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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2793/2018 & CM APPL. 23990/2018**

ARUN RATHI

..... Petitioner

Through: Ms. Sujata Kashyap, Advocate with
petitioner in person

versus

**NORTH DELHI MUNICIPAL CORPORATION AND
ORS.**

..... Respondents

Through: Mr. Shekhar Vyas, Standing Counsel for
R1.

Mr. Jaspreet Singh Rai, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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06.12.2018

Mr. Vyas, learned Standing counsel appearing for the North Delhi Municipal corporation points out that in respect of the property forming subject matter of this writ petition, an order already stands passed by this Court on 10th July, 2018 in W.P.(C) 6687/2018 (Dinesh Rathi vs. North Delhi Municipal Corporation). The said order reads thus:

“A perusal of the status report handed over in Court on behalf of the North Delhi Municipal Corporation (NDMC), reflects that they had initiated action against the unauthorized construction in the shape of rear set back at ground floor and first floor of the property bearing House No. 5, Road No.4, East Punjabi Bagh, New Delhi-110026 (hereinafter referred to as the ‘subject property’) under Section 343 and 344 of Delhi Municipal Corporation Act, 1957, vide file No. B/UC/KBZ/2013/338 on 22nd July, 2013. The demolition orders were also passed in pursuance to the unauthorized construction in the shape of kitchen at ground floor and one room at first floor in the garage portion at RHS set back and construction of partition wall in common gallery near staircase under Section 343 and 344 of Delhi Municipal Corporation Act, 1957, vide file No. B/UC/KBZ/2016/177 on 6th June, 2016 (hereinafter referred to as

‘subject construction’). The report further goes on to state that the demolition actions in the subject property was planned for 18th January, 2014, 3rd April, 2014, 2nd August, 2016, 17th October, 2016 and 16th November, 2016, which, however, did not take place owing to shortage of time or non-availability of police force. In response thereto, Mr. Rai, learned counsel appearing on behalf of the petitioner states that the applications instituted on their behalf qua regularisation of the subject unauthorized construction were rejected by the NDMC, inter alia, on the ground that they were not signed by his cousin, who is also a co-owner in the subject property and not on account of subject construction that could not be regularised. Learned counsel appearing on behalf of the petitioner would further urge that the subject unauthorized construction existing in the subject property is protected by the mandate of the provisions of the National Capital Territory of Delhi Laws (Special Provisions) (Second Amendment) Act, 2011 (hereinafter referred to as ‘the said Act’) and in particular, provisions of Section 3 thereof. The counsel for the petitioner would also urge that the protection afforded by the provisions of the said Act is available to the petitioner since the subject unauthorized construction was carried out in the year 1999 i.e. prior to the cut off date for grant of protection, as provided for in the said Act.

Learned counsel for the petitioner would, therefore, state that till such time that the NDMC, after affording the petitioner a hearing, comes to a conclusion that the subject unauthorized construction raised is not protected by the provisions of the said Act, the action for demolition must be kept in abeyance. In view of the foregoing, having heard learned counsel appearing on behalf of the parties, it is directed that the NDMC shall afford a hearing to the petitioner in order to enable the latter to establish, that the subject unauthorized construction is protected by the provisions of the said Act, by establishing through cogent material that the construction was carried out in the year 1999, as asserted. The NDMC shall, thereafter, pass an order, in accordance with law, and take necessary action as may be warranted under the provisions of the Delhi Municipal Corporation Act, 1957. The petitioner shall appear before the Deputy Commissioner, MCD, Karol Bagh Zone on 17th July, 2018 at 11:00 a.m., for the said purpose, along with all the relevant documents in support of their assertion that the subject construction was raised in the year 1999. The Deputy Commissioner, MCD, Karol Bagh Zone, shall pass a speaking order, after affording an

opportunity of being heard to the petitioner thereafter directing further action, if warranted, in accordance with law. With the above direction, the writ petition is disposed of. Pending application also stands disposed of.”

In view of the aforementioned order, it is not possible for this Court to pass any order in this case save and except permitting the petitioner to also submit a representation before the Deputy Commissioner, Municipal Corporation of Delhi, Karol Bagh Zone, who is directed to hear the petitioner as well before taking a decision as directed in the order dated 10th July, 2018 (supra) passed in W.P.(C) 6687/2018.

For the said purpose, the petitioner shall appear before the Deputy commissioner, MCD at 11 a.m. on 14th December, 2018 with the requisite representation as well as all other material that the petitioner would seek to produce before the said officer in support of his case. The Deputy Commissioner would thereafter pass a speaking order as already directed on 10th July, 2018 (supra).

The writ petition stands disposed of accordingly. However, the petitioner would, needless to say, be at liberty to re-approach this Court should any grievance survive.

C.HARI SHANKAR, J

DECEMBER 06, 2018

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