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

+ W.P.(C) 8938/2017 and CM APPLs. 36563-36564/2017 & 39839-39840/2017

SHRI NITIN KUMAR GARG Petitioner
Through Mr. Ashok Gurnani, Advocate.
versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.
..... Respondents
Through Mr. Ajjay Aroraa and Mr. Kapil Dutta,
Adv. for SDMC.
Mr. Sumit Rajput, Advocate for R-3.
Ms. Deepika V. Marwaha and Ms.
Worthina Kasar, Adv. for Intervener.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **07.11.2017**

Petitioner has preferred the instant petition aggrieved of the order dated 11.9.2017 passed by the Id. District & Sessions Judge (South-East) refusing to extend the interim protection that was originally extended, besides some other reliefs, which the Id. Counsel for the petitioner does not press at this stage of the proceedings and reserves the rights to file a fresh petition, if, called for. The petitioner preferred an appeal against order dated 13.7.2017, whereby, an appeal preferred by the petitioner against demolition order dated 13.12.2016 was dismissed. The relevant portion of the impugned order reads, as under :

“.....
.....
It is the appellant only who on last date while arguing for

issuance of notice of appeal, had placed reliance on order dated 17.07.2017 as regards regularization and on the basis thereof, interim protection had been granted. Today, it is contended by the appellant that regularization issue is not relevant for present purposes.

The applicant has placed on record material as mentioned above and respondent SDMC has yet to file reply and admittedly, the construction carried out on the terrace floor was without sanctioned plan.

Going by the above circumstances, I find no case to extend the interim protection. However, it is clarified that none of the above observations shall be read as final finding, since detailed arguments are yet to be advanced by both sides after filing reply and necessary documents.

Reply to application under Order I Rule 10 CPC be filed by the next date.

SDMC shall file reply within four weeks.

List for disposal of the application under Order I Rule 10 CPC as well as application of appellant for stay of demolition order on 03.11.2017.”

The interim application is still pending consideration and yet to be disposed off is a matter of record and it is also not disputed by the respondents that against the order declining regularisation, the petitioner has preferred statutory appeal, and, that is pending consideration before AT, MCD. In the given factual conspectus, it is desirable that the respondent-SDMC should not proceed to give effect to the impugned demolition order, at least, till the disposal of the application of the petitioner for stay, which, as jointly stated is now fixed for hearing on 25.1.2018.

Keeping in view the totality of the facts and circumstances, the instant writ petition and the pending applications are disposed off with the directions that till the disposal of the stay application filed by the petitioner, which is pending consideration before Id. District & Sessions Judge (South-East), the respondent-SDMC shall not proceed

with the execution of the impugned demolition order dated 13.12.2016, lest, it, *ipso facto*, vitiate the statutory rights of hearing. Simultaneously, ld. District & Sessions Judge (South-East) is requested to expedite the hearing of the stay application and the appeal at the earliest, preferably, on the adjourned date or within a month thereof. Writ petition and the pending applications are disposed off accordingly, with the liberty, as prayed.

A. K. CHAWLA, J

NOVEMBER 07, 2017

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