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

+ W.P.(C) 11775/2024, CM APPL. 48980/2024 and CM APPL. 48981/2024

VINAY MOHAN & ANR

.....Petitioners

Through: Mr. Tanmaya Mehta, Mr. Karan Nagrath, Ms. Rashmi Gogoi, Ms. Nupur Kumar, Ms. Niharika Nagrath, Arjun Nagrath and Mr. Ambuj Tiwari, Advocates for Petitioner no.1. Ms. S. Dua, Advocate for Petitioner No.2.

versus

ARCHEOLOGICAL SURVEY OF INDIA & ORS.Respondents

Through:

Mr. Manu Chaturvedi, Standing Counsel, MCD with Ms. Devika Singh Roy Choudhary, Advocate for R-2/MCD. Mr. Prajesh Vikram Srivastava, SPC for Respondent Nos. 1, 3 and 4
Mr. Vineet Jhanji and Mr. Imran Moulaey, Advocates for R-6.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
28.08.2024

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1. Mr. Vinay Mohan -Petitioner No. 1 and SITAC Estates Pvt. Ltd.- Petitioner No. 2 have filed the instant petition under Article 226 of the Constitution of India, 1950 seeking directions to the Archaeological Survey



of India- Respondent No. 1, the Municipal Corporation of Delhi- Respondent No. 2, and other relevant authorities to take action against the alleged illegal and unauthorized construction being carried out by Mrs. Madhulekha Sawhney -Respondent No. 6, at House No. 2, Padmini Enclave, Aurobindo Marg, New Delhi – 110016.¹ The Petitioners claim that this construction violates the Ancient Monuments and Archaeological Sites and Remains Act, 1958,² the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act 2010³ and the Delhi Municipal Corporation Act, 1957.⁴ Furthermore, they also challenge the recommendation⁵ issued by the National Monuments Authority-Respondent No.3, on 11th April, 2023, and the subsequent sanction dated 24th April, 2023,⁶ which permits reconstruction, additional construction, repairs, or renovation at the site. They argue that these approvals contravene the provisions of AMASR Act 1968 as amended by the AMASR Act of 2010.

2. The Court has extensively heard the counsels representing the parties- Mr. Tanmay Mehta, Counsel for the Petitioner, Mr. Manu Chaturvedi, Standing Counsel, MCD, Mr. Vineet Jhanji, Counsel representing Respondent No. 6 and Mr. Prajesh Vikram Srivastava, SPC for Respondent Nos. 1, 3 and 4.

3. Mr. Mehta explains the locus standi of the Petitioners to file the present petition, asserting that as owners of properties adjacent to the subject

¹ “subject property”

² “AMASR 1958 Act”

³ “AMASR 2010 Act”

⁴ “DMC Act”

⁵ “NMC recommendation”

⁶ “Impugned sanction”



property, the Petitioners have a personal and direct interest in seeking directions from the relevant statutory authorities to take action against the alleged illegal and unauthorized construction. The Petitioners argue that such construction adversely affects their property rights and thus, they have a legitimate right to approach this Court for seeking necessary directions against the illegal and unauthorized construction on the subject property.

4. The prayers in the petition primarily seek directions to prohibit the unauthorized construction on the subject property and to compel the relevant authorities to take appropriate steps, including demolition, against such illegal and unauthorized construction. The specific reliefs sought by the Petitioners are as follows:

“a) Issue a Writ of Mandamus or any other similar order/direction to the Respondent Nos.1 to 5 to prohibit any further illegal and unauthorized construction on the Said Property being House No. 2 Padmini Enclave, Aurobindo Marg, New Delhi – 110016, partly situated in the designated Prohibited Area of “Idgah of Kharera” , a Centrally Protected Monument;

b) Issue a writ or any other similar order/direction in the nature of Mandamus directing the Respondent Nos.1 to 5 to take appropriate steps/action including demolition of the illegal and unauthorized construction on the Said Property being House No. 2, Padmini Enclave, Aurobindo Marg, New Delhi – 110016, partly situated in the designated Prohibited Area of “Idgah of Kharera”, a Centrally Protected Monument; and

c) Issue a Writ of Mandamus or any other appropriate writ, direction or order, calling upon the Respondents and specifically Respondent No. 1 to produce the records relating to the grant and approval of Permission to the Respondent No. 6 to carry out re-construction/ construction / additional construction / renovations/ repairs etc., in the Said Property being House No. 2, Padmini Enclave, Aurobindo Marg, New Delhi –110016.”



