

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

+ **W.P.(C) 6052/2022 & CM APPL. 18160/2022**

Date of Decision 13/04/2022

IN THE MATTER OF:

ARMAN KHAN

..... Petitioner

Through: Mr. Danish Saifi and Ms. Mausumi Mishra, Advocates

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS..... Respondents

Through: Mr. Tushar Sannu, Standing Counsel for SDMC

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 directions against the respondents in respect of the illegal and unauthorised construction stated to be carried out at property bearing *No. T4 and T5, Main Road, Pul Prahladpur, New Delhi* (hereinafter, referred to as the '*subject property*').

2. The petitioner's grievance is that unauthorised construction is being carried out at the subject property by a builder named *Nafis* at the behest of the owner thereof, which is hazardous to the lives of residents of the area. It is alleged that for the purpose of construction at the subject

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property, poor-quality material is being used and the same has already led to the fall of the basement building, which is being constructed again.

3. Learned counsel for the petitioner submits that continuation of the alleged illegal construction poses health hazards for nearby residents, and is violative of Articles 21 (right to life) and 14(1)(a) (right to residence) of citizens. He has referred to a complaint dated 08.02.2022 made by the petitioner to the respondent/Corporation, wherein he had assailed the unauthorised construction stated to be carried out at the subject property.

4. Learned Standing Counsel appearing for the respondent/Corporation has taken a preliminary objection to the maintainability of the writ petition, alleging that the same is a motivated one.

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

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, the petitioner, who is about 22 years of age, claims that he resides near the subject property. He has raised grievance regarding unauthorised construction stated to be going on at the subject property. It is the admitted case of the petitioner that he neither has any connection with the subject property nor is an immediate neighbor of resident thereof. Notably, no Show Cause Notice is stated to have been issued by the respondent/Corporation in respect of the construction at the subject property till date.

10. Further, it is not the case of the petitioner that his easement rights or ingress/egress are being affected/obstructed by the alleged construction activity. From a perusal of the petition, it is apparent that only vague and general averments have been made by the petitioner. In fact, the petitioner has not even impleaded the owner of the subject property and/or the builder stated to be carrying out the unauthorised construction at the subject property. In this backdrop, it appears that the

present petition has been filed not to secure any fundamental/legal right, but for some motivated reasons.

11. Accordingly, the present petition is dismissed with a cost of Rs.10,000/- to be deposited by the petitioner with the *Delhi State Legal Services Authority* within a period of 4 weeks from today.

12. 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.

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

14. Needless to state, the respondent/Corporation shall take necessary action in case unauthorized construction activity takes place, or has taken place, in the subject property, contrary to 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.

15. With the above directions, the petition is disposed of.

(MANOJ KUMAR OHRI)
JUDGE

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