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

+ W.P.(C) 16220/2024 & CM APPL. 68158/2024

SUNIL KUMAR

.....Petitioner

Through: Mr. Sunil Prasad, Advocate.

versus

MUNICIPAL CORPORATION
OF DELHI & ORS.

.....Respondents

Through: Mr. Ajjay Arora, Mr. Kapil Dutta
& Mr. Nitish Dubey, Advocates
for MCD.

Ms. Anasuya Choudhury, Senior
Standing Counsel for UOI.

Mr. Arjun Mahajan, Ms. Neha Rai
& Mr. Apoorv Upamanyu,
Advocate for DDA. [M:-
9810047321]

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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22.11.2024

1. The petitioner has filed this writ petition under Article 226 of the Constitution, complaining of alleged unauthorised construction in property No. L-164, Saurabh Vihar, Near Ram Janki Mandir, Jaitpur, Bardarpur, New Delhi-110044 [“subject property”].

2. Paragraphs 2 and 3 of the petition, as filed before this Court, read as follows:

“2. That the petitioner is owner of the suit property and



*respondent no. 4 grape the suit property bearing no. L- 164,Saurabh Vihar, Near Ram Janki Mandir, Jaitpur, Badarpur, New Delhi-110044 admeasuring 100 sq. Yards and constructed illegal building without sanction and approval of respondent no.1. **copy of colour photograph annex here as annexure A-2.***

3. *That on petitioner made written complaint to respondent no.1 regarding unauthorized and illegal construction being carried by the respondent no.4 over the property bearing no.L-164,Saurabh Vihar, Near Ram Janki Mandir, Jaitpur, Badarpur, New Delhi-110044, admeasuring 100sq Yards, and despite of necessary complaint having being already been submitted in the office of the respondent no.1 (which is DMC and its official) and no action was taken by the respondent no.1 and respondent no.4 made entire construction without any hesitation. Copy of colour photograph annex here as annexure A-2.”*

3. Upon enquiry as to the documentary evidence to show that the petitioner is the owner of the subject property, Mr. Sunil Prasad, learned counsel for the petitioner, states that this averment is mistaken and that the petitioner is a resident of the locality, not the owner of the subject property.

4. Mr. Kapil Dutta, learned counsel for the Municipal Corporation of Delhi [“MCD”], who appears on advance notice, submits that the copy of the writ petition served upon him does not contain the averments extracted above. I have requested Mr. Dutta for a copy of the petition served upon him, which has been handed up in Court. Mr. Prasad confirms that the petitioner has filed only one writ petition with regard to unauthorised construction. A copy of the petition, as served upon the respondents, is handed up in Court and taken on record. Paragraphs 2 and 3 thereof read as follows:

“2. That the petitioner is residing in the same locality and petitioner having plot near the property bearing no. L-164, Shorav Vihar, Near Ram Janki Mandir, Jaitpur, Badarpur, Delhi-44.

3. That the respondent no.4 made illegal construction up to 5th floor with the consent of local police/respondent no.2 and respondent



no.1.and also tried to grape the open government area/land belong to respondent no.1 by using car parking and garden in front of property as well as said property constructed at government land.”

5. The contents of the petition as served upon the respondents are materially different from the contents of the petition filed before this Court. In paragraph 3 of the petition served upon the respondents, there is a specific averment that illegal construction has been made upto the 5th floor of the subject property. Mr. Dutta has enquired with the Assistant Engineer and produced a photograph which shows that the construction is not upto the 5th Floor. Surprisingly, paragraph 3 of the petition, as filed, does not contain these words. A comparison of the petition, as filed, and the one served upon the respondents show other material differences, both in the averments and the annexures.

6. Quite apart from these irregularities, the petition filed before this Court contains a clear averment that the petitioner is the owner of the subject property, which Mr. Prasad himself states is incorrect.

7. In these circumstances, Mr. Prasad seeks permission to withdraw the writ petition. I am of the view that such permission can only be granted subject to costs, as the petitioner has been utterly reckless in the averments made in the writ petition.

8. The petition is dismissed as withdrawn, with costs of ₹30,000/- to be deposited by the petitioner with the Delhi High Court Legal Services Committee [“DHCLSC”] [UCO Bank, Delhi High Court, Shershah Road, New Delhi, Account No. 15530110008386, IFSC Code- UCBA0001553]. A copy of this order is to be sent to the Secretary, DHCLSC. The amount of costs be deposited within the next two weeks, failing with the Registry is directed to place the matter before the Court, upon notice to Mr. Sunil



Prasad and learned counsel for the respondents who have appeared today. In such an eventuality, the petitioner will also remain personally present before the Court on the date fixed.

PRATEEK JALAN, J

NOVEMBER 22, 2024

'pv/JM'/'