

\$~23

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

+ **W.P.(C) 9212/2016**

ON STREET ORGANIZATION OF INDIAPetitioner

Through: **Mr. Sunil Nair, Advocate.**

versus

UNION OF INDIA & ORS.Respondents

Through: **Mr. Sanjeev Sabarwal, Advocate**
for UOI.

Ms. Mansi Gupta, Advocate for
SDMC.

Mr. Kirti Uppal, Senior Advocate
for R-6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

19.12.2016

%

1. The present writ petition has been filed as a Public Interest Litigation by a registered Trust seeking appropriate directions to the respondents against the alleged unauthorized construction at plot bearing No. 138-B, Jangpura-B, Bhogal, New Delhi. The prayer reads as under:

"a) To issue; writ, order, or direction in the nature of mandamus commanding the Respondents 1 to 5 to enquire the status of the constructions going on at site 138-B, Jungpura-B, Bhogal, near Barapulla Bridge, South Nizamuddin, New Delhi-11014, and thereby direct thereby take steps to stop the construction further and selling the flats constructed which are in final conditions to third parties till the respondent No.6 comply with all the compliance of construction prescribed by the concerned local/state authority in the interest of justice and fair play.

b) To issue; writ, order, or direction in the nature of mandamus commanding the Respondents 1 to 5 to enquire the status of the constructions going on at site B 138-B, Jungpura B, Bhogal, near Barapulla Bridge, South Nizamuddin, New Delhi-11014, and thereby direct a demolition order in respect as per facts and circumstances above said."

2. It is pleaded in the petition that the respondent No. 6 is engaged in the business of construction and is currently constructing a multi-storey building including a basement along with six floors, in total disregard of law. It is alleged that the said construction is being carried out on a Government land under the ownership of respondent No. 2 and is in close proximity of a historical monument i.e. the Bara Pula Bridge near South Nizamuddin. Further, the said construction is being carried out in violation of the guidelines of the respondent No. 3 and without following the provisions of the Delhi Municipal Corporation Act, 1957. It is also contended that any construction carried out within 200 meters of a historical monument is prohibited in view of sections 20A and 20B of the Ancient Monuments and Archaeological Sites and Remains Act, 2010.
3. It is alleged that the construction in question being adjacent to a public road, the extra construction material is dumped nearby, causing grave inconvenience to the public at large in view of the inexplicable air pollution and that despite repeated reminders to the respondent Nos. 1 to 5, no action has been taken till date.
4. Reiterating the allegations made in the writ petition, it is vehemently contended by Mr. Sunil Nair, the learned counsel for the petitioner that it is necessary in public interest to direct demolition of the unauthorized constructions.

5. Ms. Mansi Gupta, learned counsel appearing for the South Delhi Municipal Corporation (SDMC)/respondent No.2, on instructions, has stated that appropriate action has already been taken against the constructions which are carried out without sanction of building plans and against the Building bye-laws 1983/Master Plan of Delhi-2021, under the provisions of the Delhi Municipal Corporation Act, 1957. The learned counsel has also placed on record the notices issued under Section 349 of the Delhi Municipal Corporation Act in respect of the property in question.

6. Shri Kirti Uppal, the learned Senior Advocate appearing on behalf of the respondent No. 6 has brought to our notice that two FIRs bearing No.296/2011 and 389/2016 under Sections 394, 397 read with 34 of the Indian Penal Code and under Section 385 read with 34 of the Indian Penal Code respectively, are pending against the petitioner pursuant to the complaints lodged by the respondent No.6. It is alleged in the said complaints that Mr. Anil Singh Rawat and his associates have been blackmailing the respondent No.6 with a clear intention of extorting money. Pointing out that the writ petition has been filed by the said Anil Singh Rawat claiming to be the authorized signatory of the petitioner Trust, it is submitted by the learned Senior Counsel that the writ petition is not bona fide and is liable to be dismissed in limine. In support of his submission that the writ petition by way of PIL is not maintainable in the light of the conduct of the petitioner, the learned Senior Counsel relied upon the judgments of the Supreme Court titled ***Dattaraj Nathuji Thaware v. State of Maharashtra & Ors.***; **(2005) 1 SCC 590** and ***Neetu v. State of Punjab & Ors.***; **(2007) 10 SCC 614.**

7. After hearing the learned counsel for both the parties and having perused the material available on record, it appears to us that the writ petition is motivated and is camouflaged as a Public Interest Litigation to foster the personal disputes or for monetary gains. In the light of the contents of the complaints lodged by the respondent No.6, the factum of which has not been denied by the petitioner, we are also of the view that the conduct of the petitioner in not disclosing the complete facts and records before this Court is deprecable and disentitles him to seek any relief in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India.

8. However, having regard to the fact that the matter of unauthorized constructions is under active consideration before SDMC and steps are already in progress for demolition of the same, we make it clear that this order shall not preclude SDMC to proceed further in accordance with law.

9. The writ petition is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

DECEMBER 19, 2016

gr//