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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16866/2022, CM APPL. 53413/2022**

GUR RAJINDER SINGHPetitioner

Through: **Ms. Shruti Sharma, Advocate.**

versus

MCD & ORS.

.....Respondent

Through: **Ms. Akanksha Kaul, Mr. Aman Sahani, Mr. Akash Saxena, Mr. Sushal Tripathi, Mr. Arya Tripathi, Advocates.**
Mr. Ajjay Arora, Mr. Kapil Dutta, Mr. Vansh Arora, Ms. Simran Arora, Advocates.
Mr. Umesh Sharma, Mr. R.K Jain, Mr. Ritesh Kaushik, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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29.07.2024

1. The petitioner has filed the instant petition praying for the following relief:-

"Issue a writ of mandamus or any other writ or direction thereby directing all the respondents to restrain the illegal and unauthorized construction on the land under which the sewer line has been laid."

2. This Court vide order dated 09.12.2022 has passed following order:-

"1. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, who claims to be a resident of Ravi Nagar Extension Area, New Delhi is aggrieved by the illegal and unauthorised construction allegedly stated to be carried out by respondent Nos. 5 and 6 in front of property bearing No. RZ-127, Ravi Nagar Extension, New Delhi(hereinafter, referred to as the 'subject



area').

2. In this regard, Mr. Pankaj Kumar, learned counsel for the petitioner has referred to the complaint dated 27.11.2022 as well as order passed by this Court on 25.10.2005 in W.P.(C) 20492/2005. Reliance is placed on Section 81 of the Delhi Water Board Act, 1998 to submit that no construction or development could be carried out over any drain, sewer, supply pipe or any installation without permission.

3. Issue notice.

4. Mr. Kapil Datta, leaned counsel appears and accepts notice on behalf of respondent No. 1/MCD and, on instructions, submits that the subject area falls under the control of Flood Control Board/respondent No. 3.

5. Ms. Vrinda Awasthi, leaned counsel appears and accepts notice on behalf of respondent No. 2/DJB. Mr. Gaurav Jain, leaned counsel accepts notice on behalf of respondent No. 4 and, on instructions, submits that the concerned SHO of the area shall provide all necessary assistance as and when the same is sought for.

6. Let a joint inspection be carried out in the presence of the official from the concerned Police Station on 13.12.2022 at 11:00 a.m. and an Action Taken Report be placed on record before the next date of hearing.

7. Notice be issued to respondent Nos. 3, 5 and 6 by all permissible modes, returnable on 21.03.2023.

8. In the meantime, the respondents shall ensure that no construction is carried out at the subject area, which is not in accordance with law.

9. Learned counsel for respondent No. 1 submits that the answering respondent will communicate a copy of the order passed today to respondent No. 3."

3. The private respondent by way of its counter affidavit has disputed the contents of instant writ petition. Later, it was specifically stated that even the petitioner himself is involved in encroachment of the Government land. Be that as it may, the Court only observes that there is a personal grudge between the petitioner and the private respondent.



4. The status report filed by the respondent-MCD would indicate that the inspection of the site was carried out on 03.01.2023 by Delhi Jal Board and I&FC. During the inspection, it was found that to ascertain the Khasra no. and the ownership status, Total Station Survey Method (TSM) will have to be resorted to. The copy of the inspection report has also been placed on record.

4. For the sake of clarity, the status report is extracted as under:

"1. That the depondnet is presently posted as Executive Engineer (M-III) in the West Zone of Municipal Corporation of Delhi. On the basis of records placed before me, I have made myself conversant with facts of the present case and therefore, I am competent to swear the present report on the basis of record.

2. That this Status Report is being submitted as per orders dated 29.08.2023 of this Hon'ble Court, wherein it was directed to take expeditious action pursuant order dated 21.03.2023 of this Hon'ble Court.

3. That is it submitted that joint inspection has been carried out on 03.01.2023 by MCD, DJB and I&FC. During the inspection, it was pointed out by Tehsildar, Patel Nagar that Khasra No. of the subject aria can be ascertained through Total Station Survey (TSM) method, after which ownership status of subject area can be ascertained. The copy of the said joint inspection report duly signed by all officers is annexed as "Annexure-A".

4. That, Tehsildar Patel Nagar vide their letter no. F.1(1)/SDM/2023/2927 dated 06.03.23 requested MCD to agree to pay the survey charges after which they will initiate the Demarcation process. The copy of said letter dated 06.03.23 is annexed herewith as "Annexure-B".

5. That, MCD vide their letter no. D-167/EE(M-III)/WZ/2023-24 dated 21.06.23 addressed to SDM Patel Nagar agreed to pay the survey charges for TSM survey. The copy of said letter dated 21.06.23 is annexed herewith as "Annexure-C".

6. That, MCD vide their letter no. D-325/EE(M-III)/WZ/2023-24 dated 04.08.23 addressed to SDM Patel Nagar requested to carry out TSM survey at site so that further action can be taken in this case. The copy of said letter dated 04.08.23 is annexed herewith as "Annexure-D".



7. That, MCD vide their letter no. D-515/EE(M-III)/WZ/2023-24 dated 21.09.23 addressed to SDM Patel Nagar requested to carry out TSM survey at site so that further action can be taken in this case. The copy of said letter dated 21.09.2023 is annexed herewith as "Annexure-E"

8. That, further action in this regard will be taken after completion of TSM survey by the Revenue Department so that ownership of the land can be ascertained."

5. There is no rejoinder with respect to the status report filed by the respondent-MCD. The petitioner has failed to point out a specific location and has not placed on record the steps which the petitioner has taken pursuant to the status report filed by the respondent-MCD. The Court, under Article 226 of the Constitution of India, cannot be expected to conduct a roving enquiry as to where the particular land would be situated, when the Official respondent has taken a positive stand that the land in question is yet to be ascertained. The petitioner has not even volunteered to bear the charges for TSM. He cannot just present the petition and walk away expecting the Court to undertake all necessary enquires without extending necessary assistance. Adjudication of the issue such as the one raised in the petition would necessarily require leading of oral and documentary evidence by the parties, which under the facts of the present cases, is wholly unwarranted.

6. The petitioner, however, shall be at liberty to take appropriate remedy in accordance with law.

7. Accordingly, the instant petition stands dismissed alongwith the pending application.

PURUSHAINdra KUMAR KAURAV, J

JULY 29, 2024/KG