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

+ **W.P.(C) 11503/2024**

NAWAB KHUSRO HASAN KHANPetitioner

Through: **Mr. Sanjeev Kumar, Adv.**

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

.....Respondents

Through: **Mr. Abhinav Sharma and
Mr. Mahender Shukla, advs.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% 21.08.2024

CM APPL. 47732/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner in the instant writ petition seeks direction to the respondent-Corporation to carry out demolition action with respect to alleged unauthorised and illegal construction allegedly raised by respondent No.2 on Shop No.1409, Pahadhilmli, Churiwala, Delhi-110006.
4. The facts, as can be seen from the writ petition would indicate that the petitioner claims to be the owner of the shop in question and respondent No.2 appears to be the tenant. It is alleged that the respondent No.2 has raised construction without obtaining necessary permissions from the concerned Department.



5. The nature of the dispute raised in the instant writ petition would suggest that the petitioner by way of the instant writ petition seeks to evict the tenant from the premises in question and has, therefore, taken recourse to Article 226 of the Constitution of India. However, it appears that the same dispute can be contested while taking recourse under civil law. It has been noticed by the Court that the litigants in order to mount pressure against their rivals have involved in multiple rounds of litigation to satisfy their vindictive motives.

6. The similar position has been dealt by this Court in the case of W.P.(C) 10646/2021 *vide* judgment dated 16.08.2024. The relevant extract has been set forth: -

*25. This Court in the case of **Rajendra Motwani v. MCD**, has categorically held that illegal construction per se does not give any person, a right to knock on the doors of the Constitutional Courts under Article 226 of the Constitution of India unless and until his individual or legal right was infringed. The relevant extract of the said decision reads as under:-*

“10. The second reason for rejecting the argument urged on behalf of the appellants/plaintiffs is 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 neighbor. Legal right to light and air is only in terms of Section 15 of the Easements Act, 1882 which requires a cause of action to be laid out and proved that right to light and air has been enjoyed for 20 years and only on completion of 20 years there is a right to acquisition by prescription in the easementary rights. It is relevant to note that even after acquisition of easementary rights of prescription, yet, right to injunction for a neighbor is not absolute and is covered by Section 33 of the Easements Act which requires that disturbance to the easementary rights must actually cause substantial damage to a neighbor and the infraction materially diminishes the value of the dominant heritage with the fact that there is material interference in the physical comfort of the neighbor of living in his own house or prevents the neighbor from carrying on his accustomed business in the dominant heritage/his own



house. All these are factual aspects and admittedly there is no cause of action which is laid out in the plaint in terms of Sections 15 and 33 of the Easements Act that right to easement of the appellants/plaintiffs has become absolute as it has been enjoyed for 20 years and that in fact after rights to easement are acquired by prescription there is also a substantial damage to the appellants/plaintiffs or there is material interference in the physical comfort of the appellants/plaintiffs or the appellants/plaintiffs being prevented from carrying on his accustomed business in their own dominant heritage/own property.”

*26. The same principle was also upheld in the decisions of this Court in the case of **Vishwas Pathak v. MCD, Shiv Kumar v. South Delhi Municipal Corporation, Shiv Kumar v. South Delhi Municipal Corporation**, wherein, it was reiterated that the Writ Court cannot entertain a petition when the individual or legal rights are not infringed.*

25. Looking at the nature of the construction and background of the case, the Court is not inclined to entertain the instant writ petition and leaves it open to the petitioner to take remedy under the Civil Law.

26. With the aforesaid liberty, the petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 21, 2024/p