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

% *Decided on: 6th January, 2021*

+ LPA 273/2020 & C.M.No.24505/2020 (*stay*)

FRANCIS JOSEPH

..... Appellant

Through: Mr.Yogesh Sharma, Adv. with
Mr.Prashant Badola, Adv.

Versus

GOVERNMENT OF NCT OF DELHI

THROUGH CHIEF SECRETARY & ORS

..... Respondents

Through: Mr.Rajesh Kr.Agnihotri, Advocate
for R-1,4&5.

Ms.Puja Kalra, Advocate for R-2 & 3.

Mr.M.G.Anstin Arasu, R-6 in Person.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: **D.N.PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

1. This appeal has been preferred by original respondent No.6 in W.P.(C) No.6560/2020 being aggrieved and feeling dissatisfied by the order dated 17th September, 2020 (Annexure-A to the memo of this appeal) passed by the learned Single Judge.

2. Looking to the facts and circumstances of the case, it appears that W.P.(C) No.6560/2020 was preferred for demolition of the alleged illegal construction carried out by the appellant herein (original Respondent No.6).

3. The learned Single Judge vide order dated 17th September, 2020 issued directions to carry out the demolition process for removal of the

encroachment. The relevant paragraphs of the said order are reproduced hereunder for ready reference:-

- “6. The petitioner wrote to the South Delhi Municipal Corporation (‘SDMC’) on 31.07.2020. For some strange reason, the Corporation states that the complaint was received only on 04.08.2020. Therefore, the aforesaid contention of the Corporation is *ex facie* incorrect. The petitioner followed his complaints up with the local police and the SDM of the area concerned. He also posted his complaint by Speed Post on 31.07.2020 itself. Surely, the complaints must have reached the addressees 3 days thereafter.
7. According to the petitioner, the illegal construction has encroached upon the public street and building material is still strewn around, obstructing the right of way. **The Corporation is stated to have carried out some demolition action on 11.09.2020, and further action is contemplated on 01.10.2020.**
8. According to Ms.Kalra, the learned counsel for the SDMC, the on-going construction is an encroachment on public land, and it can, therefore, be removed immediately. **In the circumstances, let the Corporation carry out removal of the encroachment,** as it deems appropriate, within 2 weeks from today. The Corporation’s Deputy Commissioner and the DCP of the area concerned are expected to look into the manner in which the encroachment has happened and ensure that it is set right. They shall ensure that the public street is cleared of all building material. The Corporation may take assistance of the local police, as per law.
9. In view of the above, let compliance affidavits as to how the unauthorised construction came about be filed in 3 weeks from today, by both the Corporation and the police, with the prior concurrence of the Deputy Commissioner (SDMC) of the area concerned, and also with the approval of the Deputy Commissioner of the

Police concerned. Photographs of the removal of the encroachment shall also be filed.”

(emphasis supplied)

4. Looking to the aforesaid directions by the learned Single Judge, especially in para-8 thereof, it appears that the learned Single Judge had directed the Corporation/concerned Respondent Authorities to carry out removal of encroachment. However, no opportunity of being heard was given to the appellant.

5. Learned counsel for Respondent/SDMC submits that part of the subject property has already been demolished. Nonetheless, we modify the impugned order passed by the learned Single Judge to the extent that the concerned Respondent Authorities shall give adequate opportunity of being heard to the appellant herein, before carrying out any further demolition or before removal of encroachment. Remaining part of the order impugned herein, needs no modification and is not interfered with.

6. With the aforesaid observations, this appeal is disposed of along with the pending application.

CHIEF JUSTICE

JYOTI SINGH, J

JANUARY 06, 2021

‘anb’

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