

86

\$~38, 39,44 to 49 & 54-61

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

+ W.P.(C) 1807/2018

DEVENDER

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondent

+ W.P.(C) 8993/2018

JAI PARKASH

..... Petitioner

versus

GOVT. OF NCT DELHI AND ORS.

..... Respondent

+ W.P.(C) 3968/2017, CM No. 17449/2017

GEETANSU SHARMA

..... Petitioner

versus

NORTH MUNICIPAL CORPORATION OF DELHI AND ANR

..... Respondent

+ W.P.(C) 4298/2017

MUKHTAR AHMED

..... Petitioner

versus

NORTH MCD & ORS

..... Respondent

+ W.P.(C) 5882/2017

DEEPAK JAISWAL

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondent

- + W.P.(C) 6961/2017, CM No. 28905/2017
JAI PRAKASH
..... Petitioner
versus
SOUTH DELHI MUNICIPAL CORPORATION AND ORS
..... Respondent
- + W.P.(C) 7228/2017, CM Nos. 29958/2017, 35617-35618/2017
RAJIV JAIN, PROP. M/S PRACHI CREATION AND ANR.
..... Petitioner
versus
NORTH DELHI MUNICIPAL CORPORATION AND ORS
..... Respondent
- + W.P.(C) 7422/2017, CM Nos. 30629-30630/2017
NUSRAT ALI
..... Petitioner
versus
SOUTH DELHI MUNICIPAL CORPORATION & ORS
..... Respondent
- + W.P.(C) 3576/2014
MANJEET SINGH BAL
..... Petitioner
versus
UNION OF INDIA & ORS
..... Respondent
- + W.P.(C) 3995/2014, CM No. 8040/2014
PAVIT SINGH
..... Petitioner
versus
SOUTH DELHI MUNICIPAL CORPORATION & ORS.
..... Respondent
- + W.P.(C) 5978/2014
PAARDARSHITA PUBLIC WELFARE FOUNDATION (NGO)
..... Petitioner

versus

COMMISSIONER SOUTH DELHI MUNICIPAL CORPORATION
& ANR

..... Respondent

+ W.P.(C) 6818/2014, CM Nos. 16103/2014, 19139/2014, 7333/2015,
9423/2015, 2018/2016, 4859-4860/2016, 28137-28138/2016,
43537/2016, 46081/2016, 7943/2017, 13161/2017, 46104/2017 &
10583/2018
PAVIT SINGH

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondent

+ W.P.(C) 3016/2015, CM No. 27147/2015
PAARDARSHITA PUBLIC WELFARE FOUNDATION (NGO)

..... Petitioner

versus

COMMISSIONER SOUTH DELHI MUNICIPAL CORPORATION
AND ORS.

..... Respondent

+ W.P.(C) 5601/2015, CM No. 42372/2016
ILLEGAL CONSTRUCTION & WELFARE OF SOCIETY & NGO

..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondent

+ W.P.(C) 11288/2016, CM Nos. 10696/2017 & 3557/2018
PAVIT SINGH

..... Petitioner

versus

THE STATE (NCT OF DELHI) & ORS

..... Respondent

+ W.P.(C) 2370/2017, CM Nos. 3554/2018, 26664/2018, 26729-

26734/2018, 37514/2018 & 38762-38763/2018
PAVIT SINGH

..... Petitioner

versus

THE UNION OF INDIA & ORS

..... Respondents

Present: Mr. Vardhman Kaushik, Adv. with
Mr. Karn Deo Baghel, Mr. Nishant
Gautam & Mr. Dhruv Joshi, Adv. for
petitioners (item No.38)
Mr. Mishal Vij, Adv. for petitioner
(item No.45)
Mr. Sanjay Jain, Sr. Adv. (Ld.
Amicus Curiae) with Mr. Yuvraj
Sharma & Ms. Sneh Suman, Adv. for
(item No.46)
Mr. Anil Kaushik, Adv. with
Mr. Akash Bhardwaj, Adv. for
petitioner (item nos. 55, 57, 60 & 61)
Mr. Harkrishan Das Nijhawan
(Petitioner in person in item Nos.56 &
58)
Mr. Divyanshu Sarswat, Adv. with
Mr. Divakar Upadhyaya, Adv. (item
No.61)
Mr. Sanjoy Ghose, ASC (GNCTD)
with Mr. Shwetank Singh, Adv. (item
No.38 & 39)
Mr. Ajay Digpaul, Adv. for R-4 (item
no. 38)
Mr. Gaurang Kanth, Adv. with
Ms. Biji Rajesh, Adv. for R-1 & 2
(item NO.41)
Mr. Ram Kumar, SC with Mr. Sushil
Kumar, for North DMC (item No.44)
Mr. Kaustubh Anshuraj, Adv. with
Mr. Pankaj Mehta & Mr. Harshit

