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

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Date of Decision: 13th December, 2021

+ W.P.(C) 14126/2021 & CM APPL. 44597/2021

NISHA ARA (COORDINATOR, RIGHT ACTION FOUNDATION
INDIA TRUST) Petitioner

Through: Counsel (Appearance not given).

versus

SOUTH DELHI MUNICIPAL
CORPORATION & ORS.

..... Respondents

Through: Mr. Vijay Joshi, Standing Counsel
for R-1/SDMC.

Mr. Gautam Narayan, Additional Solicitor
General GNCTD with Ms. Ritika Vohra and
Ms. Nitika Pancholi, Advocates for Delhi Police.

Mr. Ved Prakash, Sub-Inspector, P.S. Sarita
Vihar, New Delhi.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

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

“a) Issue appropriate writ(s), order(s) or direction(s) in the nature of a writ of mandamus thereby directing the respondent No.1, 2 & 5 to immediately take appropriate steps in accordance with law to stop and demolish the illegal and unauthorized construction work being carried out

by the respondent No.3 & 4 and to prevent further unauthorized construction by the respondent No.3 & 4 on the property herein above mentioned;

b) Pass any other and further order as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. We have heard learned counsel appearing on behalf of the Petitioner and looked into the facts and circumstances of the case. It is evident that the Petitioner seeks a declaration from this Court that the property in question is illegally constructed by Respondents No.3 and 4 as well as a direction for its demolition.

3. It is a settled law that disputed questions of fact as well as legality or otherwise of any construction, i.e. whether the building is constructed in accordance with sanctioned plans, etc. cannot be adjudicated upon in a writ jurisdiction. It goes without saying that determination of the legality of construction of a building would require evidence, both oral and documentary, including appreciation of the sanction plans, etc. and writ petition is not the appropriate remedy to seek a declaration that the construction of the building is unauthorised. In any event, the petitioner is not remediless and can resort to appropriate remedies for the said reliefs.

4. We, therefore, see no reason to entertain this writ petition and allow the reliefs sought for. Nonetheless, we direct the Respondents to look into the grievances ventilated in the petition and take a considered decision, in accordance with law. Before taking any decision, the concerned Respondents shall give an opportunity of hearing to the owners/occupiers of the property in question.

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

CHIEF JUSTICE

JYOTI SINGH, J

DECEMBER 13, 2021/sn

