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

% Judgment delivered on: 27.03.2023

+ CM(M) 497/2023

SIYARAM SHAKYA

..... Petitioner

versus

CHAMAN PRAKASH SAXENA AND ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Swastik Singh and Mr. Atul Singh,
Advocates

For the Respondent : Mr. Pratap Singh, Advocate for R-
2/MCD.
Mr. Manish Vashist, Advocate for R-
3/DDA.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 14872/2023 (Exemption)

1. This is an application seeking exemption from filing certified copies of the annexures/documents.
2. Exemption is allowed, subject to all just exceptions.
3. The application stands disposed of.

CM(M) 497/2023 & CM APPL. 14871/2023 (Stay)

4. The petitioner has approached this Court vide the present petition to redress his grievance of having filed an application under Order XXXIX Rules 1 and 2 of CPC, 1908 seeking restraint on the purported construction being carried out by respondent no.1 in the subject suit property, which was not taken up by the learned Trial Court immediately and has been posted to 10.04.2023.

5. Mr. Swastik Singh, learned counsel appearing for the petitioner submits that the learned Trial Court had merely noted the next date of hearing as 10.04.2023 on the application rather than give a short adjournment so as to enable the petitioner to address the Court on the alleged illegal construction being carried on by respondent no.1.

6. Learned counsel further submits that he has enclosed photographs showing the present construction as also the constructions alleged to have been carried out even now.

7. Mr. Pratap Singh, learned counsel appearing for R-2/Municipal Corporation of Delhi (hereinafter as "MCD") submits that subject suit property is already booked by them and that the proposed action of demolition is also sought to be carried out.

8. Learned counsel further submits that an appropriate notice asking the police authorities to intervene and ensure that no further construction is made on the subject suit property has also been issued to the said police authorities.

9. Mr. Singh, learned counsel submits that the report generated thereon has already been filed before the learned Trial Court.

10. In view of the aforesaid submissions made by learned counsel appearing for MCD, it is deemed appropriate that respondent no.1 be

restrained from carrying out any further action of the purported construction being made by him.

11. The MCD shall ensure that the respondent no.1 desist from any such further construction as obtaining today.

12. In the meanwhile, the matter may be taken up by learned Trial Court on the date already fixed, i.e., 10.04.2023.

13. At request of Mr. Singh, learned counsel for MCD, the SHO of Police Station Dabri would render all assistance to the concerned officials of MCD to ensure that no construction, which is not within the permissible limits or in accordance with the sanctioned plan, if any, is permitted to be carried out.

14. Respondent no.1 is at liberty to approach this Court in case he seeks any modification or variation in the present order.

15. The MCD and the concerned SHO are directed to serve a copy of the present order upon respondent no.1

16. With the aforesaid terms, the petition and pending application are disposed of.

17. Copy of this order be given *dasti* to learned counsel for MCD under signatures of Court Master.

TUSHAR RAO GEDELA, J.

MARCH 27, 2023

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