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

+ **W.P.(C) 3150/2024 & CM APPL 12919/2024**

ASHA GUPTA & ANR.

.....Petitioners

Through: Mr. Arun Khatri, Mr. Sohil Khurana
and Mr. Akshay, Advs.

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Mr. Umesh K. Burnwal, SC for MCD

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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24.07.2024

1. *Vide order dated 04.03.2024, this Court has passed the following directions:-*

"CM APPL.12918/2024 (Exemption)"

*Allowed, subject to all just exceptions.
Application stands disposed of.*

W.P.(C) 3150/2024 and CM APPL.12919/2024 (Stay)

1. The present petition assails a vacation notice dated 23.02.2024, under Section 349 of DMC Act.

2. Learned senior counsel for the petitioners contends that the demolition action in respect of the property bearing No.2126/59, Naiwala, Karol Bagh, New Delhi-110005 was taken as far back in the year 2018 pursuant to a demolition order issued sometime in the year 2017. The said demolition action was duly completed. Yet, the impugned vacation notice has been issued almost 06 years after the demolition action was taken.

3. He submits that the impugned vacation notice is wholly arbitrary and without jurisdiction inasmuch as it is founded upon a demolition order



which has already been executed.

4. Issue notice.

5. Learned counsel, as aforesaid, appears and accepts notice on behalf of the respondent/MCD. He seeks some time to take instructions.

6. Let a reply be filed within a period of three weeks from today.

7. List on 09.04.2024.

8. In case any coercive/precipitative steps are proposed to be taken by the MCD in respect of the property pursuant to the impugned vacation notice, at least one week's prior notice shall be given to the petitioner."

2. The respondent-MCD in its Status Report has taken the following stand:-

"3. That the property bearing no. 2126/59, Naiwala, Karol Bagh, New Delhi had been inspected by the Junior Engineer(B ldg.) on 22.02.2024. Status Report had been filed in S(OS) No. 540/2023 in the matter of Asha Gupta & Ors. Vs Sunil Budhi Raja & Ors. The property has again been inspected by the JE(B) on 03.04.2024. It comprises of ground floor, first floor, second floor, third floor & fourth floor. There is no sanctioned building plan. Also, there is no Occupancy-cum-Completion Certificate. No ongoing construction has been seen. The ground floor has two shutters which were found locked. The above floors were therefore in accessible.

4. That action u/s 344(1) & 343 of the DMC Act had been initiated w.r.t. unauthorized construction in the shape of addition/alteration at ground floor, first floor, second floor and partly third floor and complete U/C on partly third floor, entire fourth floor and partly fifth floor vide no. B/UC/KBZ/2017/03 dated 09.01.2017. Order of demolition had been passed on 13.01.2017. Demolition action had been fixed for 21.06.2017 but could not be executed due to shortage of time. Subsequent demolition action had been taken on 30.05.2018, wherein, fifth floor roof had been demolished.

5. That vacation notice u/s 349 of the DMC Act has been sent to Sh. Ashok Gupta, P. No. 2126, Gali No. 58-59, Naiwala, Karol Bagh, New Delhi vide no, D/AF/B/KBZ/2024/294 dated 23.02.2024. A copy of the same has been endorsed to the SHO, PS Karol Bagh, New Delhi with the request to get the premises vacated. Demolition action had been



fixed for 01.03.2024. However, the program was not executed. No further demolition/sealing has been taken up.”

3. It is thus seen that the dispute in question can be agitated before the Appellate Tribunal-MCD (hereinafter ‘AT-MCD’) as per the provisions enshrined in Delhi Municipal Corporation Act, 1957.

4. Learned counsel for the petitioner, however, submits that on account of unavailability of the Presiding Officer, the AT-MCD is not functional.

5. Keeping in view the aforesaid aspect and the interim order which has already been passed on 04.03.2024, the Court deems it appropriate to dispose of the instant petition with the following directions:-

(i) Let the petitioner to file an appeal before the AT-MCD within seven working days from today.

(ii) The concerned Tribunal is directed to consider the application for stay on early date and deal with the appeal as expeditiously as possible.

(iii) Till the application for grant of interim relief is disposed of by the said authority, the interim order dated 04.03.2024 shall remain in force.

(iv) All rights and contentions are left open.

6. The instant writ petition stands disposed of along with pending application.

PURUSHAINDR KUMAR KAURAV, J

JULY 24, 2024

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