

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

+ **W.P.(C) 6971/2022**

Date of Decision: 04.05.2022

**IN THE MATTER OF:**

SH. SATISH KUMAR TOMAR ..... Petitioner

Through: Mr. Amit Kumar, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Ms. Puja Kalra, Standing Counsel  
with Mr. Virendra Singh, Advocate  
for respondent No. 1/North DMC.

Mohd. Irsad and Mr. Kumud Ranjan  
Mishra, Advocates for respondents  
No. 2 and 5.

Mr. Ashim Vachher, Standing  
Counsel with Mr. Kunal Lakra,  
Advocate for respondent No. 4/DDA  
alongwith Ashish Dixit- Junior Law  
Officer, DDA.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**(VIA VIDEO CONFERENCING)**

**JUDGMENT**

**MANOJ KUMAR OHRI, J. (ORAL)**

**CM.APPL No. 21314/2022 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

**W.P.(C) 6971/2022 & CM.APPL No. 21313/2022 (Stay)**

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 illegal and unauthorized construction stated to be carried out by respondents No. 6 and 7 on property bearing No. WZ-71, *Main Road, Village Todapur, New Delhi – 110012* (hereinafter referred to as the ‘subject property’).
2. The petitioner has claimed himself to be a resident of *RZ-143, Gali No. 10, East Sagarpur, New Delhi - 110046*. It is admitted by the learned counsel for the petitioner that the petitioner neither has any connection with the property of respondents No. 6 and 7 nor is an immediate neighbour of respondents No. 6 and 7. It is also admitted that neither the petitioner’s easement rights nor ingress/egress are affected by any alleged activity carried out by respondents No. 6 and 7.
3. Issue notice.
4. At the outset, Mr. Ashim Vachher, learned Standing Counsel appearing for respondent No. 4/DDA submits that the answering respondent has no role to play in the present petition and may be deleted from the array of parties. It is ordered accordingly.
5. Ms. Puja Kalra, learned counsel appearing for respondent No. 1/North DMC accepts notice and has taken a preliminary objection to the maintainability of the writ petition, alleging that the same is a motivated one.
6. I have heard learned counsels for the parties as well as perused the material placed on record.

7. 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.

8. 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...”*

9. 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.”*

10. In the present case, the petitioner admittedly does not have any connection with the property in question. 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.

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. 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.

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. Be that as it may, respondent No. 1/North DMC 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.

16. With above directions, captioned application stands disposed of.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**MAY 4, 2022/v**

*Click here to check corrigendum, if any*