

Vasant Kunj Enclave United Residents ... vs Municipal Corporation Of Delhi And Ors on 12 September, 2024

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 15458/2023
VASANT KUNJ ENCLAVE UNITED RESIDENTS WELFARE
ASSOCIATION REGD

Through: Mr.Parivesh Singh and
Prakash, Advs.

MUNICIPAL CORPORATION OF DELHI AND ORS.

Through: Mr.Sanjeev Sabharwal, SC
Ms.Sweety Singh and Mr.
Raj, Advs for R-2.
Mr.Gaganmeet Singh Sach
for DDA.
Mr.Digvijay Rai and Mr.
Mishra, Advs for R-4.
Mr.Anand Singh, Adv for

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV
ORDER

% 12.09.2024

1. The petitioner in the instant writ petition has prayed for the following reliefs:-

"a. Direct respondent no 1/ MCD to remove the iron gate and demolish the wall constructed on the public road to avoid inconvenience and hindrance in free movement; and b. Pass such further order(s) and/or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the Interest of Justice."

2. The respondent-MCD in its Status Report has taken a position that Nangal Devat is a well-planned colony and the boundary wall all around the colony has been constructed by the Delhi Development Authority (DDA) as This is a digitally signed order.

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per the approved layout plan and accordingly, the same was handed over to the respondent-MCD.

3. According to respondent-MCD's report, all the developmental works were initially done by the DDA and if at all, any further inquiry is required, the same will have to be verified by the concerned department.

4. Learned counsel appearing on behalf of the petitioner, however, makes various assertions inter alia pointing out from communication dated 08.06.2016 to indicate that the concerned boundary wall was being unauthorisedly constructed and therefore, the erstwhile South Delhi Municipal Corporation wrote a letter to the concerned SHO for taking necessary legal action. He also submits that there also appears to be a large chunk of land owned by the Airport Authority of India and if the matter is examined in right perspective, the same would clearly indicate that the respondents have unauthorisedly constructed the boundary wall over the government land.

5. The Court, at this stage, takes note of the observation made in W.P.(C) 10646/2021 where a dispute with respect to the construction of a boundary wall has arisen for consideration. In paragraph nos. 32 to 39 of the said decision, the Court has made the following observations:-

"32. An upshot of the above discussion clearly elucidates that the Constitutional Courts while exercising the extraordinary powers under Article 226 of the Constitution of India inter alia have to scrupulously ascertain i) whether the petition has been filed with any oblique motive or vested interest, ii) whether disputed and complex questions of facts are involved that require a shred of evidence, iii) whether there exists an alternate and equally efficacious remedy to address the grievance, iv) whether any individual or legal right of the petitioner has been violated along with consequential breach of obligations on part of authorities concerned thereto, v) whether the nature of action and nature of activity under question falls in the domain of public law etc. The aforesaid exigencies are only illustrative in nature and not This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/09/2024 at 05:04:50 exhaustive. Without such a meticulous exercise, if writ petitions are being readily entertained, then the Constitutional Courts would be committing a breach of trust against the genuine and bonafide litigants who have reposed faith in the constitutional machinery and have been longing since ages in the hope of justice. Undoubtedly, the scheme of Article 226 of the Constitution of India does not envisage such a practice and therefore, the Courts should be mindful while exercising the extraordinary writ jurisdiction. This self-imposed fetter on the discretionary extraordinary power of the Constitutional Courts was kept keeping in mind the spirit of Article 226 of the Constitution of India.

33. Any petition wherein the rights involved are not clearly exposted and are in fact, rooted in complexity of disputed facts, the Court is constrained to start a roving

enquiry and that may not be an appropriate recourse while exercising the writ jurisdiction. Writ being discretionary and prerogative in nature, should not be exercised liberally without establishing the individual or legal rights and consequential breach of obligations on the part of the authorities concerned.

