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

+ W.P.(C) No. 2509/2018 & CM APPL. No. 10410/2018, 1551/2019

MS. NIRMALA KUMARI

..... Petitioner

Through: Mr. Ashish Nischal & Mr. Arun
Nischal, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Mr. Sanjeev Sagar, Standing Counsel
for DDA with Ms. Nazia Parveen,
Adv. for R2/DDA.
Ms. Richa Dhawan, ASC for SDMC.
Mr. A.K. Singh, Adv. for R4 to 6.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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08.02.2019

The petitioner is aggrieved by alleged unauthorised construction at flat No. B-11/8171 (First Floor), B-11/8173 (Second Floor) and B-11/8175 (Third Floor), Vasant Kunj, New Delhi. Status report filed by respondent No. 1/SDMC states that the subject properties have been booked for encroachment and unauthorised construction ; that partial action has been taken; and that further action against the subject properties is also planned.

Learned counsel appearing for respondents Nos. 4 to 6 vociferously argues that the petition is not *bona-fidé* ; that the said respondents have filed a civil suit against the petitioner seeking reliefs of permanent and mandatory

injunction in relation the same alleged unauthorised construction that is the subject matter of the present petition ; and that the suit is pending before the concerned civil court.

Be that as it may, it is evident that the petitioner is not satisfied with the action taken by respondent No.1/SDMC, though the subject properties are stated to have been booked for unauthorised construction and encroachment. It is also clear that respondents Nos. 4 to 6 are raising serious factual disputes with the petitioner in relation to the alleged unauthorised construction.

In the context of the grievance made in the petition, it transpires that in compliance of orders of the Supreme Court in Writ Petition (Civil) No. 4677/1985 titled ***M.C. Mehta vs. Union of India & Ors***, vide Office Memorandum dated 25.04.2018 the Delhi Development Authority (DDA) has constituted a Special Task Force to comprehensively address violations of the provisions of the Unified Building Bye Laws and Master Plan for Delhi-2021 relating *inter alia* to construction activity and land-use in Delhi. Vide another Office Memorandum dated 23.05.2018 the DDA has also formulated an action plan for monitoring construction activities in Delhi and for fixing responsibility in case of violations of the Unified Building Bye Laws and the Master Plan.

Vide order dated 20.09.2018 made in Writ Petition (Civil) No. 1807/2018 titled ***Devender vs. Government of NCT of Delhi & Ors***. (and connected matters) by the Division Bench of this Court headed by Hon'ble the Chief Justice, the Court has held that in view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise jurisdiction in matters relating to

unauthorised construction; and has disposed of such matters granting liberty to the petitioners to raise their grievances before the Special Task Force so constituted, in accordance with the scheme and procedure formulated under the aforesaid two Office Memorandums.

By order dated 24.09.2018 made in a subsequent matter, being Writ Petition (Civil) No. 9938/2018 titled ***Suresh Chand Goel vs. East Delhi Municipal Corporation***, the Division Bench has followed its earlier order dated 20.09.2018 in Writ Petition (Civil) No. 1807/2018, similarly disposing of the writ petition, granting liberty to the petitioner to file a complaint before the Special Task Force. I am informed that the Division Bench has subsequently also made similar orders in other matters.

To be sure, the petitions that were subject matter of the aforesaid proceedings before the Division Bench were petitions filed *in public interest and otherwise*; and related to contravention *not only of sanctioned building plans but also of various laws*, including the Delhi Municipal Corporation Act, 1957, the Delhi Development Authority Act, 1957, the New Delhi Municipal Council Act, 1994, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Preservation Act, 1904 as also encroachment on public land etc.

Ergo, the binding observation of the Division Bench that in view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise jurisdiction in such matters, *must not* in my view, be restricted *only* to matters relating to unauthorised construction but *must also apply to all other matters* which the Special Task Force is mandated to deal with, including misuse and encroachment. In many instances, it may well be that there are multiple

violations of Building Bye Laws and Master Plan in the same property, say unauthorised construction, encroachment as well as misuser of premises; in which case the same agency must be left to deal with such connected issues. I should think it is for this reason that the objectives of the Special Task Force as enunciated in Office Memorandum dated 25th April 2018 include *inter-alia* matters relating to encroachment, unauthorised construction and use violations.

The aforesaid Special Task Force is a 15-member outfit with representation of the highest level from all concerned municipal, civic, revenue and law enforcement agencies of Delhi; and is therefore ideally suited for multi-agency, coordinated action against the rampant malaise of breach of various laws, rules and regulations governing building construction and land-use in Delhi.

I am informed that as of date the Special Task Force even has its own dedicated website and mobile application to facilitate making of complaints, thereby making it even easier for parties to take their grievances before the said agency.

Accordingly, I am of the view that the correct course of action in this matter also would be to dispose of the present writ petition, giving liberty to the petitioner to approach the Special Task Force in accordance with the policy and procedure laid down for the purpose in DDA's Office Memorandums dated 25.04.2018 and 23.05.2018 and avail the said alternate, efficacious remedy.

Considering that in this case there are allegations and counter-allegations in relation to unauthorised construction and encroachment in the subject properties, both the petitioner as well as respondents Nos. 4 to 6

shall be at liberty to approach Special Task Force as above.

This writ petition is disposed of in the above terms.

Pending applications, if any, are also disposed of.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 08, 2019/uj