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

+ **W.P.(C) 2624/2025**

HARI OM UPADHYAY

.....Petitioner

Through: Mr. Rahul Kumar Sharma, Advocate
with Petitioner in person.

versus

**MUNICIPAL CORPORATION OF DELHI
AND ORS**

.....Respondents

Through: Mr. Harshit Chopra, Advocate for
Respondents with Mr. Arun Rawat, AE, Building
Deptt., Shahdara North Zone MCD.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.03.2025

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CM APPL. 12472/2025

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

W.P.(C) 2624/2025 & CM APPL. 12471/2025

3. This petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following relief: -

“Issue a writ of Mandamus or any other writ of similar nature, thereby allow the present petition by quashing/setting aside/stay the demolition order dated 21.10.2024, order of demolition of building under section 343 of DMC Act, 1957, and vacation notice dated 25.02.2025 under section 349 of DMC passed by the Municipal Corporation of Delhi respondents in respect of property House No. 101, Street No. 5, Block-C, Mukund Vihar, Karawal Nagar, Delhi 110094.”

4. Issue notice.
5. Mr. Harshit Chopra, learned counsel for the Respondents accepts



notice.

6. Petitioner is aggrieved by the impugned vacation notice dated 25.02.2025 whereby Petitioner has been directed to vacate Property bearing No.C-101, Gali No.5, Mukund Vihar, Karawal Nagar, Delhi, within 24 hours of receipt of the order, so that the MCD can take demolition action.

7. Learned counsel for the Petitioner submits that there is no mandate under Section 349 of the Delhi Municipal Corporation Act, 1957 ('1957 Act') that the property must be vacated within 24 hours and the vacation notice is to this extent completely illegal. Moreover, the genesis of the impugned notice is the demolition order dated 21.10.2024, which has been challenged by the Petitioner before the Appellate Tribunal, MCD in appeal bearing No.1014/2024 and is pending consideration and therefore, MCD ought to have awaited the outcome of the proceedings before resorting to demolition action and directing the Petitioner to vacate the property.

8. It is further submitted that after receipt of vacation notice dated 25.02.2025, Petitioner filed an application dated 27.02.2025 on 28.02.2025 before ATMCD for urgent hearing of the appeal, which is to be taken up on 08.05.2025, however, the Presiding Officer of ATMCD is on leave today and even the application has been adjourned for 08.05.2025. Having no other option, Petitioner has approached this Court for protection and stay of the notice till the application for urgent hearing is taken up by ATMCD else the purpose of filing the appeal will be lost.

9. Learned counsel for MCD, on the other hand, fairly submits that there is no mandate in Section 349 of 1957 Act that the property must be vacated within 24 hours, however, it is the Petitioner who is to be blamed for the present situation as on two occasions, counsel for the Petitioner had sought



adjournments before ATMCD.

10. It is not in dispute that Petitioner has challenged the demolition order before ATMCD in appeal No.1014/2024 which is pending consideration. Upon receipt of the impugned vacation notice, Petitioner filed an application on 28.02.2025 seeking urgent hearing, however, Presiding Officer, ATMCD is on leave today and this has constrained the Petitioner to approach this Court. In my view, there is merit in the contention of the Petitioner that pending consideration of his appeal or the application for urgent hearing, he needs to be protected, as vacation of the property and consequent demolition will render the appeal infructuous. There may be merit in the contention of the Petitioner that there is no unauthorised construction in the subject property which will be decided by ATMCD on merit and therefore, till such time the application for urgent hearing is taken up, the vacation notice must be stayed.

11. Accordingly, without entering into the merits of the case, this writ petition is disposed of directing ATMCD to take up the urgent application dated 27.02.2025 filed by the Petitioner in appeal No.1014/2024 within a period of three weeks from today. Till such time the application is taken up for hearing, MCD will not give effect to the impugned vacation notice dated 25.02.2025. It will be open to ATMCD to consider the application on its own merit and to continue/vacate/vary or modify the order passed today, in accordance with law.

12. Pending application stands disposed of.

JYOTI SINGH, J

MARCH 3, 2025

S.Sharma