.

11. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

12. Copy of this judgment be sent to the standing counsel for North Delhi Municipal Corporation, East Delhi Municipal Corporation, South Delhi Municipal Corporation and New Delhi Municipal Corporation who shall place paragraph 10 of this judgment before the Commissioner of the Municipal Corporations.

APRIL 20, 2017
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J.R. MIDHA, J.