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

+ **W.P.(C) 26/2019**

**SH. VINOD KUMAR KEDIA** ..... Petitioner

Through: Mr. Ashok Gurnani, Adv.

versus

**NORTH DELHI MUNICIPAL CORPORATION** ..... Respondent

Through: Mr. Ajjay Arora and Mr. Kapil Dutta,  
Adv. for NDMC.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

% **12.03.2019**

1. This writ petition has been filed by the petitioner challenging the order dated April 10, 2018 passed by the learned District and Sessions Judge (Hqs.) Delhi in MCD Appeal No. 3053/2016 for setting aside the order dated April 21, 2009 passed by the learned Appellate Tribunal which decided the legality of the order dated March 9, 2009 passed by the Deputy Commissioner (MCD), City Zone, Delhi.
2. Some of the relevant facts are that pursuant to number of complaints, of unauthorized construction being carried out in respect of Property No. 5766, Jogiwara, Nai Sarak, Chandni Chowk, Delhi, received from MCD Control Room and vide letters dated May 17, 2007 and May 22, 2008 from ACP, Kotwali, SHO, Chandni Chowk, a work-stop notice under Section 344 of the DMC Act was issued by the Junior Engineer (B), City Zone, MCD on May 27, 2008 to the petitioner. On May 29, 2008, a notice Under Section

435 of the DMC Act was issued to the owner / builder by AE (B), City Zone informing about the demolition programme against the unauthorized construction being carried out at the aforesaid property. On May 30, 2008, a demolition action was taken by the Building Department at the ongoing stage in respect of the aforesaid property. Having found unauthorized construction being carried out, a show-cause notice dated June 18, 2008 for sealing under Section 345-A of the DMC Act was issued detailing unauthorized construction in the shape of halls on ground floor, first floor and second floor by converting residential to commercial structure by providing M.S. built up columns and beams after demolishing all internal walls and laying of roof at different levels by changing the existing roof levels by about 5 feet after demolishing the whole structure inside. In response to the sealing notice, petitioner approached this court by way of a writ petition claiming he had been simply carrying out repairs in the old building as per clause 6.4.1 of unified building bye-laws. The writ petition was heard and disposed of on September 16, 2008, whereby direction was given to the respondent corporation to pass a final order within four weeks.

3. An intra-court appeal was filed by the petitioner herein wherein, the main ground of challenge was that he should have been given an opportunity

of being heard in relation to show-cause notice dated June 18, 2008. The Division Bench did not interfere with the order of the learned Single Judge. A final order was passed by the Deputy Commissioner on March 09, 2009, who was of the view that the property needs to be sealed and he directed accordingly. This became the subject matter of an appeal before the ATMCD. The ATMCD vide its order dated April 21, 2009 has upheld the order of the Deputy Commissioner sealing the property in question. In the appeal the learned District and Sessions Judge also upheld the said order.

4. Mr. Ashok Gurnani, learned counsel appearing for the petitioner submitted that Section 345A of the DMC Act has been incorporated with a sole motive to secure the nature and extent of construction and for execution of demolition order and since no demolition order has been passed in the instant case, there was no occasion for the respondent to pass a sealing order.

5. I am not impressed by the said submission made by Mr. Gurnani for the reason that two authorities have taken a view against the petitioner inasmuch as it has come on record that as per the inspection carried out by the Superintendent Engineer of the MCD of the property in question, there was no old structure found in existence and the appellant had tried to raise

altogether a new construction without a permission from the MCD. Only the iron posts in the form of T-Iron and Iron section fittings up to the second floor level were found. There are no walls, no roof and no pillars etc. The respondent Corporation was within its right to puncture the roof in the ongoing illegal construction and thereafter issue show-cause notice for sealing, which was duly replied by the appellant. There is no dispute that the appellant was heard before the sealing order was passed. Section 435 of the DMC Act under which the notice dated May 29, 2008 was issued before the demolition was effected reads as under:

*“Save as otherwise provided in this Act or any bye-law made thereunder, no land or building shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof and no such entry shall be made without giving the said owner or occupier, as the case may be, not less than twenty-four hours' written notice of the intention to make such entry: Provided that no such notice shall be necessary if the place to be inspected is a factory or workshop or trade premises or a place used for any of the purposes specified in section 417 or a stable for horses or a shed for cattle or a latrine or urinal or a work under construction, or for the purpose of ascertaining whether any animal intended for human food is slaughtered in that place in contravention of this Act or any bye-law made thereunder.”*

6. On a specific query to Mr. Gurnani, whether he has placed on record the photographs of the construction as was existing a day prior to the

demolition effected by the respondent Corporation, his answer was in the negative. In my opinion, the petitioner has much to hide from the authorities and even from this Court. The photographs so filed by the respondent corporation in the Court below clearly suggest the existence of T-iron and iron second fittings upto the second floor level. So, it follows the whole of the building has been demolished and attempt has been made to reconstruct the plot. Concedingly, no permission for making any reconstruction has been taken. If that being so, there is no reason for this court to take a different view as already taken by the authorities below.

I find no merit in the petition. The petition is dismissed.

**V. KAMESWAR RAO, J**

**MARCH 12, 2019/jg**