



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

+ **W.P.(C) 6273/2022 & CM APPL 18921/2022**

Date of Decision: 22.04.2022

IN THE MATTER OF:

PRAVEEN GARG

..... Petitioner

Through: Mr. Atul Varma, Advocate

Versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through: Mr. Rushab Aggarwal, Advocate for
Respondent No. 1

Mr. K.G. Gopalakrishnan, Ms. Madhusudan
Agnihotri & Mr. Anilendra Pandey, Advocates
for Respondent No. 3

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 direction to respondents No. 1 & 2 to stop/seal illegal and unauthorized construction stated to be carried out by respondent No. 3 on *Plot No. R-93, Jain Colony, Part-3, Near Budh Bazar Chowk, Uttam Nagar, New Delhi* (hereinafter referred to as the 'subject property'). It is further alleged that respondent No. 3 while carrying out unauthorized construction activity on the subject property has encroached upon the public land.



2. The petitioner has claimed himself to be a resident of *House No. 9, Gali No. 9, Jain Colony II, Uttam Nagar, Delhi*. It is admitted by the learned counsel for the petitioner that the petitioner neither has any connection with the property of respondent No. 3 nor is an immediate neighbor of respondent No. 3. It is also admitted that neither the petitioner's easement rights nor ingress/egress are affected by any alleged activity carried out by respondent No. 3.

3. Issue notice.

4. Learned counsel appearing for respondent No. 1/SDMC accepts notice and has taken a preliminary objection to the maintainability of the writ petition, alleging that the same is a motivated one. He, on advance instructions, submits that the father-in-law of respondent No. 3 and the present petitioner have a prior history inasmuch a *Kalandara* under Sections 107/151 Cr.P.C. was registered on 28.12.2021 between the two.

5. Learned counsel for respondent No. 3 also accepts notice and submits that the petitioner is not a resident of the same vicinity.

6. On a specific query, as to allegedly how the petitioner came to know that public land has been encroached upon by respondent No. 3, it is stated that the petitioner often passes by that street.

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

8. 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.



9. 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...”

10. 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.”

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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, 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.

17. With the above directions, pending application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 22, 2022

p'ma