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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8583/2023, CM APPL. 32617/2023 and CM APPL. 32618/2023**

RAJJO DEVI

..... Petitioner

Through: Mr. Aditya Aggarwal and
Mr. Ankit Mutreja, Advocates

versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

28.06.2023

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W.P.(C) 8583/2023 and CM APPL. 32617/2023

1. This writ petition is directed against sealing order dated 6 June 2023 issue by the Deputy Commissioner, Narela Zone, MCD, whereby the residential premises of the petitioner, situated at H. no 109, Mandir Wali Gali, Village Bakoli, Delhi have been sealed under section 345 (A) the Delhi Municipal Corporation Act, 1957. The impugned order also refers to orders dated 16 February 2006 and 24 March 2006 passed by Supreme Court in *M.C. Mehta Vs Union of India*¹.

2. A preliminary objection was raised by Mr. Abhinav Sharma, learned counsel for the MCD, to the effect that the impugned order was appealable and that, therefore, no writ petition could be

entertained thereagainst. In support, he cites clause (m) of Section 347-B² of the DMC Act.

3. *Prima facie*, clause (m) of Section 347-B would not apply, as the premises of the petitioner have not been sealed on the ground that their construction is unauthorized. The power to seal unauthorized construction is specifically vested by Section 345-A. The invocation of Section 345 - in the impugned order also appears, *prima facie*, to be unjustified.

4. Mr. Aggarwal, learned counsel for the petitioner submitted that there is no provision in the DMC Act which permits sealing of premises on the ground that illegal activities were being carried out therein. He has also referred, in this context to an order, passed by a coordinate Single Bench of this court in *Afsar v. Commissioner (MCD)*³, in which the premises in question were sealed on the ground that illegal meat trade was being carried out therein. The coordinate Bench, in para 4 of the decision, has observed thus:

“4. The review petition came up first before this Court on 10th May, 2011 when it was enquired from the counsel for the respondent MCD review applicant as to how the power of sealing affecting the Constitutional Rights of the property owner can be conferred by administrative instructions, as aforesaid. Attention of the counsel was also invited to the Full Bench judgment of this Court in *Bajaj Departmental Stores v. MCD*⁴ subsequently considered in *M.C. Mehta v. Union of India*¹ by the Apex Court, where in the absence of a statutory provision, DDA was held to be not empowered/entitled to seal the property for misuse.”

² 347-B. Appeals against certain orders or notices issued under the Act. – Any person aggrieved by any of the following orders made or notices issued under this Act, may prefer an appeal against such order or notice to the Appellate Tribunal, namely:-

(m) an order directing the sealing of unauthorised constructions under Section 345-A;

³ 2011 SCC OnLine Del 2717

⁴ 99 (2002) DLT 401

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5. As such, *prima facie*, the decision in *M.C. Mehta*¹, too, cannot be used to seal residential premises on grounds which are not envisaged in the DMC Act.

6. Mr. Abhinav Sharma has also sought to place reliance on clause (o) in Section 347-B⁵ of the DMC Act. In as much as the impugned order has not been issued under section 347 of the DMC Act, the question of applying clause (o) of section 347 B does not, *prima facie*, arise.

7. At this juncture, Mr. Abhinav Sharma seeks some time to examine the correct legal position.

8. Mr. Aggarwal submits that the petitioner is a widow who has five children and three grand children. Of the five children, one stands incarcerated and the remaining four are married daughters. The three grand children are of tender age. As such, he submits that, as a result of the passing of the impugned order, the petitioner is left with no place to stay.

9. Given these circumstances, and as Mr. Sharma is not able to satisfy the court either as to the justification for the passing of the impugned order or on the point of alternate remedy, for the present, the court, in order to balance the equities, deems it appropriate to granted *ad interim* relief.

⁵ 347-B. Appeals against certain orders or notices issued under the Act. – Any person aggrieved by any of the following orders made or notices issued under this Act, may prefer an appeal against such order or notice to the Appellate Tribunal, namely:-

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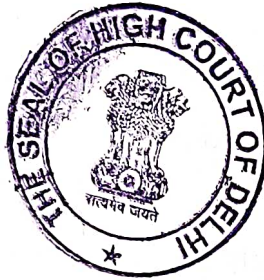
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(o) an order granting or refusing permission under Section 347;
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10. In the circumstances, issue notice to show cause as to why rule *nisi* be not issued. Notice is accepted on behalf of the respondent by Mr. Aggarwal. Counter-affidavit if any be filed within four weeks by the respondent with advance copy to learned counsel for the petitioner who may filed rejoinder thereto, if any, within three weeks thereof. List on 17 August 2023.

11. In the meanwhile, the operation of the sealing order 6 June 2023 shall remain stayed. If the property is already sealed, it shall be de-sealed forthwith.

12. *Dasti.*



A handwritten signature in black ink, appearing to be 'S. C.', written over a horizontal line.

C.HARI SHANKAR, J.
(VACATION JUDGE)

JUNE 28, 2023/pu

TRUE COPY

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