Agarwal, Adv. for R-3 (item No.45)
Mr. Rajan Tyagi, ASC with
Mr. Deepak Sharma, Adv. for R-1
(item No.46)

Mr. Kirti Uppal, Sr. Adv. with
Mr. Ajjay Arora, SC & Mr. Kapil
Dutta, Adv. for SDMC (item Nos.46
to 49)

Mr. Anuj Aggarwal, ASC with
Mr. Kanishk Rana, Adv. for R-2, 3 &
4 (item No.46)

Mr. Anupam Varma & Mr. Nikhil
Sharma, Adv. for BSES Rajdhani
Power Ltd. (item No. 46)

Mr. Sriharsha Peechara, SC for
SDMC with Ms. Vidhi Jain, Adv. for
SDMC (item No.47)

Ms. Jyoti Taneja, Adv. for NDMC
(item No.48)

Mr. Ajjay Aroraa, SC with
Mr. Kapil Dutta, Adv. for SDMC
(item nos.53 to 61)

Mr. Manjeet Singh, Adv. with
Mr. Rajesh Rawal & Mr. Ajay K.
Tyagi, Adv. for R-7 (item No.54)
Mr. Arjun Pant, Adv. for DDA (item
no.54)

Mr. Ruchir Mishra, Adv. with
Mr. Mukesh K. Tiwari & Mr.
Ramneek Mishra, Adv. for ASI (item
no. 54)

Mr. Diwankar Sethi, Adv. for SDMC
(item nos. 54, 55 & 59)

Mr. Sanjeev Sabharwal, SC for DDA
with Mr. Hem Kumar & Mr. Pritish
Sabharwal, Adv. for DDA (item nos.
55, 57, 59 to 61)

Ms. Niddhi Raman, Adv. for GNCTD

(item No.56)
 Mr. Sanjeev Bhandari, SPP (CBI)
 with Mr. Prateek Kumar, Adv. (item
 nos. 57, 58 & 60)
 Mr. Kirti Uppal, Sr. Adv. with
 Mr. Ajjay Arora, SC & Mr. Kapil
 Dutta, Adv. for SDMC (item Nos.58)
 Mr. G.D. Mishra, SC for R-1/SDMC
 (item No.60)
 Ms. Aastha Dhawan, Adv. with
 Ms. Shaini Bhardwaj, Adv. for R-36
 (item no. 60)
 Mr. Naushad Ahmed Khan, ASC for
 GNCTD (item No. 61)
 Mr. Ayush Choudhary, Adv. with
 Mr. Devanshu Yadav, Adv. for R-13,
 31 and 32 (item No.61)
 SI Ranjit, PS Neb Sarai, SI Rajesh
 Kumar, PS Mehrauli (item nos. 38-
 39, 44-49 & 54-61)

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

20.09.2018

1. All these petitions have been filed either in public interest or otherwise pointing out various illegalities in constructions made not only contrary to the sanctioned plan but also in contravention to the various laws including Municipal Corporation Act 1957, DDA Act 1957, NDMC Act, 1994, Archaeological Sites and Remains Act, 1958 and the Ancient

Monument Preservation Act, 1904, so also encroachment on public land / street etc.

2. It is the case of each of the petitioners before us that the authorities have permitted constructions to be carried out in an illegal manner in various areas throughout the NCT of Delhi in violation of statutory provisions. Even footpaths have been encroached upon and constructions are being made. The matters were seized of, various orders were passed and we are informed that in one proceeding, due to violation of certain orders passed in W.P.(C) No. 6818/2014, Contempt Case (C) No. 90/2015 is pending before us and as directed by this Court in certain cases, a CBI enquiry is also conducted and a report of the CBI has been produced before us in a sealed cover.

3. This Court while hearing the matters at various stages, had taken the assistance of Sh. Sanjay Jain, Sr. Adv./ Id. Amicus Curiae, who has also given certain suggestions in W.P.(C) No. 5882/2017, which are available on record and reports with regard to the suggestions made in the matter of coordination between various authorities for removal of encroachments, assistance of police to be taken in the matter and various issues connected with the difficulties faced while removing the encroachments by the

authorities, so also suggestions with regard to development of a software for implementing the provisions of the DMC Act have been brought on record.

4. We have taken note of all these contentions, but today it has been brought to our notice that the Hon'ble Supreme Court is seized of the issue pertaining to illegal constructions both ongoing and constructions already concluded and in ***Writ Petition(s) (Civil) No(s). 4677/1985 M.C. Mehta v. Union of India & Ors.*** various orders have been passed by the Hon'ble Supreme Court. Two such orders passed on April 24, 2018 and July 18, 2018 have been brought to our notice.

