

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
W.P.(C) 6800/2022, CM APPL. 20649/2022 and
CM APPL. 20650/2022

Date of Decision: 29.04.2022

IN THE MATTER OF:

YOGESH MIDDHA

..... Petitioner

Through: Mr. Tanveer Ahmad, Advocate

versus

MUNICIPAL CORPORATION OF DELHI (SOUTH) AND ORS

..... Respondents

Through: Counsel for MCD (South) (appearance
not given)

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 to respondent No.4 to stop illegal and unauthorised construction allegedly being carried out by him at property bearing *No. 895, C-23 and C-25, Ward No.8, Near Mehta Chowk, Mehrauli, New Delhi-110030* (hereinafter, referred to as the '*subject property*'), as well as to respondent Nos. 1 to 3 to demolish the illegal and unauthorised structure so constructed by respondent No.4 at the subject property and to seal the same.

2. The petitioner has claimed that respondent No.4 is the builder/owner/occupier of the subject property and resides in the same locality as him. It is his grievance that respondent No.4 is carrying out illegal and unauthorised construction at the subject property, and in course

of the same, bricks, *malba*, *badarpur*, etc. have been dumped on public street, which are causing inconvenience to the petitioner. The petitioner has also alleged that for the purpose of construction at the subject property, poor-quality material is being used and the same poses risks to the petitioner as well as other residents and passers-by.

3. Learned counsel appearing for the respondent/Corporation has taken a preliminary objection to the maintainability of the writ petition. It is submitted that the petition is a motivated one, inasmuch as the alleged unauthorised construction at the subject property was booked on 17.02.2021 and 28.03.2022, and the present petition came to be filed thereafter.

4. On a specific query, 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 neighbour of residents 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. 4 in the subject property.

5. I have heard learned counsels for the parties and 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. Admittedly, the petitioner in the present case 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 appears 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. Besides, it has been informed by the learned counsel for respondent/Corporation that the alleged illegal and unauthorised construction at the subject property has already been booked.

11. In view of the aforesaid, 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.

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, respondent/Corporation 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. 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. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 29, 2022/na