

\$~56

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1511/2018, CM Nos. 6179-6180/2018**
DR. JAYA SHANKAR & ANR.

..... Petitioners

Through: Mr. C. Mukund, Adv. with Mr. M.B.
Elakkumanan & Ms. Geetika Matta,
Advts.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Ms. Monika Arora, Adv. with Mr.
Kushal Kumar, Adv. for R-1/SDMC

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **16.02.2018**

CM No. 6180/2018

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 1511/2018 & CM No. 6179/2018

1. This petition has been filed challenging the order dated January 31, 2018 of respondent No.1, the relevant para of which is reproduced as under:-

“The claimant of ownership of structures at fourth floor and extended portion in front and rear of ground floor, which are not protected under the aforesaid Act is required to demolish the said structure within six days of issue of this order. In case they do not comply with the order, South Delhi Municipal Corporation by itself will initiate action for demolition of

alleged unauthorized construction and expenditure so incurred towards demolition would be recovered from them as arrears of taxes under the aforesaid act.”

2. Mr. Mukund, learned counsel for the petitioners state that the respondent Nos. 2 to 5 herein have filed a writ petition before this Court in which a status report was directed to be filed by the SDMC. He has drawn my attention to pages 72 and 73 of the paper book to show the orders passed by this Court in the said writ petition. According to him, the SDMC despite directions have not filed the status report. He also states, during the pendency of the proceedings before the Commissioner, the attention of the petitioners was not even drawn to the writ petition, which is pending consideration before this Court even though the petitioners were respondents in the said writ petition. In any case, it is his submission that there is no unauthorized construction as sought to be contended by the Corporation in the impugned order. According to him, only a repairing and cosmetic touch of the existing structure was done. Alternatively he would contend, the construction being prior to 2007, is protected under the provisions of NCT of Delhi Laws (Special Provisions) Second (Amendment) Act, 2017, the protection of which has been extended till December 31, 2020. He also states that the petitioners were also entitled to a similar relief as was granted to the other occupants of the property concerned.

3. During hearing, it was put to Mr. Mukund that the remedy against the impugned order lies before the Appellate Tribunal, MCD. On this observation, he would submit, there being an urgency, inasmuch as the respondent No. 1 has called upon the petitioners to demolish the property within six days from the issuance of the order, which order was received only on February 08, 2018 and a writ petition wherein petitioners are respondents is pending in this Court, the petitioners have approached this Court.

4. Suffice to state pendency of writ petition filed by respondents 2 to 5 would not preclude the petitioners to seek remedy of appeal before the Tribunal in terms of the provisions of the Act. Relegating the petitioners to the Appellate Tribunal, MCD and granting protection to the petitioners for a further period of 10 days from today, the writ petition and the connected application are disposed of. It is made clear, this Court has not expressed itself on the merit of the case. The Tribunal shall consider the appeal without being influenced by the fact that a writ petition is pending in this Court.

Dasti.

V. KAMESWAR RAO, J

FEBRUARY 16, 2018/ak