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

+ **W.P.(CRL) 2115/2024, CRL.M.A. 20533/2024**

MUNICIPAL CORPOPORATION OF DELHIPetitioner

Through: Mr. Pritish Sabharwal and Mr.
Sanjeet Kumar, Advocates

versus

THE STATERespondent

Through: Mr. Rahul Tyagi, ASC for the State
with SI Akashdeep PS Jamia Nagar

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **16.07.2024**

CRL.M.A. 20534/2024(for exemption)

1. For the reasons stated therein, the application is allowed.
2. The Application is accordingly disposed of.

W.P.(CRL) 2115/2024

3. Petition under Article 226 read with Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure has been filed on behalf of the petitioner with a Prayer to set aside the Order dated 31.05.2024 passed against the Deputy Commissioner, MCD to show cause why the contempt proceedings be not initiated against him.
4. It is submitted on behalf of the petitioner that the proceedings under Section 466A DMC Act were initiated by MCD officials on the subsequent bookings when it was found that complaints have been submitted on the Property. The MCD has done the initial bookings on 23.09.2022 and had put the seal on the premises. Subsequently, the seal was broken and it was



noticed on 14.03.2023 that there was unauthorized construction raised. The proceedings accordingly had been initiated and the it is the MCD, who has approached the Court. However, the learned MM has started parallel proceedings of Contempt against the complainant itself.

5. A prayer is made the learned MM's Order be stayed.
6. Learned ASC appearing on behalf of the petitioner submits that the Charge Sheet has already been filed in the present matter.
7. **Submissions heard.**
8. The Learned MM has passed the following order dated 31.05.2024 which reads as under:

“On 19.12.2023, reply was called from Deputy Commissioner MCD on the fact that the concerned property in question was booked for unauthorized construction firstly on 23.09.2022 and subsequently on 14.03.2023. Proceedings U/s 466A DMC Act were initiated by MCD officials only on the subsequent booking when 05 floors of the property were constructed.

According to the provision of DMC Act, Deputy Commissioner MCD is the responsible officer who can file the complaint against the offender for unauthorized construction but in the present case it is seen that the Deputy Commissioner MCD chose not to prosecute the accused for earlier booking of 23.09.2022 and only initiated prosecution after 06 months on subsequent booking.

It was asked by this court to the Deputy Commissioner MCD to explain why he chose not to prosecute the accused in the earlier booking but after multiple notices reply was received from Deputy Commissioner MCD that they wish to challenge the order of this court. Subsequently Commissioner MCD was requested to comply with the order of the court but no reply was received from the concerned official.

Today a reply has been received from Executive Engineer stating that there was no need to file two separate



complaint. It is pertinent to note that the Executive Engineer does not even have the authority to file a complaint, therefore, it cannot be understood why he is filing such reply.

As noted on 17.05.2024, it seems that the Deputy Commissioner MCD is not willing to answer the queries of this court and comply with orders.

One last and final opportunity is given to the Deputy Commission MCD.

Issue notice to Deputy Commission MCD to show cause why contempt proceedings shall not be initiated against her for not complying with order dated 19.12.2023 and 10.04.2024.

*Copy of this order be sent alongwith process.
Be put up on 07.06.2024”.*

9. Considering the nature of the impugned Order, its operation is hereby stayed. However, it is clarified that the Trial shall continue and only the Order dated 31.05.2024 is stayed.

10. List for arguments on 07.11.2024.

NEENA BANSAL KRISHNA, J

JULY 16, 2024/PT