

\$~25

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

%

Date of Decision: 04th October, 2021

+ W.P.(C) 11258/2021
ANIS KHAN

..... Petitioner

Through: Mr.Sitab Ali Chuadhary, Mr.Mahtab
Ali & Mr.Sadiq, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Mr.Sunil Goyal, Advocate for SDMC.
Mr. Sameer Vashisht, Additional
Standing Counsel, GNCTD with
Ms.Urvi Kapoor and Ms.Sanjana
Nangia, Advocates for R-3&4.
Mr.J.K. Jain, Advocate for R-5.
SI Mahavir Singh, PS New Friends
Colony.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

Proceedings have been conducted through video conferencing.

CM APPL. 34665/2021 (exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 11258/2021 and CM APPL. 34664/2021 (stay)

1. Present Public Interest Litigation has been preferred seeking the following reliefs:

“(a) A Writ of Certiorari calling for the records of the case for perusal;

W.P.(C) 11258/2021

Page 1 of 4

(b) A writ, order, directions in the nature of mandamus directing the Respondent SDMC to demolish and/or seal the said illegal & unauthorized construction carried out by the Respondent No.5 & his associates at land measuring 2150 sq. yards out of Khasra No. 222 and 269/1, Khewat No. 27, Khatauni No. 164 area of Khijrabad, known as Ward No. 7, Zakir Nagar, Khijrabad, New Delhi;

(c) A writ, order, directions in the nature of mandamus forthwith staying the unauthorized construction going on & carried on by the Respondent No. 5 and his associates, at the land measuring 2150 sq. yards out of Khasra No. 222 & 269/1, Khewat No. 27, Khatauni No. 164 area of Khijrabad, known as Ward No. 7, Zakir Nagar, Khijrabad, New Delhi;

(d) A writ, order, directions in the nature of mandamus directing the Respondent Nos. 1-4 to lodge an FIR against the Respondent No. 5 and their associates for breaking the seal of the property in question and further the Respondent Nos. 1-4 to investigate the matter as per law against those who break the seal and doing illegal unauthorized construction at land measuring 2150 sq. yards out of Khasra No. 222 and 269/1, Khewat No. 27, Khatauni No. 164 area of Khijrabad, known as Ward No. 7, Zakir Nagar, Khijrabad, New Delhi, in violation of building bye-laws and breaking the seal thereof;

(e) A Writ of mandamus commanding the Respondents to pay the cost of the petition to the petitioner;

f) Any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. We have heard learned counsel appearing on behalf of the Petitioner and learned counsel appearing on behalf of Respondent No. 5.

3. Present writ petition has been filed seeking directions to SDMC to demolish and/or seal the alleged illegal and unauthorised construction carried out by Respondent No. 5 and his associates at land measuring 2150 sq. yards out of Khasra No. 222 and 269/1, Khewat No. 27, Khatauni

No.164, Zakir Nagar, Khijrabad, New Delhi, as also to direct Respondents No. 1 to 4 to lodge an FIR against Respondent No. 5 for breaking the seal of the property in question.

4. We have carefully perused the writ petition and find that the averments/allegations of alleged illegal and unauthorised construction are completely vague and without any material particulars. Petitioner has made no efforts to place on record the map/sanctioned plan of the building/area in question nor are there any documents such as the report of the Architect etc. to substantiate the plea raised.

5. There can be no doubt that the nature of construction of a building or its conformity or otherwise with the sanctioned plans, cannot be adjudicated by this Court on the basis of photographs alone, which have been placed on record as Annexure P-2 to the memo of this writ petition. Cogent evidence is required to be led in appropriate proceedings to prove and establish that the building is without and/or in violation of the sanctioned plans or that the construction is unauthorised. The bald and the vague pleadings cannot lead this Court to conclude in favour of the Petitioner.

6. We may also take note of the contention of learned counsel appearing on behalf of Respondent No. 5, on advance copy of the writ petition, made on instructions that the construction in question is in conformity with the sanctioned plan duly approved by the Competent Authority.

7. While we take the statement of learned counsel for Respondent No. 5 on record, we are of the view that highly disputed questions of fact are involved in the present petition, which would require evidence based on documents, such as, the sanctioned plan etc. and cannot be gone into in a writ petition.

8. In view of the aforesaid, we do not see any reason to entertain the present Petition. The same is accordingly dismissed with costs of Rs.10,000/- to be deposited by the Petitioner with the Delhi State Legal Service Authority within a period of six weeks from today. The aforesaid amount shall be utilized for the programme 'Access to Justice'.

9. A copy of this order be sent forthwith to the Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi.

10. Petitioner is, however, at liberty to take recourse to remedies available to him, in accordance with law, in an appropriate Forum.

11. With these observations, writ petition along with pending application is disposed of.

CHIEF JUSTICE

JYOTI SINGH, J

OCTOBER 04, 2021/SU

भारतमेव जयते