

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5821/2022, CM APPL. 17480/2022, CM APPL. 17481/2022**



Date of Decision 11/04/2022

IN THE MATTER OF:

ASHUTOSH DIWEDI

..... Petitioner

Through: Mr. Dushyant Yadav and Mr. Jayant
Sharma, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & OR Respondents

Through: Mr. Umesh K. Burnwal, ASC for
respondent No.1.
Mr. Divyam Nandrajog, Panel
Counsel for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

Manoj Kumar Ohri, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner seeking the following prayers:-

“a. Issue a Writ of Mandamus or a writ of any other nature or direction in like nature the Respondent No. 1 forthwith remove/demolish the unauthorized construction at property No. R-180, Vani Vihar, Uttam Nagar, New Delhi- 110059.

b. Issue a writ of mandamus or a writ of any other nature or any other direction/order directing the Respondent No. 2 to provide the police force for removal of unauthorized construction at property no. R-180, Vani Vihar, Uttam Nagar, New Delhi- 110059.

c. Pass any of the order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The petitioner has claimed himself to be a resident of House No. Q-



174, Q-Block, Vikas Nagar, Uttam Nagar, New Delhi-110059. It

admitted by the learned counsel for the petitioner that neither the petitioner's easement rights nor ingress/egress are affected by any alleged construction activity carried out by respondent No. 3 in the subject property.

3. Learned counsels appearing for respondent Nos. 1 and 2 have taken a preliminary objection to the maintainability of the writ petition, alleging that the same is a motivated one.

4. Learned ASC for respondent No.1, on advance instructions, submits that the petitioner is a habitual complainant, inasmuch as, six to seven complaints have been filed by him with respect to other properties. He, on instructions, further submits that the petitioner is in no way affected by the alleged unauthorized construction.

5. On a specific query, learned counsel for the petitioner concedes that the petitioner has filed other writ petitions however, he is unable to give details of the same.

6. I have heard learned counsels for the parties as well as perused the material placed on record.

7. There is no gainsaying that a petition under Article 226 of the Constitution of India lies only for enforcement of a fundamental or legal right.

8. Notably, a Co-ordinate Bench of this Court in Rajendra Motwani & Anr. v. MCD & Ors. reported as **2017 SCC OnLine Del 11050** has held as follows:-

“10. ...that an illegal construction in itself does not give any legal right to a neighbor. An illegal construction always no doubt gives locus standi to the local municipal authorities to seek removal of the illegal construction, but, a right of a neighbor only arises if the legal rights of light and air or any other legal right is affected by virtue of the illegal construction of the neighbour...”

9. Recently, in Pawan Kumar Saraswat v. North Delhi Municipal



Co-ordinate Bench of this Court took note of a petition filed under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for relief such as the one sought in the present petition. The learned Judge observed as follows:-

“15. Though unauthorized illegal construction, which is becoming rampant, cannot be countenanced however, I am of the view that a party that does not approach the Court with clean hands and files a petition with ulterior motives should not be permitted to invoke the extra ordinary Writ jurisdiction of this court. I am of the view that the petition deserves to be dismissed.”

10. In the present case, the petitioner admittedly does not have any connection with the property in question. He has further failed to show as to which fundamental or legal right of his is being affected by any alleged construction activity carried out in the subject property. It is quite apparent that the present petition has not been filed for enforcement of any fundamental or legal right, but rather for some motivated reasons.

11. In this backdrop, this Court is not inclined to exercise its power under Article 226 of the Constitution of India to grant the relief sought by the petitioner.

12. Accordingly, the present petition is dismissed, with a cost of Rs.5,000/- to be deposited by the petitioner with the *Delhi State Legal Services Authority* within a period of four weeks from today.

13. Proof evidencing receipt of deposit shall be filed with the Registry of this Court, failing which the Registry shall list the matter before this Court.

14. A copy of this order be communicated electronically to Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi for information.

15. Be that as it may, respondent No.1 shall take necessary action in case any unauthorized construction activity takes place, or has taken place, in the



subject property, except in accordance with a sanctioned building plan, any. In the event of any grievance arising hereafter, the petitioner shall be at liberty to approach the Special Task Force constituted by DDA pursuant to directions of the Supreme Court.

16. With the above directions, the petition is disposed of. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 11, 2022

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