



2023:DHC:8382



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

% **Date of order: 1st November, 2023**

+ **W.P.(C) 9982/2023 & CM APPL. 38464/2023**

ANNI SHOKEEN

..... Petitioner

Through: **Mr. Parveen Kumar, Advocate**

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondents

Through: **Ms. Shobhana Takiar, Standing
Counsel for DDA**

**Mr. Roshan Lal Goel and Ms. Anju
Gupta, Advocates for R-2 and R-4**

**Ms. Anju Gupta & Mr. Roshan Lal
Goel, Advocates for R-3 and R-4**

**Mr. Shubham Singh and Mr. Aayush
Gautam, Advocates on behalf of Mr.
Karn Bhardwaj, ASC for GNCTD for
R-5**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A. issue Writ, order and/or directions to the respondents in the nature of mandamus or any other writ directing the respondents to conduct demarcation, remove all existing encroachment and thereafter construct the appropriate boundary wall with

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necessary grills and gates around the green belt/ park in question situated at Pkt-00, Main Kanjhawala road, Ward no. - 26 Sector-1, Rohini, Delhi-110085 and/or;

B. direct the respondents to conduct periodic checking/survey and take legal action thereafter against the encroachers, if any possible future encroachment or tree cutting is done by any encroacher over the green belt/park in question situated at Pkt-00, Main Kanjhawala road, Ward no. -26 Sector-1, Rohini, Delhi-110085.

C. Direct the Respondents to plant sufficient trees on the green-belt/park in question and to maintain the green belt/park in question on regular basis in such a way that the petitioner and the near by residents of Pkt-00, Main Kanjhawala Road, Ward No. 26, Sector-1, Rohini, Delhi 110085 can use the said green belt/ park in question and/or;

D. Pass any other order/ orders which this Hon'ble Court may deem fit and proper in the interest of justice.”

2. The petitioner has filed the present petition for removal of alleged illegal encroachment on the land situated at Pkt-00, Main Kanjhawala Road, ward no. 26, Sector-1, Rohini, New Delhi which is owned by the respondent no.1 ('respondent DDA' hereinafter) where the land in question is marked for development as a green belt/park.

3. For the said land, the petitioner had apprehended encroachment and therefore, had filed complaints to various Government Departments seeking removal of the said encroachment and conservation of trees and fencing around the said land, however, due to inaction by the said departments, the petitioner filed a suit bearing no. CS SCJ 1581/2018 against the respondent DDA and MCD before the District Court, Rohini.



4. During pendency of the said suit, the petitioner continued approaching the concerned officers and also filed an RTI seeking details as to whether the said land/park has been handed over to the Municipal Corporation of Delhi ('MCD' hereinafter), however, the status of the ownership became clear once the MCD filed their written statements in the abovesaid suit filed by the petitioner and therefore, ownership of the respondent DDA was established.

5. It has been stated that in the year 2021, the respondent DDA removed the encroachment partly and therefore, the said suit pending before the learned Trial Court was withdrawn by the petitioner vide order dated 15th December, 2021.

6. Thereafter, the petitioner approached the Lieutenant Governor, Delhi by way of filing various online complaints starting from 18th January, 2022 regarding the subsequent encroachment on the said land belonging to the DDA, however, allegedly, no action was taken by any of the Government Departments.

7. Therefore, aggrieved by the said alleged inaction and further encroachment on the land, the petitioner has preferred the present petition.

8. The learned counsel appearing on behalf of the petitioner submits that the respondents have failed to fulfill their obligations imposed upon them by way of Statutes and in turn have violated the petitioners rights enshrined under the Constitution of India.

9. It is submitted that the petitioner and other residents of the concerned locality are being restrained in using the green belt/park since the same has been encroached upon illegally.



10. It is submitted that the respondents are not fulfilling their legal and statutory duties to maintain and prevent any encroachment on the land designated as green belt/park.

11. It is submitted that the said encroachment on the land has restrained the petitioner and other residents of the locality to use it as a public utility as the same is used by the encroachers for commercial purposes and other interests.

12. It is also submitted that the respondent is not paying heed to the concerns of the petitioner and have never taken any action against the serial encroachers even though they are duty bound to provide public places/parks for the use of petitioner and other residents

13. It is further submitted that the said encroachment cannot be controlled until the boundary wall is constructed, and the said non-construction has led to the present situation.

14. It is submitted that the respondent departments are merely shifting the onus of maintenance of the green belt/park on each other and are not taking material steps to deal with the grievance of the petitioner.

