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

+ **W.P.(C) 4592/2025 & CM APPL. 21271/2025**

RAKESH

.....Petitioner

Through: **Mr.Manoj Khanna, Adv. (Through
VC).**

versus

SUB DIVISIONAL MAGISTRATE & ORS.Respondents

Through: **Ms.Pavitra Kaur and Mr.Shiven
Asthana, Advs for R-1.
Mr.Kapil Dutta and Mr.Vansh Luthra,
Advs for MCD/R-2.
Ms.Manika Tripathy, SC for DDA.
Mr.Puneet Yadav,SPC for R-4 with
Si Vivek.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **09.04.2025**

1. While instituting the proceedings of this writ petition, the petitioner has prayed that an appropriate direction be issued to respondent no.2/Municipal Corporation of Delhi (MCD) to carry out the demolition of the alleged construction of the building at F-713A, Khasra No.621-622, Village Lado Sarai, New Delhi.
2. It has been brought to the notice of this Court by learned counsel representing respondent no.2/MCD that in respect of the subject property, a Civil Suit bearing no. CS SCJ 419/2021 has been instituted by the petitioner wherein, apart from making a prayer for permanent injunction, a prayer has



also been made for decree of mandatory injunction thereby, directing the defendants in the suit to demolish the alleged illegal construction/encroachment over DDA land behind the property no. F-713/1, and others, Khasra No.224, Village Lado Sarai, New Delhi. A copy of the plaint has been furnished by learned counsel representing respondent no.2/MCD which is taken on record.

3. Our attention has also been drawn by learned counsel for respondent no.2/MCD to an order dated 22.01.2025 wherein, learned Trial Judge has made an observation that *“Despite several opportunities, affidavit of evidence has not been filed by the plaintiff till date. Affidavit in compliance with order dated 23.11.2015 passed by Hon’ble Court of Delhi in writ petition (C) 10794/2015 in case titled “Sudeep Kumar Vs. SDMC & Anr.”, as directed on the last date of hearing, has also not been filed.”*

4. The learned Trial Court accordingly, even imposed a cost on the plaintiff of Rs.5000/-. Submission is that in fact the very *bona fide* of the petitioner is doubtful and in view of the pendency of the Civil Suit, where a prayer has been sought for demolition as well, this petition could not have been instituted by the petitioner for the reason that no one can be permitted to take recourse to parallel remedies simultaneously.

5. When confronted with the aforesaid issues, learned counsel for the petitioner states that since nothing is happening before the learned Trial Court in the Civil Suit, therefore, the instant petition has been filed by the petitioner in public interest. Such an explanation, in our considered opinion, does not entitle the petitioner to institute the proceedings of this writ petition for the simple reason that for the prayer made in this petition, a suit has already been instituted by the petitioner, where he has been defaulting in not producing the



necessary evidence as a result of which, even costs have been imposed on him.

6. Though, the factum of pendency of the Civil Suit has been disclosed in the writ petition, however, such disclosure itself does not entitle the petitioner to institute a writ petition in the wake of the pendency of the Civil Suit.

7. These proceedings thus, are clearly an abuse of the process of law and Court and therefore, the writ petition along with pending application stands dismissed.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

APRIL 9, 2025/MJ