5. In the order passed on April 24, 2018, the issue of unauthorized construction in various colonies has been dealt with by the Hon'ble Supreme Court and with regard to both ongoing and constructions already completed and encroachments in various areas, the following directions have been issued by the Hon'ble Supreme Court:-

"In view of this situation, we direct that there should not be any further construction in unauthorized colonies including on public land beyond the existing building and other bye-laws. Consequently, all building and construction activity in the unauthorized colonies including on public land is stopped with immediate effect beyond the existing building and other bye-

laws applicable to authorized colonies. The concerned authorities will ensure compliance.

It has been submitted by learned Additional Solicitor General (Mr. Nadkarni) that a Task Force is contemplated that will ensure that the orders of this Court and the applicable bye-laws are implemented and encroachments, etc. as well as unauthorized constructions are removed.

The Task Force as suggested by learned Additional Solicitor General (Mr. Nadkarni) may be constituted with immediate effect.

As a first step, the Task Force should remove encroachments on public roads, public streets and pedestrian streets, as mentioned in the immediate action submitted by Mr. Nadkarni in a Revised Note dated 18th April, 2018. The needful should be done within a period of two weeks from today.

We make it clear that the Monitoring Committee may suggest to the Task Force the areas where immediate action is required to be taken. It is stated by learned Additional Solicitor General (Mr. Maninder Singh) that about 27.02 acres of public land has been taken over by the Delhi Development Authority since 1st April, 2018. The details of this have not been mentioned. An affidavit should be filed giving full details of the 27.02 acres of public land that has been taken over by the Delhi Development Authority from unauthorized encroachments.”

6. Similarly, in the order passed on July 18, 2018 in the same case

95

certain submissions made by the learned Attorney General have been taken note of and steps for receiving complaints, development of mobile application and registration of complaints pertaining to unauthorized constructions and encroachments have been indicated in the order. We are informed that based on various directions issued by the Hon'ble Supreme Court as indicated in the aforesaid petition, the Delhi Development Authority vide Office Memorandum No. O-33011/1/2006-DDI dated April 25, 2018 has constituted a Special Task Force consisting of about 15 Members, the objective of the Task Force and the Rules and procedure for functioning of the Task Force has been brought to our notice.

7. That apart, by another Office Memorandum No. O-33011/1/2006-DDI issued by the DDA on May 23, 2018, an action plan for monitoring all ongoing construction activities in Delhi, fixing of responsibilities in case of violation of Master Plan, unified Building Byelaws and issues with regard to illegal constructions have been dealt with and even a plan for receipt of complaint with regard to illegal and unauthorized constructions already made and steps to be taken for their removal have been indicated. Once under the orders passed by the Hon'ble Supreme Court, a Special Task Force has been created and an action plan has also been drawn for the

purpose of preventing any further illegal construction and also for removal of constructions unauthorizedly and illegally undertaken, now the purpose of all these writ petitions filed before us in public interest or otherwise stands fulfilled to a certain extent and further action are to be taken in the matter based on the duties entrusted to the Special Task Force and the action plan drawn under the supervision of the Hon'ble Supreme Court, that being so, it is not appropriate now for us to exercise our jurisdiction in all these matters. Suffice it would be to say that all these petitioners are granted liberty to raise appropriate pleas before the authorities as are notified in the Office Memoranda dated April 25, 2018 and May 23, 2018 and the authorities are directed to proceed in the matter as directed by the Hon'ble Supreme Court and indicated in the above-mentioned Office Memoranda with regard to grievance of each of the petitioners.

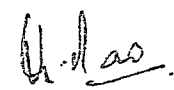
8. That apart, we are informed that in some of the cases, which have been pending before us, on directions issued, the Central Bureau of Investigation has conducted enquiry and has submitted certain preliminary reports. We direct the Registry to return back the same to the CBI. The CBI is granted liberty to proceed with the investigation in accordance with law and thereafter in case of any violation or commission of offence, the CBI

would be at liberty to prosecute the person(s) concerned after following the due process of law. However, while doing so, the Central Bureau of Investigation shall take note of directions, if any issued by the Hon'ble Supreme Court in this regard and thereafter proceed in accordance with law.

9. We are also conscious of the fact that the Contempt Case(C) No. 90/2015 is pending before us on account of violation of certain directions issued and we propose to deal with the same in accordance with law and therefore the Contempt Case(C) No. 90/2015 is kept pending to be dealt with by us in accordance with law.

10. With the aforesaid, we dispose of all the aforesaid matters granting liberty to the petitioners to proceed for making their complaints before the Special Task Force in accordance with the Scheme formulated and the procedure contemplated in the Office Memoranda, as are indicated hereinabove and the Special Task Force to deal with the complaints in accordance with law. All pending applications thereto, are also disposed of, as such.


CHIEF JUSTICE


V. KAMESWAR RAO, J

SEPTEMBER 20, 2018/ak