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

% Judgment delivered on: 18.05.2023

+ CM(M) 842/2023

JATINDER PAHWA

..... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Yadav, Senior Advocate
with Mr. Nishant Anand and Ms.
Gugun Bansal, Advocates.

For the Respondent : Ms. Jagrati Singh, Standing Counsel
for MCD.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 26328/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 26329/2023 (for exemption from filing entire Trial Court Record)

3. This is an application seeking exemption from filing the entire Trial Court Record.

4. Exemption is allowed, subject to all just exceptions.

5. The application stands disposed of.

CM(M) 842/2023 & CM APPL. 26327/2023 (for stay)

6. Petitioner challenges the order dated 16.05.2023 in A.No. 286/2023 filed before the learned Appellate Tribunal MCD (hereinafter referred to as “ATMCD”), whereby the learned ATMCD had simply issued notice on the appeal and declined to hear the request seeking *ex parte* stay of the vacation notice dated 03.05.2023.

7. Mr. Rajesh Yadav, learned Senior Counsel appearing for petitioner brings to the notice of this Court the order dated 08.05.2023 in W.P.(C) 6011/2023 titled as “*Jatinder Pahwa vs. Municipal Corporation of Delhi*” whereby this Court had granted 10 days time and directed that no coercive action be taken against the petitioner in pursuance of the aforesaid vacation notice for a period of 10 days to enable the petitioner to take steps in accordance with law to file an appeal before the appropriate forum.

8. Mr. Yadav, learned Senior Counsel, accordingly submits that in pursuance of the aforesaid directions, an appeal under Section 347B of the DMC Act, 1957, was filed.

9. Thereafter, learned Senior Counsel brings attention of this Court to the impugned order to submit that, whether the application seeking stay of the vacation notice is valid or invalid, ought to have been considered by the learned ATMCD after hearing the submissions made by the petitioner herein, which was not done.

10. Learned Senior Counsel submits that in case the application was not maintainable or even the appeal was not maintainable, the appeal

itself ought to have been dismissed, so as to enable the petitioner to take appropriate steps subsequent thereto.

11. Mr. Yadav, learned Senior Counsel submits that having not considered the aforesaid submissions, the petitioner is in a quandry, whereby no relief against such vacation notice is addressable by the petitioner is an appropriate form.

12. Per contra, Ms. Jagrati Singh, learned Standing Counsel appearing for the respondent MCD on an advance notice submits that there indeed is no appeal available against the vacation notice contemplated under Section 343 (2) and, therefore, the ATMCD has rightly passed the impugned order.

13. Ms. Singh, learned standing counsel submits that it is only against the demolition order that any such interim directions could have been passed.

14. She submits that the petitioner has not filed any appeal against the demolition order as such and, thus, there is no question of interference by this Court under Article 227 of the Constitution of India.

15. This Court has considered the submissions made by the learned Senior Counsel for the petitioner and also learned standing counsel for the respondent MCD, and is of the considered opinion that it is the indelible right of the petitioner to be heard and an order giving reasons as to on what grounds and on what basis, the orders are passed, is the substratum of principles of natural justice, which can not be diluted.

16. In view of the aforesaid submissions as also the fact that by a perfunctory order, the ATMCD has refused to hear the request of the petitioner for an *ex parte* stay of the vacation notice dated 03.05.2023

the same is unsustainable in law.

17. Considering the fact that the ten days period as granted to the petitioner *vide* the order dated 08.05.2023 passed by this Court is expiring today, it would be in the interest of justice to continue the aforesaid stay uptill 30.05.2023.

18. It is made clear the learned ATMCD may hear and dispose of the application on or before 30.05.2023.

19. With the aforesaid direction, the present petition along with pending application is disposed of with no order as to costs.

20. Order *Dasti* under the signatures of the Court Master.

TUSHAR RAO GEDELA, J.

MAY 18, 2023/nd

