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

+ W.P.(C) 98/2018 and CM No.423/2018

RAJ KUMAR KASANA Petitioner
Through Mr.A.K.Mishra and
Mr.Amit Kumar, Advs. with petitioner in
person.

versus

SOUTH DELHI MUNICIPAL
CORPORATION Respondent
Through: Mr. Rajan Tyagi, ASC for R-1
Mr.Kirti Uppal, Sr.Adv. with
Mr.Peeyoosh Kalra and Ms.Sona Babbar,
Advs. for R-2 to 9.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
19.04.2018

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1. This writ petition has been filed by Raj Kumar Kasana, resident of 292, Jood Bagh, Kotla Mubarak Pur, New Delhi-110003 contending that there is illegal construction in the property no. 291 (right hand side and left hand side) 292/5, 292/6 and 263 in the village Jood Bagh, Kotla Mubarak Pur, New Delhi-110003; that despite complaints to the South Delhi Municipal Corporation (SDMC), no action has been taken and, therefore, the present writ petition has been filed in public interest litigation seeking the following prayers:-

- “(a) direct the Respondent to take the necessary action for removal of the illegal construction raised by the illegal and unauthorized constructions under the address of 291 (LHS), 291 (RHS), 292/5&6 and 263 Village Jood Bagh Kotla Mubarak Pur New Delhi 110003 and demolish the building and restore the open and vacant status of the land as before such constructions*
- (b) issue a writ of mandamus or any other appropriate writ/order or direction to the Respondent to submit the status report in respect of the illegal construction raised by the owners under the address of 291 (LHS), 291 (RHS), 292/5&6 and 263 Village Jood Bagh Kotla Mubarak Pur New Delhi 110003 as mentioned as under complaints.*
- (c) direct the Respondent to initiate appropriate action against the illegal construction raised by the owners under the address of 291 (LHS), 291 (RHS), 292/5&6 and 263 Village Jood Bagh Kotla Mubarak Pur New Delhi 110003; and*
- (d) pass such other or further order for the preserving the remaining piece of community utility land and prevent further occurrence of any illegal construction on the vacated land in future or as this Hon’ble Court may deem fit and proper.”*

2. Along with the writ petition, the petitioner has enclosed a supporting affidavit wherein he has stated as follows:-

“3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.

4. I, petitioner have /has no personal interest in the litigation and neither myself nor anybody in whom I am petitioner is interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public.

This petition is not guided by self gain or gain of any Person, institution, body and there is no motive other than of public interest in filing this petition.

5. I have done whatsoever inquiry / investigation which was in my power to do, to collect all date / material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition. I further confirm that I have not concealed in the present petition and date / material / information, which may have enabled this court to form an opinion to grant any relief or not. The contents of the affidavit have been explained to me in vernacular language, which I am fully understood.”

3. Pursuant to the averments made in the writ petition by the appellant, this Court issued notice to the respondent on the 5th January, 2018. In response to the service of the notice by us, the private respondent nos.2 to 9 appeared in the matter on 18th April, 2018 when the following order was recorded by us:

“1. Appearing on behalf of the private respondent nos.2 to 9, Mr. Kirti Uppal, ld. Senior Counsel submits that a civil suit has been filed by the petitioner for permanent injunction and damages against the following defendants :

*“1. Gram Sudhar Sabha (Regd.)
Through its Secretary Jood (Jor) Bagh,
Sawa Nagar,
New Delhi-110003*

*2. Shri Shyam Singh, - respondent no.6 herein
S/o Shri Lakhmi*

3. Shri Rajbir (Kallu) - respondent no.2 herein

S/o Shri Richh Pal

*4. Shri Satbir (Sappu) - respondent no.8
herein S/o Shri Richh Pal*

5. Shri Jattan S/o Shri Ram Swaroop

*6. Shri Kishan
S/o Shri Lekha
All R/o Jood (Jor) Bagh, Sawa Nagar,
New Delhi-110003*

*7. SHO
Kotla Mubarakpur Police Station
New Delhi.”*

2. It is pointed out by Mr. Kirti Uppal, ld. Senior Counsel that these private respondents/defendants are all office bearers of the Gram Sudhar Sabha which stands impleaded as defendant no.1 in the said suit.

3. It is further submitted by Mr. Uppal that the present writ petition has been filed mala fide on account of the petitioner having failed to get any interim injunction in the civil litigation.

4. The petitioner, who is present in person, admits that he has filed the said civil suit against the respondents. We find that no disclosure in this regard has been made in the writ petition.

5. The matter was passed over on the first call as ld. counsel for the petitioner was not available. At the second call, the petitioner - Raj Kumar Kasana again submits that his counsel is not available.

6. List on 19th April, 2018.”

4. Today the petitioner is present in person and is represented by his counsel.

5. We have heard the learned counsel for the petitioner. It is to

be noted that apart from these submissions, the respondent nos.2 to 9 have also filed an affidavit in reply enclosing documentary evidence thereof. *Inter alia* our attention is drawn to a site plan of the area of the village Jood Bagh, Kotla Mubarak Pur, New Delhi which indicates the shop no. 292 of the petitioner Raj Kumar Kasana as well. A perusal thereof shows that across the road from the property of the petitioner, is a string of shops including shop No.292/2, 292/3, 292/4 and 48 regarding which the writ petitioner has made no grievance at all even though they are contiguous with the shop no. 292/5 owned by respondent no.6.

