

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

W.P.(C) 6059/2022



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Date of Decision: 13.04.2022

IN THE MATTER OF:

SUDHIR GAHLOT

..... Petitioner

Through: Mr. M.M. Singh, Advocate

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR... Respondents

Through: *Counsel (appearance not given)*

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM.APPL.18169/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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1. The present petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner seeking direction to respondent No. 1 to stop the unauthorized construction being carried out in the property bearing *No. C-9, Om Vihar, Gulab Bagh, Main Najafgarh Road, Opp, Metro Pillar No. 702, near Miglani Paint and Hardware store, Uttam Nagar, New Delhi* (hereinafter, referred to as the '*subject property*') by respondent No. 2. The petitioner has further sought necessary directions for sealing and demolition of the alleged unauthorized construction carried out in the subject property.



2. The petitioner has claimed himself to be a resident of area near the subject property. It is admitted by the learned counsel for the petitioner that the petitioner neither has any connection with the subject property nor is an immediate neighbor of resident thereof. It is also admitted 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.

3. Learned 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.

4. On a specific query, learned counsel for the petitioner submits that the instant petition is the first of its kind to have been filed on behalf of the petitioner.

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 the 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 admittedly does not have any connection with the property in question. He is stated to have come across the alleged unauthorized construction at the subject property while he was passing through the area. The petitioner 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.

10. 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.

11. At this stage, learned counsel for the petitioner, on instructions, submits that the petitioner is ready and willing to deposit a sum of Rs.10,000/-.

12. Accordingly, the present petition is dismissed with a direction to the petitioner to deposit the volunteered sum of Rs.10,000/- with the *Delhi State Legal Services Authority* within a period of two 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. Needless to state, respondent No.1 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.

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

(MANOJ KUMAR OHRI)
JUDGE

APRIL 13, 2022
p'ma