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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 675/2019
KAMLESH DEVI & ORS Appellant
Through Mr. Raghav Kapoor, Advocate.

versus

MAYA DEVI & ORS Respondent
Through Mr. Anunaya Mehta, Advocate for
R1.
Ms. Richa Dhawan, Additional
Standing Counsel (SDMC) for R2 &
R3.
Ms. Hetu Arora Sethi, ASC
(GNCTD) for R4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **23.10.2019**

CM APPL. 46595/2019 & CM APPL. 46597/2019 (exemptions)

Allowed, subject to all just exceptions.

LPA 675/2019 & CM APPL. 46596/2019 (stay)

1. The present appeal has been filed by the appellant being aggrieved by an order dated 25.09.2019, passed by the learned Single Judge in W.P.(C) No. 7729/17, filed by the respondent No.1/petitioner.
2. We may note that all the three appellants were impleaded as respondents in the writ petition. It is also not in dispute that no notice was issued to the appellants in the captioned writ petition, which was disposed of

on 04.10.2018, after a Status Report was filed by the respondent No.2/SDMC stating *inter alia* that complete demolition of the unauthorized construction existing in the premises, situated at Village Mahipalpur, where the appellants are residing, shall be carried out on 10.10.2018 and a compliance report shall be filed.

3. It is stated by Mr. Mehta, learned counsel for the respondent No.1/petitioner that the respondents No.2 & 3/SDMC had failed to demolish the unauthorized construction in accordance with law and the petition was adjourned to 01.11.2018, only for reporting compliance by the respondents No.2 & 3/SDMC.

4. It is stated by the learned counsel for the respondents No.2 & 3/SDMC that appropriate action for demolition of the unauthorized construction at the subject premises was carried out and at least by then, the appellants would have been well aware of the pendency of the writ petition, but for reasons best known to them, they elected not to participate in the said proceedings.

5. Learned counsel for the appellants states that the writ petition filed by the respondent No.1/petitioner is mischievous and she and her family have an axe to grind with the appellants, who are lawful owners in occupation of the subject premises.

6. Mr. Mehta, learned counsel for the respondent No.1/petitioner disputes the said claim that the appellants are owners in occupation of the subject premises. He states that the appellants are in occupation of only a part of the subject premises.

7. We may note that on 01.11.2018, the writ petition was adjourned to 10.04.2019, for reporting compliance. On 10.04.2019, the matter was adjourned to 18.07.2019, to await a Status Report from the SDMC in respect of the demolition action. On 18.07.2019, learned counsel for the respondent No.1/petitioner had disputed the Status Report filed by the SDMC. As a result, she had been granted time to file a response along with photographs. The petition was again adjourned to 25.09.2019, with a direction that the concerned Engineer of the SDMC would remain present in Court on the said date. On 25.09.2019, learned counsel appearing for the SDMC had stated before the learned Single Judge that a part of the unauthorized construction had not been demolished as per the Status Report dated 16.07.2019 and that the needful would be done within four weeks.

8. It is at this stage that the appellants have woken up by approaching the Court for relief. Instead of filing an application before the learned Single Judge, they have rushed before the Division Bench, by filing the present appeal.

9. We decline to entertain the appeal. Nor are we inclined to get embroiled on the issue of ownership of the premises, which is not even a subject matter of consideration in the writ petition. Even if the said submission made by learned counsel for the appellants that his clients were unaware of the initial order passed in the writ petition on 04.10.2018, is accepted, there is no explanation worth the name as to what steps were taken by the appellants after the demolition action was commenced by the SDMC in their premises, in terms of the directions issued in the writ petition.

10. Be that as it may, while disposing of the present appeal, liberty is granted to the appellants to approach the learned Single Judge by filing an appropriate application bringing on record, all the relevant facts that have been stated in the present appeal, for seeking modification/vacation of the order dated 25.09.2019. If the appellants do approach the learned Single Judge by filing an application seeking necessary orders, the same shall be considered and decided in accordance with law.

11. The appeal is disposed of alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

OCTOBER 23, 2019/MK/s