

(2019) 11 DEL CK 0433

In the Delhi High Court

Case No : Criminal Writ Petition No. 2078 Of 2019

D.K Chopra

APPELLANT

Vs

South Delhi Municipal Corporation & Ors

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 107, 150, 156(3), 164, 482

Indian Penal Code, 1860 — Section 342, 354A, 506

Citation : (2019) 11 DEL CK 0433

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Rajan Tyagi, Ashok Kumar, Naiem, Jitender Rana, Ashish Aggarwal, Rajesh Mahajan

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. Vide this Judgment, I shall dispose of a petition filed under Article 226 of the Constitution of India read with Section 482 CrPC for direction to State to take action against the guilty officers not registering case against respondent no.3 and his associates and to direct the State to register case against Head Constable Sunil and Devendri for giving wrong complaint/ statement against the petitioner for attempt to tear cloths and rape as well as direction to respondent no.1 to remove illegal construction carried out on the terrace by respondent no.3.

2. It is submitted that the petitioner is a retired Central Government GO and residing at Flat No. 1039, Sector A, Pocket A Vasant Kunj, New Delhi-110070 with his family. Respondent no. 3 Sh. Rajeev Kumar keeps harassing him by stopping his way by standing before his house on common Stairs. He has fixed three Cameras one at his own house near gate, Second at Stairs of 1038 facing petitioner's house and third on newly constructed room blocking passage of water, air exist of petitioner at terrace facing petitioner terrace.

3. Respondents no. 2,3 & 4 i.e. State (NCT of Delhi), Mr. Rajeev Kumar and SHO, Kishan Garh Police Station, Katwaria Institutional Area, New Delhi had also arranged a theft at petitioner's residence on 28.01.2008 with the help of one Rakesh, a car cleaner on the direction of the then Chief Commissioner Kalkata Sh H.K. Saran. The said Rakesh was again caught stealing goods from petitioner's terrace but was saved by Respondents no 3 and respondent No. 4.

4. It is submitted that Abhya Sood resident of flat No. 1033 is business partner of Rajeev, respondent no.3. It is submitted that Rajesh Kathoria of Flat No. 1035 who is also partner of Rajeev i.e. respondent No. 3 had blocked the petitioner's toilet waste pipe intentionally which was got rectified through MCD after 70 days of struggle.

5. It is submitted that Respondent No. 3 used his mother to book a false case of attempt to rape upon the petitioner on 12.2.2019. However, the same was not accepted by Respondent No. 4. It is further alleged that Respondent No. 3 with the help of Respondent No. 4 has blocked his camera, TV, light and was instrumental in theft of his goods. It is further submitted that due to illegal construction carried out on terrace all drainage system was blocked by respondent no. 3 in connivance with respondent No. 1, 2 and 4 and respondent no. 1 has not taken any action against illegal construction carried out by respondent No. 3 by using his terrace.

6. It is next submitted that the petitioner had also met respondent No. 1 DC on 25.7.2019 but without any positive result. It was prayed that directions be issued to register cases against all those persons who are guilty of not taking any action against his complaints and departmental action be also ordered against delinquent officers.

7. After conclusion of arguments, the petitioner also filed written submissions and submitted that encroachment and illegal construction has been carried out by occupants of house number 1033, 1035, 1037. It is further alleged that about fifteen years back Rajeev and Devendri, Respondent no. 2 and 3 respectively had broken the petitioner's tubelight and CCTV camera. On 28.01.2008, during the day, a major theft had taken place at the Petitioner's house. Police had refused to file the FIR. The ACP who had registered the FIR after 5 days was immediately transferred. Later on Respondent No.4 filed status report stating that police was unable to trace the accused persons. It is submitted that in October 2018, one Rakesh who is a Driver by profession was caught by the petitioner while committing theft in his property but was allowed to escape by Respondent No. 3 Devendri. The petitioner's daughter had also made recordings of the event but the police till date has failed to file the FIR even though stolen property was recovered from Rakesh.

