



NEUTRAL CITATION NO: 2022/DHC/002046

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

+ **W.P.(C) 7140/2022 and CM APPL. 21896/2022**

Date of Decision 23/05/2022

IN THE MATTER OF:

KAMAL KAPOOR

..... Petitioner

Through: Ms. Priya Khurana, Advocate.

Versus

THE STATE & ORS.

..... Respondents

Through: Mr. Shashi Pratap Singh and Ms. Abhilasha, Advocates for respondent No.1/SHO Kirti Nagar. Mr. Anand Prakash, Standing Counsel for Nr.D.M.C. alongwith Ms. Varsha Arya and Mr. Akhil Raj, Advocate. Mr. Ajjay Arora and Mr. Kapil Dutta, Advocates for MCD.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner, who claims to be a social activist



residing at House No. 6/4 First Floor, Ramesh Nagar, H.O., West Delhi-110015, seeks the following reliefs:-

"a) Direct the respondent No.1 to 6 to demolish/clear the entire 3rd Floor and excess area in the shape of chhajjas and full coverage of illegal and unauthorised construction raised on the Property Bearing No. 61/1, 2 & 3rd Floor, WHS, Furniture Block, Kirti Nagar, New Delhi - 110015 as the said illegal construction is directly effecting the ingress and egress of the petitioner and the public to secure the ends of justice;

b) Direct the respondent No.1 to 6 to file the status report after removal of encroachment on public street and public land and 3rd floor of illegal and unauthorised construction and extended chajjas raised on the Property Bearing No. 61/1, 2 & 3rd Floor, WHS, Furniture Block, Kirti Nagar, New Delhi - 110015.

c) Direction may kindly be passed to the Respondent No.1 to 6 to take action against the concern officials of the respondent who are directly allowing the respondent no. 7 and 8 to raise the extended area in shape of chajja and illegal and unauthorised construction raised on the Property Bearing No. 61/1, 2 & 3rd Floor, WHS, Furniture Block, Kirti Nagar, New Delhi - 110015."

2. In the petition, it has been averred that the petitioner is in the business of property dealing and real estate and came to know that respondent No.7/*Anand Padia* and respondent No.8/*Avdesh Mishra*, who are owners and builder of the subject property respectively, have carried out unauthorised construction at the same. It is further averred that respondent No. 8 being a builder has raised unauthorised construction at other places as well.

3. Considering the vague averments made in the petition, the petitioner was directed on earlier occasion to clarify as to how many such



petitions have been filed by him. In response to the same, an affidavit has been placed on record by the learned counsel for the petitioner giving the following details :-

Sl. No.	Case No.	Title	Status
1.	W.P.(C) 11850/2021	Kamal Kapoor v. The State of NCT of Delhi & Ors.	Dismissed as withdrawn vide order dated 25.10.2021
2.	W.P. (C) 14457/2021	Kamal Kapoor v. The State (NCT of Delhi) & Ors.	Dismissed as withdrawn vide order dated 16.12.2021

4. Mr. Ajjay Arora, learned counsel for the respondent/Corporation, has taken a preliminary objection to the maintainability of the petition, alleging that the petitioner has been selectively picking properties to file petitions such as the present one without being connected to the subject properties in any manner and the same casts a doubt on his intentions. He further submits that besides the petitions mentioned in the above chart, the petitioner has also filed W.P.(C) 11782/2021, which is listed today before this Court. It is informed that the petitioner's father/Satish Kumar had also filed a similar petition bearing W.P.(C) 14793/2021, which has been disposed of with a cost of Rs.10,000/-.

5. In addition and without prejudice to the foregoing, Mr. Anand Prakash, learned Standing Counsel for North DMC, assures that necessary action would be taken in case any unauthorised construction takes place, or has taken place, at the subject property, contrary to sanctioned building plan/bye-laws.



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 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

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with the subject property nor is an immediate neighbor of resident thereof.

11. 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.

12. A perusal of the above chart placed on record would further show that the petitions mentioned therein came to be dismissed as withdrawn. In this backdrop, it appears that the present petition has been filed not to secure any fundamental/legal right, but for some motivated reasons.

13. Accordingly, the present petition is dismissed with a cost of Rs.2,000/- to be deposited by the petitioner with the *Delhi State Legal Services Authority* within a period of one week from today. Miscellaneous application is disposed of as infructuous.

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. 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 sanctioned building plan/bye-laws. In the event of any grievance arising hereafter, the petitioner shall



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be at liberty to file an appropriate petition and/or to approach the Special Task Force constituted by DDA pursuant to directions of the Supreme Court.

(MANOJ KUMAR OHRI)
JUDGE

MAY 23, 2022

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