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

+ **W.P.(C) 179/2024**

SHARDA

..... Petitioner

Through: Mr. Sagar Mehlawat and Mr. Virat
Pratap Singh, Advs. along with
petitioner in person.

versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents

Through: Mr. Abhinav Singh, Ms. Swega
Agarwal and Ms. Bhavi Garg, Advs.
for MCD and Delhi Police.
SI Chetan Rana, SI Lal Chand, PS
V.K. South

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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23.01.2024

CM APPL.832/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 179/2024

1. The present petition has been filed by the petitioner seeking the following reliefs:

“A. Allow the instant Writ Petition and declare the demolition order dated 21.02.2023 and the demolition carried out by Respondents on 06.03.2023 as illegal and void and was done with mala fide intentions of the Respondents.

B. Direct the Respondents to pay the compensation jointly or severally to the Petitioner to the tune of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lacs only) for the monetary loss and harassment, mental agony, undue hardship, and stress caused by the illegal demolition carried out by the Respondents along with the costs of the litigation.

C. Direct an inquiry into the whole incident so all the culprits involved are



punished in order to create a deterrent so that such activities are not done in future by the state/ statutory authorities violating the fundamental rights of the citizens.

D. Direct the Competent authority to take strict action/disciplinary action against the Respondents and all other personnel of MCD involved for not following the due process of law and mandatory statutory provisions and for acting in with malafide intentions.”

2. Admittedly, the petitioner earlier approached this court by way of a Writ Petition bearing W.P.(C) No. 3660/2023 seeking the same reliefs (as in the instant petition), which came to be disposed of *vide* order dated 23.03.2023, passed by this court. The said order reads as under:

*“1. Learned counsel for the petitioner seeks leave to withdraw the present petition with liberty to avail his remedy before the Appellate Tribunal, MCD.
2. The leave and liberty, as prayed for, are granted. The petition is dismissed as withdrawn alongwith pending application.”*

3. Pursuant thereto, the matter was considered by the ATMCD and was disposed of *vide* order dated 24.05.2023. The said order reads as under:

“ 24.05.2023

*Present: Sh. Sagar Mehlawat, Ld. counsel for the appellant.
Sh. Vijay Tyagi, Ld. counsel for the respondent.*

*Fresh V/N filed by Ld. counsel for respondent. It be taken on record.
Status report filed, copy supplied.*

This appeal has been filed against the demolition order dated 29.02.2023 passed with respect to property Palm Avenue near Soorya Garden, Ram Mandir Road, Vasant Kunj, New Delhi, which was booked for unauthorized construction in the shape of ground floor, first floor and raising of wall at second floor.

A show cause notice dated 10.02.2023 was issued in the name of Smt. Sharda W/o Satbir, which as per record pasted at site on 15.02.2023. However, while pasting the show cause notice the signature of two independent witnesses have not been obtained. After pasting of the show cause notice, as no reply was received, therefore, a demolition order dated 21.02.2023 was passed which was also served upon the appellant through pasting. Similarly, no signature of two independent witnesses were obtained at the time of pasting of the impugned demolition order.

Ld. counsel for the appellant submits that the entire structure has already been demolished, which fact has also been confirmed by the Ld. counsel for



respondent. Though there is procedural lapse in the service of show cause notice, however, that is of no consequence as on date, as the property in question has already been demolished, therefore, appeal filed by the appellant against the impugned demolition order has become infructuous. Accordingly, the same is dismissed being infructuous. Appeal file be consigned to record room.”

4. It is evident from a perusal of the aforesaid order passed by ATMCD, that instead of pronouncing upon the legality and validity of the impugned demolition action taken by the MCD, the ATMCD has disposed of the matter by noting that the appeal filed by the appellant/petitioner against the impugned demolition order has become infructuous since the property already stood demolished.
5. Learned counsel for the petitioner submits that the ATMCD ought to have pronounced upon the legality and validity of the demolition action which was the purport of the liberty granted by this court *vide* order dated 23.03.2023. He further submits that the petitioner cannot be left remediless in the event of any illegal action being undertaken by the MCD. It is submitted that once a finding in this regard is rendered by the ATMCD, the petitioner would be at liberty to claim damages against the MCD even if the structure stood demolished. It is further contended that the order dated 24.05.2023, passed by ATMCD, erroneously notes that the structure of the petitioner stood demolished whereas in actual fact, the same has not been totally demolished and had instead been tilted.
6. Considering the aforesaid aspects, it would be appropriate for ATMCD to go into the legality and validity of the impugned demolition action taken by MCD. The prayers of the petitioner cannot be deemed to have rendered infructuous merely because the demolition action had been taken by the MCD prior to consideration of the matter by ATMCD. The



legality of the actions of the MCD ought to be pronounced upon by the ATMCD, after consideration of the matter on merits.

7. Consequently, the order dated 25.05.2023 is set aside. The matter is remanded to ATMCD to consider the aforesaid pleas raised by the petitioner including the plea as to the legality and validity of the demolition order impugned in this writ petition and also in W.P.(C) 3660/2023. Once the ATMCD has decided the appeal filed before it by the petitioner on merits, the petitioner would be at liberty to avail further appropriate remedies as permissible under law.

8. It is further directed that the concerned file pertaining to alleged unauthorized construction i.e. File No.152/UC/B-II/SZ/2023 be placed before the ATMCD and a copy thereof be also supplied to the petitioner to enable the petitioner to make the appropriate submissions before the ATMCD.

9. With the aforesaid directions, the present writ petition stands disposed of.

SACHIN DATTA, J

JANUARY 23, 2024/cl