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

+ W.P.(C) 7306/2012

SANDEEP SINGH

..... Petitioner

Through: Mr. Alok Jha and Mr. N. Tripathi,
Advvs.

Versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS

..... Respondents

Through: Ms. Biji Rajesh, Adv. for Mr.
Gaurang Kanth, Adv. for R-1/SDMC.
Mr. Avtar Singh, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.08.2015

1. The petitioner seeks mandamus to the respondents No.1 &2 i.e. South Delhi Municipal Corporation (SDMC) and the Police to take action with respect to the construction, allegedly unauthorized, by the respondent No.3 Kuldeep Singh Bhogal in property No.11, Hari Nagar Ashram, New Delhi.
2. Notice of the petition was issued.
3. The counsel for the respondent No.1 SDMC on the last date of hearing reported that the property in question was constructed prior to 2007 and therefore protected under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. The petitioner had then sought time

to respond.

4. The counsel for the petitioner contends that the aforesaid Act does not afford any protection against encroachment on public street as has been done by the respondent No.3. It is further contended that according to the respondent No.1 SDMC the number of the property of the respondent No.3 is '1' whereas according to the petitioner it is '11'.

5. The counsel for the petitioner however on enquiry states that there is no confusion as to the identity of the property and the discrepancy is only of number of the property. It is not for this Court, in this proceeding, to resolve the said discrepancy of the number which the property of the respondent No.3 bears, as long as there is no dispute as to which property the status report pertains.

6. With respect to the contention of the counsel for the petitioner, of encroachment over public street, as per the status report of the respondent No.1 SDMC, the property is situated in unauthorised regularised colony and the counsel for the respondent No.1 SDMC states that there is no encroachment over any public street and there are no identifiable street in the said colony.

7. A perusal of the file shows that the respondent No.1 SDMC in its first

status report dated 13th February, 2013 filed in this Court stated, (i) that in the inspection carried out on 26th November, 2012, a structure having come up over the street, without disturbing the means of access at ground floor level, was noticed; (ii) that the matter was referred to the Maintenance Department of Central Zone and to the Town Planning Department for their comments regarding the status of the street to ascertain, whether the alleged structure is a case of encroachment or otherwise; (iii) that the concerned Maintenance Division-I, Central Zone, SDMC, vide their note dated 8th January, 2013 reported that street / passage was clear at ground level though had been covered with RCC roof at first floor and above by the adjacent buildings; since the street / passage is clear at the ground floor, so the matter does not seem to be a case of encroachment; (iv) that the alleged structure is unauthorized, unauthorized construction on the first floor and second floor in the form of projection over government land has been recorded on 8th February, 2013 and requisite show cause notice issued.

8. I am *prima facie* of the opinion that in encroachment over public land / public street, whether it be on ground level or above ground level would constitute an encroachment and merely because the street / passage on the ground level has not been encroached but the space above it has been

encroached, would not make the encroachment any less an encroachment.

9. The Maintenance Division-I, Central Zone of the respondent No.1 SDMC in the note dated 8th January, 2013 has also only stated that it does not “seem” to be a case of encroachment.

10. It is deemed appropriate to direct the appropriate authorities of the respondent No.1 SDMC to take a final view on the said matter.

11. It is also the argument of the counsel for the respondent No.3 that this petition is a result of political rivalry between the petitioner and the respondent No.3 and that the petitioner has also indulged in unauthorized construction in his property No.34, Hari Nagar Ashram, New Delhi. The petitioner cannot seek mandamus from a Writ Court with respect to unauthorized construction in the property of the respondent No.3, without being ready to face the consequences of unauthorized construction, if any on his property.

12. Accordingly, this petition is disposed of, with the following directions to the respondent No.1 SDMC:

(I) to on or before 31st October, 2015, take a final decision on the aspect of encroachment at the level of first floor and above, over a public street and if decide the same to be an encroachment and

actionable, take appropriate action in accordance with law with respect thereto within two months thereafter;

(II) to on or before 7th October, 2015, inspect the property No.34, Hari Nagar Ashram, New Delhi of the petitioner and if finds any unauthorized construction therein, to initiate action in accordance with law with respect thereto and take it to its logical conclusion within two months thereafter.

13. Needless to state that both, the petitioner as well as the respondent No.3 as well as any other person aggrieved by the action, if any taken by the respondent No.1 SDMC, in pursuance to the directions hereinabove, shall have remedies in accordance with law and which shall be adjudicated without being influenced by any observation herein.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2015

‘gsr/bs’

(corrected & released on 26th September, 2015)