8. It is next submitted that in the year 2013 there was illegal encroachment and construction on government land measuring 250 sq. feet in front as well as and backside by one Abhay Sood. He had also broken petitioner's water tank on

01.07.2013 and the connection was only restored after the intervention by the police. When the daughter of the petitioner had gone to click pictures on 04.07.2013, Abhay Sood had misbehaved with her and also manhandled her. The police has, however, not taken any action against him. It is further submitted that the neighbors also regularly allow their water to overflow and have also grown a tree in the property of the petitioner.

9. It is next submitted that respondents No. 2 and 3 along with their male and female servants claim that they are Gujjars and have threatened to annihilate the petitioner and his family on the ground that they are Punjabis. In this regard an attempt was made on 16.03.2019 when they had tried to book a false case of molestation against the petitioner. The respondents have also blocked the CCTV camera of the petitioner. They have also damaged the property belonging to the petitioner and have prevented him from entering his own property many times. All attempts of bringing this to the notice of the Police has failed.

10. It is next submitted that roof of the petitioner has also been damaged. Cracks have made their way through the ceiling and water seepage has become a major issue during rainy seasons. Not only is this bothersome but it has also damaged the property of the petitioner as well as his electrical devices.

11. It is further submitted that petitioner has been prevented from carrying out repair on the damaged roof. On 31.03.2019, a worker repairing the said ceiling was chased away. The daughter of the petitioner was also chased and threatened to have her clothes ripped apart if the petitioner did not back out from his attempts to have the roof fixed.

12. It is submitted that the status report filed by the respondents is not correct. Moreover, the photos submitted in the status report show a distorted version as the illegal encroachment on the roof of the respondents is not shown in the same. It is also submitted that illegal encroachment has been regularized for extraneous considerations.

13. It is next submitted that the petitioners are being deprived of their right to life, property liberty, security and privacy. The state cannot be allowed to disregard its responsibilities towards the petitioner. The petitioner has prayed that the illegal encroachment be removed and the respondent 4 be directed to take actions against the respondents. It is also requested that actions be taken against head constable Sunil and Respondent 3 for conspiring with each other and instituting a false case against the petitioner. It is submitted that State be directed to take action against the guilty officers for not booking case against respondent no.3 and his associates, direct the state to book case against HC Sunil and Devendri W/o Mahak R/o A-1037, VasantKunj, New Delhi for giving wrong complaint/statement against the petitioner for attempt to tear clothes and rape and to direct respondent no.1 to remove illegal construction carried out on the terrace by respondent no.3.

14. The State in its reply has submitted that the prayers as sought, cannot be

maintained by the way of a criminal writ petition. If the petitioner has a grievance that a case is not registered on his complaint, the proper course is to approach the magistrate U/S 156(3) CrPC and not by the way of a writ petition. Further, whether the complaint given by the Devendri was false or not cannot be sought to be adjudicated by the way of present petition. In case , the petitioner is aggrieved by any illegal construction by respondent no.3, he has an efficacious remedy against the same and cannot maintain such relief by way of the present criminal writ petition.

15. It is submitted that pursuant to the order dated 29.07.2019 passed by this Hon'ble Court directing the respondents to file a status report in the case, an inspection of flat no. 1039 with terrace and flat no. 1037, Sec-A, Pkt-A, Vasant Kunj, New Delhi was carried out on 29.07.2019 along with J.E Jitender Singh Rana of SDMC. S.I Pankaj along with W/Ct. Tekasenla and J.E Jitender Singh Rana also jointly inspected flat no. 1039 with terrace and flat no.1037,Sec-A, Pkt-A, Vasant Kunj, New Delhi. During inspection the State was photographed and video recordings was also done.

16. It is further submitted that during the course of enquiry on the complaints referred to by the petitioner, the site i.e. Flat no. 1039, Sector A, Pocket A, Vasant Kunj, New Delhi, the house of the present petitioner and respondent no.3 i.e. Flat no. 1037, Sector A, Vasant Kunj, New Delhi was visited and 3 CCTV cameras were found installed there. One CCTV camera is installed outside the main gate of flat of respondent no.3, the other camera is installed on the terrace above the extended floor of the flat of the respondent no.3 and 3rd camera is installed at the entry/exit point of the terrace of the building. During the course if enquiry, it was revealed that all the said CCTV cameras are installed by respondent no.3.

