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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1015/2018 & CM APPL. 35152-35154/2018**

NISHA SHARMA

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Ajit Dayal, Mr. Awijit Paliwal &
Ms. Shabana, Advocates.

versus

NDMC

..... Respondent

Through: Ms. Namrata Mukim, Advocate for
R-1.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **30.08.2018**

Vide the present petition, the petitioner assails the impugned order dated 24.08.2018 of the learned Appellate Tribunal, MCD in Appeal No.862/16 submitting *inter alia* to the effect that the Appeal No.862/16 was filed against the order dated 12.09.2016 of the Assistant Engineer (B), City Zone under Section 343 of the DMC Act, 1957, which appeal is presently pending qua the observations in the said order to the effect that the petitioner herein had carried unauthorized construction of the ground floor, 1st floor, 2nd floor, 3rd floor and 4th floor of the property bearing no.490-491-492, Haveli Haider Quli, Chandni Chowk, Delhi-06 which was liable to be demolished and that the petitioner was directed under Section 343 & 344 of the DMC Act, 1957 to demolish the same within six days of

the receipt of the said order otherwise the same will be demolished at the risk and cost of the owner/occupier and it has been submitted on behalf of the petitioner that along with the appeal there was an application filed seeking the stay of the operation of the said impugned order dated 12.09.2016 of the Assistant Engineer (B), City Zone as that there has been no adjudication of the said application seeking the stay of the operation of the said order and that vide order dated 24.08.2018, the learned Appellate Tribunal, MCD has observed to the effect that there was no action being taken in the property concerned and the concerned Dy. Commissioner was directed to appear in person in case proper action taken report was not filed on the next date of hearing which is 13.11.2018.

The said order dated 24.08.2018 of the learned Appellate Tribunal, MCD indicates that the status report was filed indicating that the demolition action was fixed for 31.08.2018 and it was further observed that the property was occupied, vacation notice and lock breaking had been issued. It has been submitted on behalf of the petitioner that there being no adjudication of the application filed by the petitioner seeking the stay of the operation of the order dated 12.09.2016 of the Assistant Engineer (B), City Zone, the same was in relation of the principle of natural justice and there ought to be a hearing granted in relation thereto by the learned Appellate Tribunal, MCD.

On behalf of the respondent, learned counsel for the respondents has drawn the attention of this Court towards the

proceedings of the date 12.01.2018 of the Appellate Tribunal, MCD
in the instant appeal which read to the effect:

A. No. 862/16

12.01.2018

***Present: Sh. Ram Dev Sharma, husband of appellant.
Sh. Dharamvir Gupta, counsel for MCD.***

***Husband of appellant submits that counsel is not
available due to death of his relative and seeks
adjournment.***

***In the interest of justice, last and final opportunity is
granted for arguments on 27.04.2018.***

***In the meanwhile respondent will file status report
whether any demolition action has been taken in the
property in question in pursuance of impugned demolition
order and whether any further action required or not as
there is no stay on the next date of hearing.***

Sd/-

***(SANJEEV KUMAR)
ADJ & SJ-cum-P.O.
Appellate Tribunal:MCD
12.01.2018.***

and it has thus been submitted on behalf of the respondent that as vide
order dated 12.01.2018, the learned Appellate Tribunal, MCD has
called upon the respondent to file the status report whether any
demolition action had been taken qua the property in question in
pursuant to the impugned demolishing order, i.e., 12.09.2016, and

whether any further action was required or not “**as there is no stay**” on the next date of hearing which was indicated to be listed for the date 27.04.2018.

On behalf of the petitioner, it has been submitted that the copies of the proceedings in the Appeal No.862/16 on the record dated 20.09.2016, 26.09.2016, 25.01.2017, 01.05.2017, 31.08.2017, 12.01.2018, 27.04.2018 and it has thus been submitted on behalf of the petitioner that it is apparent that there has been no adjudication of the application seeking a stay of the operation of the impugned order so far and it has now been submitted on behalf of the petitioner that she confines the prayer in the present petition to the extent that a hearing be granted on the application filed by the petitioner seeking a stay of the operation of the order dated 12.09.2016.

Apparently, the said submission made on behalf of the petitioner that there has been no adjudication vide a speaking order of the application filed by the petitioner seeking a stay of the operation of the demolition order dated 12.09.2016 issued vide notice bearing no. D/EE (B)/CZ/2016/3036 is correct as per the copies of proceeding sheets placed on record of the proceedings in the appeal before learned Appellate Tribunal, MCD. In the circumstances, the learned Appellate Tribunal, MCD is directed to take up the proceedings in relation to the application seeking the stay of the operation of order dated 12.09.2016 and is directed to pass a speaking order on the same after giving an opportunity to either side and is directed to take up the proceedings on the date 04.09.2018 till

which date, the respondent is directed to maintain status quo in relation to the property in question.

Nothing stated hereinabove shall however amount to any expression of the merits or demerits of the Appeal No.862/16 nor on the application for stay filed by the petitioner qua the demolition order dated 12.09.2016.

The petition stands disposed of.

Copy of this order be given *Dasti* under the signatures of the Court Master to both the parties, as prayed.

ANU MALHOTRA, J

AUGUST 30, 2018/NC