

(2011) 06 DEL CK 0070

Delhi High Court

Case No: Writ Petition (C) 4065 of 2011 and CM No. 8421 of 2011

Dr. Devendra Kumar

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision: June 3, 2011

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Sanjeev Sabharwal and Alok Singh, for the Appellant; Gaurang Kanth and Saurabh Khanna, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rajiv Sahai Endlaw, J.

The Petitioner claims to be the owner and occupier of house No. 129, Sukar Bazar Wali Gali, Neb Sarai, New Delhi - 110 062 and being threatened with action by the Respondent MCD for demolition of unauthorized construction has filed the present petition seeking the relief of mandamus to the Respondent MCD to regularize the property.

2. The counsel for the Respondent MCD appearing on advance notice states that after giving due notice demolition action has already been taken against the property on 1st April, 2011 and further demolition action on 21st April, 2011. He states that further action needs to be taken against the property. He has also contended that the said property is also the subject matter of the Public Interest Litigation being W.P.(C) No. 2485/2011 before the Chief Justice's Bench of this Court wherein vide order dated 20th April, 2011 the Respondent MCD has been directed to take action against the unauthorized construction.

3. The counsel for the Petitioner has rejoined contending that he is unable to avail the remedy before the Appellate Tribunal, MCD owing to the vacancy in the office of the Presiding Officer therein. In other matters, it has been informed that though the Presiding Officer has been appointed but has not started holding Court as yet.

4. This Court is of the opinion that the directions of the Division Bench for taking action against the unauthorized construction in the property would not come in the way of persons aggrieved from such action availing their remedies in law. In the circumstances aforesaid, the Petitioner is unable to avail of the remedy. It is not deemed expedient for this Court to enter into the controversy at this stage and it is deemed expedient to allow the Petitioner to avail the alternative remedy.

5. Accordingly, the petition is disposed of by restraining the Respondent MCD from taking any action of demolition or sealing with respect to the property till 10th July, 2011. Unless there is any further stay from any Court/MCD Appellate Tribunal by then, the Respondent MCD to proceed to take action against the property on 11th July, 2011. This is on the condition that the Petitioner shall not alienate, encumber or part with possession of the property and shall not carry out any work whatsoever including of restoration of the portions of the property already demolished and if found to be carrying out such works, the Respondent MCD shall be entitled to immediately take action against the property. No order as to costs.

Dasti under signature of court master.