

\$~3

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

+ LPA 718/2018

SAROJ MINZ

..... Appellant

Through Dr. Amit George, Mr. Saurabh
Bhargavan, Mr. Khoda Apa,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondent

Through Mr. Chiranjeev Kumar, Mr. Mukesh
Sachdeva, Advocates for R1/UIO.
Mr. Dhanesh Relan, Standing
Counsel for SDMC with Mr. Rajeev
Jha, Ms. Gauri Chaturvedi, Advocates
for R2/SDMC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **31.07.2019**

1. The appellant is aggrieved by an order dated 29.10.2018 passed by the learned Single Judge disposing of the writ petition filed by her against a notice issued by the L&DO for alleged breach of the terms and conditions of the lease and for issuing directions to the respondent no. 1/L&DO and the respondent no. 2/SDMC to remove the alleged unauthorized construction raised on Plot No. D-II/1 AB, Lajpat Nagar-II, New Delhi and stop its commercial misuse by the respondents no. 3 to 5, responsible for the said unauthorized construction and misuse.

2. Learned counsel for the appellant states that when the writ petition

was listed for admission on 29.10.2018, the learned Single Judge recorded the submission made by the learned counsel for the respondent no.2/SDMC to the effect that the Breach Notice dated 31.01.2018 is required to be dealt with by the respondent no. 1/L&DO. As a result, the petition was disposed of with directions issued to the respondents to pass appropriate orders in respect of the said Breach Notice as per law.

3. The grievance of the appellant is that the impugned order has failed to take into consideration the serious consequences of the Breach Notice dated 31.01.2018 specified in para-3 that clearly states that in the event the breaches pointed out in the said notice are not remedied within the stipulated timeline, then steps for re-entering the premises will be taken against the recorded lessees. He explains that the appellant is the legal heir of the original co-allottee of the subject premises, Sh. Deep Chand Sadhwani whereas the other branch of the family is represented by respondents no.3 to 5 who are the legal heirs of the co-allottee, Sh. Kunda Mal Sadhwani. The Breach Notice specifically records that the respondents no. 3 to 5 have breached the terms and conditions of the lease by putting the residential premises in question to commercial use and opening shops there.

4. Learned counsel submits that adverse consequences of the Breach Notice dated 31.01.2018 being serious in nature and the respondents no. 1 & 2 having failed to act in accordance with law to stop the said breach by directing the respondents no. 3 to 5 to discontinue their illegal commercial activity, the interest of the appellant in the subject property has been seriously jeopardised, though she is using it purely for residential purposes.

5. Issue notice.
6. Learned counsel for the respondent no. 1/L&DO & the respondent no.2/SDMC accept notice. Respondent no.1/L&DO has filed a counter affidavit in terms of the order dated 18.12.2018.
7. Having regard to the fact that by the impugned order the writ petition filed by the appellant was disposed of on very first date, when no one was present on behalf of the private respondents no. 3 to 5, we dispense with the requirement of issuing notice to them in the present appeal.
8. Respondent no.1/L&DO has filed a counter affidavit and stated that the subject premises was inspected on 12.01.2018 and misuse was reported for which the Breach Notice date 31.01.2018 was issued to all the legal heirs of the deceased co-lessees. The counter affidavit is however silent as to whether the misuse has ceased by now. There is no reference made therein to any fresh inspection conducted by the officials of the respondent no.1/L&DO at the premises to verify its present status.
9. Any action contemplated by the respondent no. 1/L&DO in terms of the Breach Notice dated 31.01.2018, shall have serious ramifications and adversely affect the interest of the appellant in the subject premises. Therefore simply directing the respondent no.1/L&DO to pass appropriate orders on the Breach Notice, is not enough.
10. In our opinion, it is a fit case where notices should have been issued to the private respondents no.3-5 for eliciting their response before passing any orders or even relegating the parties to appear before the respondent no.1/L&DO, if necessary, for granting a hearing to both sides and taking a

decision on the Breach Notice, after determining the position on the ground.

11. Accordingly, the impugned order dated 29.10.2018 is quashed and the writ petition filed by the appellant is restored for consideration. The parties are directed to appear before the Roster Bench on 26.08.2019, for further proceedings.

12. The interim order dated 18.12.2018 shall continue to operate till appropriate orders are passed by the learned Single Judge on the stay application filed by the appellant alongwith the writ petition. Needless to state that the respondent no. 1/L&DO would be at liberty to file an application for seeking vacation/modification of the said order and if it does so, the learned Single Judge will hear both sides and pass appropriate orders thereon.

13. The appeal is disposed of.

HIMA KOHLI, J

ASHA MENON, J

JULY 31, 2019/MK/rr