5. To support the Petitioners' case, Mr. Mehta has relied upon a status report dated 30th July, 2024, filed by Superintending Archaeologist, Delhi Circle, Archaeological Survey of India (Respondent No. 1 herein), in a Civil Suit (CS No. 7830/2016),⁷ pending before the ADJ Saket Courts, New Delhi. The said report highlights the violations noticed by the officials of Delhi Circle and the Competent authority during the joint survey conducted by them at the subject property. Mr. Mehta further contends that the Petitioners, in the first instance, sought the intervention of the Respondent authorities through representations dated 28th June, 2024, and 19th July, 2024, explicitly highlighting their grievances regarding the alleged unauthorized construction. However, despite these efforts, no substantive action has been taken by the authorities. He argues that the State Authorities have been wilfully neglecting their duty to address the illegal construction undertaken on the subject property, thereby necessitating the issuance of appropriate directions from this Court to ensure compliance with the law.

6. In response to the Court's query regarding the scope of the pending Civil Suit mentioned above, Mr. Mehta clarifies that the cause of action in the present petition is entirely distinct from the one raised in the said suit. He submits that the Civil Suit was initially filed due to the commercial activities allegedly being conducted on Property No. 2, Padmini Enclave, Aurobindo Marg, New Delhi-110016. Although the issue of unauthorized construction was also raised in that suit, it specifically pertained to construction activities carried out during the period of 2013-2014. Mr. Mehta further acknowledges that the Civil Suit was subsequently amended

⁷ "Civil Suit"



in 2023; however, he emphasizes that the illegal constructions, which are the subject matter of the present petition, represent a separate cause of action that arose after the amendments were made to the plaint. He argues that the current petition focuses on more recent unauthorized constructions, and, therefore, the relief sought in this writ petition is not barred by the pendency of the Civil Suit.

7. Mr. Manu Chaturvedi, Standing Counsel representing MCD, on the other hand, strongly opposes the maintainability of the present petition and has placed reliance on the judgments of this Court in *Himanshu v. East Delhi Municipal Corporation & Anr*⁸ and *Arjun Singh v. Municipal Corporation of Delhi and Ors.*⁹ Furthermore, in response to the allegation that the MCD has failed to act on the complaints made by the Petitioners, Mr. Chaturvedi points out that the MCD has, in fact, taken cognizance of the matter. He submits that on 27th August 2024, the property in question was booked, and a show-cause notice was issued to its owner, thereby demonstrating that the MCD is actively addressing the issue raised by the Petitioners.

8. On the other hand, Mr. Jhanjhi, Counsel for Respondent No. 6, argues that there are substantial factual disputes in this matter and urges that this Court should refrain from entertaining the present petition. He emphasizes that the parties are already engaged in litigation before the Civil Court in Civil Suit (CS No. 7830/2016), which addresses similar issues, including the question of unauthorized construction. Mr. Jhanjhi further contends that the amended plaint in the Civil Suit explicitly raises

⁸ Order dated 31st July, 2023 in W.P (C) 8104/2022.

⁹ Order dated 21st July, 2023 in W.P. (C) 9624/2023



the issue of unauthorized construction, and that the Petitioner has recently filed an interim application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, in the pending suit, seeking similar relief. Since this application is still under consideration, Mr. Jhanjhi argues that the Petitioner should not be permitted to seek the same relief by way of the present writ petition, as it would amount to an abuse of process and forum shopping.

