



2023:DHC:8547



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

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

+ **W.P.(C) 10770/2023 & CM APPL.56038/2023**

BHUMI CHATTER SINGH RACHHOYA Petitioner

Through: **Mr.Arun Kumar Tewari and
Mr.Anurag Singh, Advocates**

versus

VICE CHAIRMAN, DDA AND ORS. Respondents

Through: **Mr.Sanjay Katyal Standing Counsel
for DDA with Mr.Nihal Singh and
Mr. Sanjay Vashishtha, Advocates
Mr.Chetanya Singh, Advocate for
MCD (Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a) Issue a Writ of Mandamus to the Respondents with a direction for implementing the order dated 07.02.2023 and 13.02.2023 and to demolish the illegal encroachment.

b) Issue an appropriate Writ Directing the Respondents to pay Cost to the Petitioner;

c) Any other relief, order or direction this court may deem fit and proper under the facts and circumstances of this case.”



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2. The petitioner who is an ex-councillor of Municipal Corporation of Delhi ('MCD' hereinafter) is seeking directions against the respondents to effectuate the order dated 7th February 2023, and 13th February 2023, pertaining to the demolition of illegal/unauthorized construction and encroachment of agricultural land bearing Khasra no. 74/4/2 min, 5/1 5/2 & 6/2 at Rajdhani Park, opposite Metro Pillar No. 450 and 451, Mundka, Delhi, on the area admeasuring about 5 Acres, which falls under the administrative jurisdiction of Deputy Commissioner, Narela Zone ('encroached land' hereinafter).
3. The petitioner had made complaints dated 5th January 2023, and 13th January 2023, before the Divisional Commissioner, Delhi Government; Zonal Commissioner of MCD and President, Delhi Anusuchit Jaati Vikas Sangthan, Nangloi, alleging illegal and unauthorized construction of commercial establishments on the encroached land in question, and sought for demolition of the said unauthorized construction.
4. Subsequent to the above said complaints, the Deputy Director (DA) Cell L/M, West Zone, Delhi Development Authority ('DDA' hereinafter'), issued an order dated 7th February 2023, to the Deputy Commissioner of Police, Outer District, Delhi Police, Pushpanjali, New Delhi, seeking police assistance for demolition and issued another order dated 13th February 2023, for the demolition of the unauthorized construction upon the encroached land under Section 30 (1) of the Delhi Development Act, 1957 ('the Act' hereinafter).
5. Thereafter, the Sub-Divisional Magistrate, Punjabi Bagh Main,



Rohtak Road, Nangloi, ('SDM' hereinafter') sent various letters dated 28th March 2023, 17th April 2023, 1st June 2023, and 3rd May 2023, to the Deputy Director (L/M), West Zone, DDA, Subhash Nagar More, New Delhi-27, seeking update on the demolition on the encroached land in question and further requested for furnishing of Action Taken Report in this regard.

6. Since, no action had been taken by the concerned authorities, and as the compliance of the orders dated 7th February 2023, and 13th February 2023, remained pending, hence aggrieved by the same, the petitioner has preferred the present writ petition seeking directions for implementation of the above said orders.

7. Learned counsel appearing on behalf of the petitioner submitted that the inaction on behalf of the respondents in complying with a statutory order passed by a competent authority is contrary to the principles of law.

8. It is submitted that the land in question is an agricultural land and has been illegally occupied by influential people of the area who have undertaken to construct commercial and residential establishments which is illegal *per se*.

9. It is submitted that the petitioner made a DRTI application before the Deputy Commissioner, Narela Zone, seeking information regarding the status of the land in question. In reply to the said DRTI application dated 18th May 2022, it has been categorically stated that no permission with respect to any kind of construction over the said land has been given by any competent authority.

10. It is submitted that the petitioner had made a complaint regarding the



illegal encroachment upon the land in question before various authorities including the DDA, pursuant to which an order for demolition of the unauthorized construction was issued on 13th February 2023, under Section 30 (1) of the Act, since it was found that the said construction was in violation of Section 12(1) of the Act.

11. It is submitted that the Deputy Director (Development Area) LM/WZ vide order dated 7th February 2023, had directed the concerned police authority to provide for adequate force to assist in implementing the order for demolition which was scheduled to be carried out on 27th February 2023.

