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

+ **CM(M) 243/2020 and CM APPLs. 7413-14/2020**

JAGANNATH

..... Petitioner

Through: Mr. Parikshit Mahipal, Advocate (M:  
9868873986).

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Mr. Abhay Pratap, Advocate for  
NDMC (M: 9599057638).

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**25.02.2020**

1. The present appeal has been filed challenging the impugned order dated 24<sup>th</sup> January, 2020, by which the appeal filed by the Petitioner under Order 43 Rule 1 CPC was dismissed by the Trial Court.
2. The background is that the Petitioner had filed a suit for declaration and perpetual and mandatory injunction against the North Delhi Municipal Corporation (*hereinafter*, “NrDMC”) in respect of the ground and first floor of property bearing No. 501/5, Nai Basti, Kishan Ganj, Delhi (*hereinafter*, “*suit property*”). In the said suit, the NrDMC’s demolition notice dated 26<sup>th</sup> October, 2018 was challenged. The relief prayed for in the suit was for an order restraining the concerned authorities from demolishing the suit property, a declaration declaring the inspection report in respect of the suit property as null and void and a mandatory injunction seeking withdrawal of the said demolition notice.
3. In its written statement, the NrDMC took the stand that the suit

property is in a dangerous condition and upon a complaint by the owner, the demolition notice was issued. Accordingly, dismissal of the suit was sought. The Trial Court, vide order dated 14<sup>th</sup> August, 2019, rejected the Petitioner's application for interim-injunction. The said order was appealed against by the Petitioner. The said appeal has also been dismissed by the Trial Court vide the impugned order dated 24<sup>th</sup> January, 2020.

4. Ld. counsel for the Petitioner submits that the demolition notice is a result of a complaint made by one Ms. Kamlesh Kumari who is a resident of the neighbouring premises. It is therefore argued that the demolition notice is not *bona-fide*. Ld. counsel further submits that a suit has been filed by Ms. Kamlesh Kumari against the Petitioner which is still pending and thus the order for demolition is contrary to law.

5. On the other hand, ld. counsel for the NrDMC has pointed out that the demolition notice itself records that the suit property is in a dilapidated and dangerous condition and that it could cause severe harm to persons who are residing therein. The said report dated 26<sup>th</sup> October, 2018 reads as under: -

Nai Basti, Kishan Ganj, Delhi-110007, स्थित भवन संख्या 501/5, Nai Basti, Kishan Ganj, Delhi-110007 के स्वामी/अभिभावक (का नाम) Owner/occupier(s), ऐसा स्थान से आया है कि भवन संख्या 501/5, Nai Basti, Kishan Ganj, Delhi-110007 जिसके आप स्वामी /अभिभावक हैं, बर्दाश्त दशा में है और वह उस स्थान के रहने वाले तथा राहगीरों के लिये खतरनाक है।

**Translated:** The owner/occupier(s) (name) of Nai Basti, Kishan Ganj, Delhi – 110007, property bearing No.501/5, Nai Basti, Kishan Ganj, Delhi -110007 - it is seen that property bearing No.501/5, Nai Basti, Kishan Ganj, Delhi-110007, of which you are the owner/occupier, is in a horrible condition and it is dangerous for the people living in the property as well as passerbys.

6. This Court has heard the ld. counsel for the parties. The Petitioner relies upon the independent architect's report to argue that the suit property is not in a dilapidated condition. However, a perusal of the said report shows that the same also concludes that there is partial damage to the suit property. The relevant portion of the said report is extracted below:

*“OPINION:*

*Considering and keeping in view the above mentioned facts and circumstances I am of the opinion that the 9" thick bricks wall partly damaged, first of all will be removed and to reconstruct at the same place and only cement plaster, white wash is required to be carried out in the same to make it more convenient. The subject mentioned property/house is in safe in structurally and habitable condition.”*

7. A perusal of the photographs which have been placed on record also shows that there is enormous leakage in the roof and the property is not in a good condition. At a *prima facie* stage, the NRDMC's report cannot be ignored inasmuch as there could be danger to human life. Accordingly, this Court does not find any ground to interfere with the said order. The NrDMC shall, however, adhere to the procedure prescribed, in respect of notice being given prior to the demolition.

8. The impugned order or the order of this Court shall not be considered as an opinion on merits as to the title of the suit property, which may be a dispute between Ms. Kamlesh Kumari and the Petitioner.

9. The petition is disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH, J.**

**FEBRUARY 25, 2020/MR/T**