



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

+ **W.P.(C) 6238/2022 & CM APPLs 18750/2022, 18751/2022**

Date of Decision: 22.04.2022

IN THE MATTER OF:

RAJNI KUKREJA

..... Petitioner

Through: Ms. Radhika Khushaldas, Advocate

Versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mini Pushkarna, Standing
Counsel for NDMC alongwith Ms. Khushboo
Malhotra, Ms. Shikha Baisoya, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner seeking the following reliefs:-

“(i) to issue an appropriate writ, order or direction directing the Respondent-NDMC, its officials to remove Temporary-Kachi Wall, stopping the egress & ingress of the Petitioner to Shop No.628, Main Road, Khari Baoli, Delhi, in the interest of justice;

(ii) to issue appropriate writ, order or direction directing Respondent/NDMC officials to remove encroachment on Footpath outside Shop No.628, Main Road, Khari Baoli, Delhi in the interest of justice;

(iii) to restrain the Respondent/NDMC officials from raising any construction obstructing entrance / Right of way /



Footpath to Shop No.628, Main Road, Khari Baoli, Delhi in the interest of justice;

(iv) pass any other and / or further order / orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioner claims to be the owner of a shop bearing No. 628, Main Road, Khari Baoli, by virtue of registered Sale Deed dated 29.11.2018. It is her grievance that ingress/egress to/from her shop, which is touched by a 7 ft. footpath maintained by the respondent/North DMC, is being obstructed by the creation of a 7 ft. Kachi (temporary) Wall in front of the shop by the respondent/North DMC. The petitioner also assails raising of walls measuring 4 ft. each, on the left and right side on the footpath.

3. Learned counsel for the petitioner submits that the impugned construction in front of the petitioner's shop is obstructing ingress/egress to/from the shop, and as such, the act of the Corporation in raising the same is violative of Articles 19(1)(g) and 300A of the Constitution of India. It is stressed that on account of the impugned construction, allegedly carried out on the footpath, the petitioner has been denied 'right to carry out business' and '*right to property*'.

4. Learned counsel further submits that the neighbouring shop owners at *Main Road, Khari Baoli* had earlier attempted to encroach upon the footpath by raising illegal and unauthorised construction. Assailing the same, a Suit bearing No. 732/2020 was filed by the petitioner, wherein vide order dated 13.02.2020, interim relief was granted against the said shop owners. It is alleged that since the shop owners could not succeed in encroaching upon the footpath on account of the Suit filed by the petitioner, they got officials of the Corporation to



raise the *Kachi* Wall in front of her shop to intentionally obstruct the entrance thereof. As such, the construction of the *Kachi* Wall by the Corporation in front of the petitioner's shop is stated to be actuated by malice, having been raised at the behest of neighbouring shop owners.

5. Ms. Mini Pushkarna, learned Standing Counsel appearing for the respondent/North DMC, submits that the present petition has been filed in suppression and concealment of material facts. It is contended that a *Piyau* (drinking water tap) in front of the petitioner's property/shop was in existence for about last 100 years, until its unauthorised demolition by unknown persons in the year 2020, and the impugned act of construction by the respondent/North DMC in front of the petitioner's shop relates to the re-construction of the said *Piyau*.

6. Learned Standing Counsel has handed over a set of documents in Court, including copies of – (i) representations dated 17.04.2019 and 25.09.2019 made by the petitioner seeking removal of the *Piyau*, (ii) office noting of North DMC dated 06.09.2018, indicating that the *Piyau* was functional at the time and about 100 years old, (iii) rough Site Plan showing existence of the *Piyau*, (iv) entry in Register of Immoveable Property of MCD regarding the *Piyau*, stated to be dating back to 05.09.1968, (v) letters dated 12.03.2020 and 17.03.2020 sent by the Corporation to SHO, P.S. Lahori Gate seeking registration of an FIR regarding unauthorised demolition of the *Piyau* by unknown persons and requesting for police assistance on the date planned for reconstruction thereof, (vi) photographs of the *Piyau* prior to its unauthorised demolition in the year 2020 as well as post-temporary construction carried out the very same year. The same are taken on record.



