

Banarsi Dass vs North Delhi Municipal Corporation ... on 19 April, 2023

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 9522/2019
BANARSI DASS

.....
Through: Mr. Shivam Malik, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER

..... R
Through: Ms. Puja Kalra, Standing Counsel
MCD
Mr. Surat Singh and Mr. Shivam Sachdev
Advocates for respondent No.4

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 19.04.2023

1. Learned Standing Counsel for MCD submits that an updated Status Report has been filed which reads as under:-

"4 a) That as per record, the unauthorized construction in the shape of entire ground floor, first floor, part portion second floor, mumty at third floor and installation of mobile tower at roof top of mumty had been booked vide file no. 323/C-23/B-II/UC/CLZ/2019 dt. 31.07.2019 and after following due process of law including grant of personal hearing demolition order had been passed vide no. 578/EE(B)-II/CLZ/2020 dt. 24.09.2020.

b) That the subject property was again inspected by the official of answering respondent on 02.01.2023 and found that the property was residentially occupied accordingly, vacation notice u/s 349 of DMC Act had been issued to the owner / occupier of subject property with direction to vacate the subject property within 24 hours and a copy of the aforesaid vacation notice had been forwarded to the SHO, Samaypur Badli with request to get the premises vacated, if the same is not got Digitally Signed By:NIJAMUDDEEN ANSARI Signing Date:21.04.2023 14:43:55 vacated within stipulated time. The copy of vacation notice is annexed herewith and

marked as "Annexure A"

c) That a notice vide no. 13/EE(B)-II/CLZ/2022 dt. 09.01.2023 had also been sent to M/s ATC Telecom Infrastructure Pvt. Ltd. for removing/ shifting of roof top mobile tower at subject property and in response to aforesaid notice the telecom company had removed/shifted the mobile tower and also inform to answering respondent on dt. 23.01.2023. The copy of aforesaid letter dt. 23.01.2023 is annexed herewith and marked as "Annexure B"

d) That after following due process of law, demolition programme has been fixed on 27.01.2023 and demolition action has been taken vide which roof panel on ground and second floor (extended building portion over gali) had been cut down and room walls at ground floor and second floor has been demolished.

e) That further demolition action was taken on 31.01.2023 vide which unauthorized construction in the shape of roof panel of first floor room cut down and walls (in extended portion of building over gali) had been demolished. That further action could not be taken due to interim protection granted to the petitioner / owner / occupier by this Hon'ble court vide order dt.

06.02.2023. The photographs taken during demolition action are annexed herewith and marked as "Annexure C".

2. Learned counsel for respondent No.4 seeks a copy of the Status Report and submits that though some demolition action has already been taken however, the answering respondent intends to challenge the demolition order before the Appellate Tribunal, MCD in view of Section 347-B of the DMC Act. He prays that interim protection may be granted in order to enable the answering respondent to take the above steps.

3. Accordingly, in view of the above submissions, the present petition is Digitally Signed By:NIJAMUDDEEN ANSARI Signing Date:21.04.2023 14:43:55 disposed of with a direction that no coercive action be taken against respondent No.4 in pursuance of the demolition notice/order for a period of four weeks from today to enable respondent No.4 to approach the ATMCD, whereafter the continuation of the interim protection shall be sought by respondent No.4 from the ATMCD in the appeal filed, if any.

4. Learned Standing Counsel for MCD shall supply a copy of the Status Report to the learned counsel for respondent No.4 during the course of the day.

5. It is further directed that subject to the outcome of the proceedings filed, if any, before the ATMCD, the MCD shall take necessary action expeditiously and in accordance with law.

MANOJ KUMAR OHRI, J APRIL 19, 2023 na Digitally Signed By:NIJAMUDDEEN ANSARI Signing Date:21.04.2023 14:43:55