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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7585/2019, CM Nos. 31571-31572/2019**
NARESH AGARWAL & ANR

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Puneet Bhatnagar, Ms. Richa S.
Bhatnagar & Ms. Bhagya K. Yadav,
Advts.

versus

SOUTH DELHI MUNICIPAL CORPORATION (MCD SOUTH)
THROUGH: ITS COMMISSIONER

..... Respondent

Through: Mr. Ranjeet Pandey, ASC

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

ORDER
16.07.2019

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CM No. 31572/2019

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 7585/2019, CM No. 31571/2019 (for stay)

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

“It is therefore most respectfully prayed:

That this Hon'ble Court may be pleased to issue any appropriate writ or writ of certiorari/ Mandamus

A. To quash the vacation notice u/s 349 of DMC Act dated

12/07/19.

B. To quash the show cause notice dated 28/06/19 under 345 of AMC act issued by respondent with respect to 1st and 2nd floor, and terrace and servantquarter at property bearing no.- C-6 Kailash Colony, New Delhi-48.

C. To quash the letter dated 08/07/2019 issued by respondent rejecting the application of the petitioner and 2nd floor, and terrace and servant quarter at property bearing no.- C-6 Kailash Colony, New Delhi-48.

D. Pass appropriate writ of mandamus and direct the Respondent to regularize the existing construction at 1st and 2nd floor with terrace and servant quarters above the garage block C-6 Kailash Coloney, New Delhi.

E. Any other or further order/relief which this Hon'ble Court deems fit and proper in the facts of the case may be also be passed in favour of the petitioners.”

2. It is the submission of Mr. Kirti Uppal, learned Senior Counsel for the petitioners that the respondent, without passing an order of demolition, has issued a vacation notice. In other words, it is his submission that vacation notice under Section 349 follows a demolition order, which has not been issued in this case.

3. That apart, it is his submission that the petitioners are entitled to a consideration of their regularization application, which the respondent has not considered on the ground that no objection is required from the occupants of the other floors.

4. On a specific query to the learned counsel for the respondent, whether

any demolition order has been passed, he has handed over a copy of an order dated June 27, 2019 to Mr. Kirti Uppal stating to be a demolition order. At this, Mr. Kirti Uppal states that the petitioners shall challenge the order of demolition dated June 27, 2019 in the ATMCD.

5. I record the submission made by the learned counsel for the respondent that the protection of six days shall be available to the petitioners from today. On this, Mr. Kirti Uppal state, instead of six days, protection be extended till 15 days to enable the petitioners file an appeal before the ATMCD.

6. Noting the submission and making it clear that the demolition order dated June 27, 2019 shall not be given effect to till August 1, 2019 within which time, the petitioners shall approach the ATMCD, the ATMCD shall consider the appeal / stay application filed by the petitioners herein without being influenced by the protection granted by this Court.

7. It goes without saying that the petitioners shall be entitled to take all pleas as available to them both on facts and in law. The writ petition and connected application are disposed of.

Dasti.

V. KAMESWAR RAO, J

JULY 16, 2019/ak