6. The private respondent has pointed out that the petitioner is using this public interest litigation not only for maintaining private grievances but as a tool to blackmail the property owners. It has been submitted that these properties have been left out from the writ petition for the reason that the petitioner is not in any civil litigation with the owners thereof.

7. Photographs of the property of the petitioner supporting the allegation of the respondents that the petitioner is continuing to make unauthorized and illegal constructions are also on record. The photographs reflect that the plot No.292, Jood Bagh, Kotla Mubarak Pur, New Delhi-110003, of the petitioner has a basement and five floors over that.

8. A copy of the plaint in the suit CS(OS) No.2491/2014 (which has been transferred to Saket Court) titled as ***Raj Kumar Kasana vs. Gram Sudhar Sabha (Regd.) and others*** has been filed. In this suit, the petitioner has sought the following prayers:-

“a) Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendant No.1 to 6 or his employees, agents, assignees, representatives and/or any person or body claiming through them, as successor or otherwise, restraining them from encroaching or construction or altering or entering or trespassing in the Suit property.

b) Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendant No.1 to 6 or his employees, agents, assignees, representatives and/or any person or body claiming through them, as successor or otherwise, restraining them from obstructing in any egress or ingress of the Plaintiff with respect to the Suit property by creating any nuisance and hindrance of any kind or by any mean, in the use and enjoyment of the Suit property by the Plaintiff.

c) Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendant No.1 to 6 or his employees, agents, assignees, representatives and/or any person or body claiming through them, as successor or otherwise, restraining them from creating any third party interest and/or transferring the possession of the Suit property to any person or in any manner, except the Plaintiff.

d) Pass a decree, directing the Defendant No.1 to 6 to restore the Suit property by constructing the left and back side walls of the Suit property;

e) Pass a decree of damages for a sum of Rs.5 Lacs in favour of the Plaintiff and against the Defendant No.1 to 6.

f) Award the costs of the present Suit to the Plaintiff and against the Defendant No.1 to 6.

g) Pass any such other order or order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of the Plaintiff and against the Defendants.”

9. Copy of orders dated 6th July, 2012 and 12th May, 2016 passed in CS(OS) 1764/2014 have been placed in support of the submission that the petitioner is using civil litigation as tool for compelling defendant to make payments.

10. A perusal of the above plaint as well as the order dated 18th April, 2018 reflects that three of the defendants in this suit have been arrayed as respondent nos. 2, 3, 6 and 8 in the present writ petition. The petitioner is claiming entitlement of the valuable immovable property against them.

11. It is to be noted that respondent Nos.2 to 9 have asserted that the petitioner has been compelling them to concede the prayer made in the suit and that, in exchange, he would withdraw the present writ petition.

12. We propose to dispose of this writ petition on preliminary grounds, and we are not touching on the merits of the assertion made by the respondents.

13. It is trite that a petitioner who files a public interest litigation must approach the court with clean hands. The writ petition filed in public interest when it seeks to make a complaint against private respondents, must necessarily disclose the pendency of any other litigation in which the private parties are involved. In the present case, the petitioner is in civil litigation so far as respondent Nos.2, 8 & 9 are concerned. This litigation relates to immovable property and the petitioner has *inter alia* made a prayer for possession of immovable property therein. According to the respondents, the present writ petition has been filed for the reason that the writ

petitioner failed to secure any relief against the respondents in the suit.

14. The present writ petition is accompanied by an affidavit where the petitioner has stated that the “petitioner is not guided by self-gain or gain of any person and there is no motive other than of filing public interest which filing writ petition”. The writ petitioner also states that he has “no personal interest with the litigation”.

15. In the writ petition, the petitioner makes no disclosure of the pendency of the suit filed against the private respondents. The petitioner has also selectively opted to file the writ petition only in respect of the property in which respondent Nos.2, 8 & 9 (defendant in the suit) have interest. He has opted deliberately to keep out other properties which are located and constructed contiguous to the properties of these respondents. The intent of the petitioner in filing this writ petition, which is to compel the private respondents to concede his civil litigation, is writ large in his conduct. The writ petitioner was required to make a fair and complete disclosure of the fact that there was litigation with the other side.

16. Interestingly while the petitioner makes a grievance in this writ petition that the private respondents have made illegal and unauthorized construction, he fails to disclose the illegality of his own construction. The writ petition is, therefore, completely an abuse of the process of law as well as against the spirit of public interest litigation. Valuable judicial time has been expended on this writ petition.

17. It is well settled that failure to make a complete disclosure and the attempt to mislead the court would invite proceedings for criminal contempt under the Contempt of Court Act.

18. The writ petition is dismissed with costs quantified at Rs.25,000/- be payable to the respondent No.1-SDMC and Rs.32,000/- collectively to respondent Nos.2 to 9 @ Rs.4,000/- each. The writ petitioner shall also deposit a sum of Rs. 25,000/- as costs with the Delhi High Court Legal Service Committee. The costs shall be paid within a period of two weeks from today. Receipt of the payment shall be placed on record. In case, the receipts are not produced, the Registrar (Writs) shall place the matter before this court.

19. Notice is also issued to the petitioner to show cause as to why criminal contempt proceedings be not drawn against him. The petitioner is present in the court and accepts the same. The petitioner shall file reply to the show cause notice within six weeks. The Registry shall draw up a paperbook and register the criminal contempt petition which shall be placed before the appropriate Division Bench as per roster.

20. List the Criminal Contempt Petition on 5th July, 2018.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 19, 2018

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