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

+ **W.P.(C) 10123/2019**

**RWA K-BLOCK MOHAN PARK THROUGH ITS SECRETARY
AND ORS.Petitioners**

Through: Mr. Adarsh Kumar Tiwari, Mr.
Devesh Kumar, Ms. Vartika Maurya,
Mr. Vinit Kumar Pathak and Mr.
Ashutosh Main Tiwari, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

.....Respondents

Through: Mr. D. K. Sharma, Ms. Pooja Das and
Mr. Parth Sahrawat, Advs. for MCD.
Ms. Sapna Chauhan, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

19.09.2024

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1. The grievance raised by the petitioner in the instant petition relates to an alleged encroachment on public land which, according to the petitioner, is unauthorisedly constructed by the respondent.
2. The petitioner submits that, on account of an unauthorised construction of boundary wall beside the side walls of interfacing House no.s 27 and 28 in K-31 Block Mohan Park, Model Town, Delhi on one side and Nalla cum Road on the other side, are causing immense nuisance and thereby, interfering with the ease of access to the public road.
3. A perusal of the facts would indicate that earlier the petitioner has



approached this Court by way of W.P.(C) 1856/2019 and in terms of order dated 22.09.2019, the Court took note of the existence of Special Task Force [“STF”] pursuant to the directions of the Supreme Court *vide* order dated 24.04.2018 in W.P. (C) 4677/1985 titled as ***M.C. Mehta v. Union of India***.

4. Accordingly, the writ petition came to be disposed of and the petitioner was granted liberty to pursue remedy before the STF in accordance with the procedure laid down under Office Memorandum dated 25.04.2018 and 23.05.2018.

5. Learned counsel appearing for the petitioner then refers to *Annexure P-24*, which is a representation dated 31.07.2019, stated to have been made to the Vice Chairman, DDA (Head of STF), requesting necessary steps to be taken for removal of the alleged encroachment, and submits that no action is taken by the STF. Though the STF has been arrayed as respondent No.2, however, there does not seem to be any reply by the said respondent.

6. The petitioner, therefore, points out from the status report placed on record by the respondent-Corporation that in absence of relevant record with the MCD to ascertain/confirm that the land in question has been released by DDA or the Delhi Police, the necessary action by the respondent-Corporation has not been taken. Learned counsel, therefore, emphasises that the official respondent be directed to conduct a thorough examination of the record and to take the issue to its logical end.

7. The Court is of the considered opinion that the nature of the grievance sought to be agitated in the instant petition may not be amenable to writ jurisdiction under Article 226 of the Constitution of India. Under almost similar circumstances, in W.P.(C) 10646/2021 titled as ***Resident Welfare Association v. Kishan Devnani and Ors.***, the Court has considered various



such aspects and in terms of paragraph Nos.36 to 39, it has been held as under:-

*“36. The High Court under the writ jurisdiction cannot possibly entertain all the cases where public nuisance, encroachment over government areas etc. are being alleged. Furthermore, it is not a case where the petitioner does not have any legal remedy. There exist alternate legal remedies under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023, Special Task Force constituted vide Notification dated 25.04.2018 by the Ministry of Housing and Urban Affairs or a Civil Suit etc., which are also equally efficacious. The Court in the decisions of **DDA v. Rajbir Singh, Nemai Bagdi v. State of W.B., Rita Dalal v. Inspector-in-Charge/Officer-in-Charge, Protap Chandra Naskar v. State of W.B., Jai Prakash Yadav v. State of Bihar and Sanjeet Kumar Singh v. State of Bihar**, wherein, a similar controversy relating to the boundary wall was agitated, declined to entertain the writ petition and rather, gave the liberty to approach the competent Civil Court or avail any other remedy available as per law.*

37. In the instant case, it appears that the boundary wall in question has been in existence for more than at least 30 years. As to when the boundary wall came to be constructed, no party has any authentic documents to assert its claim. It is stated that repairing of the boundary wall took place in the year 2012. This in itself indicates that in the year 2012, the boundary wall may have been at least 10 to 15 years old. Even going on this basis, the boundary wall in question might have been constructed at least before the year 2000.

38. Be that as it may, in the instant petition, various disputed questions of facts exist as to i) when exactly the boundary wall in question was constructed? ii) who constructed the boundary wall in question? iii) whether it was on private land or public land? iv) which layout plan was accurate? v) whether the shops in question were constructed by the petitioner-Association members? vi) whether the shops in question are encroaching the public land or violating the extant rules or regulations? vii) whether the boundary wall in question obstructs the petitioner-Association's members to access public parks, recreation centres etc? All these are undoubtedly debatable questions of facts and if such controversies are entertained in the writ petitions, the Constitutional Courts would be engaging in roving enquiries into such contentious facts, which would mandatorily require thorough leading of evidence from both the parties and adjudication thereupon. Such an exercise may not be amenable to writ jurisdiction under Article 226 of the Constitution of India, as discernible from the above discussion.



39. In view of the aforesaid, while reserving the liberty in favour of the petitioner-Association to avail appropriate remedy available as per law, the instant petition stands dismissed, alongwith the pending applications.”

8. The Court, however, takes into consideration the directions already in existence *vide* order dated 22.09.2019, which necessarily requires the STF to at least consider the grievance of the petitioner and to take a final decision.

9. Since in order dated 22.02.2019, no time limit is prescribed, therefore, the STF is directed to deal with the petitioner’s complaint within a period of six months from the date of receipt of the copy of this order.

10. In case the petitioner’s grievance is not mitigated, and is not amenable to be adjudicated under the STF’s scope, the petitioner, thereafter shall be at liberty to approach the concerned Civil Court as has been observed in W.P.(C) 10646/2021.

11. With the aforesaid directions, the petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 19, 2024/P