

#44

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 06.07.2018

W.P.(C) 6926/2018

V. M. SINGH

.... Petitioner

versus

SOUTH MUNICIPAL CORPORATION AND ANR .. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Arjun Harkauli and Mr. Vardaan Wanchoo, Advocates.

For the Respondents : Mr. Ajjay Aroraa and Mr. Kapil Dutta, Advocates for SDMC.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CM No. 26256/2018 & 26257/2018 (Exemption)

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 6926/2018 & CM No. 26255/2018 (stay)

1. The present petition statedly under Article 226 of the Constitution of India, *inter alia*, prays for an order to quash and set aside an order dated 31st May, 2018, passed by the Appellate Tribunal for Municipal Corporation of

Delhi (ATMCD) in Appeal No. 30/2018, titled as “*V.M. Singh vs. South Delhi Municipal Corporation & Anr.*”

2. Issue notice.

Mr. Ajjay Aroraa, learned counsel appearing on behalf of the South Delhi Municipal Corporation (SDMC) on advance notice, invites my attention to a decision of the Supreme Court of India in “*Amrik Singh Lyallpuri vs. Union of India*”, reported as (2011) 6 SCC 535, to urge that an appeal against the order impugned in the present petition lies before the Court of District Judge. It is further urged that the present petition under Article 226 of the Constitution of India is, even otherwise, not maintainable since the order that has been carried before this Court is a consent order, wherein, the petitioner of his own volition stated that he is ready to get the construction regularised and further sought an opportunity to do so which was granted. At the petitioner’s instance, the learned Tribunal further restrained the official respondent from taking any coercive action in relation to the petitioner’s property to enable the latter to apply for regularisation as prayed for by him, within a period of one month from the date of the impugned order; which the petitioner hasn’t yet done.

3. Mr. Arjun Harkauli, learned counsel appearing on behalf of the petitioner refuted the assertion that they consented to apply for regularisation and asserts that the order is erroneous to the extent that it records a statement to this effect on their behalf.

4. Be that as it may, that can only be the subject matter of an appeal which lies before the District Judge in accordance with the dictum of the Supreme Court in *Amrik Singh Lyallpuri* (*supra*).

5. Even otherwise, if the present petition were to be treated as one under Article 227 of the Constitution of India, it would be incumbent upon the petitioner to demonstrate that the impugned order is one that was rendered without jurisdiction or is perverse.

6. Having heard learned counsel for the parties, I find that the impugned order has been rendered by a forum within whose exclusive jurisdiction the subject matter in relation to the petitioner's property falls and that a reading of the impugned order, which was rendered on an interim application seeking stay, cannot be characterized as being perverse in the determination of the present proceedings. In view of the foregoing, the present petition is devoid of any merit and is accordingly dismissed, whilst reserving liberty to

the petitioner to file an appropriate proceeding, in accordance with law, assailing the impugned order before the concerned District Judge.

7. Before parting with the order, it would be appropriate to consider the submission made on behalf of the learned counsel for the petitioner to the effect that the show cause notice issued on behalf of the official respondent to the petitioner, which is the subject matter of the said appeal pending determination before the ATMCD, has been issued by an officer against whom the petitioner has instituted an application under Section 340 Cr.PC for perjury. The said assertion of fact is not refuted on behalf of the official respondent. In view of this and in terms of the well established legal principle that “*justice must not only be done but must be seen to be done*”, the competent Court before whom the appeal against the impugned order may be instituted will examine whether the prejudice has been caused to the petitioner on account of the bias that allegedly vitiates the action taken on behalf of the official respondent.

8. With the above observations, which have been rendered without prejudice to the rights and contentions of the parties and which may be examined in an appropriate proceeding, in accordance with law, the writ

petition is dismissed and disposed of. Pending application also stands disposed of.

A copy of the order be given *dasti* to learned counsel for the parties.

SIDDHARTH MRIDUL
(JUDGE)

JULY 06, 2018
RS

