

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

Date of Decision: 04.05.2022

+ **W.P.(C) 2367/2020 & CM. 8283/2020**

IN THE MATTER OF:

SACHIN SINGH

..... Petitioner

Through: None.

versus

SOUTH DELHI MUNICIPAL
CORPORATION AND ANR.

..... Respondents

Through: Ms.Richa Dhawan, Standing Counsel,
SDMC.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

(JUDGMENT)

MANOJ KUMAR OHRI, J. (ORAL)

1. Present none for the petitioner.
2. It is noted that even on the last date of hearing, the petitioner remained unrepresented.
3. Be that as it may, a plain reading of the case records would show that the present petition has been filed under Articles 226 and 227 of the Constitution of India on behalf of the petitioner seeking direction to respondent No.1/SDMC to demolish the illegal and unauthorised construction stated to be carried out at property bearing *No.160 A/2, Govind*

Puri, Kalkaji, New Delhi-110019 (hereinafter, referred to as the '*subject property*') by respondent No.2. The petitioner has also sought a direction restraining respondent No.1/SDMC from permitting respondent No.2 to make further illegal and unauthorised construction over the subject property, as well as restraining respondent No.2 or any other person from putting the illegal and unauthorised construction into use, in any manner whatsoever.

4. The petitioner has claimed that he used to visit the locality near the subject property for work purpose. It is stated that while passing by the suit property during one such visit, he came across a heap of building material, which was allegedly placed on the road/footpath in front of the subject property thereby obstructing it. It is further stated that the building where alleged construction is going on is 60-70 years old, and the construction is being carried out by respondent No.2 without getting a sanctioned building plan from respondent No.1/SDMC.

5. Ms. Richa Dhawan, learned Standing Counsel appearing for respondent No.1/SDMC, has taken a preliminary objection to the maintainability of the writ petition, alleging that the same is a motivated one.

6. 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.

7. 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... ”

8. Recently, in Pawan Kumar Saraswat v. North Delhi Municipal Corporation and Others reported as **2021 SCC OnLine Del 4530**, another 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.”

9. In the present case, it is apparent that the petitioner neither has any connection with the property in question, nor is an immediate neighbour of residents thereof. It is an admitted case that neither the petitioner’s easement rights nor ingress/egress are affected by any alleged construction activity carried out by respondent No.2 in the subject property.

10. Inasmuch as the petitioner has 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 appears 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. Besides, the petitioner has not been vigilant in pursuing the reliefs sought. Accordingly, the petition is dismissed for non-prosecution.

13. Needless to state, respondent No.1/SDMC shall take necessary action in case unauthorized construction activity takes place, or has taken place, in the subject property, except in accordance with a sanctioned building plan, if 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.

14. With the above directions, the petition is disposed of. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

MAY 4, 2022/v