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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 15th March, 2018

+ CM(M) 1084/2015 & CM Nos. 25951/2015, 30754/2015,
10167/2017, 24800/2017

M/S MANGAL DAS VISHAMBER LAL JAIN & ORS.

.... Petitioners

Through: Mr. Rajat Aneja with Ms.Chandrika
Gupta & Ms. Nisha Sharma,
Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms. Renu Gupta, Standing Counsel
for NDMC.
Mohd. Elahi, Advocate for proposed
R-2 Mohd. Mursaleen.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the petition at hand, the correctness, legality and propriety of the order dated 09.02.2015 of the Additional Senior Civil Judge passed on the file of suit (CS no.17/2014) instituted by the petitioners and order dated 22.07.2015 of the first appellate court passed in appeal (MCA no.7/2015), affirming the formal order whereby the application of the petitioners (plaintiffs) seeking an order of injunction under Order XXXIX Rules 1 and 2 Code of Civil Procedure, 1908 (CPC)

was dismissed.

2. The petitioners had brought the aforesaid civil suit seeking reliefs in the nature of declaration and permanent injunction against North Delhi Municipal Corporation (NDMC) vis-à-vis orders issued by it invoking its jurisdiction under Sections 348 and 349 of Delhi Municipal Corporation Act, 1957, declaring the building dangerous, in a part of which (at the ground floor) the plaintiffs claim to have been in use and occupation as tenants for over five decades, directing it to be sealed.

3. By the said orders under Sections 348 and 349 of Delhi Municipal Corporation Act, 1957 issued on 17.10.2014, the building in question was declared to be dangerous for human habitation. It is the contention of the petitioners that the said action was *mala fide*, it having been initiated at the instance of Mohd. Mursaleen S/o Sh. Chaudhary Mughal, R/o T-224-A, Gali No.3, Nawab Road, Sadar Bazar, Delhi-110006, he being the landlord in respect of the petitioners in the portion referred to above. By the impugned orders, the trial court and the first appellate court declined to grant any relief of injunction against demolition or sealing.

4. When the petition at hand was filed, by order dated 04.11.2015, it was directed that if the respondent NDMC had any plan for demolition of the property before the next date of hearing, such fact would be brought to the notice of the court as also the counsel for the petitioners. The said order was extended by subsequent order dated

03.12.2015 and continued to operate till 17.07.2017, when an assurance of the counsel for the respondent was recorded that no demolition action would be taken till the next date, i.e. 01.11.2017. The order was further extended till today by order dated 01.11.2017. It is the contention of the petitioners that on 07.12.2015, demolition action was carried out razing the building substantially. It is their case that the building was a three storeyed structure and presently only the outer walls remain, the inner walls and the upper floors have been brought down, only rubble remaining at the ground level. The petitioners had filed an application seeking initiation of contempt proceedings on account of such demolition. For the record, it may be added that the respondent-Corporation denies that any demolition action was carried out during the pendency of these proceedings.

5. On the application (CM No.10167/2017) moved under Order I Rule 10 read with Section 151 CPC, notice was issued to Mohd. Mursaleen, the person described by the petitioners as the landlord in their respect, such party having appeared in response, the counsel for the petitioner clarifying that similar application has already been moved and is pending before the trial court for impleadment of the said party in the civil suit and also for corresponding amendments to the plaint.

6. Be that as it may, Mohd. Mursaleen, in the above facts and circumstances, is a proper party, if not a necessary party and, therefore, is impleaded here. It is inherent in this decision that the trial court will also take an appropriate decision on similar prayer qua the

civil suit – this order, however, not to be construed as endorsing the prayer for amendment of the plaint in which respect the application of the petitioner will be considered in accordance with law.

7. After some hearing, the learned counsel representing the petitioners fairly conceded that these proceedings will not carry the day for him any further, given the fact that the superstructure in question has already been brought down substantially, only rubble remaining at the site, it being of no use to any quarter including the petitioners. He, thus, submitted, on instructions, that he may be allowed to withdraw the present petition and instead be given liberty to move an application for amendment of the plaint to incorporate additional prayer vis-a-vis his claim for restoration of the right to enjoy the tenancy rights, which, according to him, still subsist, notwithstanding the demolition action in respect of the building under the cover of jurisdiction of the municipal authority under Section 348 of Delhi Municipal Corporation Act, 1957, this based on his contention that his possessory rights have not been extinguished. Needless to add in this context that the respondent Mohd. Mursalem once impleaded formally as a defendant in the suit will have the right to raise all defences and contentions for consideration at the trial in the suit.

8. The petition is thus dismissed as withdrawn though with liberty as aforesaid, granted to the parties.

9. The interim orders stand vacated.

10. This disposes of the pending applications as well.

R.K.GAUBA, J

MARCH 15, 2018

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