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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 139/2017 & CM APPL. 17927/2017
NORTH DELHI MUNICIPAL CORPORATION Appellant
Through: Ms. Mini Pushkarna, Advocate and
Ms. Anushruti, Advocate.
versus
NEO RAM SHARMA Respondent
Through: Mr. S.K. Bhalla, Advocate with
Respondent in person.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **19.02.2018**

The learned counsel for the appellant states that the notification referred by her on the last date has urbanised only two pockets of land marked as Zone-M and Zone P1 which have been developed as per the master plan. In other words, except for the aforesaid two pockets, the land in village Khera Khurd is still classified as a rural area. The respondent had filed a suit seeking injunction against eviction from certain lands which are a part of Village Khera Khurd. They had contended that the Delhi Rent Control Act, 1958 ('Act') is not applicable to the said land. Whereas the appellant argued otherwise. It was the appellant's case that the suit land came under the Act, therefore the Civil Court has no jurisdiction to pass the impugned order i.e. the lis should have been adjudicated by the Rent Controller. When it was the respondent's case that no Notification existed regarding Village Khera Khurd, they could not have brought any Notification in support of the contention. A negative or void cannot be proven. It has only to be ascertained.

If it was the appellant's case that a Notification existed i.e. there was a

positive document showing that the Act extended to the area in question, then they should have produced it to negate the respondent's assertion. The document brought forward by the appellant shows that only areas of two pockets in Village Khera Khurd have been extended the coverage of the Act from 2017. In other words, no area of the Village Khera Khurd had been urbanized prior to 2017. Therefore, it is clear admission by the appellant themselves that the aforesaid Act was not applicable to the entire Village at the time when the impugned order was passed.

This second appeal has been pursued as a matter of course, without application of mind or without ascertaining whether a Notification extended the application of the Act to the suit land. It is a misuse of the process of the Court by a statutory body. The Court is inclined to dismiss the appeal with costs of Rs.1,00,000/-. However, at this stage, Ms. Mini Pushkarna, the learned counsel for the appellant requests for a pass over to seek instructions as to whether the matter should be pursued. At her request, the case is passed over.

Upon instructions, Ms. Pushkarna states that she would like to withdraw the appeal. Accordingly, the appeal is dismissed as withdrawn. However, since the respondent has been constrained to appear before this Court on three occasions, a nominal cost of Rs. 10,000/- shall be paid to him through counsel by way of a demand draft within two weeks from today.

NAJMI WAZIRI, J

FEBRUARY 19, 2018

RW /sb