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

+ LPA 92/2025, CM APPL. 7375/2025, CM APPL. 7376/2025 &
CM APPL.7377/2025

COLONEL AJAY YADAV & ANR.

.....Appellants

Through: Mr. Abhik Chimni, Ms. Pranjali
Abrol, Mr. Maarooof, Mr. Gurupal
Singh and Ms. Shreya Bajpai,
Advocates.

versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Kumar Pathak, Standing
Counsel with Mrs. K.K. Kiran Pathak,
Mr. Sunil Kumar Jha, Mr. M.S.
Akhtar and Mr. Devendre Kumar,
Advocates for R-1/L&B
Mr. Kapil Dutta, Advocate for R-2.
Mr. Tushar Sannu and Mr. Hardik
Saxena, Advocates for R-3/DDA.

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Date of Decision: 7th February, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.: (ORAL)

LPA 92/2025

1. Present appeal has been filed under Clause X of the Letters Patent assailing the impugned judgement dated 20.01.2025 in W.P.(C) 352/2025 titled "*Colonel Ajay Yadav & Anr vs. Government of National Capital*



Territory of Delhi & Ors.”, whereby the learned Single Judge had dismissed the writ petition filed by the appellants on the grounds of alternate remedy; embargo of locus standi and forum shopping.

2. It is the case of the appellants that appellants are individual residents of Section B, Pocket – 1, Vasant Kunj since 20-30 years and members of Vasant Kunj Residents Welfare Association (hereinafter referred to as “RWA”). The appellants’ states that they have filed the underlying writ petition challenging the MCD Sanction letter dated 13.05.2025 and the subsequent orders/clearances granted in terms of construction of a housing complex at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa in Sector-B, Pocket-1, Vasant Kunj situated in the South Central Morphological Ridge.

3. Mr. Chimni, learned counsel for the appellants at the outset, submits that the learned Single Judge has overlooked the crucial issue raised in the underlying writ petition. In that, he states that though the RWA had filed a writ petition bearing W.P.(C) No.11283/2024 raising certain issues, yet had not raised a pertinent question which would be necessary to adjudicate before a writ Court can pass any effective justifiable order. Arguing vociferously, he states that the issue covered in para 5 of the prayer clause of the underlying writ petition is not only the edifice on which other prayers and substantial questions of law are predicated, but also the only issue which the Court under Article 226 of the Constitution, ought to judicially examine so as to ensure there is no injustice caused.

4. According to the learned counsel, though the other prayers in the writ petition filed by the RWA as also the underlying writ petition are seemingly similar, yet, there is a substantial difference in those. He attempts to



persuade that prayer 5 of the underlying writ petition seeks consideration, examination and adjudication as to whether the decision of the Expert Appraisal Committee dated 29.11.2024 granting conditional clearance to respondent no.4 for construction of a housing complex at the subject property ought not to be set-aside at the first instance itself, being violative of the guidelines pertaining to Morphological Area of Delhi. He claims that unless the said issue, which according to him is the core question, is adjudicated at the first instance, the other issues may really not reach the root of the dispute. In other words, his contention is that other issues would only be a consequential effect to the issue raised in the underlying writ petition.

5. That apart, he also forcefully contends that the right of a citizen under Article 226 of the Constitution, particularly where there is an infraction of a inviolable fundamental right of a citizen, even if a writ petition filed by a larger body or an association of which the said individual is a part, is pending adjudication, remains unfettered and untrammelled. Thus, on that basis, he contends that the right of the appellants to approach this Court under Article 226 of the Constitution remains unaffected, pristine and pure. He states that the learned Single Judge misdirected herself on this fundamental principle of constitutional right of the appellants. He thus, prays that the impugned judgment be set aside and the underlying writ petition be directed to be taken up for adjudication.

6. Having heard Mr. Abhik Chimni, learned counsel for the appellants, we find that fundamentally the submissions are on an erroneous interpretation of the constitutional rights.

