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

+ W.P.(C) 6687/2018 & CM No. 25426/2018 (stay)

DINESH RATHI

..... Petitioner

Through Mr. Jaspreet S. Rai, Mr. Rohit Nagpal
and Mr. Sukhdeep Kaur Rai,
Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Through Mr. Shekhar Vyas, Standing Counsel
for NDMC.

Ms. Sujata Kashyap, Advocate for
respondent No. 3.

Mr. Anjum Javed, ASC along with
Mr. Devendra Kr. and Mr. Faran
Ahmad, Advocates for respondent
No. 4.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

% **10.07.2018**

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.

SIDDHARTH MRIDUL, J

JULY 10, 2018/RS

W.P.(C) 6687/2018

page 3 of 3