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

+ W.P.(C) 5949/2020, CM APPL. 21509/2020, CM APPL. 21511/2020
& CM APPL. 21766/2020

PREM LATA BHATIA AND ORS

..... Petitioners

Through: Mr. Darpan Wadhwa, Senior
Advocate with Mr. Nikhil Singhvi,
Mr. Mohit Seth and Mr. Obhirup
Ghosh, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR Respondents

Through: Mr. Anil Grover, SC for NDMC/R-1.
Ms. Archana Gaur, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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07.09.2020

The hearing was conducted through video conferencing.

CM APPL. 21510/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

W.P.(C) 5949/2020, CM APPL. 21509/2020, CM APPL. 21511/2020 & CM
APPL. 21766/2020

3. Issue notice.
4. The learned counsel named above accept notice on behalf of the respondents.
5. Th petitioners seek quashing and setting aside of an impugned eviction notice dated 18.08.2020 apropos a property i.e. 13, Kasturba

Gandhi Marg, New Delhi – 01, which is already a subject matter of adjudication in W.P. (C) No.14998/2006. It concerns an order of the L&DO to re-enter the property. Without prejudice to the rights and contentions, the misuser charges of about Rs.78 lacs as imposed by the L&DO, have already been paid by the petitioners. In the interim, the L&DO has stated that it will not take any coercive measures. In the said case the following order has been passed on 7.7.2020:

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O R D E R

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07.07.2020

1. The hearing was conducted through video conferencing.

CM APPLN. 14301/2020 in W.P.(C) 14998/2006
(By petitioner for directions)

2. Issue notice.

3. The learned counsel for the non-applicant/respondent as mentioned above accepts notice.

4. In two weeks of the previous order, a fresh computation of the amounts due towards „conversion charges“ was to be communicated by the MoUD to the petitioner. Months have passed but the order has not been complied with. The learned counsel for the UOI states that the L&DO has carried out the computation and the fresh amounts due and payable by the applicant/petitioner shall be communicated to him on or before 14.07.2020. Let it be so done, failing which the officer concerned shall file an affidavit of explanation, with the approval of his senior officer. The information/fresh order/computation shall be shared/communicated on the following email addresses, as furnished by the learned counsel for the applicant/petitioner, through counsel as well:

“rohitbhatia91@gmail.com

nikhilsinghvi@gmail.com”

5. The applicant/petitioner apprehends adverse action by the New Delhi Municipal Corporation

(„NDMC”) on the basis of the re-entry order passed by the Ministry of Urban Development („MOUD”), which is the subject matter of this petition. However, the previous order indicates that the MoUD has itself stated that till the next date, they will not take any adverse action in view of the fact that the amounts payable by the petitioner is yet to be communicated. Furthermore, the petitioner had indicated that he was ready and willing to pay the due amounts, recomputed as per law, towards „conversion charges”. The petitioner submits, that once the re-entry order is being regarded as in abeyance, by the MoUD itself, there can be no occasion for the NDMC to re-enter the premises or take any precipitate steps.

6. In view of the above, renotify on 14.07.2020, for further proceedings.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.”

6. The present impugned order has been prompted upon a communication to the NDMC from the Monitoring Committee appointed by the Supreme Court. The property is a residential. It is stated that it is not in commercial use.
7. The learned Senior Advocate for the petitioners, submits that the order which prompted the action of the NDMC itself is not maintainable in view of the directions of the Supreme Court passed in W.P. (C) No. 4677/1985 on 14.08.2020, wherein it has recorded as under:

“85. It is apparent from the various orders passed by this Court from time to time and from the various reports of the Monitoring Committee that it was never authorized by this Court to take action against the residential premises that were not being

used for commercial purposes. It was appointed only to check the misuser of the residential properties for commercial purposes. After that, this Court directed that the Monitoring Committee should also look into the matter of “encroachment on the public land” and “unauthorized colonies” that have come up on the public land and were wholly unauthorized without sanction. At no point in time, this Court had empowered the Monitoring Committee to act vis-à-vis to the purely residential premises.

86. The power of sealing of property carries civil consequences. A person can be deprived of the property by following a procedure in accordance with law. The Monitoring Committee is not authorized to take action concerning the residential premises situated on the private land. If there is unauthorized construction or in case of deviation, the requisite provisions are under the DMC Act, such as sections 343, 345, 347(A), 347(B). The mode of action and adjudication under the Act is provided including appellate provisions and that of the Tribunal. It would not be appropriate to the Monitoring Committee to usurp statutory powers and act beyond authority conferred upon it by the Court. The Monitoring Committee could not have sealed the residential premises, which were not misused for the commercial purpose as done vide Report No.149, nor it could have directed the demolition of those residential properties.

