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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 1268/2019

R. K. GANDHI AND ANR.

..... Petitioners

Through: Mr. Pradeep Kumar Arya, Mr. Raj
Karan Sharma, Mr. Aditya Yadav,
Ms. Deepika Khari & Mr. Priyansh
Malik, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Kartik Jindal & Ms. Stuti Karwal,
Advs. for R-1/SDMC.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **06.02.2019**

W.P.(C) No. 1268/2019 & CM APPL. No. 5684/2019 (for interim relief)

The petitioner seeks quashing of notices dated 08.01.2019 and 25.01.2019 issued by the respondent/SDMC whereby property, being shop bearing No. 1/81 Punjabi Bagh West, New Delhi has been booked for unauthorised construction and show-cause notices in respect thereof have been issued by the respondent as a pre-cursor to taking action against it. The record shows that the petitioner has received the aforesaid notices and has also responded thereto.

Learned counsel appearing for the respondent/SDMC has shown in court a complaint letter dated 27.10.2018 against the subject property addressed to the Monitoring Committee constituted under orders of the Supreme Court in W.P. (C) No. 4677/1985 titled ***M.C. Mehta vs. Union of India & Ors.***; and states that, as indicated by the noting on the said complaint, action against the subject property has been initiated at the

instance of the Monitoring Committee. A copy of the complaint has been handed-up and also shared with counsel for the petitioner. The same is taken on record.

To be sure, when the Monitoring Committee was constituted by the Supreme Court vide order dated 24.03.2006 made in W.P. (C) No. 4677/1985 titled ***M.C. Mehta vs. Union of India & Ors.***, its primary task was to oversee implementation of the law relating to misuse of premises, that would culminate in sealing of such premises.

Over a period of time however, other tasks relating to implementation of Master Plan for Delhi-2021, Unified Building Bye-Laws and other municipal legislations have also come to be entrusted and assigned to the Monitoring Committee, including all aspects of unauthorised construction, misuse of premises, encroachment on public land and allied illegal activities. This has been acknowledged by the Monitoring Committee *inter alia* in its report No. 128 dated 05.09.2018 submitted to the Supreme Court. The said report has been cited by the Supreme Court in order dated 07.09.2018 made in W.P. (C) No. 4677/1985, whereby the Court has also noted the Monitoring Committee's submission that it is doing its best to comply with the orders passed by the Supreme Court to ensure 'that there are no encroachments or unauthorised constructions or misuse of property in Delhi'; with the Monitoring Committee lamenting however that it is not getting adequate support from executing agencies such as MCD, NDMC, DDA and the Police. In the said order, the Supreme Court has further requested the Monitoring Committee to continue with its onerous task and has observed that it expects statutory bodies and the police to render all necessary assistance to the Monitoring Committee in carrying out its task.

In various orders made by the Supreme Court in W.P. (C) No. 4677/1985 aforesaid, the Supreme Court has mandated that no court, including the High Court, shall entertain any matters in which the action impugned has been initiated at the instance of Monitoring Committee. It is *inter-alia* so mandated in order dated 15.12.2017, the relevant portion of which is extracted below:

“37.We make it clear that henceforth it will not be necessary for any person whose residential premises have been sealed for misuse for any commercial (other than industrial) purposes at the instance of the Monitoring Committee to file an appeal before the appropriate statutory Appellate Tribunal. Instead, that person can directly approach the Monitoring Committee for relief after depositing an amount of Rs.1,00,000/- with the Monitoring Committee which will keep an account of the amounts received by it. Any person who has already filed an appeal before the appropriate statutory Appellate Tribunal but would prefer approaching the Monitoring Committee may withdraw the appeal and approach the Monitoring Committee for relief on the above terms and conditions and on deposit of Rs. 1,00,000/- as costs with the Monitoring Committee, provided that the premises were sealed at the instance of the Monitoring Committee. Any challenge to the decision of the Monitoring Committee will lie to this Court only. We are constrained and compelled to make this order given the history of the case and the more than serious observations of this Court of an apparent nexus between some entities and the observations regarding corruption and nepotism.” (Emphasis supplied)

In its report No. 128 dated 05.09.2018 rendered by the Monitoring Committee, it was stated as follows:

**“CHANNEL OF COMMUNICATIONS FOR REDRESSAL
BY THE AGGRIEVED/DEFAULTING PUBLIC ON
SEALING MATTERS:**

The Monitoring Committee would like to submit that despite clear orders from the Hon’ble Court with respect to the chain of communication for appeal against the sealing actions to be only addressed to this Hon’ble Court, it has been seen that in a number of cases, the parties concerned have approached other Courts i.e. High Court, District Court and surprisingly in one case, Consumer Court with the sole purpose of delaying the process of sealing ordered under the orders of the Hon’ble Court. The Monitoring Committee has come to the conclusion that all these dubious deviations in redressal appeals are primarily to gain time and delay the process. Some examples of this unfair practice are highlighted in the succeeding paragraphs.”

Whereupon the Supreme Court made order dated 07.09.2018 in which it said:

“Channel of communications for redressal by the Aggrieved/Defaulting Public on sealing matters

It is stated that some of the defaulting individuals/organizations are approaching the Courts – whether it is the High Court or the District Court and even in one case the State Consumer Disputes Redressal Commission.

It is submitted by the Monitoring Committee that these Courts and the Commission do not have any jurisdiction over these issues in view of the order passed by this Court.

The learned Amicus will bring it to the notice of the Courts and the Commission that prima facie jurisdiction does not lie with them leaving it for the Courts to take a decision in the matter.”

(Emphasis supplied)

In a recent order dated 27.11.2018, the Supreme Court has further observed as under:

“Petitions being entertained by other Courts/Tribunals/Authorities

The Monitoring Committee has brought to our notice that other Courts/Tribunals/Authorities including the State Consumer Commission and District and Sessions Judge are entertaining the petitions despite order passed by this Court.

We have requested Mr. A.D.N. Rao to look into these cases. We reiterate that no Court or Tribunal or any other Authority shall look into these matters as well as the petitions which are pending before us.”

(Emphasis Supplied)

In view of the above, it is clear that *any* action taken at the instance of Monitoring Committee – be it action relating to unauthorised construction, encroachment or misuse of premises – would be covered by the mandate of Supreme Court in the foregoing orders; and accordingly this court is mandated not to intercede in any such action.

Accordingly, as per the mandate of the Supreme Court, this court ought not to entertain the present petition.

The writ petition is accordingly dismissed.

It will of course be open to the petitioners to approach the Monitoring Committee and/or the Supreme Court to seek remedy in accordance with the orders made by the Supreme Court.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 06, 2019/uj