34. On this fulcrum, this Court also expresses its displeasure when petitions with vested interests are being filed under the writ jurisdiction. These cases lead to an undesirable docket explosion and often end up burdening the already saddled judiciary. Moreover, entertaining such writ petitions results in a domino effect and propels other litigants to file similar cases by frequently knocking on the doors of Constitutional Courts under Article 226 of the Constitution of India. Consequentially, these writ petitions, if being entertained, will consume not only judicial time but also resources, which can effectively be utilised in cases where parties have been awaiting the fate of their cases since ages. In a judicial system with mounting pendencies, it is necessary for the Courts to ensure that judicial time is used judiciously. Judicial time, in principle and in fact, is public's time and the principles discussed above are only meant to ensure that it goes to the deserving causes so that the constitutional promise of guaranteed protection of rights is fulfilled in a time-bound manner. This Court, in the W.P. (C) No. 9828/2015 titled as Kotak Mahindra Bank Ltd. v. Bank of Baroda, has considered the consequences of the liberal approach being adopted while entertaining the writ petitions under Article 226 of the Constitution of India. The relevant extract of the said decision reads as under:-

"The jurisdiction of the High Court under Article 226 of the Constitution of India is an extraordinary remedy, to be not invoked or allowed to be invoked ordinarily, as is found being done increasingly, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/09/2024 at 05:04:51 leaving very little time for the High Court to deal under Article 226 with issues really deserving consideration there under. Supreme Court, as far back as in Rashid Ahmed v. Municipal Board, Kairana 1950 SCC 221 : AIR 1950 SC 163 and Nain Sukh Das v. The State of Uttar Pradesh AIR 1953 SC 384 held that prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which the ordinary legal remedies are not adequate but in the last over half century the said principle appears to have been forgotten, with the writ remedy being considered as a cure for all ordinary ailments also and for which the ordinary legal remedies under the civil law are adequate. The same has resulted in the High Court being inundated with writ petitions, the disposal whereof axiomatically is found to be taking, in most cases, as much time as the disposal of an ordinary civil lis, and which has resulted in the High Court facing difficulty in providing immediate relief even in deserving cases in writ jurisdiction and/or being left with little time to ponder over the important constitutional issues coming before it in the writ jurisdiction. In my humble view, a time has thus come for the High

Court to send out a clear message of the writ remedy being an extraordinary remedy not available as an alternative to the remedy already available under the civil and general laws."

35. This Court as well, in W.P.(C). 2873/2022 titled as Purandeep Singh v. BSES Yamuna Power Ltd., has noted the detrimental effect of entertaining the writ petitions wherein disputed questions of facts exist or where the alternate remedy was not exhausted before approaching the writ Court.

36. The High Court under the writ jurisdiction cannot possibly entertain all the cases where public nuisance, encroachment over government areas etc. are being alleged. Furthermore, it is not a case where the petitioner does not have any legal remedy. There exist alternate legal remedies under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023, Special Task Force constituted vide Notification dated 25.04.2018 by the Ministry of Housing and Urban Affairs or a Civil Suit etc., which are also equally efficacious. The Court in the decisions of DDA v. Rajbir Singh, Nema Bagdi v. State of W.B., Rita Dalal v. Inspector-in-Charge/Officer-in-Charge, Protap Chandra Naskar v. State of W.B., Jai Prakash Yadav v. State of Bihar and Sanjeet Kumar Singh v. State of Bihar, wherein, a similar controversy relating to the boundary wall was agitated, declined to entertain the writ petition and rather, gave the liberty to approach the competent Civil Court or avail any other remedy available as per law.

37. In the instant case, it appears that the boundary wall in question has been in existence for more than atleast 30 years. As to when the boundary wall came to be constructed, no party has any authentic documents to assert its claim. It is stated that repairing of the boundary This is a digitally signed order.

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38. Be that as it may, in the instant petition, various disputed questions of facts exist as to i) when exactly the boundary wall in question was constructed? ii) who constructed the boundary wall in question? iii) whether it was on private land or public land? iv) which layout plan was accurate? v) whether the shops in question were constructed by the petitioner-Association members? vi) whether the shops in question are encroaching the public land or violating the extant rules or regulations? vii) whether the boundary wall in question obstructs the petitioner-Association's members to access public parks, recreation centres etc? All these are undoubtedly debatable questions of facts and if such controversies are entertained in the writ petitions, the Constitutional Courts would be engaging in roving enquiries into such contentious facts, which would mandatorily require thorough leading of evidence from both the parties and adjudication thereupon. Such an exercise may not be amenable to writ jurisdiction under Article 226 of the Constitution of India, as discernible from the above discussion.

