



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

+ Date of Decision: 18.05.2022

IN THE MATTER OF:

+ **W.P.(C) 7673/2022 & CM APPLs. 23516/2022, 23517/2022**

MUNESH KUMARI Petitioner

Through: Mr. Karan Singh, Advocate

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through: Mr. Kapil Dutta & Mr. Ajjay Arora,
Advocates for SDMC

+ **W.P.(C) 7674/2022 & CM APPLs. 23518/2022, 23519/2022**

PARVEEN KUMAR Petitioner

Through: Mr. Karan Singh, Advocate

Versus

SOUTH DELHI MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER & ANR. Respondents

Through: Mr. Kapil Dutta & Mr. Ajjay Arora,
Advocates for SDMC

+ **W.P.(C) 7675/2022 & CM APPLs. 23521/2022, 23522/2022**

GYAN RATTAN AND ANR Petitioners

Through: Mr. Karan Singh, Advocate

Versus



NEUTRAL CITATION NO: 2022/DHC/001929

SOUTH DELHI MUNICIPAL CORPORATION AND ANR

..... Respondents

Through: Mr. Kapil Dutta & Mr. Ajjay Arora,
Advocates for SDMC

+ **W.P.(C) 7676/2022 & CM APPLs. 23523/2022, 23524/2022**

SHAKUNTLA GAUTAM

..... Petitioner

Through: Mr. Karan Singh, Advocate

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through: Mr. Kapil Dutta & Mr. Ajjay Arora,
Advocates for SDMC

+ **W.P.(C) 7677/2022 & CM APPLs. 23525/2022, 23526/2022**

TILAK RAJ

..... Petitioner

Through: Mr. Karan Singh, Advocate

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through: Mr. Kapil Dutta & Mr. Ajjay Arora,
Advocates for SDMC

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

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

1. The present petitions have been filed under Article 226/227 of the Constitution of India on behalf of the petitioners seeking quashing of notices dated 12.02.2021/17.02.2021 issued by respondent No. 1 as well as the order(s) dated 16.04.2021 passed by the ATMCD. Other connected reliefs are also sought by the petitioners.
2. Learned counsel for the petitioners submits that the notices dated 12.02.2021/17.02.2021 were issued to the petitioners, thereby directing removal of encroachment from public passage/street in view of the order dated 14.01.2020 passed in CS No.56897/2016 (Old No. 323/14). During the course of submissions, learned counsel for the petitioners has placed reliance on the orders dated 13.07.2021 & 10.05.2022 passed by this Court in W.P.(C) 6436/2021 & W.P.(C) 4243/2021 respectively.
3. Issue notice.
4. Mr. Kapil Dutta, Advocate appears and accepts notice on behalf of respondent No. 1/SDMC. He has taken a preliminary objection to the filing of the present petitions, by submitting that the petitioners had assailed notices dated 12.02.2021/17.02.2021 before the ATMCD and the challenge to the same came to be decided vide order dated 16.04.2021 passed by the Appellate Tribunal.

He further submits that in terms of the decision of the Supreme Court in Amrik Singh Lyallpuri v. Union of India and Others reported as (2011) 6 SCC 535, the petitioners' remedy against order dated 16.04.2021 lies before the learned District Judge. Learned counsel has also drawn the attention of the Court to the statements of the petitioners made on 03.09.2016/16.09.2016 in CS No. 56897/16, wherein each of them stated as under:-



“I am applicant in the application under Order 1 rule 10 r/w 151 CPC for impleading me as a defendant in the instant case. I have gone through the statement of the plaintiffs recorded on 03/09/2016. I have no objection, if SDMC removes the encroachment at the suit property as per their lay-out plan filed on record by SDMC i.e., Ex. X. I undertake to cooperate the SDMC in removal of the encroachment from the suit property as per lay-out plan Ex. X even if, it is prejudiced to my rights over the suit property. I am making my statement voluntarily without any undue influence, without any fear, force or coercion. The statement has been explained to me in vernacular.”

5. Learned counsel for respondent No.1/SDMC further submits that the petitioners' reliance on the aforementioned orders of this Court is misplaced, inasmuch as the factum of their making statements before the Civil Court was not brought to the notice of the Court.
6. At this stage, learned counsel for the petitioners, without prejudice to the rights and contentions of the petitioners, seeks leave to withdraw the present petitions with liberty to approach the learned District Judge to seek the appropriate relief.
7. Leave and liberty, as prayed for, are granted.
8. In the meantime, for the petitioners to avail appropriate remedy under law, no precipitate action be taken in pursuance of notices dated 12.02.2021/17.02.2021 for a period of one week from today.
9. The petitions are dismissed as withdrawn, alongwith the pending applications.

(MANOJ KUMAR OHRI)
JUDGE

MAY 18, 2022

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