17. It is submitted that to verify the allegation of the petitioner that on 28.01.2008, a theft was arranged by respondent, records were verified from the then police station PS- Vasant Kunj (North), New Delhi, however, no record of any complaint or PCR call made by the petitioner could be traced. Further, all the record of the year 2008 stand destroyed by the order of Dy. Commissioner of police, south district, New Delhi and no FIR was found to have been lodged regarding the said alleged incident as quoted by the petitioner in his present petition.

18. It is submitted that on 14.07.2013, at 10:50 pm, a DD.no. 53A was recorded against the complaint about teasing of one maid servant at house no. 1033, Sec-A, Pkt-A, Vasant Kunj, New Delhi by a neighbor. The DD was received at PS-Vasant Kunj(N) and was entrusted to SI Amar Singh for further necessary action. SI Amar Singh reached at the spot where one Ms. Amrita D/o Jeet Bahadur R/o House no. 1033,Sec-A, Pkt-A, Vasant Kunj, New Delhi and one Abhay Sood S/o Tek Chand R/o 1033,Sec-A, Pkt-A, Vasant Kunj, New Delhi were found present. Ms Amrita gave her written complaint to SI Amar Singh wherein she alleged that on 14.07.2013, at 10:15 pm, when she went to see water tank at the back side

of the building, Mr. D.K Chopra R/o house no.1039,Sec-A, Pkt-A, Vasant Kunj, New Delhi i.e present petitioner who was present there had caught her by her arm and pulled her to his side. When she screamed, he threatened her and fled away. Thereafter she called the owner of his house Sudesh Sood and his son Dr.Abhay Sood for help. Dr. Abhay Sood had called at 100 number and on this complaint, a case FIR no. 272/13, U/s 354A/506 IPC was registered at PS-Vasant Kunj (N), New Delhi against the present petitioner. During the course of investigation, the present petitioner Dinesh Kumar Chopra S/o Ramnath Chopra R/o House no.1039,Sec-A, Pkt-A, VasantKunj, New Delhi was arrested on 15.07.2013. The statement of complainant Ms Amrita was got recorded U/s 164 CrPC wherein she reiterated her initial statement which was given by her in her complaint on which the said FIR was registered. After completion of investigation, the accused/present petitioner Dinesh Kumar Chopra was charge sheeted and the case was put in court for trial before the Mahila Court, Patiala House Courts, New Delhi on 06.09.2013. Presently the case is pending before the Mahila Court, Patiala House Courts, New Delhi.

19. According to prosecution, the petitioner was also earlier arrested in another case being FIR no. 76/2002 U/s 342/506 IPC, PS- Vasant Kunj, New Delhi.

20. It is submitted that on 12.02.2019 at 15:07:52 hrs, a PCR call vide DD no. 31A regarding quarrel at house no.1037, Sec-A, Pkt-A, VasantKunj, New Delhi, was received at PS- Kishangarh, New Delhi and the same was entrusted to HC Sunil for further necessary action. HC Sunil reached at the spot, where the lady caller W/o Sh. Mahek Singh i.e the mother of respondent no.3 was found present. During enquiry, Smt. Devendri stated that the petitioner was doing unauthorized construction on the terrace of his flat, due to which the water supply pipe of her flat has got damaged. She further stated that she has already filed a complaint with SDMC, Green Park, New Delhi vide complaint no. 2118/19, against the present petitioner. The said PCR call was, therefore, closed, as no cognizable offence was made out. No other allegation as stated by the present petitioner in his present petition, were made by the mother of respondent no.3.

21. On 18.02.2019 vide Diary no 202/LC, the petitioner lodged a complaint at PS- Kishangarh regarding abusing, threatening of murder and beating, damaging of property, non-removal of pipe from his office door and false allegations of rape, damaging dress of his mother and need for protection of life and property. Enquiry on the said complaint was conducted since no cognizable offence was made out, a non-cognizable report (NCR) vide no 0018/19 dated 22.02.2019 U/s 506 IPC was registered at PS- Kishangarh, New Delhi.