7. During the course of submissions, learned Standing Counsel has drawn the attention of the Court to the copy of entry in the Register of Immoveable Property of MCD, as per which the management of the *Piyau* was transferred to the MCD under Wilson Survey No.115/4258. Reliance is also placed on the aforementioned photographs to submit that the *Piyau* was operational in March, 2020, however, it was illegally demolished on 10.03.2020 and is being constructed again.

8. Learned Standing Counsel has informed that prior to the unauthorised demolition of the *Piyau* by unknown persons, against which a representation was made by the Corporation to the SHO, P.S. Lahori Gate, the petitioner in fact had also made representations dated 17.04.2019 and 25.09.2019 to the SHO and other authorities, assailing encroachment over the footpath in the form of the *Piyau* and stating that it posed problems for her property/shop. However, the factum of making said representations as well as of having knowledge about the existence and location of the *Piyau* has been concealed by the petitioner in the present petition.

9. In connection with the above, learned Standing Counsel has made reference to the copy of office noting of the North DMC dated 06.09.2018, bearing signatures of the JE (Works), to submit that pursuant to a representation received in the year 2018, an inspection of the site in question was conducted and some minor encroachment was found adjacent to the *Piyau*, which was removed.



10. Relevant excerpt from the aforementioned office noting of North DMC is reproduced hereunder:-

“...Above representation/complaint is regarding encroachment at Footpath/Pathway adjacent to Shop No. 625, Khari Baoli, Delhi-110006.

The site was inspected and the report is as under:-

- 1. The complainant has complained regarding encroachment by a piyau on the Footpath/Pathway. In this regard it is to submit that there is a piyau on Khari Baoli Road in front of Shop No. 628. Some minor encroachment was found adjacent to the piyau and the same was removed (photographs attached). The issue of illegal activities of unscrupulous/antisocial elements pertains to Delhi Police.*
- 2. It is alleged in the complaint that no water is being served to public from this piyau. In this regard, it is to submit that said piyau is functional. Also from local enquiry it reveals that the said piyau is more than 100 years old.*
- 3. It is further submitted that as per IPR (Immoveable Property Register) maintained by Land & Estate Department of MCD, the said piyau has been shown as piyau in front of Shop No. 627/28 at serial no. 8 of Register No. 53 of City Zone (Copy placed opposite).*
- 4. The complainant has requested for removal of this piyau. In this regard, it is to submit that approval of Corporation House is required for demolition of any Municipal Property.”*

11. I have heard learned counsels for the parties and perused the material placed on record.

12. In the present case, the petitioner has assailed the action of the Corporation in constructing a *Kachi* Wall in front of her property/shop, by stating that the same is a motivated one and also violative of her legal rights to property and carry out business. Notably, it is the admitted case



of the petitioner that the shop in question was constructed about 40 years ago.

13. From the material placed on record, it is apparent that as per the respondent/North DMC, the *Piyau* was in existence for about 100 years, until it came to be demolished illegally in the year 2020. The factum of existence of the *Piyau* in front of shop bearing No. 628, *Main Road, Khari Baoli*, prior to the year 2020, was in the knowledge of the petitioner at the time of filing of the present petition. However, the same has been suppressed. Over and above, the petitioner has imputed *mala-fides* to the Corporation in connection with its carrying out reconstruction of the *Piyau*, which was operational prior to the unauthorised demolition in the year 2020.

14. In fact, the petitioner had earlier raised dispute against the existence and location of the *Piyau* before authorities including the SHO, P.S. Lahori Gate. The same has also been suppressed by her in the present petition.

15. Considering the facts and circumstances of the present case, it is deemed apposite to advert to the following observation made by the Supreme Court in Arunima Baruah v. Union of India and Others reported as (2007) 6 SCC 120:-

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its



discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

16. In light of the foregoing, it is apparent that the petitioner has not approached this Court with clean hands. She has suppressed facts, which are material to the grant/denial of the relief sought by way of the present petition.

17. At this stage, learned counsel for the petitioner, on instructions, submits that the petitioner is ready and willing to deposit a sum of Rs.10,000/- with the Commissioner, North DMC for re-construction and upkeep of the *Piyau*.

18. Keeping in view the aforesaid, the present petition is disposed of with a direction to the petitioner to deposit the amount of Rs.10,000/- with the Commissioner, North DMC within a period of four weeks from today. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 22, 2022

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