12. It is submitted that the office of the Sub- Divisional Magistrate, Punjabi Bagh, Main Rohtak Road, Nangloi had sent a list of unauthorised constructions in the area of Sub-Division (Punjabi Bagh), to the Deputy Director (LM), West Zone DDA, Subhas Nagar More, New Delhi, and had directed them to carry out proper demolition at the earliest and submit a compliance report by 5th March 2023. The abovesaid list among others included the encroached land in question.

13. It is submitted that multiple reminders were sent to the MCD and other concerned authorities requesting them to take necessary steps and carry forward the demolition and effectuate the order dated 13th February 2023, however, the respondent authorities have failed to comply with the said demolition order.

14. It is submitted that the issuance of a demolition order under Section 30 (1) of the Act, by the respondent authorities highlights acknowledgement



of the illegal construction and encroachment however, compliance is yet to be effected and non compliance of the same is a violation of the statutory order.

15. Therefore, considering the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.

16. *Per Contra*, the learned counsel appearing on behalf of the respondents DDA vehemently opposed the present petition submitting to the effect that they have already taken cognizance of the complaint and will take necessary action on the same as per the procedure prescribed under the law.

17. It is submitted that the aforesaid land area has already been declared a development area under Section 12 (1) of the Act, and only the respondent authority is responsible for removal of any encroachment upon the land declared as a development area under the said provision.

18. It is submitted that the Deputy Director (Development Area) LM/WZ issued order dated 13th February 2023, under Section 30 (1) of the Act, thereby, directing the encroacher to show cause as to why any demolition be not made since the unauthorized construction thereto, is in violation of Section 12 (1) of the Act.

19. It is also submitted that vide the abovesaid demolition order, the encroacher was informed that in the event he fails to comply with the direction of demolishing the illegal construction, the respondent authorities would take an action against him for the non-compliance of the said order.

20. It is further submitted that the present petitioner does not have a *locus*



standi to file the instant petition as he is not the owner of the said property, does not hold lease of the said property, is not remotely affected by the said demolition as he does not reside or hold rights to the adjacent properties, therefore, not having the right to file the present writ petition seeking demolition of the said construction.

21. Therefore, considering the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merits, may be dismissed.

22. Heard the learned counsel appearing for the parties and perused the record.

23. The present petitioner has approached this Court seeking issuance of a writ of mandamus for implementation of order dated 7th February 2023, and 13th February 2023, passed under Section 30 (1) of Act. It is the case of the petitioner that the respondent authorities have failed to comply with the order of demolition even though it has been categorically specified in the order dated 13th February 2023, that the said encroachment and illegal erection thereto, is in violation of Section 12 (1) the Act.

24. The learned counsel appearing on behalf of the respondents, in rival submissions, have contended that the petitioner lacks *locus standi* to file the present writ petition since, neither does he not hold any title of ownership *qua* the encroached land, nor is he remotely affected by the said demolition. Further, the petitioner does not even reside or hold rights to the adjacent properties therefore, he does not have the right to file the present writ petition seeking demolition of the said illegal encroachment, and hence, the



petitioner cannot be granted the reliefs as prayed hereinabove.

25. Before delving into the analysis of the facts of the instant matter, it is imperative for this Court to revisit the settled law regarding issuance of the writ of mandamus with regards to removal of the illegal encroachment from a land where the petitioner does not bear any *locus standi*. Furthermore, it is also pertinent to decide whether this Court can pass any directions for the execution of an executive order of demolition while exercising its writ jurisdiction.

26. Mandamus literally means ‘a command’. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law.

27. The Hon’ble Supreme Court had extensively dealt with the yardstick pertaining to the writ of mandamus in ***Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.***, (2013) 5 SCC 470, and observed as under:

“21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is



already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.”

28. Upon perusal of the above said judgment, it is observed that ordinarily a person who is adversely affected or injured by an action or omission of the administration can approach the Court of law. There are



subtle distinctions in the standing requirement in respect of different writs, while even a stranger may seek certiorari or prohibition, though the remedy is discretionary, the person seeking mandamus must show that he has a legal right and the respondent has a legal duty to be performed.

29. Upon deliberation of the observations made by the Hon'ble Supreme Court in the aforementioned judgment, the law on issuance of a writ of mandamus is settled which states that there must exist a legal right in the person seeking such issuance and the said right must be infringed.

