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

+ LPA 502/2017

MANISH SARPAL

..... Appellant

Through: Mr. Shekhar Nanavaty, Adv.

versus

DELHI CANTONMENT BOARD

..... Respondent

Through: Mr. Tarveen Singh Nanda, Adv.

+ LPA 506/2017

ALEXENDER JOHN

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Shekhar Nanavaty, Adv.

versus

DELHI CANTONMENT BOARD

..... Respondent

Through: Mr. Tarveen Singh Nanda, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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28.07.2017

CM Nos. 26457/2017 & 26458/2017 in LPA 502/2017

CM Nos. 26709/2017 & 26625/2017 in LPA 506/2017

Exemption allowed subject to all just exceptions.

The applications stand disposed of.

LPA 502/2017 & CM Nos. 26459/2017

LPA 506/2017 & CM Nos. 26626/2017

Since, we are not inclined to issue notice in the Letters Patent

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Appeals, we have not examined the applications seeking condonation of delay.

The appellants in the aforesaid appeals have assailed the common order dated 23.03.2017 passed by the learned Single Judge in their respective writ petitions. The appellants had challenged the sealing orders passed by the Delhi Cantonment Board on the ground that no appeal was maintainable against the said orders. Since at the time of filing of writ petition, the appeals against the demolition orders passed by the Cantonment Board as well as the compounding applications of the appellants were pending, the learned Single Judge has directed prior disposal of the appeals and the compounding applications. Accordingly, the Appellate Authority has vide order dated 23.02.2017, disposed of the appeals filed by the appellants. The Appellate Authority directed, that the portion of the premises of the appellants which were beyond the construction limits of FAR/set backs etc. as provided in the existing building bye-laws, notified by the Government of India in Gazette Notification dated 08.06.2002 be demolished. The further direction was issued that the appellants would not be entitled to carry out any construction in the demised premises in contravention to the provisions of Cantonment Act, 2006, building bye-laws and policies on the subject.

Before the learned Single Judge there was no challenge to the order passed by the Appellate Authority; in fact the impugned order records that none of the parties wish to challenge the said orders. Consequently, vide the impugned order the respondent-Cantonment Board was directed to demolish within six weeks those portions of the

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demised premises of the Appellants which were beyond the construction limits of FAR/set backs, etc. as provided in the building bye-laws and policies notified by the Government of India in Gazette Notification dated 08.06.2002 within six weeks thereafter. The learned Single Judge further directed that after demolition had been carried out, possession of the premises be handed back to the respective appellants after removing of the seal. It was also directed that in case, after demolition, the property becomes unsafe for human habitation, Delhi Cantonment Board was at liberty to take action in accordance with law. The rights of the appellants to assail any such action under the law was also preserved.

The only submission advanced by learned senior counsel for the appellant is that the new building bye-laws are about to be notified and, therefore, demolition may be put on hold. He has relied on the minutes of meeting held by Delhi Cantonment Board on 02.01.2014 wherein it was resolved that demolition action in respect of unauthorised construction may be kept pending till notification of the model building bye-laws 2013.

We are not at all impressed with this argument of the appellant. As it would appear from the record placed before us that aforesaid so-called model building bye-laws have been drafted in the year 2013. We are now in the year 2017 and, though 3 ½ years have passed since the said model building bye-law were drafted, yet they have not been enforced till date. The Delhi Cantonment Board is a statutory Board and is bound to act to enforce the law. No citizen can claim that his unauthorized construction- which is liable to be demolished

under the existing laws, should not be so demolished in the hope that the law would be amended in future. The resolution relied upon by Mr.Nandrajog, as passed by Delhi Cantonment Board is also in the teeth of the prevailing law. Such a resolution cannot be relied upon or enforced by any Court. We may also observe that in the present case, the unauthorized construction was raised by the appellants only after January 2014 as is apparent from the inspection reports placed on record. In any event, whether the unauthorized construction was raised before or after the drafting of the model bye-laws is of no consequence since the same cannot provide any justification ^{to} ~~on~~ any person to breach the law.

We find absolutely no merit in these appeals and the same are hereby dismissed.



VIPIN SANGHI, J



REKHA PALLI, J

JULY 28, 2017

gm/sr