15. Therefore, in light of the foregoing submissions, the learned counsel for the petitioner submits that the present petition be allowed, and the relief may be granted, as prayed.

16. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the present petition submitting to the effect that the petitioner does not have a *locus standi* to file the writ petition as the



land belongs to the respondent DDA and therefore, he is not an aggrieved party.

17. It is submitted that the allegations advanced on behalf of the petitioner are devoid of any merits and there no fundamental or legal rights of the petitioner have been infringed upon or violated by the respondent.

18. It is submitted that the petitioner has filed the instant writ petition with the intent to abuse the process of law since he has not been able to produce any shred of evidence that would tantamount to violation of his right.

19. It is submitted that the petitioner had earlier preferred a suit seeking removal of the encroachment and during the pendency of the said suit, the respondent DDA had taken action on the encroachment, therefore, resulting in withdrawal of the suit filed by the petitioner.

20. It is also submitted that the respondent DDA is a statutory body entrusted to discharge the functions as per the procedure enshrined under the regulations formed by the Authority and if there is any illegal encroachment, the Authority shall remove the same as per the guidelines formulated for removal of such encroachment.

21. It is further submitted that the petitioner had also filed a complaint with the Special Task Force ('STF' hereinafter) for removal of the encroachment and the report dated 7th April, 2022 as submitted by the STF clearly labeled the said land as encroachment free.

22. Therefore, in light of the foregoing submissions, the learned counsel appearing for the respondents submits that the present petition, being devoid of any merits, may be dismissed.



23. Heard the learned counsel for the parties and perused the record.
24. In the instant case, the petitioner has approached this Court seeking issuance of writ of mandamus for directing the respondent DDA for removal of encroachment from their land notified/reserved for the purpose of development as a green belt/park.
25. As per material on record, the petitioner had filed a civil suit bearing no. CS SCJ 1581/2018, before the Rohini District Court, for removal of the alleged encroachment which was withdrawn vide order dated 15th December, 2021, since the petitioner had stated before the learned Trial Court that the encroachment in question has been removed by the DDA and hence, the reliefs sought thereto stood satisfied. Despite the said withdrawal and submission made before the learned Trial Court, as also noted in the order dated 15th December, 2021, the petitioner has again approached the Court stating that there have been further encroachment in the said land and the respondents have failed to conserve the property meant as a green belt/park. It has been further submitted on behalf of the petitioner that the respondents are obligated under the Statutes to remove the illegal encroachers and they are not fulfilling their duty as per the law.
26. In the rival submissions made by the respondent DDA, the petitioner's *locus standi* has been questioned submitting to the effect that the petitioner is not an aggrieved party and therefore, cannot approach this Court under its extraordinary writ jurisdiction seeking the reliefs as prayed in the pleadings. Accordingly, the respondents whilst opposing the instant petition pray for its dismissal.



27. In view of the submissions made on behalf of the parties, it is imperative for this Court to adjudicate the present petition first on the aspect of whether the petitioner has any *locus standi* to file the instant petition or not, and if the writ of mandamus can be issued and subsequently, on the merits of the present case.

28. Now coming to the first issue at hand, i.e. whether the writ of mandamus for directing the respondent DDA to remove the alleged encroachment from the said land can be issued.

29. As reiterated by the Hon'ble Supreme Court and this Court in a catena of judgments, the writ of mandamus is a writ defined as a command which can be issued in favor of a person being successful in establishing a legal right on violation of the said right by an entity/individual entrusted to perform the legal duty. Therefore, establishment of such a right is a condition mandatory for issuance of the writ of mandamus.

30. The scope of the writ of mandamus has been defined and explained by the Hon'ble Supreme Court from time to time, wherein, the Hon'ble Court has extensively dealt with the nature of the said writ and the scenarios deemed to be fit for issuance of the same.

31. In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*, (2013) 4 SCC 465, the Hon'ble Supreme Court crystallized the principles in relation to the scope of power of a writ Court and held as under:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he



satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta [1951 SCC 1024 : AIR 1952 SC 12] , Saghir Ahmad v. State of U.P. [AIR 1954 SC 728] , Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044] , Rajendra Singh v. State of M.P. [(1996) 5 SCC 460 : AIR 1996 SC 2736] and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [(2009) 2 SCC 784] .]



32. On perusal of the aforesaid case, it is clear that even though the said provision empowers the Courts to issue mandamus for rectifying the illegality committed by a public authority, the Courts are still not empowered to get into the fact finding exercise.

