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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 13459/2019**

Date of Decision: 16.02.2023

IN THE MATTER OF:

DR. M ALAM
S/O MOHD. IMRAN
R/O A-4 and A-19,
J J COLONY,
CAMP NO.2, NANGLOI,
NEW DELHI

ALSO AT A-33,
J J COLONY,
CAMP NO.2, NANGLOI,
NEW DELHI

..... Petitioner

Through: Mr. Ravinder Kumar Yadav, Ms.
Arti Anupriya and Ms. Charu,
Advocates.

versus

1. GOVT OF NCT OF DELHI
THROUGH CHIEF SECRETARY
DELHI SECRETARIAT, IP ESTATE, DELHI - 110002,

2. DELHI URBAN SHELTER IMPROVEMENT BOARD,
GOVT OF NCT OF DELHI
THROUGH ITS DIRECTOR,
AT- PUNARWAS BHAWAN, LP. Estate,
NEW DELHI -110002

ALSO AT:
ROOM NO. C-5, VIKAS KUTEER,
I.P. ESTATE, NEW DELHI-110002

..... Respondents

Through: Mr. Saurabh Kumar Dixit and

Mr. Naveen Kumar Raheja,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Learned counsel appearing on behalf of the petitioner seeks for issuance of a writ in the nature of mandamus against the respondent to remove a wall erected adjacent to properties bearing No. A-4 and A-19, J J Colony, Camp No.2, Nangloi, New Delhi and National Highway-10, Delhi-Rohtak Road (hereinafter referred to as 'the said properties'), as has been shown in the site plan.

2. According to the case of the petitioner, respondent No.2 raised a wall having a width of 4 feet 6 inches and a height of 7 feet (hereinafter referred to as 'the said wall'), adjacent to the said properties. The petitioner states that on account of erecting the said wall, a huge obstruction of free flow of light and air to the said properties of the petitioner is being caused and the same has also obstructed free access to the Delhi-Rohtak Road (NH-10). The said wall also encroached upon/covered the footpath/service lane meant for the usage of the general public at large. He further states that various representations were submitted for removal of the said wall, however, no action has been taken and, therefore, the fundamental right of the petitioner under Article 21 of the Constitution of India is violated.

3. Respondent no.2 has filed its counter-affidavit and an objection has been raised. It is stated that the petitioner does not have a valid

title/right/interest in the said properties and he himself has violated the applicable laws in constructing the building on the said properties.

4. According to respondent No.2, the plots adjacent to the said properties were demolished and the said wall was raised thereafter to protect the demolished government land from encroachment.

5. It is also stated that the Delhi-Rohtak road (NH-10) can be easily accessed through adjacent service lanes/streets situated on either side of the said properties and no easementary right qua air, light and direct access through the demolished plots can be claimed as no such right ever existed in the petitioner's favour.

6. Having considered the submissions made by the learned counsel appearing on behalf of the parties, this court finds that the present case involves various disputed questions of facts. As held by the Hon'ble Supreme Court in its decisions in *Smt. Gunwant Kaur and Ors. vs Municipal Committee, Bhatinda*¹ and *ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Ors.*², the writ court in exercise of power under Article 226 of the Constitution of India cannot enter into the domain of adjudicating the disputed question of facts which requires adducing elaborate evidence. Accordingly, this court does not find any reason to interfere in the instant petition. The right claimed by the petitioner is not capable of being established in the summary proceedings under Article 226 because it requires detailed examination of the evidence.

7. The same is, therefore, dismissed.

¹(1969) 3 SCC 769

²(2004) 3 SCC 553

8. Needless to state that the petitioner is at liberty to take appropriate recourse in accordance with the law.

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 16, 2023/ p

