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

+ **W.P.(C) 11303/2024 & CM APPL. 46838/2024**

SMT MANJU RAWAT

.....Petitioner

Through: Mr.Aditya Tripti Juyal, Mr.Dipak Raj
Singh and Mr.Sanjeev, Advs.

versus

MUNICIPAL CORPORATION OF DELHI AND ORS

.....Respondents

Through: Mr.Arn timer Gupta and Mr.Shashi
Gupta, Advs for MCD.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR timer KUMAR KAURAV

ORDER

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14.08.2024

1. The petitioner in the instant petition seeks directions to respondent-MCD to take a decision on his representation seeking regularisation of the construction in question which is stated to have been made on 29.07.2024.
2. No rules or regulations have been presented to the Court that indicate under which provisions, the respondent-MCD is obligated to process the application for regularisation. The Court, under Article 226 of the Constitution of India, may only direct for enforcement of extant rules and regulations that are shown to have been violated by the respondent-MCD.
3. The Supreme Court in the case of *Joginder v. State of Haryana*³, has held that regularisation of a property is not the right of an individual but the

³ (2021) 3 SCC 300



discretion of the authority subject to the applicable rules and policy. The relevant paragraph is culled out below:-

“13. It is required to be noted that the persons in illegal occupation of the government land/panchayat land cannot, as a matter of right, claim regularisation. Regularisation of the illegal occupation of the government land/panchayat land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the government land/panchayat land are not entitled to regularisation. As observed by this Court in the recent decision in State of Odisha v. Bichitrananda Das [State of Odisha v. Bichitrananda Das, (2020) 12 SCC 649] , an applicant who seeks the benefit of the policy must comply with its terms....”

4. Further , it is well settled that a writ of mandamus cannot be issued to compel the exercise of discretion, as held by the Supreme Court in the case of ***Mangalam Organics Ltd. v. Union of India***⁴. The relevant extract of the said decision reads as under:-

39.Merely because conditions laid in the said provisions are satisfied, would not be a reason to necessarily issue such a notification. It is purely a policy matter. No doubt, the principle against arbitrariness has been extended to subordinate legislation as well [see *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121]]. ***At the same time, the scope of judicial review in such cases is very limited. Where the statute vests a discretionary power in an administrative authority, the court would not interfere with the exercise of such discretion unless it is made with oblique end or extraneous purposes or upon extraneous considerations, or arbitrarily, without applying its mind to the relevant considerations, or where it is not guided by any norms which are relevant to the object to be achieved.***

5. Although the petitioner has not annexed any document indicating the bye-laws, but he draws the attention of the Court to paragraph no.21 of the writ petition to say that Unified Building Byelaws, 2016 provides for



regularisation of unauthorised construction solely through his pleadings.

6. The facts of the case further indicate that the action for demolition/sealing was taken against the property in question as far back as 2015.

7. Considering the foregoing, the Court is not inclined to pass any directions. The petitioner, however, shall be at liberty to take necessary steps in accordance with law against the demolition/sealing action.

8. Needless to state that the decision as to whether any unauthorised construction is to be regularised or otherwise, will have to be done at the discretion of the respondent-MCD.

9. Accordingly, the instant writ petition along with pending application stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 14, 2024/MJ

⁴ (2017) 7 SCC 221