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

+ O.REF. 3/2018

RESHMA NAEEM & ANR

..... Petitioners

Through: Mr.S.D.Ansari and Mr.I. Ahmad,
Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Ms.Puja Kalra and Mr.Virendra
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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23.08.2019

1. This reference has been made by the learned District and Sessions Judge (HQs) Delhi under Order XLVI of the Code of Civil Procedure (CPC) on 15.02.2018 with regard to the jurisdiction of the Court of District and Sessions Judge (HQs) Delhi for entertaining appeals under Section 347 D of the Delhi Municipal Corporation Act, 1957 (hereinafter referred as the said Act).

2. Following questions have been raised by the learned District and Sessions Judge (HQs) Delhi:-

"1. Whether the Administrator (here in this case the District & Sessions Judge, (HQs.), Tis Hazari Courts, Delhi), has power to hear appeals against the orders of the Appellate Tribunal: Municipal Corporation of Delhi (AT:MCD) restricted only to the orders of the Appellate Tribunal by which the orders made or notices issued by Municipal Authorities under the Delhi Municipal Corporation Act, 1957 have been either confirmed or modified or annulled as provided under Section 347D of Delhi Municipal Corporation Act? Or

2. Whether the Administrator [here in this case the District & Sessions Judge, (HQs.), Tis Hazari Courts, Delhi] is empowered to hear appeals as a regular Appellate Court under Code of Civil Procedure, 1908 against ail orders passed by the Appellate Tribunal: Municipal Corporation of Delhi in the appeals pending before the said Tribunal passed during the course of hearing the appeals including the impugned order dated 23.10.2013 by which

Appeal was dismissed as withdrawn and MCD was directed to seal the property in question and submit a report to Tribunal and option to take police aid was also provided and file was to be put up for compliance and order dated 24.05.2016 by which it was held that once an order has been passed, the same has become final, if not challenged and set aside by the higher courts and the tribunal has no power to review the order which was passed by the Ld. Predecessor and the prayer of the appellant/non-applicant to amend the order was rejected."

3. In O. Reference Nos.1/2017 and 2/2017, Coordinate Bench of this Court on 25.01.2019 has already answered the above two questions and the order notes:-

'11. A perusal of Section 343 and Section 347B would reveal that in so far as an order under Section 343 is concerned, the same is relatable to an order of demolition and stoppage of buildings and works in certain cases. Similarly, Section 347B relates to certain orders made or notice issued under the Act. The same are relatable to Sections 313, 314, 315(1), 317(2), Sections 334, 336, 337 and 338 etc. Nowhere the sections refer to an order passed in an application filed under Order XXII Rules 10 and / or Order 1 Rule 10 CPC read with Section 151 CPC. So, it necessarily follows that in the absence of the said provisions of CPC being referred to either in Section 343 or in Section 347B, an appeal before the District and Sessions Judge against an order dated June 5, 2015, which is an order under Order XXII Rule 10 read Section Order 1 Rule 10 CPC shall not lie. In other words the appeal to the District and Sessions Judge under Section 347D of the Act encompasses in itself only orders passed under two provisions of the Act, i.e., Sections 343 and 347B and not orders passed under Order XXII Rule 10 read with Order 1 Rule 10 CPC or any interlocutory order. No order in an application / petition other than under Sections 343 or 347B can be a subject matter of an appeal before the appellate authority, i.e., District and Sessions Judge (Hqs.) Tis Hazari Courts, Delhi.

12. Further, I am of the view that sub section 1 of Section 347D has to be read as a whole to know the correct purport / intention of the provision. The words "An appeal shall lie to the Administrator (District & Sessions Judge) against an order of the Appellate Tribunal made in appeal under Section 343 or Section 347B" are followed by the words "confirming, modifying or annulling an order made or notice issued under this Act". So, it necessary follows, it is that order which is passed by the Appellate Tribunal, in an appeal under Section 343 or 347B, confirming, modifying or annulling the order made or notice issued under the Act, which can be subject matter of appeal before the District & Sessions Judge. In the absence of any provision, the District and Sessions Judge (Hqs.) cannot bestow upon himself a power which is not vested in him by a Statute. It is also a settled position of law that any act liable to be done in a particular matter has to be done in that matter only and not otherwise. In the absence of any

appellate power vested with District & Sessions Judge (HQs) by the Act, no appeal shall lie. In this regard, I may refer to the following observation of the Supreme Court in AIR 1979 SC 1250 Munshi Ram and Ors. v. Municipal Committee Chheharta.

"It is well recognised that where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded. Construed in the light of this principle, it is clear that sections 84 and 86 of the Municipal Act bar, by "inevitable implication" the jurisdiction of the Civil Court where the grievance of the party relates to an assessment or the principle of assessment under this Act."

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16. In view of the above, the references are answered by holding that it shall only be the orders / notice issued under Section 343 and Section 347B of the Act, which can be challenged in an appeal before the learned District & Sessions Judge (HQs) under Section 347D of the Act."

4. I need not add anything at my end. The law propounded in the decision dated 25.01.2019 in O. References No.1/2017 and 2/2017 shall suffice the queries raised in this Reference. Thus an appeal shall lie to the Administrator [learned District & Sessions Judge, (HQs), Tis Hazari Courts, Delhi] against an order of the Appellate Tribunal in an appeal under Section 343 and 347B of the said Act, confirming, modifying or annulling an order made or notice issued under the Act.

5. The reference is answered accordingly.

YOGESH KHANNA, J.

AUGUST 23, 2019

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