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

+ **W.P.(C) 9940/2015**

R.K. MODI

..... Petitioner

Through **Mr.Rajender Agarwal, Advocate.**

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through **Mr.Arun Birbal with Mr.Sanjay Singh, Advocates for DDA.**

Mr.Ajay Dignpaul, Advocate for SDMC.

Mr.Lalit Gupta with Mr.Siddharth and Mr.Harsh Singhal, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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20.03.2017

Present writ petition has been filed seeking removal of unauthorised construction/encroachment in the stilt/common area in the residential multistoried building known as tower no.II, Mount Kailash, East of Kailash, New Delhi.

In an Action Taken Report dated 10th March, 2016, SDMC had stated that necessary demolition action had been carried out by the Building Department.

Thereafter, the private respondent no.3 had also filed an affidavit stating that even though the construction was legal, the prayer of the petitioner in writ petition stood satisfied by the

demolition action carried out by SDMC.

Subsequently, the petitioner who appeared in person had stated that the entire unauthorised/illegal construction in the property in question had not been demolished.

Consequently, this Court had directed the Executive Engineer, SDMC to file a more precise affidavit.

On 8th February, 2017, the Executive Engineer, SDMC filed a categorical affidavit stating that the entire unauthorised/illegal construction in the stilt area of the property stood demolished/removed.

Today, learned counsel for the petitioner once again reiterates that the entire unauthorised/illegal construction in the stilt area has not been removed.

However, this Court finds that no affidavit has been filed by the petitioner controverting the aforesaid affidavits. Also if the petitioner's version is accepted, then it would amount to a serious disputed question of fact, which cannot be adjudicated upon in writ proceedings.

Consequently, the present writ petition is disposed of with liberty to the petitioner to file appropriate legal proceedings in accordance with law, in the event he so desires. The rights and contentions of the respondents are left open.

MANMOHAN, J

MARCH 20, 2017
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