33. Now coming to the contention of the respondent regarding the petitioner not having *locus standi* to file the present petition. The doctrine of *locus standi* has been defined as a mechanism to prevent a stranger from being a party to a dispute and interfering in the same without having any right to do so. It is well settled that the parties aggrieved by an act have a vested right to file a case, however, the settled law also excludes the parties who are strangers to the dispute.

34. The principle related to the said doctrine have been extensively discussed and expounded by the Hon'ble Supreme Court in a catena of judgments, whereby, the Hon'ble Court dealt with the aspect related to the institution of suits involving only the persons suffering from a legal injury.

35. In ***Ghulam Qadir v. Special Tribunal and Ors. (2002) 1 SCC 33***, the Hon'ble Supreme Court discussed the settled position regarding the issue of *locus standi* and held as under:\

“37. Regarding locus standi of the respondents to file the writ petition against the order of the Tribunal, Shri Rao has launched a two-pronged attack submitting that the respondent tenants being not the aggrieved parties had no right to challenge the order passed against them as they claimed through the Custodian and did not have any independent right in themselves. So far as the authorities



under the Act are concerned, it is submitted that they could not have preferred a writ petition being a quasi-judicial authority entrusted with the powers of adjudication of rights of the claimants over the property vesting in such authorities. In support of his submissions, he has referred to various provisions of the Act and relied upon some pronouncements of this Court.

38. *There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."*



36. Recently, in *Eswari v. State of T.N.*, 2023 SCC OnLine Mad 403, the Madras High Court also dealt with the aspect of strangers in a writ petition and held as under:

“35. The petitioner is thirty eight years old as on 09.01.2021 when the appointment orders were issued by the sixth respondent Corporation to the respondent Nos. 7 to 60 to the post of Junior Assistants. As per the recruitment notification of the sixth respondent Corporation for the post of Junior Assistants, it stipulates age eligibility as 18 to 35 years for the aspirants hailing from SC/Arunthathiyar/ST Community. The petitioner who has crossed thirty five years of age is therefore, not eligible to make an application to the post of Junior Assistant as per the recruitment notification issued by the sixth respondent Corporation.

36. The petitioner does not have an independent legal right to challenge the appointments of the respondent Nos. 7 to 60 to the post of Junior Assistants, pursuant to the recruitment notification issued by the sixth respondent Corporation. The petitioner being ineligible to apply for the post of Junior Assistant, as per the recruitment notification issued by the sixth respondent Corporation, is not an aggrieved person, but, is a stranger to the selection process. Hence, she cannot legally maintain a Writ Petition, seeking to challenge the appointments of the respondent Nos. 7 to 60 to the post of Junior Assistants by the sixth respondent Corporation.

37. The Honourable Supreme Court in the case of Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed reported in (1976) 1 SCC 671 held that a stranger who is not an aggrieved person cannot maintain a Writ for either Certiorari or Mandamus. The relevant



paragraphs of the aforesaid decisions of the Honourable Supreme Court is reproduced hereunder:

“50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a “stranger” unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a “stranger”, and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of Respondents Nos. 1 and 2, which they have under Article 19(1)(g) of the Constitution, to carry on trade or business subject to “reasonable restrictions imposed by law”. ”

38. The case on hand is a case where the petitioner even without challenging the recruitment notification and even without questioning the eligibility of the respondent Nos. 7 to 60 to hold the post of Junior Assistants, pursuant to the recruitment notification issued by the sixth respondent Corporation, has attempted to challenge the appointments only on the ground that she has a priority for being appointed as a Junior Assistant ahead of the respondent Nos. 7 to 60.

39. This Court cannot accept the contentions of the petitioner as raised in this Writ Petition, in view of the fact that she is a stranger as far as the appointments of the respondent Nos. 7 to 60 to the post of Junior



Assistants are concerned as they have been appointed under a recruitment notification which was not the subject matter of any challenge before any Court of law.”

37. On perusal of the aforesaid judicial dictum, it is clear that the party foreign to a matter cannot file a case as the judicially enforceable right available for enforcement is absent for the said party.

38. In the instant case, the petitioner has mentioned about the people living in the vicinity getting affected by the alleged encroachment and the petitioner being one of those parties should be categorized as a party directly affected by the said encroachment, however, he has failed to supplement the said contention by providing any proof of the same.

39. Therefore, the law regarding the writ of mandamus does not empower this Court to issue the said writ when the petitioner has failed to establish its *locus standi*.

