



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

+ **W.P.(C) 11782/2021**

Date of Decision 23/05/2022

IN THE MATTER OF:

KAMAL KAPOOR AND ANOTHER Petitioners
Through: Mr. Pradeep Mishra, Advocate.

Versus

THE COMMISSIONER (NORTH MCD) AND
OTHERS Respondents
Through: Mr. Ajjay Arora, Mr. Kapil Dutta
and Mr. Anuj Bhargava,
Advocates for North DMC.
Mr. Diwakar Singh, Advocate for
respondent No.6.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioners have sought directions for the respondents to take action against the alleged illegal and unauthorised encroachment/construction carried out at *Shop Nos.A-4 to A-9, Tilak Market, Ramesh Nagar, New Delhi-110015*, which are stated to have been allotted by North DMC under the Tehbazari Scheme.
2. At the outset, Mr. Pradeep Mishra, learned counsel appearing for the petitioners, submits that he is no longer authorised to appear in the matter.



3. Neither the petitioners nor any representative authorised to appear on their behalf is present.

4. In the petition, it has been averred that the petitioners are residents of area in vicinity of the shops/stalls in question. The petitioners' grievance is that in violation of the Tehbazari Scheme, the allottees/occupants have carried out illegal and unauthorised construction/encroachment at the shops as well as over footpath, road and Government land, which is causing inconvenience to them and other local residents. It is alleged that the impugned construction/encroachment has taken place in the form of spaces allotted for two shops being merged into one, the spaces available outside the shops being let out to third parties, etc.

5. Mr. Ajjay Arora, learned counsel for the respondent/Corporation, has taken a preliminary objection to the maintainability of the petition, alleging that petitioner No.1 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 another petition bearing W.P.(C) No.7140/2022 seeking demolition of property stated to be illegal and unauthorised has been filed on behalf of petitioner No.1, wherein an affidavit has been placed on record by Ms. Priya Khurana, Advocate representing petitioner No.1 in the matter, to the effect that he had filed other petitions seeking relief of demolition, including W.P.(C) Nos.11850/2021 and 11457/2021, which came to be dismissed as withdrawn. It is informed that the father of petitioner No.1, namely *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/-.



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 extraordinary Writ jurisdiction of this court. I am of the view that the petition deserves to be dismissed.”

10. In the present case, the petitioners have raised a grievance regarding unauthorised construction stated to be going on at the shops in question as well as illegal encroachment allegedly carried out by *W.P.(C) 11782/2021*



allottees/occupants of the shops on footpath, road and Government land. However, it is the admitted case of the petitioners that they have no immediate connection with the shops in question.

11. Further, it is not the case of the petitioner that his easement rights or ingress/egress are being obstructed by the alleged construction activity.

12. A perusal of the chart placed on record in W.P.(C) 7140/2022 would show that the petitions mentioned therein were filed by petitioner No.1 and the same came to be dismissed as withdrawn. Over and above, two other petitions of similar nature have been filed by petitioner No.1 and his father, i.e. W.P.(C) Nos. 7140/2022 and 14793/2021 respectively, which have also been dismissed. 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. Keeping in view the aforesaid and the order passed in W.P.(C) 7140/2022, the present petition is dismissed.

14. Be that as it may, the respondent/Corporation and the concerned SHO are directed to ensure that no further illegal and unauthorized construction takes place at the shops/site in question, contrary to law. In the event of any grievance arising hereafter, the petitioners shall 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/ga