7. In order to have clarity as to what prompted the learned Single Judge



to disagree with the submissions of learned counsel for the appellants, it would be apposite to extract the relevant paragraphs where the core issue were dealt with. Para 8 of the impugned judgment reads thus:

“8. Clearly, Petitioners have raised two broad issues in this writ petition i.e. construction of the subject property in a morphological ridge without clearance of the Supreme Court and RMB and that the sanction granted by MCD vide letter dated 13.05.2024 with respect to the subject property falls foul of Clause 3.2.4 of Notification dated 04.07.2018, issued in exercise of powers conferred under Section 57(1) of the Delhi Development Act, 1957. Both these issues have been raised by the RWA of which the Petitioners are members in W.P.(C)11283/2024 and in which Court declined to grant interim relief. To my mind, Petitioners are only forum hunting by filing the present writ petition being well-aware of the earlier writ petition and the application filed therein raising a ground that the subject property of Respondent No.6 falls in the Morphological Ridge Area of Delhi. Moreover, as rightly pointed out on behalf of the Respondents, Petitioners have failed to disclose that in W.P.(C)11283/2024 interim relief of stay against the alleged unauthorized construction was declined by the Court vide order dated 11.09.2024. It is the first principle of writ jurisdiction that a person must come to Court with clean hands. For reasons best known to the Petitioners, they have not disclosed material facts and the writ petition is only an attempt to seek interim relief, declined in W.P.(C) 11283/2024.”

We find from a plain reading of the aforesaid paragraph, that the learned Single Judge has manifestly crystallized the basic issue raised in the underlying writ petition and has examined the same. We do not find any reason to interdict the sound reasoning of the learned Single Judge in the aforesaid paragraph. However, we find it appropriate to supplement the reasoning with our own analysis.

8. In order to satisfy our conscience, we deem it appropriate to extract the prayers in the W.P.(C) No. 11283/2024 filed by the RWA in juxtaposition to the ones made in the underlying writ petition. The same in seriatim are as under:

W.P.(C) 11283/2024:-



“a) CERTIORARI, thereby quashing sanction dated 13.05.2024 [Annexure P-1] granted by the Respondent No. 3 with respect to the development over the Subject Property being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket-1 in Vasant Kunj Housing Scheme, New Delhi;

b) PROHIBITION, thereby restraining Respondent Nos. 1-3 from granting any further Sanction or approval with respect to any development over the Subject Property, being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket-1 in Vasant Kunj Housing Scheme, New Delhi;

c) CERTIORARI, thereby quashing the Minutes of the 368th Screening Committee Meeting as approved by the 368th Screening Committee Meeting dated 22.04.2019, and 370th Screen Committee Meeting dated 17.06.2019 in respect of the subject property [Annexure P-2 (Colly)], being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket-1 in Vasant Kunj Housing Scheme, New Delhi;

d) PROHIBITION, thereby restraining the Respondents from permitting or actually raising of any construction on the subject property contrary to brochure (Annexure P-1) and the original layout plan (Annexure P-2) as demonstrated to the public by the Respondents;

e) MANDAMUS, commanding the Respondent No. 1 – 3 to restore the Subject Property, in terms of the promise as made through the brochure (Annexure P-7) and the layout plan (Annexure P-8) as demonstrated to the public by the Respondents;

f) CERTIORARI, thereby quashing the order dated 07.12.2012, passed by the Ld. PO, Appellate Tribunal, MCD allowed the appeal No. 24/AT/MCD/2009 (Annexure P-3) as well as final order and judgment dated 16.07.2016 passed by the Ld. District and Sessions Judge in MCD Appeal No. 04/13 (Annexure P-4);”

W.P.(C) 352/2023:-

“1. Issue a Writ/Order/Direction restraining any party, including the Respondents from allowing or effecting any development/construction activities at Khasra no. 1230/2 (New) admeasuring 6 bighas and 7 biswa in Sector-B, Pocket-1, Vasant Kunj;

