

# Kishan vs South Delhi Municipal Corporation And ... on 30 March, 2022

**Author: Manoj Kumar Ohri**

**Bench: Manoj Kumar Ohri**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 5334/2022  
KISHAN

Through: Mr. Amitesh Gaurav, Advoc

versus

SOUTH DELHI MUNICIPAL  
CORPORATION AND ANR.

..... Respondents

Through: Mr. Sunil Goyal, Mr. Deepak Jangra,  
Ms. Shivani Tayal, Mr. Satender  
Singh, Advocates for Respondent  
No.1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI  
ORDER

% 30.03.2022

1. The present petition has been filed under Article 226 of the Constitution of India on behalf of the petitioner seeking direction to respondent No. 1/South Delhi Municipal Corporation to remove the unauthorised construction from the property bearing No. B-20, T-Block, Shukar Bazar, Uttam Nagar, New Delhi-110059, stated to be carried out by respondent No. 2. The petitioner has also sought direction to respondent No.1 to take disciplinary action against the erring officers and to respondent No.2 to ensure that no further illegal/unauthorised construction is carried out in the subject property.

2. The petitioner has claimed himself to be a resident of House No. RZ- 22, South Extension, Part-II, Mohan Garden, West Delhi-110059. It is admitted by the learned counsel for the petitioner that the petitioner neither Signature NotVerified Digitally Signed By:SANGEETAANAND has any connection with the property of respondent No.2 nor is an immediate neighbour of respondent No.2. It is also admitted that neither the petitioner's easement rights nor ingress/egress are affected by any alleged construction activity carried out by respondent No.2.

3. On a specific query, learned counsel for the petitioner has submitted that the petitioner has also filed another petition being W.P.(C) 13416/2021, wherein similar relief has been sought with respect to a different property against the respondent therein.

4. Mr. Sunil Goyal, learned counsel appearing for respondent No.1/South Delhi Municipal Corporation, has taken a preliminary objection to the maintainability of the writ petition, alleging that the same is a motivated one. He has also placed reliance on a decision rendered by a Division Bench of this Court in *Prerna Ek. Disha Foundation v. Chairman Special Task Force and Others* reported as 2021 SCC OnLine Del 3114 to submit that the Court while dealing with a similar fact situation had dismissed the petition with heavy cost.

5. There is no gainsaying that a petition under Article 226 of the Constitution of India lies only for enforcement of a fundamental or legal right.

6. Notably, a Co-ordinate Bench of this Court in *Rajendra Motwani & Anr. v. MCD & Ors.* reported as 2017 SCC OnLine Del 11050 has held as follows:

"10. ...that an illegal construction in itself does not give any legal right to a neighbor. An illegal construction always no doubt gives locus standi to the local municipal authorities to seek removal of the illegal construction, but, a right of a neighbor only arises if the Signature NotVerified Digitally Signed By:SANGEETAANAND legal rights of light and air or any other legal right is affected by virtue of the illegal construction of the neighbour..."

7. Admittedly, the petitioner in the present case does not have any connection with the property in question. He has failed to show as to which fundamental or legal right of his is being affected by any alleged construction activity carried out by respondent No. 2. It appears that the present petition has not been filed for enforcement of any fundamental or legal right, but rather for some motivated reasons.

8. In this backdrop, this Court is not inclined to exercise its power under Article 226 of the Constitution of India to grant the relief sought by the petitioner.

9. Accordingly, the present petition is dismissed, with a cost of Rs.10,000/- to be deposited by the petitioner with the Delhi State Legal Services Authority within a period of two weeks from today.

10. Proof evidencing receipt of deposit shall be filed with the Registry of this Court, failing which the Registry shall list the matter before this Court.

11. A copy of this order be communicated electronically to Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi for information.

12. Needless to state, respondent No.1 shall take necessary action in case any unauthorized construction activity takes place, or has taken place, in the subject property, except in accordance with a sanctioned building plan, if any. In the event of any grievance arising hereafter, the petitioner shall be at liberty to approach the Special Task Force constituted by DDA pursuant to directions of the Supreme Court.

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13. With the above directions, the petition is disposed of.

MANOJ KUMAR OHRI, J MARCH 30, 2022/v Click here to check corrigendum, if any Signature NotVerified Digitally Signed By:SANGEETAANAND