39. In view of the aforesaid, while reserving the liberty in favour of the petitioner-Association to avail appropriate remedy available as per law, the instant petition stands dismissed, alongwith the pending applications. "

6. It is of equal significance to take note of the decision of the Supreme Court in W.P. (C) 4677/1985 titled as M.C. Mehta v. Union of India which envisaged for putting in place a mechanism which inter-alia would effectively deal with the complaints of unauthorised and illegal construction of encroachment. In pursuance thereto, a Special Task Force (STF) has been constituted vide notification dated 08.03.2019 by the Delhi Development Authority.

8. Looking at the nature of the grievance raised in the instant writ petition and also the scope of the STF, the Court finds that the same can be agitated before the STF.

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9. With respect to the aforesaid aspect, a similar view has been taken by this Court in the order dated 30.08.2024 in W.P. (C) 12033/2024 titled as Pravin Singhal v. Municipal Corporation of Delhi and Ors., wherein, it has been held as under:-

"6. It is discernible from the aforesaid notification that STF has been constituted with an aim of comprehensively addressing the issue of illegal construction and encroachment, including on public land, parking spaces, roads, pavements, etc., and to oversee the enforcement of provisions of MPD-21 and the Unified Building Bye Laws for Delhi. The composition of STF would indicate that the same consists of various Officers from different Departments, including municipal, civic, revenue and law enforcement agencies. The Vice Chairman of DDA is the Chairman of STF and the Commissioner (Planning) of DDA appears to be its Member Secretary.

7. The said notification further stipulates that STF shall meet at least once every month. Additionally, the monthly report of STF is required to be sent to the Hon'ble Lieutenant Governor of Delhi, the Ministry of Housing and Urban Affairs, GoI, and the Secretary of the Ministry of Environment, GoI, who are also required to review the progress achieved quarterly and assess future plans. In essence, STF has been vested with comprehensive powers to regulate construction activities and to act decisively against the erring builders, officials, encroachers, violators of building norms etc.

14. In LPA 245/2019 titled as Sneh Lata & Anr. v. North Delhi Municipal Corporation & Anr., the Division Bench of this Court, while highlighting the composition and

functioning of STF, has held that STF is a specialised agency which offers an alternate efficacious remedy to the litigants aggrieved by the unauthorised construction. The relevant paragraphs of the said decision are reproduced as under:-

"The Special Task Force comprises 15 members from various municipal, civic, revenue and law enforcement agencies of Delhi; and even has its own dedicated website and mobile application to facilitate making of complaints. The Special Task Force is therefore a specially constituted agency to address grievances relating inter-alia to unauthorised construction; and an aggrieved person may avail the alternate, efficacious remedy before the Special Task Force.

In view of the setting-up of the Special Task Force under directions of the Supreme Court even the respondent This is a digitally signed order.

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Accordingly, the appellants are free to avail their statutory remedies before the ATMCD in respect of action initiated by the corporation by issuing notices under Delhi Municipal Corporation Act, 1957. On the other hand respondent No.2 may, if aggrieved, approach the alternate forum of the Special Task Force to seek amelioration of any grievances or invoke any other remedy available under law. Accordingly, parties may resort to the appropriate remedy, as they may be advised."

15. A similar view has been taken by the Division Bench of this Court in a Public Interest Litigation being W.P. (C) 8104/2022 titled as Himanshu v. East Delhi Municipal Corporation & Anr., in W.P. (C) 4649/2017 titled as Fazruddin v. DDA & Ors., in W.P. (C) 5988/2019 titled as Jaladhar Das v. North Delhi Municipal Corporation & Ors. and in W.P. (C) 11873/2023 titled as RWA Sunlight Colony v. GNCTD & Ors."

11. In view of the aforesaid, instead of keeping this petition pending on the Board of this Court, the petitioner is granted liberty to approach the STF by way of proper representation along with the copy of this order. If the petitioner does so, let the grievance of the petitioner be dealt with by the STF in accordance with law as expeditiously as possible. The petitioner is entitled to place reliance on the Status Report and the pleadings filed by the respondents in this case before STF.

12. Accordingly, the instant writ petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J SEPTEMBER 12, 2024/MJ This is a digitally signed order.

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