9. In light of the above, it is evident that the Petitioners have already invoked the jurisdiction of the Civil Court in Suit No. CS 7830/2016, which pertains to the alleged unauthorized construction on the property in question. The pleadings submitted in the Civil Suit, as presented by Mr. Jhanjhi and acknowledged by Mr. Mehta, demonstrate that the suit raises grievances concerning unauthorized construction, renovation, or repairs being undertaken on the subject property. Therefore, if there are subsequent instances of illegal construction, they must also be addressed before the Civil Court. The prayers made in the interlocutory application are sufficiently broad to encompass the issue of unauthorized construction, including any recent developments.

10. While Mr. Mehta argues that the scope of the Civil Suit is confined to unauthorized constructions from 2013-2014 and that the amendments made in 2023 do not cover grievances related to unauthorized constructions occurring thereafter, this contention does not persuade the Court to entertain the present petition. The jurisdiction of a Civil Court is limited to the specific pleadings and causes of action set forth by the parties, and the jurisdiction of this Court under Article 226 of the Constitution is indeed wider and more flexible, permitting the Court to issue directions for



enforcement of fundamental and statutory rights. However, the mere existence of broader jurisdiction under Article 226 does not automatically justify the intervention of this Court, particularly where an effective and efficacious alternative remedy is already being pursued by the parties in a Civil Court. In the present case, the Civil Court has been seized of the dispute regarding the construction on the subject property since 2014, and the parties have been actively litigating the matter there for nearly a decade. The Civil Court is competent to adjudicate upon all questions of fact and law relating to the unauthorized construction, including any new or continuing violations that may have occurred after the filing of the suit or subsequent amendments. Given the long-standing litigation before the Civil Court and the existence of a specific interlocutory application covering the alleged unauthorized construction, this Court finds that the Civil Court is best suited to address the grievance comprehensively. Allowing parallel proceedings would not only lead to multiplicity of litigation but could also result in conflicting decisions, which this Court must avoid. Therefore, the Petitioners should pursue their remedies before the Civil Court, where their grievances regarding both past and recent unauthorized constructions can be adjudicated upon in accordance with law.

11. Furthermore, as regards the allegations of illegal and unauthorized construction, this Court is inclined to adopt the approach outlined in its decision dated 20th September, 2018, in *W.P.(C) No. 1807/2018*. In that case, the Court emphasized that issues relating to alleged illegal construction—such as deviations from sanctioned building plans, violations of municipal regulations set by the Municipal Corporation of Delhi (MCD), Delhi Development Authority (DDA), New Delhi Municipal Council



(NDMC), or breaches of laws governing archaeological sites, ancient monuments, or encroachments on public land—are most appropriately addressed by first approaching the Special Task Force (STF) established by the Supreme Court to deal with such matters. The STF remains in existence and is actively engaged in examining and resolving such complaints. This framework ensures a specialized and focused examination of the allegations, leveraging the expertise and mandate of the STF to handle such specific grievances. Accordingly, this is yet another reason why this Court is not inclined to entertain the present petition at this stage.

12. Mr. Mehta informs the Court that the Petitioners have already approached the STF. Therefore, the only necessary direction that this Court can issue is to direct the STF to examine the Petitioners' complaint/representation dated 27th June, 2024, and take appropriate action within a period of four weeks from today, in accordance with the law. However, since the MCD has already booked the subject property and issued a show cause notice to the owner of the subject property, the STF shall also consider this development when examining the complaint to determine whether any additional directions are necessary.

13. It is clarified that while the present writ petition is not being entertained by this Court, in light of the submission made by Mr. Chaturvedi that the subject property has already been booked, it is expected that the MCD shall proceed with the adjudication of the show cause notice, issued to the affected party, in accordance with the law. Should the decision on the said show cause notice be adverse to the interests of any party, they are at liberty to explore their legal remedies as available to them under the law.



14. With the above directions, the writ petition along with pending applications stands disposed of.

SANJEEV NARULA, J

AUGUST 28, 2024

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