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

% ***Date of Decision: 27.05.2024***

+ **W.P.(C) 7544/2024**

VISHWAS PATHAK Petitioner

Through: Mr. Nitin M. Bharti, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ORS..... Respondents

Through: Mr. Ashutosh Gupta, MCD alongwith
Mr. Arman Monga, Adv. for MCD.
Mr. Arun Panwar and Ms. Prashansa
Sharma, Advs. for R-2 and R-3.
Mr. Kirti Uppal, Sr. Adv. alongwith
Mr. Deepak Agarwal, Mr. Aditya Raj
and Ms. Pragati Sharma, Advs. for
R-6.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition has been filed by the petitioner seeking that the respondent nos.1 to 5 be directed to take action for demolition of the unauthorized construction at Shop No.4158, Nai Sadak, Chandni Chowk, Delhi-110006.
2. It has been averred in the petition that the petitioner is a resident of Jahaniyapur, Sultanpur, Safipur, Uttar Pradesh and he visits Delhi on a regular basis for work.
3. It is further averred that on 09.05.2024, the petitioner had gone to buy a saree for his mother and upon reaching the shop in question, the petitioner



noticed that significant unauthorized construction has taken place in the shop in question.

4. It is averred in the petition that the said shop has a narrow single staircase with multiple flights of stairs with hundreds of shoppers on each floor which has been built illegally/ unlawfully without any sanctioned plan.

5. Admittedly, the petitioner is not even a resident of Delhi. There is no specific averment in the writ petition as to how his individual legal or fundamental right has been infringed.

6. In the circumstances, at the outset, it was enquired from the petitioner as to whether he was desirous of withdrawing the present petition and instead file a PIL on the same cause of action. However, the petitioner insists on agitating his grievance *vide* the present petition.

7. Learned counsel for the petitioner relies upon the following judgments *i.e.*, *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402, *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, *Harbanslal Sahnia v. India Oil Corporation Ltd. & Ors.*, (2003) 2 SCC 107, *Ghulam Qadir v. Special Tribunal and Ors.*, MANU/SC/0608/2001, *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal*, MANU/SC/0063/1962, *Bangalore Medical Trust v. B. S. Muddappa & Ors.*, MANU/SC/0426/1991 and *S. P. Gupta v. Union of India (UOI) and Ors.*, MANU/SC/0080/1981, to contend that the present petition is maintainable.

8. The aforesaid judgments reiterate the wide scope of power under Article 226 of the Constitution of India. There can be no cavil as regards the scope of Article 226 of the Constitution of India, as laid down in the aforesaid judgments. However, in these proceedings, it is incumbent on the



petitioner to show that any of his fundamental/legal rights have been violated.

9. A coordinate bench of this Court in judgement dated 16.10.2017 titled ***Rajendra Motwani & Anr. v. MCD & Ors.***, 2017 SCC OnLine Del 11050 has held as under:-

“10. ...that an illegal construction in itself does not give any legal right to a neighbour. 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 neighbour 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...”

10. Likewise, in an Order dated 20.12.2011 titled ***Shakti Singh v. MCD & Ors.***, LPA 992/2011, it has been held by a Division Bench of this Court :-

“15. ... Suffice would it be to state that all and sundry cannot question the legal status of buildings in Delhi. It is only people in the neighbourhood whose air and light or enjoyment of their properties is in peril, would alone have a locus standi to raise issues pertaining to legality of buildings in their area.”

11. In a judgement dated 02.09.2021 titled ***Shiv Kumar v. South Delhi Municipal Corporation & Anr.***, 2021:DHC:2721, relying upon ***Rajendra Motwani*** (supra), a coordinate bench of this Court held as under :-

“10. As noticed herein above, admittedly Petitioner's light, air and legal rights are not affected. He is not even a neighbour. Petitioner has selectively filed this petition only against the property of Respondent No. 2 and the reason given by learned counsel is that the son of Respondent No. 2 has filed a petition on which action has been taken by the Corporation against several properties.”

12. In a judgement dated 22.04.2022 titled ***Praveen Garg v. South Delhi Municipal Corporation and Ors.***, 2022:DHC:1490, a coordinate bench of this Court relying upon ***Rajendra Motwani*** (supra) held as under :-

“8. 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.

9. Notably, a Co-ordinate Bench of this Court in *Rajendra Motwani v. MCD* 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...”

10. Recently, in ***Pawan Kumar Saraswat v. North Delhi Municipal Corporation*** 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 extra ordinary Writ jurisdiction of this court. I am of the view that the petition deserves to be dismissed.”

11. In the present case, the petitioner admittedly does not have any connection with the property in question. He is stated to have come across the alleged unauthorized construction at the subject property while he was passing through the area. The petitioner has further failed to show as to which fundamental or legal right of his is being affected by any alleged construction activity carried out in the subject property. It is quite apparent that the present petition has not been filed for enforcement of any fundamental or legal right, but rather for some motivated reasons.”

13. The same principle was reiterated in ***Yogesh Middha v. Municipal Corporation of Delhi (South) and Ors.***, 2022:DHC:1684 and ***Annu Arora v. Municipal Corporation of Delhi and Ors.***, passed in W.P.(C)



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14. In view of the aforesaid position of law enunciated and reiterated by coordinate benches of this Court, this Court is not inclined to entertain the present petition, and the same is consequently dismissed.

SACHIN DATTA, J

MAY 27, 2024/r, dn