22. The petitioner made various other written complaints to various authorities regarding the alleged illegal construction carried out by the respondent no.3 and also made various PCR calls regarding the same. All the said PCR calls and complaints stand filed as closed since no cognizable offence was made out and the jurisdiction to deal with illegal construction is not with the police but with the concerned municipal corporation.

23. It is submitted that on 25.02.2019, the resident of Flat nos. 1033,1036,1037,Sec-A, Pkt-A, VasantKunj, New Delhi lodged a complaint against the petitioner wherein, it was alleged that the present petitioner threatens the residents of the building and does illegal construction and forcefully removes the water tanks of the residents of their building. They further alleged that the present petitioner has broken the platform of the water tanks and was trying to encroach upon terrace. During enquiry of the said complaint, it was revealed that the information regarding the said unauthorized construction by the petitioner has already been sent to Deputy Commissioner, South zone, New Delhi on 18.02.2019 vide Diary No. 3/UC/KG. The information regarding the unauthorized construction by the respondent no.3 was also sent to the Deputy Commissioner, South Zone, New Delhi on 22.02.2019 vide Diary no. 5/UC/KG.

24. It is further submitted that on 02.03.2019, at 12:49:28 hrs, a PCR call vide GD no 21A regarding, "A lady caller alleging that some men have climbed on the flat of her terrace who are abusing and pushing her" was received. The same was entrusted to SI Pankaj for further necessary action. SI Pankaj reached the spot i.e H. No. 1039,Sec-A, Pkt-A, Vasant Kunj, New Delhi i.e the flat of the present petitioner, where the daughter of the petitioner namely Trushti was found present. Ms. Trushti informed that the owner of the Flat no. 1037 was doing unauthorized construction on the terrace and when she reached at the terrace one female labor present there along with the owner of Flat no. 1037 namely Devendri i.e the mother of the respondent no.3 started abusing her. Since both the parties i.e. the present petitioner and his daughter, on one side and mother of the respondent no.3 on the other were making allegations each other and various cross complaints of threatening and PCR calls were received at PS- Kishangarh, it was found that there was likelihood that both the said parties could commit a breach of the peace and disturb the public tranquility as such preventive action U/s 107/150 CrPC was taken vide GD No. 37A dated 02.03.2019, PS- Kishangarh, New Delhi, against both the parties for keeping peace and to prevent the commission of any cognizable offence. On 12.04.2019, a Kalandra U/s 107/150 CrPC was submitted before the Ld. SEM/South west district, New Delhi and notices to both the parties were issued by the Ld. SEM/ South west district, New Delhi with date of hearing fixed as 26.04.2019. On 26.04.2019, 13.06.2019, and 31.07.2019, both the parties did not appear before the Ld. Court of SEM and the Ld. SEM have issuedailable warrants against both the parties. The said proceedings are still pending before the Ld. SEM.

25. It is further submitted that on 01.07.2019, the petitioner lodged a complaint at PS- Kishangarh, New Delhi, wherein he alleged that illegal construction was being carried out by the respondent no.3. He also alleged that his camera TV, laptop etc were blocked by the respondent no.3 and the police has booked him U/ s 107/51 CrPC on 28.04.2019. The petitioner has also alleged that on 13.03.2019, his two TVs, computer lying in the stairs were thrown on the roof and his office at his roof was damaged. An enquiry was conducted on the said complaint. During enquiry, it was revealed that the information regarding the

said unauthorized construction by the petitioner had already been sent to the Deputy Commissioner, South zone, New Delhi on 18.02.2019 vide Diary no. 3/UC/KG. Information regarding the unauthorized construction by the respondent no.3 was also sent to the Deputy Commissioner, South Zone, New Delhi on 22.02.2019 vide Diary no. 5/UC/KG. During the course of further enquiry of the said complaint, it was revealed that the petitioner had installed 2 CCTV cameras in the railing of balcony of his flat which were found not blocked. The allegations leveled by the complainant could not be substantiated, during enquiry and the said complaint was filed as closed, since no cognizable offence was made out of the said complaint.

