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

+ **W.P.(C) 1482/2024**

RAJESH GUPTA

..... Petitioner

Through: Mr. S. B. Upadhyay, Sr. Adv.
alongwith Mr. Sandeep Ratra, Ms.
Sunila Chaudhary and Mr. Rishabh
Chauhan, Advs.

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms. Anshula L Bakhru, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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01.02.2024

The hearing has been conducted through video-conferencing.

CM APPL.6126/2024 (Exemption)

Allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 1482/2024 and CM APPL.6125/2024 (Stay)

1. The present petition impugns the proposed demolition action directed to be taken in respect of the petitioner's property pursuant to speaking order dated 18.08.2023 passed under Section 343 of the Delhi Municipal Corporation Act, 1957.
2. It is contended by the learned senior counsel appearing for the petitioner that the said speaking order has been passed in utter disregard of the fact that the property in question is protected under the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007 and National Capital



Territory of Delhi Laws (Special Provisions) Second Act, 2011 (as amended in 2023).

3. Attention has been drawn to the fact that the speaking order itself acknowledges the existence of the property since prior to the cut off date as contemplated in the aforesaid legislation. It is submitted that this is evident from the deposit slips issued by the Property Tax Department which is dated 29.03.2006.

4. As such, it is evident that a structure has been in existence since prior to the relevant cut off date, however, the impugned order presumes against the petitioner on the basis that the petitioner failed to establish the extent of construction prior thereto. On this count, the speaking order is stated to suffer from an error apparent on the face of the record inasmuch as it proceeds on surmises and conjectures, disregarding the material placed on record by the petitioner to establish that the petitioner is entitled to protection under the aforesaid legislation.

5. After some hearing, it is conceded that the aforesaid speaking order is appealable before the ATMCD. Accordingly, learned senior counsel for the petitioner seeks leave to withdraw the present petition with liberty to file an appeal before the ATMCD. It is submitted by the learned senior counsel for the petitioner that the appeal before the ATMCD shall be filed expeditiously and not later than one week from today.

6. Accordingly, the present petition is dismissed as withdrawn with liberty as prayed for.

7. The ATMCD is requested to decide the appeal as expeditiously as possible. In the peculiar facts and circumstances of the case, it is directed that during the pendency of the appeal before the ATMCD, the



respondent/MCD shall not take any precipitative/coercive steps qua the property in question.

8. It is made clear that this Court has not pronounced upon the merits of the contentions of the petitioner. All the rights and contentions of the parties are reserved and shall be duly considered by the ATMCD on merits.

SACHIN DATTA, J

FEBRUARY 1, 2024/r