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

+ **W.P.(C) 10329/2024, CM APPL. 42315/2024**

COL JITENDER KUMAR BHALLA

.....Petitioner

Through: Mr. Deepak Vohra, Adv.
Ms. Sonali Malhotra, Adv. alongwith
Ms. Nidhi Narwal, Adv.

versus

**MUNICIPAL CORPORATION OF
DELHI & ORS**

.....Respondent

Through: Mr. Divyam Nandrajog, Panel
Counsel, GNCTD alongwith Mr. Jatin
Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **29.07.2024**

CM APPL. 42316/2024

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 10329/2024, CM APPL. 42315/2024

1. The petitioner in the instant writ petition challenges impugned order dated 20.07.2024, whereby, the petitioner has been directed to remove the alleged encroachment within 5 days, failing which the respondent-Corporation shall take necessary action for its removal.
2. Learned counsel appearing for the petitioner points out that if the dates and events are considered in right perspective, the same would indicate that the impugned action has been taken by the respondent-Corporation at the instance of private respondent against whom the petitioner has instituted a



Civil Suit before the competent Court. He then submits that since the competent Court has already directed for filing of the status report and the respondent-Corporation in its report dated 18.07.2024 has unequivocally admitted that the construction of the private respondent is illegal and unauthorised, therefore, the impugned vindictive action has been taken.

3. According to him, the respondent-Corporation has not afforded any opportunity to the petitioner to satisfy that there is no illegal encroachment. He, however, undertakes that if the respondent-Corporation finds that the petitioner is involved in an illegal encroachment of any of the part, the petitioner shall remove the same.

4. Learned counsel who appears for the respondent-Corporation, on advance instructions, points out that *vide* notices dated 19.07.2024 and 25.07.2024, necessary action against the private respondent has already been taken. The respondent-Corporation, therefore, submits that within a period of two weeks, the necessary steps will be taken and the matter shall be taken to its logical end.

5. Keeping in view the pendency of a Civil Suit between the petitioner and the private respondent, the Court, at this stage, is not inclined to pass any further directions. Nevertheless, the submissions made by the learned counsel appearing for the respondent-Corporation are placed on record.

6. Reverting to the issue raised in the instant petition, it is seen that the petitioner has alleged that the impugned action is taken with *malafide* intent. The Court, at this stage, only directs the respondent-Corporation to grant seven days' time to the petitioner to satisfy that there is no illegal encroachment. If the respondent-Corporation, after hearing the petitioner, finds that the petitioner is involved in an illegal encroachment, the



respondent-Corporation is at liberty to take necessary action in accordance with law.

7. At this juncture, learned counsel for the respondent-Corporation also placed on record communication dated 25.07.2024, whereby, the petitioner had undertaken to remove the encroachment. While responding to the aforesaid communication dated 25.07.2024, petitioner submits that the same was tendered with respect to any unauthorised construction, if it is found at all. However, as of now, the respondent-Corporation has completely failed to demonstrate as to which part of the petitioner's accommodation is in illegal encroachment or unauthorised construction.

8. Having considered the aforesaid aspect, the directions are summarised as under :-

- i. Petitioner shall be given 7 days' time to submit proper justification/representation of the construction alleged to have been raised unauthorisedly.
- ii. The respondent-Corporation, after considering the reply, shall pass a reasoned order. If the petitioner thereafter is aggrieved by the same, he shall be at liberty to take appropriate remedy in accordance with law.

9. With the aforesaid directions, the instant petition stands disposed of with pending applications.

PURUSHAINdra KUMAR KAURAV, J

JULY 29, 2024/KG