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

+ **W.P.(C) 7524/2016**

ALOK GUPTA AND ORS

..... Petitioners

Through Mr Vinod Malhotra, Mr Rahul Sachdeva,
advocates.

versus

STATE OF NCT DELHI AND ORS

..... Respondents

Through Mr Saumya Tandon, Advocate for R1,2,3
& ACP with Mr Resham Singh, AE, Flood
Irrigation Department.

Ms Mansi Gupta, Advocate for
NMCD/R4.

Mr Balendu Shakhar, Mr Sriansh Prahash, Mr Raj
Kumar Maurya, Advocates with Mr Dinesh Jindal,
LO for DPCC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 26.03.2019

1. The petitioner has filed the present petition, *inter alia*, praying that the respondents be restrained from raising an unauthorized wall in front of the shops of the petitioners.
2. Respondent no.3 (Flood and Irrigation Department) has filed a counter affidavit, enclosing therewith the site plan and the proposed wall. It is seen that the wall is proposed to be raised on one side of the service road. The wall would then separate the PWD main road and the service road on which the shops of the petitioners are situated. It is affirmed on behalf of

respondent no.4 (North Delhi Municipal Corporation) that the land in question on which the wall is being raised, belongs to PWD. The respondents affirm that no NOC would be required from the North Delhi Municipal Corporation as the decision to grant the same would rest with respondent no.2 (Public Works Department). It is also clear from the counter affidavit of respondent no.3 that the NOC has been issued for the construction of the said wall. In view of the above, the contention that the wall is unauthorized as alleged by the petitioner is erroneous and the said contention cannot be accepted.

3. The learned counsel appearing for the petitioner further submitted that notwithstanding that the construction of the wall may be authorized, the same requires to be interdicted as it is in violation of the fundamental rights of the petitioner for carrying on their livelihood. He has relied on the decision of a Single Judge of the Patna High Court in ***Harizan Naw Avam Jahaj Tatha Sadak Yatayat Swavalambi Sahakari Samiti Ltd v. State of Bihar and Others : (2002) 3 PLJR 523***. The aforesaid contention is also bereft of any merit. It is clear from the affidavits that the petitioners are not interdicted in any manner from carrying on their business from the shops in question. As is apparent from the site plan, the shops are located on a road which is a wide road of 4.5 metres and it is not disputed that access to the said road would be provided. It appears that the petitioners essentially want to use the slip road parallel to the main road, presumably for using the same as car parking.

4. Clearly, the petitioners have no right to insist upon the same. The decision referred to in ***Harizan Naw Avam Jahaj Tatha Sadak Yatayat Swavalambi Sahakari Samiti Ltd. (supra)***, referred to by the counsel

appearing for the petitioners is of no application at all. In that case, the District Magistrate had interdicted the Ferry Services and, therefore, the persons involved in such Ferry Services approached the court complaining of loss of livelihood. Plainly, the facts in this case are materially different and as noticed above, the petitioners are not interdicted in carrying on their business from the shops in question, in any manner.

5. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

MARCH 26, 2019

pkv