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

+ W.P.(CRL) 3243/2017 & Crl.M.A.No.19062/2017

P C PATHAK & ORS Petitioners

Represented by: Mr.K.Singhal, Advocate

versus

THE STATE GOVT OF NCT OF DELHI & ORS Respondents

Represented by: Ms.Kamna Vohra, ASC for the State
with Ms.Sarabjeet Kaur, Advocate
and ASI Badlu Ram, PS Janak Puri
Mr.Amit Sinha and Mr.A.S.Singh,
Advocates for R-3

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
17.07.2018

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1. Despite passover, none appears for respondent No.2, though respondent No.2 has been duly served and has appeared on previous date.
2. Aggrieved by the order dated 31st October, 2017 passed by the SDM, Dwarka under Section 133 Cr.P.C. the petitioners prefer the present petition.
3. On a complaint filed by Balbir Singh alleging that petitioner No.1, the owner of property No.A-1B/117C, LIG Flats, Janak Puri has made unauthorized construction at a public passage, the SDM vide order dated 31st October, 2017 noted that the the petitioner No.1 has failed to show any permission granted by the Competent Authority to construct the staircase i.e. unauthorized construction on passage and directed the local body

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i.e. SDMC to conduct a field visit of the site and remove the encroachment/unauthorized construction from public land within one month and submit a compliance report to the SDM.

4. Grievance of the petitioner is that while passing the order impugned the SDM failed to comply with the necessary formalities. No report was asked for the SDMC to find out whether there was any unauthorized construction.

5. In the present petition, an affidavit has been filed by the SDMC according to which an inspection of the site was conducted by the area JE and EE of the SDMC. Though no date of inspection has been given the field staff noticed that the owner of the property had constructed a staircase leading to the roof of the second floor and originally no such staircase was provided by the DDA. According to the affidavit, as per the DDA Rules, an open staircase cum ladder is permitted where no staircase has been provided for approach to the terrace. Further, the flat was very old. Petitioner No.1 had purchased the that in the year 2004 and the staircase was also constructed about 6-7 years back. Since the construction of the staircase open to the terrace which was not provided by the DDA is not an unauthorized construction, no action is warranted.

6. consequently the impugned order dated 31st October, 2017 passed by the SDM is set aside.

MUKTA GUPTA, J.

JULY 17, 2018

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