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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1172/2019**
SH. RAMESH

..... Petitioner

Through: Mr. M.S. Bammi, Ms. Vaneeta
Shalini, Ms. Varsha Nain and Ms.
Sana Khan, Advs. with petitioner in
person.

versus

**THE COMMISSIONER, NORTH DELHI MUNICIPAL
CORPORATION AND ORS.**

..... Respondents

Through: Mr. Tushar Sannu and Mr. Shivam
Chhalotre, Advs. for R1
Mr. Shiv Charan Garg, Adv. for
Intervener.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **22.05.2019**

CM No. 5319/2019 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 1172/2019

1. The present petition has been filed by the petitioner with the following prayers:

*“It is, therefore, most respectfully prayed that this Hon’ble
Court may graciously be pleased to:*

a) Issue a writ of mandamus or any other appropriate

writ directing the respondent No.1 and 2 to withdraw the said vacation notice dated 08.01.2019 or in alternate to quash the said vacation notice dated 08.01.2019; and / or
b) Issue a writ of mandamus or any other appropriate writ directing the respondent No.3 to not to react / take any action in response the said vacation notice dated 08.01.2019; and / or
c) Pass any other or further order(s) as this Hon'ble Court may deem fit, just and proper in the given facts and circumstances of the present case.”

2. It is the case of the petitioner in the writ petition that the property of the petitioner was constructed upto ground floor in 2010. The petitioner purchased the property in question in the name of his wife in February, 2010. His wife passed away and the petitioner himself became the caretaker of the said property. In 2010, the petitioner started construction of first floor of the property but the same could not be completed because of some objections raised by the neighbour.

3. On January 08, 2019 a vacation notice has been issued by the respondent / Nr. DMC but was never served on the petitioner or any of his family members. It is averred that the police officials from the concerned police station has visited the house of the petitioner in order to ask him to

vacate the said property in question and to hand over the vacation notice dated January 08, 2019 to him.

4. The Nr. DMC has filed a status report vide diary No.46221/2019. The same is not on record. The Registry shall place the said status report on record. I have taken a copy of the status report as filed by Mr. Sannu learned counsel for the Nr. DMC, wherein in paras 3 and 4 the following has been stated:

“3. That it is submitted that as per record, a decree dated 01.10.2015 was passed by the Court of Ms. Shivali Sharma, ASCJ, Delhi, Tis Hazari Court in Suit No.492/2013 title Akhilesh Tiwari & Anr. vs. Sh. Ramesh & MCD regarding unauthorised construction in Property No.5690, Gali No.3, New Chandrawal, Delhi whereby a decree of injunction was passed on the following terms:

“(i) A decree of permanent injunction thereby restraining the defendant No.1 his agents, employees, successors, labourers etc. permanently from raising any unauthorised construction in any portion of the suit property without obtaining proper sanction from the Municipal Authority.

(ii) A decree of mandatory injunction thereby directing the defendants to demolish the illegal / unauthorised construction raised by defendant No.1 on the

ground and first floor of the suit property in the same position as shown in red colour in site plan EX PW 1/11 and to restore the ground floor of the suit property in the same position as shows in the site plan Ex PW1/5.

(iii) Cost of the suit is also awarded in favour of plaintiff.

(iv) The site plan Ex PW1/5 & Ex PW 1/11 shall form a part of the decree.”

4. That as per record, Sh. Akhilesh Tiwari filed an Execution Petition No.40/15 (New No.95347/16) seeking execution of aforesaid decree dated 01.10.2015 and the same is pending adjudication before the Court of Sh. Ankit Singla, ASCJ, Delhi Tis Hazari Court. The said case was last listed on 10.05.2019 and the same has now been adjourned to 26.07.2019. It is submitted that in view of aforesaid decree, unauthorised construction in the property No.5690, Gali No.3, New Chandrawal, Delhi was booked under Section 343 and 344 of the DMC Act vide file No.199/C-69/B-II/UC/CLZ/2016 dated 30.05.2016 and after following the due process of law demolition order dated 17.06.2016 was passed thereby directing the noticee / owner / occupier of the property in question to demolish the said unauthorised construction within 6 days. Since the notice failed to comply with the demolition order therefore action was planned for 09.03.2017 wherein 4 number column at first floor were demolished and cut

down by gas cutter. Raised brick wall of first floor were also demolished. Further action could not be taken as the building was occupied at ground floor.

In order to take further action in the matter, a vacation notice dated 08.01.2019 under section 349 of the DMC Act was issued which is a subject matter of the present writ petition.”

5. From the above, it is clear that the action against the petitioner is being taken by the respondent pursuant to a decree dated October 01, 2015 passed by the learned Civil Judge in Suit No.492/2013 filed by one Akhilesh Tiwari wherein the petitioner herein was a defendant. It is also noted that pursuant thereto, the execution proceedings are also pending. The unauthorised construction in the property has been booked under Section 343 and 344 of the DMC Act and a demolition order dated June 17, 2016 has been issued.

6. It is pursuant thereto the vacation notice has been issued. What is really a matter of concern is that there is no reference made by the petitioner to the suit filed by Akhilesh Tiwari impleading the petitioner herein as defendant No. 1. As I find that there is no mention about the filing of the suit by Akhilesh Tiwari wherein the petitioner was a defendant, and also, there is no mention about the decree having been passed by the Court

concerned, the concealment of the facts itself is a sufficient ground for this Court to dismiss the writ petition. Further, I note the stand of the Nr. DMC is that the action is being taken in satisfaction of the decree dated October 01, 2015. I do not see any reason to entertain the present writ petition. The same is dismissed.

CM No. 5320/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 22, 2019/aky