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

+ W.P.(C) 3662/2023

RIZWAN AHMED & ORS.Petitioners

Through: Ms. Shaziya, Advocate.

versus

AIRTEL TOWER DEPARTMENT & ORS.Respondents

Through: Mr. K.G. Gopalakrishnan and Ms.
Nisha Mohandas, Advocates for R-
1.

Mr. Pratap Singh and Mr. Sourav
R., Advocates for R-2.

SI Narender Singh, P.S. Chandni
Mahal.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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13.11.2024

1. The petitioner has filed this petition under Article 226 of the Constitution, for a direction upon the respondents to remove a mobile tower installed on property bearing No. 2408, Kamra Bangash, Near Durga Sweet, Darya Ganj, Delhi-110002 [“subject property”].

2. An additional counter affidavit dated 11.10.2023 has been filed by respondent No. 1, in which a permission granted by the Municipal Corporation of Delhi [“MCD”] on 02.12.2022 for installation of the tower in the subject property has been annexed. The permission has been granted in favour of Indus Towers Limited, which is not a party to the



present petition.

3. This Court by a judgement in W.P.(C)3267/2010 [Cellular Operators Association of India & Ors. vs. Municipal Corporation of Delhi] and connected matters, has held that temporary structures/towers on rooftops for providing Cellular Basic Mobile Phone services fall within the definition of “building” under the Municipal Statutes and all provisions of the Municipal Act and bye-laws have been held to be applicable. Further, by an order of a Coordinate Bench dated 11.04.2023 in W.P.(C) 3113/2022 [Sh. Jai Prakash Gupta vs. North Delhi Municipal Corporation and Ors.], the petitioner was relegated to alternative remedies before the Appellate Tribunal of MCD [“ATMCD”], in a challenge to the installation of a mobile tower.

4. In view of the above, the writ petition is disposed of, with liberty to the petitioner to assail the permission letter dated 02.12.2022 before the ATMCD, if he is so advised.

5. All rights and contentions of the parties, in the event of such a challenge, are left open.

PRATEEK JALAN, J

NOVEMBER 13, 2024/MR/