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

+ W.P.(C) 4336/2017

NAND RAM

..... Petitioner

versus

SOUTH DELHI MUNICIPAL  
CORPORATION & ORS.

..... Respondents

AND

+ W.P.(C) 7181/2017

NAND RAM

..... Petitioner

versus

SOUTH DELHI MUNICIPAL  
CORPORATION & ANR.

..... Respondents

Present: Ms.A.Maitree and Ms.Radhika Chandrashekhar, Advs. for the  
petitioner- Sh.Nand Ram.  
Mr.Ajjay Aroraa and Mr.Kapil Dutta, Advs. for R-1/SDMC.  
Mr.Sanjeev Anand, Ms.Renu Kuher, and Ms.Shivangi, Advs.  
for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

**13.01.2020**

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1. The facts show that essentially there is a civil dispute pending between the petitioner and his brother. The writ petitions being W.P.(C) Nos.4336/2017 and 7181/2017, which are listed today are nothing but an offshoot of the said civil dispute pending between the petitioner and his brother(private respondent).

W.P.(C) No.4336/2017

2. This writ petition is filed seeking the following relief:

“(i) Direct the respondent/SDMC to contemplate further actions including "restriction of uses of buildings" under section

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been compared and the digital data is as per  
the physical file and no page is missing.

W.P.(C) 4336 & 7181/2017

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347 of the DMC Act in respect of semi-finished structure/premises raised on Plot No.153, New Manglapuri, M.G. Road, Mehrauli, Delhi in continuation of the revocation of the building plan under section 338 of the DMC Act by the SDMC, vide order No.D/314/DC/SOUTH ZONE/SDMC/2017 dated 03.05.2017.”

3. The facts as stated are that the petitioner and his family are residing in the immediate neighbourhood of the illegal construction raised by respondent No.3/private respondent. It is claimed that the said respondent No.3 has succeeded in raising semi-furnished five storey illegal and unauthorised construction on a plot measuring 125 sq.yds. bearing No.153, New Manglapuri, M.G.Road, Mehrauli, New Delhi. It is further pointed out that the petitioner has filed various writ petitions seeking necessary direction against respondent No.1/SDMC officials. The details of these writ petitions are as follows:

- i) W.P.(C) 1716/2017 which was disposed of on 27.02.2017 noting the stand of the corporation that show cause notice has already been issued to respondent No.3/private respondent and action would be initiated;
- ii) W.P.(C) 2013/2017 which was disposed of on 06.03.2017 noting that the actions initiated on the basis of the show cause notice under section 338 of the DMC Act shall be concluded and the issue of illegal construction shall also be addressed;
- iii) W.P.(C) 3508/2015 which was disposed of on 06.03.2017, relates to the same issue; and
- iv) W.P.(C) 3284/2017 which was dismissed as withdrawn vide order dated 14.04.2017 also pertains to the same issue.

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4. It is the grievance of the petitioner that despite the above orders, respondent No.1/SDMC has not completed any action at the sites and has given a free hand to respondent No.3/private respondent to defeat the process of law. It is claimed that under section 347 of the DMC Act, respondent No.1/SDMC is under statutory obligation to put a restriction on the use of the building immediately.

W.P.(C) No.7181/2017

5. This writ petition is filed seeking the following reliefs:

“(i) To set aside/quash the order dated 14.07.2017 passed by ATMCD in Appeal No. 333/ATMCD/17 titled as Kanwar Singh Vs. SDMC;

(ii) To resolve the cancellation/revocation of building Plan under Section 338 of the DMC Act vide order No.D/314/DC/South Zone/SDMC/2017 dated 03.05.2017 in respect of plot No.153, New Manglapuri, M.G. Road, Mehrauli, New Delhi.

6. The narration of facts is virtually identical to the facts stated in W.P.(C) No.4336/2017. However, it appears that sanctioned building plan of respondent No.2, namely, private respondent was revoked/cancelled. Subsequent to which the private respondent filed an appeal before the learned ATMCD. The petitioner also moved an application for impleadment under Order 1 Rule 10 CPC through which the petitioner was permitted to raise arguments regarding the contested issues. The admitted fact is that the learned ATMCD vide order dated 14.07.2017 has allowed the appeal of the private respondent against the revocation/cancellation order dated 03.05.2017. Hence, the present writ petition stating that order of the learned

ATMCD is liable to be *set aside*.

COMMON ORDER

7. I may note that the petitioner had also filed a suit for partition against his two brothers including the private respondent Sh.Kanwar Singh for various properties one of which is subject matter of the present writ petition, namely, plot No.153, New Manglapuri, M.G. Road, Mehrauli, New Delhi. A Co-ordinate Bench of this court in CS(OS) 1442/2015, titled 'Sh.Nand Ram v. Kanwar Singh & Ors.' dismissed the suit noting that the property in Manglapuri including the writ property has already been partitioned and the petitioner has received his 1/3<sup>rd</sup> share in the same vide order dated 10.10.2019.

8. I may also note that respondent No.1/SDMC has filed a status report on 17.01.2018. In the said status report, it is stated that the owner has applied for regularisation of existing structure with an undertaking that he will demolish the non-compoundable deviations.

9. Factually what follows is that, the present series of writ petitions are nothing but a civil dispute pending between the petitioner and the private respondent. Repeatedly writ petitions are being filed claiming that the private respondent(brother of the petitioner) is carrying out illegal and unauthorised construction. Respondent No.1/SDMC had revoked the sanctioned building plan of the private respondent on 03.05.2017. An appeal was filed against the same before the learned ATMCD. The learned ATMCD has vide order dated 14.07.2017 allowed the appeal and noted as follows:

“22. As far as another contention of the learned counsel for applicant that construction raised by appellant is beyond the

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building plan filed by the appellant under Saral Scheme acknowledged by the respondent, in my view since no such ground has been taken by the respondent corporation while revoking the acknowledgment, hence same cannot, be raised in appeal. However, it is clarified that respondent corporation is always at liberty to take demolition action as per provisions of DMC Act if there is construction which is excess or in deviations of the sanctioned building plan granted by the respondent corporation, hence, no ground is made out to dismissed the appeal on this ground."

10. Hence, the learned ATMCD has given liberty to respondent No.1/SDMC to take steps as per law in case there is excess or deviations in the sanctioned building plan granted by respondent No.1/SDMC.

11. Even otherwise, I may note that an appeal lies against the order of the learned ATMCD under section 347(C) of the DMC Act in terms of the judgment of the Supreme Court in the case of *Amrik Singh Lyallpuri v. Union of India & Ors., 2011 6 SCC 535*. It is not for this court to adjudicate the impugned order of the learned ATMCD dated 14.07.2017 as is sought to be done by the petitioner.

12. In any case, it is clear that these writ petitions are nothing but an offshoot of the civil dispute pending between the petitioner and his brother-private respondent. In my opinion, it would not be appropriate for this court to pass any further orders.

13. These writ petitions are disposed of with the direction to respondent No.1/SDMC to take steps as per law, in case, there is any illegal/unauthorised construction, or illegal use of the property by the private respondent.

14. I also direct respondent No.1/SDMC to take steps as per law, in case,

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any such illegal/unauthorised construction or misuse of the premises is done by the petitioner.

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**JAYANT NATH, J.**

**JANUARY 13, 2020/v**