

\$~A-16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7240/2018 & CM APPL. 27582/2018**
SH. MANOHAR BALWANI Petitioner
Through **Mr.S.D.Ansari** and **Mr.I.Ahmed,**
Advts. along with petitioner in person.
versus

NORTH DELHI MUNICIPAL
CORPORATION & ORS. Respondents
Through **Ms.Puja Kalra,** Standing Counsel
with **Mr.Virendra Singh,** Adv. for
R-1/North DMC.
Mr.Arvind Chaudhary, Adv. for
RWA.
Mr.Deepender Hood, Adv. for
Sh.Surinder Kumar.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
28.01.2020

%

1. This writ petition is filed by the petitioner seeking to impugn the order being vacation notice under section 349 of DMC Act, in the name of Surinder Kumar, dated 26.06.2018 issued by respondent No.1/North DMC. Other connected reliefs are also sought.
2. The case of the petitioner is that the petitioner become the tenant in the property bearing No.17, Village Sahipur, Shalimar Bagh, Delhi. The owner Sh.Surinder Kumar filed an eviction petition against the present petitioner and the same is said to be pending. Thereafter, it is claimed that Sh.Surinder Kumar created a fictitious society known as 'Sahipur Gram Vikas Welfare Association and named one Sh.Munish Kumar a resident of House No.8-B, Village Sahipur, Delhi as its President.

3. Thereafter, a collusive suit was filed by Sh.Surinder Kumar on behalf of the fictitious Association, i.e. Sahipur Gram Vikas Welfare Association for permanent and mandatory injunction praying that respondent No.1, his agents, servants, employees, assignee etc. to take measurement for the safety of the residents. The petitioner was also impleaded as respondent No.4 in the said suit. On 11.12.2017, the trial court directed the concerned Executive Engineer to inspect the property in question regarding danger caused to the property adjacent to the suit property due to the dilapidated condition of the suit property and fixed the matter for filing of the status report. Subsequent to the aforesaid inspection, respondent No.1/North DMC has on 26.06.2018 asked the petitioner to vacate the said premises under section 349 of The DMC Act. Hence, the present petition.

4. Respondent No.1/North DMC has filed an affidavit. In the affidavit, it has been stated that the property in question is approximately 225 sq.yds. The half of the property is vacant with full of garbage and there the roof has fallen down. The other half portion of the property consists of two small rooms, entrance and some verandah portion. One of the said rooms is being used as office and the other one is being used as store/labour sitting room. As far as the roof of labour sitting room is concerned, its height is about 7 ft. and is made of thin plywood through which seepage is coming. The other room is also somewhat in the same condition. The top roof of these rooms is made of rusted I-sections and red sand stone tiles at about 13-14 ft. from the ground. The I-sections used in the top roof are totally rusted and the red sand stone tiles are broken at various places. The other room is used as storage for garbage. The bricks, columns and walls supporting the main roof have cracks at various locations. The top roof is full of earth and grass causing

danger to the roof. It is stated that the building is in dangerous/dilapidated condition.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner insists that the order in question is illegal, motivated and an attempt of the landlord to get the property in question vacated. It is further pleaded that in terms of section 348 of the DMC Act, no such order could have been passed.

7. Learned counsel for respondent states that the petitioner misrepresented to the trial court that a stay order has been passed by this court.

8. I may note that the suit in question, which is pending before the civil court, has been filed by the said Sahipur Gram Vikas Welfare Association. As per the said suit, some portions of the suit property have fallen. The plaintiff and other residents asked defendant No.1 to get the premises repaired or demolished but defendant No.1, i.e. owner of the suit property, refused to consider the said request. It is further stated that the suit property is lying in dangerous and dilapidated condition. It is in this background, the court on 21.03.2017 gave liberty to MCD to take appropriate action as per direction of the court. On 11.12.2017, a direction was passed by the trial court to the concerned Executive Engineer to inspect the property in question regarding danger caused to the property adjacent to the suit property due to the dilapidated condition. The concerned Executive Engineer was also directed to give prior notice to defendant No.4, i.e. the present petitioner. It is pursuant to the aforesaid direction of the civil court, respondent No.1/North DMC has after carrying out inspection of the property issued an order under section 348 of the DMC Act dated

06.07.2018. This was followed by vacation notice dated 26.06.2018 under section 349 of the DMC Act.

9. It is clear that the civil court was seized of the matter. The petitioner is also a party to the suit. It is obvious that impugned order has been passed consequent to the direction of the civil court. There appears to be no reason for this court to set aside the impugned order.

10. I may also look at the statutory provisions. Section 348 of the DMC Act reads as follows:

“348. Removal of dangerous buildings:-

(1) If it appears to the Commissioner at any time that any building is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighbourhood of such building, the Commissioner may, by order in writing, require the owner or occupier of such building to demolish, secure or repair such building or do one or more such things within such period as may be specified in the order, so as to prevent all cause of danger therefrom.”

11. On the direction of the civil court an inspection was done by the concerned Executive Engineer of the property in question. The property in question was found in a dangerous and dilapidated condition. The bricks, columns and walls supporting the building have cracks at various locations. The top roof is full of earth and grass causing danger to the roof. The I sections have rusted. The red sand stone tiles have cracked. Photographs have also been placed on record to show the dangerous/dilapidated condition of the building.

12. In my opinion, the facts and circumstances show that the respondent No.1 has exercised its powers rightfully under section 348 and 349 of the

DMC Act. There are no reasons for this court to interfere with the impugned order. The petition is dismissed.

13. At this stage, the learned counsel for the petitioner states that the present order of this court be stayed for a period of ten days to enable the petitioner to take appropriate steps as per law. It is ordered accordingly.

14. It is made clear that this order will become operational after ten days.

JAYANT NATH, J.

JANUARY 28, 2020/v