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

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Judgment delivered on: 21.01.2021

+ W.P(C) 887/2021

DEVENDER BALHARA

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATIONRespondent

Advocates who appeared in this case:

For the Petitioner: Mr. Arush Kapoor, Advocate.

For the Respondent: Mr. Kapil Dutta, Advocate for Mr. Ajjay Aroraa,
Standing Counsel, SDMC.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.2326/2021 (exemption)

Exemption is allowed subject to all just exceptions.

W.P(C) 887/2021 & CM APPL.2327/2021

1. The hearing was conducted through video conferencing.
2. Petitioner seeks a restraint on the respondent from taking coercive action till the time his appeal filed before the MCD Appellate Tribunal is taken up for hearing.
3. Petitioner is aggrieved by a speaking order dated 15.01.2021

whereby, the representation of the petitioner seeking a restraint on the respondent from taking action against his alleged unauthorised construction was rejected.

4. Learned counsel for petitioner submits that petitioner has filed an application seeking regularisation of his construction, which application is still pending and without disposal of the same, subject order has been passed. Learned counsel for petitioner further contends that petitioner has already filed an appeal before the MCD Appellate Tribunal, however, since the MCD Appellate Tribunal is not sitting, he has approached this Court

5. Learned counsel appearing for the South Delhi Municipal Corporation submits that he is not aware as to whether the regularisation application has been disposed of or not, however, he submits that consequent to order dated 15.01.2021 a demolition action has been planned for today and a request has been sent to the police authorities for providing police protection.

6. He further submits that as per his instructions a Presiding Officer has been nominated for the MCD Appellate Tribunal and is awaiting the notification from the Delhi Government. He submits that very soon the Tribunal is likely to start functioning.

7. Learned counsel for the respondent submits that the action was taken against the subject property consequent to directions issued by this Court in *W.P(C) 7497/2020 titled Manohar Singh vs. South DMC*

& Ors.

8. It is observed that subject order dated 15.01.2021 was passed consequent to a direction given by this Court by its order dated 19.10.2020 in W.P(C) 8232/2020 to treat the writ petition as a hearing and to pass an order afresh after hearing the petitioner. Pending the consideration, consequent to the directions issued on 19.10.2020, there was a restraint on the respondents from taking any precipitative action against the property of the petitioner.

9. After hearing the petitioner, subject impugned order dated 15.01.2021 has been passed, against which Petitioner has filed an appeal to the MCD Appellate Tribunal. The appeal has not been taken up as the MCD Appellate Tribunal is not sitting.

10. Since the MCD Appellate Tribunal is likely to commence functioning soon and there was already a stay order consequent to order dated 19.10.2020, respondent are restrained from taking any further coercive action against the subject property till the application of the petitioner for stay is taken up for consideration by the Appellate Tribunal.

11. It is clarified that this protection shall be available to the petitioner only in case petitioner files an application for stay/early hearing of his appeal within one week of the Appellate Tribunal commencing its sitting and shall continue only till the time the application for stay is taken up for consideration by the Appellate

Tribunal. Thereafter, it would be open to the Appellate Tribunal to pass appropriate orders. Appellate Tribunal shall dispose of the application for stay without being influenced by anything stated in this order.

12. The petition is accordingly disposed of in the above terms.

13. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J.

JANUARY 21, 2021

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