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

+ W.P.(C) 8708/2024 & CM APPLs. 35558-59/2024 (stay)
SMT. JASODA DEVI & ORS. Petitioners

Through: Mr. Pulkit Aggarwal, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: Mr. Parvinder Chauhan and Ms.
Mahima Anand, Advs. for R-2.
Mr. Arun Panwar, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **02.07.2024**

CM APPL. 35560/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 8708/2024 & CM APPLs. 35558-59/2024 (stay)

3. The petitioners seek to challenge Annexure P-7 (Colly) notice dated 28.05.2024 issued by respondent No.1 under Section 41 of the Delhi Urban Shelter Improvement Board Act, 2010 ["**Act**"] on various grounds including violation of applicable rules and regulations.
4. Learned counsel appearing for the petitioners, upon being confronted with a query as to why the petitioners should not avail the alternative remedy under Section 45 of the Act, places reliance on the decision of the Hon'ble Supreme Court in the case of ***Radha Krishan Industries v. State of H.P.***¹

¹ (2021) 6 SCC 771.



5. More specifically, while placing reliance on paragraph no.27 of the said decision, he submits that if the impugned action of any of the State authorities is in violation of the principles of natural justice, then this court has requisite jurisdiction to entertain the writ petitions.

6. I have considered the submissions made by learned counsel appearing for the petitioners and have also perused the relevant records.

7. A bare perusal of the notice dated 28.05.2024 would indicate that the Delhi Urban Shelter Improvement Board *inter alia* in pursuance of the directions dated 08.05.2024 passed by this Court in W.P.(C) 13236/2022 seeks for the response of the petitioners as to why appropriate action for eviction, sealing or demolition of unauthorised *pucca* structure at the aforesaid plot should not be taken against the occupants. The fact whether the petitioners' possession is unauthorised or not will have to be adjudicated after extending a proper opportunity of hearing to all the contesting parties.

8. Notably, Section 45 of the Act provides that any person aggrieved by any notice, order or any direction issued or given by the Board under the Act may within thirty days from the date of receipt of the notice, order or decision, appeal to the Lieutenant Governor. For the sake of clarity, Section 45 of the Act is being reproduced as under:

“45. (1) Any person aggrieved by any notice, order or direction issued or given by the Board under this Act, may, within thirty days from the date of receipt of the notice, order or decision, appeal to the Lieutenant Governor:

Provided that the Lieutenant Governor may entertain an appeal after the expiry of the said period of thirty days if he is satisfied that there was sufficient cause for not filing it within that period.

(2) An appeal to the Lieutenant Governor shall be made in such form and shall be accompanied by a copy of the notice, order or direction appealed against and by such fees as may be prescribed by rules.



(3) The order of the Lieutenant Governor on an appeal under subsection (1) shall be final.

4) No appeal shall be decided under this section unless the appellant has been heard or has had a reasonable opportunity of being heard.”

9. In the present case, the petitioners are unable to satisfy as to how the alternative remedy which is provided under the Act is not efficacious to ventilate their grievance, if according to them even no notice is warranted under the present case. It is noteworthy that the respondent has not taken any action for demolition as of now and has only called upon the petitioner to satisfy as to why such action for demolition is not necessary. The petitioners, therefore, are fully entitled to satisfy the respondent while explaining their case on the question of demolition. At this stage, the petitioners cannot allege violation of the principles of natural justice.

10. Under the facts of the present case, since the impugned action is purported to have been taken in pursuance of the directions issued by the Division Bench of this Court and the facts of the case require greater scrutiny and examination, therefore, this court does not deem it appropriate to exercise powers under Article 226 of the Constitution of India and accordingly, leaves it open to the petitioner to take alternative remedy in accordance with law.

11. Needless to emphasise that in case the petitioners avail alternative remedy, the concerned authority shall deal with the same strictly in accordance with law without being influenced by any of the observations made hereinabove.

12. So far as the prayer with respect to directions to the respondent-Municipal Corporation of Delhi (MCD) restraining not to take any action is concerned, needless to state that admittedly, as of now, no such action has



been taken by the respondent-MCD. The impugned notice is issued by Delhi Urban Shelter Improvement Board (DUSIB) only to accord an opportunity of hearing to the concerned petitioners before taking an action and, therefore, this court is unable to pass any pre-emptive directions. Accordingly, no such relief as prayed for can be granted.

13. In view of the aforesaid, the petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JULY 2, 2024/p