



\$~88

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10616/2024, CM APPLs. 43595/2024, 43596/2024 &
43597/2024**
AYUSHI JAIN AND OTHERS

.....Petitioner

Through: Mr.Alok Alok Srivastava, Adv.

versus

MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Counsel (*appearance not given*).

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

%

01.08.2024

1. Heard learned counsel appearing for the petitioners.
2. Shorn of unnecessary details, in W.P.(C) 6800/2019, the petitioner therein sought for the demolition of the construction raised on the subject property including the construction raised by the petitioners herein. On 16.12.2022, this Court in W.P.(C) 6800/2019 granted liberty to the petitioners/sellers to approach Appellate Tribunal - Municipal Corporation of Delhi (ATMCD) against the order of demolition. The petitioners were also protected for a period of four weeks from the date of passing of the order. The relevant extracts of the said order read as under:-

4. The concerned SHO, Police Station Jagat Puri is directed to provide all the necessary police assistance to respondent No.1 as and when requested for.



5. Learned counsels for respondent Nos. 3 to 16 pray that protection be granted to the answering respondents so that they can file appropriate proceedings against the demolition orders/action.

6. Accordingly, in view of the above, the present petition is disposed of with the directions that respondent No.1 to not take any precipitate action against the respondent Nos. 3 to 16 for a period of four weeks from today, where after the continuation of this direction would have to be sought in the appropriate proceedings before the Appellate Tribunal, MCD, if filed. The proceedings as and when filed would be considered on its own merit.

3. Admittedly, the petitioners herein, approached ATMCD on 11.01.2023. It is thus seen that within less than a period of 30 days, the petitioners resorted to the remedy as per the liberty granted by this Court.

4. Thereafter, the ATMCD passed an order on 19.09.2023, rejecting the appeal of the petitioner on the score that the demolition order was passed on 11.11.2019 and received by the petitioners on 15.11.2019, therefore, there was a delay of approximately 3 years. Thereafter, the learned District and Sessions Judge has also upheld the said order.

5. A bare perusal of the order passed by the ATMCD rejecting the condonation of delay would indicate that the same is passed on erroneous consideration of facts and circumstances in the instant case. The Court is, therefore, of the considered opinion that when this Court granted liberty to the petitioners to file an appeal and the appeal was admittedly filed within a reasonable period of time, the same ought to have been heard on merits.

6. The learned District and Sessions Judge has also failed to consider the aforesaid aspect in its right perspective.

7. Consequently, the impugned judgment and order dated 10.07.2024 passed by the learned Principal District and Sessions Judge, East, Karkardooma Courts, Delhi and judgment and order dated 19.09.2023



passed by the learned AD&SJ-cum-P.O., Appellate Tribunal, MCD, Delhi are set aside. The matter is remitted back to the ATMCD to be heard on merits.

8. At this stage, it is submitted by the learned counsel appearing for the petitioners that as of now, the ATMCD is not functional. He, therefore, prays for interim protection till his application for stay is considered by the ATMCD.

9. Looking at the nature of the grievance raised in the instant writ petition and liberty being already granted *vide* aforementioned order dated 16.12.2022, the Court finds it appropriate to protect the interest of the petitioners till the time the application for interim relief to be filed by the petitioners is considered by the ATMCD.

10. Further course of action shall take place in accordance with the order to be passed by the ATMCD.

11. Accordingly, the instant writ petition along with pending application stands disposed of.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 1, 2024/MJ