....

88. It is quite apparent that particularly when the Monitoring Committee is not empowered to take action, the incumbents could not have been deprived of the due process of protection in accordance with law. As against the action of the Monitoring Committee, no appeal lies elsewhere. Even High Court is not authorized to entertain any matter and scrutinize its action, such is the drastic step taken by this Court by way of an exceptional measure in public interest, and

it is confined to the misuse of residential property for commercial purpose and encroachments and unauthorized construction on the public land, roads.

89. After going through the report of the Monitoring Committee and other reports which have been relied upon by the Amicus Curiae, there is no scintilla of doubt that the Monitoring Committee in the past at any point of time did not seal any residential premises being used for residential purposes, situated on the private land nor it could have ordered demolition. The 'caption' of the various reports of Monitoring Committee i.e. "PRELIMINARY REPORT OF THE MONITORING COMMITTEE FOR SEALING OF COMMERCIAL ESTABLISHMENTS IN RESIDENTIAL PREMISES" makes it absolutely clear that Monitoring Committee did not entertain any doubt about the purpose for which it was constituted. Apart from that, it was authorized by subsequent orders to act with respect to unauthorized construction on the public land and roads that too, which violated the MPD2021.

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8. The notice issued by the NDMC has been replied to by the petitioners, vide letter dated 24.08.2020, drawing the attention of the Council to the aforesaid directions. The learned Standing Counsel for the NDMC submits that they are duty-bound to follow the orders of the Monitoring Committee and it is for the petitioners to obtain a clarification, if it is so required, from the Supreme Court. He also submits that by an earlier order, the Supreme Court had said that no High Court will interfere with the directions of the Monitoring Committee and that no petition will be entertained apropos any directions issued by the Monitoring Committee. He refers to the order

of the Supreme Court dated 28.01.2019 in W.P. (C) No. 4677/1985, which reads *inter alia* as under:

“This Court has made it clear that any challenge to the decision of the Monitoring Committee will lie to this Court only. Apart from that this was reiterated again by this Court. On 07.09.2018, this Court, inter alia passed the following order:-

“... It is stated that some of the defaulting individuals/organizations are approaching the Courts - whether it is the High Court or the District Court and even in one case the State Consumer Disputes Redressal Commission.

It is submitted by the Monitoring Committee that these Courts and the Commission do not have any jurisdiction over these issues in view of the order passed by this Court.

The learned Amicus will bring it to the notice of the Courts and the Commission that prima facie jurisdiction does not lie with them leaving it for the Courts to take a decision in the matter.”

Again on 27.11.2018, the Court, inter alia, passed the following order:-

“... The Monitoring Committee has brought to our notice that other Courts/Tribunals/Authorities including the State Consumer Commission and District and Sessions Judge are entertaining the petitions despite order passed by this Court.

We have requested Mr. A.D.N. Rao to look into these cases. We reiterate that no Court or Tribunal or any other Authority shall look into these matters as well as the petitions which are pending before us.”

In view of the aforesaid, prima facie, we stay the operation of the order dated 23.01.2019 passed by the High Court of Delhi at New Delhi in LPA No.6/2019

and restrain the High Court to entertain any petition in connection with the matters relating to the Monitoring Committee, as these matters are to be heard by this Court only.
....”

9. Now the NDMC's impugned notice is dated 18.08.2020. It was issued on the basis of a communication dated 10.08.2020 from the Monitoring Committee. The Supreme Court's aforesaid judgment and order came on 14.08.2020 i.e. prior to the impugned notice.
10. The Court is informed that the NDMC has already taken up the matter with the Monitoring Committee regarding the directions of 10.08.2020 in the context of the Supreme Court's subsequent order of 14.8.2020. In the circumstances, it will be fair that NDMCs precipitate action against the petitioners, as may be, will be in tandem with its efforts to seek a clarification. It will be fair for the Council to communicate to the petitioner any clarification or advise, it may receive.
11. It will be open to the petitioners to pursue their remedies, as may be available in law.
12. The writ petition, alongwith pending applications, is disposed-off in terms of the above.
13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

SEPTEMBER 7, 2020/AB