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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 75/2020 and CM APPL.4998-99/2020
MANOHAR BALWANI Appellant
Through: Ms. Pooja Tandon, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS
..... Respondents
Through: Ms. Puja Kalra, Standing Counsel and
Mr. Virendra Singh, Advocate for R-1/Nr.DMC.
Mr. Deepender Hooda, Advocate for Mr. Surender
Kumar, Advocate for R-2.
Mr. Arvind Chaudhary, Advocate for R-3/RWA.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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07.02.2020

CM APPL. 4999/2020 (exemption)

Allowed, subject to all just exceptions.

LPA 75/2020 and CM APPL.4998/2020 (stay)

1. The appellant/petitioner is aggrieved by the order dated 28.01.2020, passed by the learned Single Judge dismissing W.P.(C) 7240/2018 filed by him assailing an order passed by the respondent No.1/Nr.DMC, calling upon him to vacate premises No.17, Village Sahipur, Shalimar Bagh, Delhi, under Section 349 of the Delhi Municipal Corporation Act, 1957 (in short, 'DMC Act') on the ground that the same is dangerous, in a dilapidated condition and therefore unfit for human habitation. It is noteworthy that counsel for the appellant has not bothered to file either the notice issued by the

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respondent No.1/Nr.DMC under Section 349 of the DMC Act or the order passed under Section 348 of the DMC, though the entire grievance hinges on the said notice and order.

2. In the impugned order, the learned Single Judge has noticed that a suit in respect of the subject premises instituted by the respondent No.2, is pending before the learned Civil Judge, Rohini Courts, wherein reliefs for permanent and mandatory injunctions have been prayed for, calling upon the respondent No.1/Nr.DMC to take steps for the safety of the residents of the areas. The appellant/petitioner herein has been impleaded as defendant No.4 in the said suit. On the basis of directions issued by the learned Civil Judge on 11.12.2017, the Executive Engineer, Nr.DMC was directed to conduct an inspection of the suit property and submit a report, which was submitted through a Status Report. Thereafter, a notice dated 26.06.2018, was issued by the respondent No.1/Nr.DMC to the appellant/petitioner calling upon him to vacate the subject premises under Section 349 of the DMC Act.

3. We are informed that the said suit is still pending consideration before the learned Civil Judge and all the parties are appearing in the said proceedings. Noting that an inspection was conducted by the Executive Engineer of the respondent No.1/Nr.DMC on the directions of the learned Civil Court and further, taking into consideration the affidavit filed by the respondent No.1/Nr.DMC in the writ proceedings describing the status of the subject property, the learned Single Judge has opined that powers vested in it under Sections 348 and 349 of the DMC Act have been rightly exercised by the respondent No.1/Nr.DMC and there is no occasion for the court to interfere with the said order.

4. Learned counsel for the appellant/petitioner seeks to rely on a Structure Stability Report dated 31.01.2020, prepared by a Structural Engineer registered with the MCD to state that the said document demonstrates that the report of the Executive Engineer is incorrect and has been wrongly relied upon by the learned Single Judge.

5. We may note that the aforesaid report has been got prepared by the appellant/petitioner only after the writ petition came to be dismissed. Therefore, there was no occasion for the learned Single Judge to have had the benefit of the said report.

6. If the appellant/petitioner has a grievance in respect of the report of the Executive Engineer, Nr.DMC or the Status Report filed by the respondent No.1/Nr.DMC in the writ proceedings, it is for him to approach the learned Civil Judge in the pending suit instituted by the respondent No.2 and point out the ambiguities/contradictions therein.

7. We decline to entertain the present appeal, which is dismissed alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 07, 2020

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