40. In any case, the remedy for removal of illegal encroachment has been provided to the citizens of this Country under the penal provisions as well as the code dealing with the civil wrongs done to a citizen, however, the parties first need to establish their title to the encroached land which is absent in the present case.

41. Furthermore, the standing instructions issued by the respondent DDA also clarifies the procedure laid down for the officials of the respondent for demolition of an illegal construction and the said procedures keep on revising from time to time and the petitioner has already availed the said remedy where the land was labeled as encroachment free.



42. It is not a dispute before this Court that the said land belongs to the respondent DDA, and the petitioner is neither an owner nor a caretaker of the said land, therefore, this Court fails to understand the violation of the petitioner's rights.

43. No doubt that the citizens have the legal remedy to approach the Highest Courts of this Country, however, they need to show the violation of their rights as provided under the laws governing this democracy, otherwise, they do not have a *locus standi* to file a writ petition seeking remedy not affecting or benefitting them.

44. The factual matrix before this Court hints towards the vigilant nature of the petitioner, wherein, the petitioner has approached this Court by way of filing the present writ petition seeking a solution for the plight of the residents of the area where such green zone is situated, however, the rule regarding such cases is already settled as per which the aggrieved parties have an option to file a Public Interest litigation ('PIL' hereinafter) before the Courts.

45. The filing of PILs is one of the exception created to the doctrine of *locus standi* by the Hon'ble Supreme Court where the parties are provided flexible and broader mechanism for approaching the Courts in interest of justice for common citizens of this Country, however, the parties cannot claim to be individually aggrieved by filing writ of such a nature which hint towards them being the aggrieved party seeking issuance of mandamus for their own grief and not for public interest.



46. The present case can be a matter to be taken up by the Court by way of filing a PIL, however, the petitioner being a stranger to the property in question bars him to file a petition claiming violation of his individual right.

47. Therefore, in light of the foregoing discussion, this Court is of the view that the petitioner in the instant case does not have any *locus standi* to file the present petition as he has failed to meet the ingredients essential for establishing the right to file the petition.

48. Now advertent to the issue of alleged illegal encroachment on the DDA land. The learned counsel appearing for the respondent DDA apprised this Court that the encroachment on the said land has been already removed by the respondent Authority in the year 2021, and the STF report dated 7th April, 2022 also suggests the same.

49. The material on record includes the report of the STF where the comments of the officer concerned are attached. The relevant part of the report dated 7th April, 2022 is reproduced herein:

Reference ID	Submission Date	Replied By	Remarks	Transferred to	Others Details	Scanned Document	Status	Under Process	Final Action
SNS20220222189P	03/03/2022	Trilochan Tyagi, EE-II/CDO		Kulbir Singh (Dir. (Hort.) North-West)			Transferred		
SNS20220222189P	21/03/2022	Kulbir Singh, Dir. (Hort.) North-West	This Matter Pertains To HD-V	Devender Kumar (Deputy Director (Hort V)) (Grid)			Transferred		
SNS20220222189P	07/04/2022	Devender Kumar, Deputy Director (Hort V)	Above Area Encroachment Free			Document File	FinalAction NO		YES No Action Required Yes, 07/04/2022



50. On perusal of the comments given by the officer concerned, it is made out that the land *qua* which the petitioner has preferred the instant petition is already encroachment free, therefore, the same evidently makes the present petition nothing, but infructuous and the issue raised by the petitioner has already been clarified in the report submitted by the STF.

51. As clarified in the foregoing paragraphs, the writ jurisdiction provided to the Court precludes any fact finding exercise and therefore, the report given by the STF which states that the said land is encroachment free satisfies this Court.

52. In the first part of the order, this Court had already analyzed the aspect related to the doctrine of *locus standi*, wherein, it is observed by this Court that the conditions necessary to prove the same are not fulfilled by the petitioner and in the subsequent paragraphs, the case against the respondent DDA is not made out as the land in question is already encroachment free. Hence, based on the foregoing discussion, this Court does not find any merit in this petition.

53. This Court is of the view that the petitioner has been unable to make out its case seeking enforcement of writ jurisdiction of this Court. Upon finding no force in the allegations advanced on behalf of the petitioner, it is, hereby, held that the instant petition is not a fit case to exercise the writ jurisdiction of this Court.

54. Accordingly, the instant petition stands dismissed.

55. Pending applications, if any, also stand dismissed.



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56. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 1, 2023
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Click here to check corrigendum, if any

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