

Delay) Banarsi Dass vs Gyanesh Bharti, Commissioner And Anr on 10 January, 2023

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CONT.CAS(C) 21/2023 & CM APPL. 1017/2023 (condonation of delay)

BANARSI DASS

Through: Mr. Akshit Tomar

versus

GYANESH BHARTI, COMMISSIONER
AND ANR

Through: Ms. Puja Kalra,

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 10.01.2023

1. The present contempt petition has been filed against the officials of Municipal Corporation of Delhi ('MCD') on account of non-compliance of the order dated 02.09.2019, passed by a Coordinate Bench of this Court in W.P. (C) 9522/2019. The relevant paragraph nos. 2 and 4 of the said order reads as under:

"2. Learned counsel for respondents No. 1 to 2 has filed a counter- affidavit in court. They have confirmed that in the said property being E145- A, Yadav Nagar, Delhi there exists a ground floor, first floor, second floor, a mumty at third floor and a mobile tower on the roof top of the mumty. Respondents No. 1 and 2 have initiated action under Sections 343/344 of the DMC Act. The said unauthorised construction has been booked on 31.07.2019 and a show cause notice has been issued to Mr.Krishan Kumar, the occupier of the property in question.

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4. At this stage, learned counsel for the petitioner has pointed out that the unauthorised construction also encroaches upon the public passage. Respondents No. 1 and 2 while dealing with the aforesaid show cause notice would also take these submissions into account"

2. Learned Counsel for the Petitioner states that no steps have been the Respondents, officials of MCD, despite several follow ups made with them for implementation and compliance of the order dated 02.09.2019.

3. Issue notice. Learned counsel for the Respondent accepts notice. She states that in pursuance to the show cause notice, issued in July 2019, the owner of the property bearing no. E-145-A, Yadav Nagar, Delhi ('property') was heard and a speaking order was passed on 24.09.2020 for demolition of the property. She states that however, due to the Covid-19 pandemic, no steps for demolition could be taken. She states that in January, 2023, MCD has now issued a vacation notice to occupiers of the property to enable the demolition action.

4. She states that she has received instructions that permission for installation of the mobile tower has been given afresh in July, 2022. She states that though it is highly irregular that such a permission has been granted after passing of the order dated 02.09.2019. She states that the permission in July, 2022 was granted by a distinct department of MCD, whereas the jurisdiction qua unauthorised construction forming subject matter of this petition lies with Building Department of MCD. She seeks time to put on record the explanation for the said permission granted. She further states that a notice has been issued to the company which installed the mobile tower to have the same dismantled within a period of 15 days from 07.01.2023.

5. This Court has heard the parties. It appears to the Court that the steps in January, 2023, have been taken by the Respondents only after service of the present contempt petition. It is, therefore, evident that there has been non-compliance and complete disregard of the said order dated 02.09.2019.

6. The explanation given by the learned counsel for the Respondents for the issuance of the July, 2022 permission is not satisfactory. The Respondent is directed to file her counter affidavit and disclose the name of the Assistant Engineer ('AE') and the Junior Engineer ('JE') of the area who were responsible for the compliance of the said order dated 02.09.2019. She requires and is granted four weeks' time to file her counter affidavit.

7. The details of the JE and AE shall be furnished within a period of one week from today with advance service to the Petitioner. The Petitioner will file an amended memo of parties impleading the said AE, JE as parties to the present petition. The current JE shall remain present in Court on the next date of hearing.

8. List on 24.03.2023.

MANMEET PRITAM SINGH ARORA, J JANUARY 10, 2023/msh/aa