26. I have considered the rival submissions. The petitioner has prayed that State be directed to issue directions against the guilty officers and directed to register a case against HC Sunil and Devendri for giving wrong statement against the petitioner for an attempt of tear her cloths and false allegations of rape and respondent no.1 be directed to remove illegal construction on the terrace by respondent no.3. This court is of the opinion that the relief sought by the petitioner cannot be granted by way of criminal writ petition and if he has any grievance against the respondents and intends to register a complaint/FIR against them, the proper course/ remedy is to approach the Ld. Magistrate under Section 156 (3) CrPC and not by way of writ petition. It is a settled law that if an equally efficacious remedy is available, the High Court should not grant the relief under Article 226 of Constitution of India unless the circumstances are very compelling and extra ordinary. Similarly, whether the complaint filed by the Davendri is false or not also cannot be adjudicate by way of the present writ petition. So far as illegal construction by respondent no.3 is concerned, the petitioner has efficacious remedy by filing the complaint before SDMC or before other competent/ appropriate forum but such kind of relief cannot be granted by way of present writ petition. So far as allegations of the petitioner regarding theft on 28.01.2008 is concerned, there is no record available with the police station and in case the petitioner is aggrieved, he can pursue the said matter by filing a complaint under Section 156 (3) CrPC against the accused persons for registration of FIR. While deciding the petition it has also to be kept in mind that an FIR bearing no. 272/13 U/s 354A/506 IPC already stands registered at PS-Vasant Kunj (N), New Delhi against the present petitioner. As per report, the petitioner was also arrested in another case bearing FIR no. 76/2002 U/s 342/506 IPC, PS- Vasant Kunj, New Delhi. So far as the complaint of the petitioner regarding the threat that he would be murdered is concerned, the enquiry report has revealed that no cognizable offence has been made out. The petitioner, however, has efficacious remedy by filing a complaint case before the Ld. MM.

27. From the entire facts on record, it transpires that petitioner has not come to the court with clean hands. He has suppressed material facts of illegal construction raised by him and is, therefore, not entitled for any equitable relief. Reliance in this regard is placed upon "Poonamchand & Ors. vs. State of M.P. &

Ors., W.P. 139/2017", wherein Hon'ble Supreme Court has held as under:-

7. In *Prestige Lights Ltd. v. SBI* (2007)8 SCC 449 , it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R.V. Kensington Income Tax Commissioners* (1917)1 KB 486 (CA) and observed: (*Prestige Lights Ltd. Case* (2007)8 SCC 449 , SCC p. 462, para 35) In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible. (Emphasis supplied)

28. In view of the above law laid down by Hon'ble Supreme Court, the petitioner who has not come to the court with clean hands and has suppressed material facts is not entitled to the relief claimed by him.

29. In the present case, as per report appearing on record, the petitioner has also carried out unauthorized construction. He is himself guilty of violating the rule, regulations, guidelines and building by laws. He is, therefore, not entitled to an equitable relief from the court. Since the petitioner has not come to the court with clean hands and has also an equally effective remedy of approaching civil and/or criminal court for redressal of his grievance, he is, therefore, not entitled for any relief sought vide this petition under Section 226 of the Constitution of India read with Section u/s 482 Cr.P.C.

30. So far as a complaint dated 02.03.2019 of the daughter of the petitioner is concerned, a preventive action under Section 107/150 CrPC has already been taken to prevent commission of any cognizable offence. The matter is pending before the Ld. SEM. The petitioner can approach appellate court in case he has any grievance against the order passed by Ld. SEM. Thus, an equally efficacious remedy is available to him. So far as non registration of the FIR is concerned, as discussed earlier the petitioner can file an application under Section 156 (3) CrPC or a complaint case before the Ld. MM.

31. Thus, in view of the fact that the petitioner has not come to the court with clean hands as he has himself carried out unauthorized construction and equally

effective remedy is available to him for redressal of his grievance, the relief sought by him cannot be granted by way of present writ petition. The present writ petition under article 226 is, therefore, dismissed.