

#69

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 04.09.2018

W.P.(C) 9254/2018

GAYA PRASAD YADAV

..... Petitioner

versus

EAST DELHI MUNICIPAL CORPORATION

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Prashant Sharma, Advocate with Mr. Amit Kr. Verma, Advocate.

For the Respondents : Mr. G.D. Mishra, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India prays as follow:-

- a) *"Pass a writ of mandamus or any other appropriate writ/order(s)/direction(s) against the respondent, thereby directing or ordering the respondent to allow a period of 15 days to the petitioner to remove his machines, raw/furnished material out of the premises so sealed by the respondent i.e. Plot no. 198, Khasra no. 15/18, Pole no. 0 Main Sevadham Road, Mandoli,*

Delhi-110093;

Any other relief may also be granted by the Hon'ble Court in favour of the petitioner as well as against the respondent”

2. A perusal of the prayer clause extracted hereinabove clearly reveals that, without assailing the act of sealing carried out by the EDMC, in accordance with law, the petitioner has limited himself to the relief of de-sealing of the subject property, in order to enable him to remove his goods lying sealed therein.

3. Furthermore, the petitioner has also not assailed the sealing order passed by the EDMC, prior to the sealing of the subject premises for misuse thereof, in the present proceedings.

4. In W.P. (C) 4677/1985, titled as “*M.C. Mehta Vs. Union of India & Ors*” vide its judgment and order dated 16.02.2006, a three Judge Bench of Hon'ble Supreme Court clearly concluded that, the expression ‘to erect a building’ in relation to provisions of Section 345(A) of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the ‘said Act’) means and includes the ‘conversion of user’ therein.

5. A further reading of the provisions of Section 347(B) and in particular sub-section (m) thereof clearly provides that, an order directing sealing of unauthorised constructions under Section 345(A), is an order against which an appeal may be preferred before the Appellate Tribunal.

6. In view of the foregoing discussion, this Court has no jurisdiction to grant the relief prayed for by the petitioner, in view of the effective remedy of statutory appeal provided under the provisions of the said Act.

7. The petition is therefore dismissed, whilst reserving liberty to the petitioner to assail the act of commission on behalf of the EDMC, hereinbefore elaborated, in accordance with law, before the Appellate Tribunal Municipal Corporation of Delhi (ATMCD).

8. A copy of this order be given *dasti* to learned counsel for the parties under the signatures of Court Master.

SIDDHARTH MRIDUL
(JUDGE)

SEPTEMBER 04, 2018
p'ma