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

+ **W.P.(C) 7098/2010**

SARASWATI KUNJ WELFARE SOCIETYPetitioner

Through: Counsel (*appearance not given*).

versus

MCD AND ANRRespondents

Through: Mr.Mukesh Gupta, SC for MCD with
Mr.Arn timer Gupta, Adv.
Mr.Sunil Dalal, Sr.Adv with
Mr.Abhishek Sharma, Adv for R-2.

CORAM:

HON'BLE MR. JUSTICE PURUSHAIN DRA KUMAR KAURAV

ORDER

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05.08.2024

1. The petitioner has filed the writ petition seeking the following reliefs:-

" a) A writ of mandamus or any other appropriate writ, order or direction, directing the Respondent Nos. 1 to cancel and revoke the regularization of the unauthorized construction of respondent No.2 and consequently bring down / demolish the unauthorised and illegal construction standing in the property bearing no. 8/9 and 8/10, Saraswati Kunj, Alipur Road (Sham Nath Marg), Civil Lines, Delhi-110 054.

b) A writ of certiorari or any other writ, order or direction quashing / canceling the building / sanctioned/ regularized building plan and or any order regularising the illegal construction issued by Respondent No.1 pertaining to property bearing no. 8/9 and 8/10 Saraswati Kunj, Alipur Road (Sham Nath Marg), Civil Lines, Delhi-110 054,

c) In the alternative direct the respondent No. 1 to by issuance of writ order or any other writ, order and or direction, directing the respondent no. 1 to not to discriminate by treating the members of the petitioner society and or other residents / owners of the properties in



the group housing scheme known as "Saraswati Kunj Welfare Society at plot Number 8, Alipur Road (Sham Nath Marg), Civil Lines, Delhi: 110054 differentially and to treat them on equal status and terms as in the case of respondent no. 2 and permit and also allow them to raise the construction, that is additional construction / reconstruction / repairs / alteration / modification etc. without having the valid and subsisting sanctioned building plans but within the parameters and the limits as per law and as sanctioned and permissible under the resolution no. 598 dated 16.11.1972 of the standing committee of respondent number 1 and regularisation of the same on the same footing, terms and conditions as has been done in case of respondent number 2.

d) Orders granting costs of the present petition in favour of the petitioner and against the respondents.

e) Any other and further relief as this Hon'ble Court may deem fit and proper."

2. The Court takes note of the order passed by this Court in W.P.(C) 8909/2009 which was filed by *Sh. Laxmi Dutt Gupta* who appears to be the signatory of instant writ petition on behalf of the petitioner-society.
3. The Court *vide* order dated 13.05.2009 dealt with the dispute relating to property no.8/1, Alipur Road (Sham Nath Marg), Civil Lines, Delhi - 110054 and also the property bearing no.8/9 and 8/10 Alipur Road (Sham Nath Marg), Civil Lines, Delhi - 110054.
4. The relief clause in the instant writ petition relates to property bearing no. 8/9 and 8/10 Saraswati Kunj, Alipur Road (Sham Nath Marg), Civil Lines, Delhi which admittedly was the relief in W.P.(C) 8909/2009.
5. The Court finds that the petitioner withdrew the said writ petition with respect to the property in question while reserving the rights to contest the application in the pending Civil Suit OS 508/2008 and the contempt petition registered as CCP 393/2009.
6. On being asked, learned counsel for the petitioner does admit that the



Civil Suit OS 508/2008 is pending before the competent court.

7. In view of the aforesaid, the Court is not inclined to deal with the controversy relating to the property in question which admittedly is part of the Civil Suit, more particularly, in view of the fact that the petitioner in her personal capacity had withdrawn the earlier writ petition *vide* order dated 13.05.2009.

8. The Court also takes note of the fact that entertaining any petition or application with respect to the same case is hit by the principle of *res-judicata*. This seems to be the misuse of the writ remedy, which should be resorted to and exercised sparingly.

9. The instant writ petition stands disposed of reserving all rights and contentions of the parties.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 5, 2024/MJ