

# **Mohd. Saleem vs Commissioner S.D.M.C And Anr on 18 February, 2019**

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 5289/2018 & CM APPL. No. 20538/2018  
MOHD. SALEEM ..... Petitioner  
Through: Mr. Subhash Chand Budhiraja, Adv.

versus

COMMISSIONER S.D.M.C AND ANR. .... Respondents  
Through: Mr. Anil Panwar, Adv. for R-1.

CORAM:  
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 18.02.2019 The main prayer in this writ petition is as follows: A. Direct the respondent No 1 to remove the illegal construction raise over the plot No.E-387, measuring 200Sq. Yards (Size 30ft x 60 ft) situated at abadi known as E-block , Jaitpur Extension, Part-II , Badarpur , New Delhi by the respondent no.2.

B. Direct the respondent No 2 to stop / restraining for sale to 3rd persons of the plot No.E-387 , measuring 200Sq. Yards (Size 30ft x 60 ft) situated at abadi known as E-block , Jaitpur Extension, Part-II , Badarpur , New Delhi.

2. It transpires that the petitioner had earlier filed a civil suit No. 58/2015 in the District Court, Saket, New Delhi against respondents Nos. 1 and 2 who were both defendants in the said suit.

3. The claim made in the suit was as follows:

"It is therefore, most respectfully that this Hon'ble Court may kindly be pleased to pass a decree of permanent injunction in favour of the plaintiff and against the defendant No. 1 thereby the defendant No. 1 be restrained to carry unauthorized and illegal construction on the suit property i.e. plot No, E-387, measuring 200 Sq. yards (size 30 ft. x 60 ft.) situated at abadi known as E-block, Jaitpur Extension, Part- II, Badarpur, New Delhi and the same is portion of khasra no.732 of revenue village of Jaitpur, Tehsil Kalkaji, New Delhi.

It is, further, prayed that a decree of mandatory injunction may also be passed in

favour of the plaintiff and against the defendant No. 2 thereby the defendant No. 2 be directed to demolish/ remove unauthorized and illegal construction carried by the defendant No. 1 on the suit property i.e. plot No.E-387, measuring 200 Sq. yards (size 30 ft. x 60 ft.) situated at abadi known as E-block, Jaitpur Extension, Part-II, Badarpur, New Delhi and the same is portion of khasra no.732 of revenue village of Jaitpur, Tehsil Kalkaji, New Delhi."

4. The suit CS No. 58/2015 was subsequently withdrawn by the plaintiff therein, being the petitioner in this petition, and on that date the civil court recorded as under:

"At this stage, plaintiff submits that he would like to withdraw the present suit with liberty to file fresh suit before appropriate court after removing certain technical defects/carrying out the necessary changes/amendment. Separate statement of the plaintiff is recorded in this regard."

5. It is evident from above that there is almost complete identity as between the prayer made in this petition and the claim made in the suit.

6. Upon being queried as to why the suit was withdrawn by the plaintiff, learned counsel for the petitioner states that the suit was withdrawn since the petitioner was informed that the subject property had been booked for action by the municipal corporation.

7. Paragraph 18 of the petition recites to the effect that the civil court had passed an order for removal of unauthorized construction in the subject property and that the suit was thereafter fixed for trial.

8. There appears to be serious discordance between what the record shows and what is stated by counsel for the petitioner at the bar.

9. Be that as it may, what is clear is that the petitioner had filed a civil suit making certain claims, which suit was subsequently withdrawn and the present petition came to be filed, seeking substantially the same relief, against the same parties and in respect of the same subject property.

10. In substance the relief sought is against alleged unauthorized construction in property bearing plot No. E-387 situate in the abadi area of Jaitpur Extension Part-II, New Delhi.

11. In the context of the petitioner's grievance, it transpires that in compliance of orders of the Supreme Court in Writ Petition (Civil) No. 4677/1985 titled M.C. Mehta vs. Union of India & Ors, the Ministry of Housing & Urban Affairs ("MHUA") of the Government of India has vide Office Memorandum dated 25.04.2018 constituted a Special Task Force to comprehensively address violations of the provisions of the Unified Building Bye Laws and Master Plan for Delhi-2021 relating inter alia to construction activity and land-use in Delhi. Vide another Office Memorandum dated 23.05.2018 the MHUA has also formulated an action plan for monitoring construction activities in Delhi and for fixing responsibility in case of violations of the Unified Building Bye Laws

and the Master Plan.

12. Vide order dated 20.09.2018 made in Writ Petition (Civil) No. 1807/2018 titled Devender vs. Government of NCT of Delhi & Ors. (and connected matters) by the Division Bench of this Court presided-over by Hon'ble the Chief Justice, the Court has held that in view of the setting-up of the Special Task Force under directions of the Supreme Court it is not appropriate for our court to exercise jurisdiction in matters relating to unauthorized construction; and has disposed of such matters granting liberty to the petitioners to raise their grievances before the Special Task Force so constituted, in accordance with the scheme and procedure formulated under the aforesaid two Office Memorandums.

13. By order dated 24.09.2018 made in a subsequent matter, being Writ Petition (Civil) No. 9938/2018 titled Suresh Chand Goel vs. East Delhi Municipal Corporation, the Division Bench has followed its earlier order dated 20.09.2018 in Writ Petition (Civil) No. 1807/2018, similarly disposing of the writ petition, granting liberty to the petitioner to file a complaint before the Special Task Force. I am informed that the Division Bench has subsequently also made similar orders in other matters.

14. To be sure, the petitions that were subject matter of the aforesaid proceedings before the Division Bench were petitions filed in public interest and otherwise; and related to contravention not only of sanctioned building plans but also of various laws, including the Delhi Municipal Corporation Act, 1957, the Delhi Development Authority Act, 1957, the New Delhi Municipal Council Act, 1994, the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Preservation Act, 1904 as also encroachment on public land etc.

15. The aforesaid Special Task Force is a 15-member body with representation of the highest level from all concerned municipal, civic, revenue and law enforcement agencies of Delhi; and is therefore ideally suited for multi-agency, coordinated action against the rampant malaise of breach of various laws, rules and regulations governing building construction and land-use in Delhi.

16. I am informed that as of date the Special Task Force even has its own dedicated website and mobile application to facilitate making of complaints, thereby making it even easier for parties to take their grievances before the said agency.

17. Accordingly, I am of the view that the correct course of action in this matter also would be to dispose of the present writ petition, giving liberty to the petitioner to approach the Special Task Force in accordance with the policy and procedure laid down for the purpose in MHUA's Office Memorandums dated 25.04.2018 and 23.05.2018 and avail the said alternate, efficacious remedy.

18. This petition is disposed of in the above terms.

19. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 18, 2019/uj