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

+ W.P.(C) 10119/2015 and CM APPL. 24832/2015

SUSANTA BHUNIYA Petitioner
Through Mr. Preet Pal Singh, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION OF DELHI & ORS
..... Respondents
Through Ms. Biji Rajesh, proxy counsel for
Mr. Gaurant Kanth, Advocate.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **07.11.2017**

Petitioner, aggrieved of the installation of a mobile tower, generator and supporting machinery on the terrace of the property bearing no. E-796, C.R. Park, New Delhi, has preferred the instant petition alleging that such installation is in violation of the provisions of DMC Act 1957 and the bye-laws framed thereunder, and, inspite of the complaints made, the respondent-SDMC has committed acts of omission and commission in discharge of its statutory obligations.

In the short affidavit that has come to be filed on behalf of respondent-SDMC, it is stated, as follows :

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.....

3. That at the outset it is most humbly submitted that the present writ is not maintainable in view of the fact that the issue involved herein is pending adjudication before the Ld.

District & Sessions Judge, Tis Hazari Courts, New Delhi. In view of the same, the present writ petition deserves to be dismissed at the outset.

4. That the Petitioner-herein preferred an appeal before Id. Addl. District Judge (South), Saket Courts against Order dated 25.05.2011 passed by the Ld. trial court. The Ld. ADJ dismissed the said appeal observing, *inter alia*, that the Petitioner-herein failed to implead MCD as a necessary party to the suit in which the impugned judgment was passed.

5. That it is most humbly submitted that the mobile tower in question in the present petition had been sealed by the answering-respondent *vide* sealing order bearing No.D/1002/DC/EE(B)-I/CNZ/14 dated 30.01.2014. It is most humbly submitted that Respondent no.2 preferred an appeal against the sealing Order dated 30.01.2014 and the rejection order dated 26.11.2013 before the Appellate Tribunal, MCD (ATMCD).

6. That ATMCD, *vide* its order dated 16.07.2015, quashed the sealing order dated 30.01.2014 and the order of rejection dated 06.11.2013 and directed the answering respondent to de-seal the tower in question. Further, the Ld. Appellate Tribunal remanded back the matter with a direction to Respondent to reopen the rejected application and decide the same under the norms and conditions contained in policy dated 20.11.2003.

7. That it is pertinent to note that the answering respondent de-sealed the tower in question in compliance with the Order dated 16.07.2015 passed by ATMCD and hence there is no illegality in the said action of the answering-respondent.

8. That it is most humbly submitted that the Order dated 16.07.2015 passed by ATMCD is under challenge before the Ld. District Judge, Tis Hazari Courts and in view of the same the present writ is not maintainable at this stage.

9. In view of the above submissions it most humbly prayed that the present writ maybe rejected as being premature.”

As per the above-said depositions made on behalf of respondent-SDMC, the mobile tower was sealed and thereagainst, the respondent no.2 had preferred an statutory appeal before AT, MCD. Such appeal having been allowed, it is said to be under challenge

before Id. District Judge, Saket Courts. In view of the action taken, which cannot be disputed, it does not lie in the mouth of the petitioner to allege that the respondent-SDMC did not take any action for the alleged unauthorized or illegal installation of the mobile tower complained of. Suffice to say, a lis in that regard is actually pending adjudication.

In view of the foregoing, writ petition is disposed off with a direction that the petitioner would be at liberty to place all relevant documents before the appellant Tribunal or the concerned District Judge, where the appeal is preferred, and, if, considered appropriate, the AT, MCD and/or the concerned District Judge, may consider giving a restricted hearing to the petitioner. It goes without saying, the respondent-SDMC shall furnish to the petitioner, the details of all pending proceedings either before AT, MCD or the District Judge concerned, in relation to the subject matter of the instant petition, within a week from today. Petition stands disposed off accordingly.

A. K. CHAWLA, J

NOVEMBER 07, 2017

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