2. Issue a Writ of Mandamus or any other Writ/Order/Direction restraining Respondent No. 1-3 from granting any further Sanction or



approval with respect to any development over the Subject Property, being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket-1 in Vasant Kunj Housing Scheme, New Delhi;

3. Issue a Writ/Order/Direction setting aside sanction dated 13.05.2024 granted by the Respondent No. 2 with respect to the development over the Subject Property being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket-1 in Vasant Kunj Housing Scheme, New Delhi;

4. Issue a Writ of Mandamus or any other Writ/Order/Direction setting aside the Minutes of the 368th Screening Committee Meeting dated 22.04.2019, and 370th Screen Committee Meeting dated 17.06.2019 approving the grant of sanction in respect of the subject property, being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket- 1 in Vasant Kunj Housing Scheme, New Delhi;

5. Issue a Writ of Mandamus or any other Writ/Order/Direction setting aside the decision of the Expert Appraisal Committee dated 29.11.2024 granting conditional clearance to Respondent No. 4 for construction of a Housing Complex at Subject Property being land situated at Khasra No. 1230/2 (New) admeasuring 6 Bighas and 7 Biswa situated in Sector-B, Pocket-1 in Vasant Kunj Housing Scheme, New Delhi;

A fair comparison brings to fore the fact that there is practically no difference in the prayers contained in both the writ petitions. In fact, the prayers made in the underlying writ petition are identical except for the manner in which they have been expressed. Learned counsel for the appellants had laid great emphasis on prayer no.5 of the underlying writ petition being distinctive and unique to stand on its own, notwithstanding the other prayers, is misplaced, fallacious and unmerited. A careful examination of the relief sought in prayer no.5 of the underlying writ petition would reveal that the same deals with a decision rendered by the Expert Appraisal Committee dated 29.11.2024 for grant of conditional clearance to respondent no.4 for construction of a housing complex at the



subject property which falls in the Morphological Ridge Area of Delhi. A perusal of the prayers contained in the writ petition filed by the RWA clearly shows that it has sought quashing of 368th Screening Committee Meeting dated 22.04.2019 and 370th Screening Committee Meeting dated 17.06.2019; quashing of sanction dated 13.05.2024 in respect of development over the subject property amongst other prayers. The prayer no.5 in the underlying writ petition seeks quashing of the conditional clearance granted by the Expert Appraisal Committee dated 29.11.2024. *Ex facie*, this decision is subsequent to the previous sanctioning order noted above. Logically, the said decision of the Expert Appraisal Committee would be subsumed in the other prayers of the writ petition filed by the RWA which may and can be taken note of and appropriate directions be passed by the learned Single Judge *in seisin* of the said writ petition. Thus, the apprehension of the appellants that the same may not be considered by the learned Single Judge is unfounded. We are therefore, not persuaded to accept this submission.

9. Consequent to the aforesaid analysis, we find the filing of the underlying writ petition, impermissible. This gathers all the more seriousness inasmuch as the appellants are admittedly members of the said RWA. In case such actions are permitted, the Courts would be flooded with frivolous and multiple multitude of litigations on the common subject. We cannot countenance any such situation. For this reason too, we concur with the findings of the learned Single Judge that the appellants appears to indulge in forum shopping. In fact, learned Single Judge has also recorded a finding of fact that the appellants herein failed to disclose that in W.P.(C) 11283/2024, interim relief of stay against the alleged unauthorised



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construction was declined by the Court *vide* order dated 11.09.2024. This assumes seriousness as a person seeking discretionary relief must approach the Court with clean hands.

10. For the reasons stated above and concurring with the reasoning rendered by the learned Single Judge in the impugned judgment, we are inclined to and accordingly dismiss the appeal *in limine*.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

FEBRUARY 7, 2025/kct