30. Pursuant to the above, it is observed by this Court that for enforcement of a fundamental or a legal right under the garb of writ of mandamus, the present petitioner must establish the *locus standi* to maintain this petition.

31. It is an admitted fact that the petitioner is neither the land holder, lease holder, nor does he have possession of the land in any form, and that he also lacks the title *qua* the encroached land. Further, the petitioner's right remains unaffected to the extent of the land adjacent to the encroached land in question mentioned above.

32. Therefore, it is evident that the petitioner does not meet one of the most essential ingredients, i.e., he has failed to establish a legal right under any statute and that the said right has been infringed. Hence, in the absence of existence of such *locus standi*, this Court is of the considered view that the instant writ petition is not maintainable.

33. Another issue that needs consideration is whether this Court can pass any directions for the implementation and compliance of the order dated 7th



February 2023, and 13th February 2023. By virtue of the said orders, the respondent authority had sought for the assistance of police since the direction to demolish the illegal construction upon the encroached land, was passed.

34. In this regard, the Hon'ble Supreme Court in the matter of ***Union of India v. Shree Gajanand Maharaj Sansthan***, (2002) 5 SCC 44, had observed the following:

“7. ...no writ of mandamus can be issued to the government to consider whether the provision should be enforced and when the government would be able to do it. More so where the data placed before the court showed that the government was alive to the problem but in the peculiar circumstances had not been able to take a decision.”

35. Furthermore, the Hon'ble Supreme Court in the matter of ***Union of India v. S.B. Vohra***, (2004) 2 SCC 150, held as under:

“52. The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefore. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.”

36. In light of the above stated judgment, the legal principle behind the issue that whether this Court can pass such directions as has been sought by the petitioner is crystallised. The ambit of a Writ Court does not extend to



resolving such trivial compliance matters.

37. It is a settled law that such matters squarely fall within the expertise and jurisdiction of the statutory/executive authorities, as constituted under the relevant statutes enacted by the State legislature. These specialized bodies are better equipped with the necessary technical expertise to navigate the complexities of encroachment and are statutorily authorized to resolve such disputes, including the objections submitted by the aggrieved parties.

38. Now advertent to the facts of the instant matter.

39. On perusal of the facts on record, it is established and admitted that the respondent authority have taken cognizance of the complaint with regard to the above said encroachment and accordingly, issued an order for demolition in furtherance to the encroachment on the land in question vide order dated 13th February 2023, passed under Section 30 (1) of the Act.

40. It is apparent on the face of record that the respondent authority had acknowledged the illegal erection upon the encroached land and that the same is in violation of Section 12 (1) of the Act. Therefore, the factor to be considered is only of compliance of the said order which has yet not been affected.

41. Reflecting upon the extent of the High Court's writ jurisdiction, as explicated by a plethora of precedents, it is held that this Court shall abstain from adjudicating on the dispute emerging from non-compliance of an executive order. The High Court cannot sit in the shoes of an executive and pass directions for the compliance of the order of demolition, thereby, intervening with the executive process.



42. The matter at hand only pertains to the non-compliance of an executive order and as such the plea with regard to the encroached land has been duly heard, and an appropriate action has been already taken by a competent authority. In light of such circumstance, this Court finds itself constrained in exercising its writ jurisdiction on matters that fall short of substance and are trivial for this Court to take cognizance of.

43. It has been established in the preceding paragraphs that the petitioner lacks *locus standi* to address this Court pertaining to the encroached land in question, and that an order is already passed by the competent authority.

44. Pertinently, the Courts have to be hyper vigilant while issuing a writ of mandamus since the said writ is an extraordinary remedy which is to be invoked only upon special occasions and in exceptional circumstances. Henceforth, this Court is of the view that no such directions or order could be passed.

45. Therefore, this Court finds itself constrained by its constitutional limits and the nature of jurisdiction it embarks, to act as a compliance agent on behalf of any concerned competent authority considering that order dated 13th February 2023, already exists.

46. In view of the above discussions of facts and law, this Court is of the view that there is no force in the propositions put forth by the petitioner and due to the reasons mentioned in the foregoing paragraphs, the present petition is liable to be dismissed.

47. Therefore, in light of the above, the instant writ petition stands dismissed being devoid of any merits.



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48. Pending applications, if any, also stands dismissed.
49. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 1, 2023

Dy/ryp/db

Click here to check corrigendum, if any

Signature Not Verified

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