

(2021) 09 DEL CK 0178

In the Delhi High Court

Case No : Civil Writ Petition No. 10933 Of 2021

Pawan Kumar Saraswat

APPELLANT

Vs

North Delhi Municipal Corporation & Ors

RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 DEL CK 0178

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Pran Nath Dhar, Shivesh P. Singh, Akhil Mittal, Imran Ahmad, Rishikesh Kumar, Premasagar Pal

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. The hearing was conducted through video conferencing.
2. Petitioner seeks a direction against the respondent-Corporation to take action against unauthorized illegal construction of commercial nature, deviation and encroachment of property bearing municipal No. 2858 from Gali Ghasi Ram and property bearing municipal No. 2877 from Gali Jajam Puria, Hauz Qazi, Delhi and further seeks cancellation of sanction plan obtained by Mohd. Kasif son of Mohd. Akil etc.
3. As per the petitioner illegal unauthorized construction activity is being raised in the subject property contrary to the sanctioned building plan and there is a deviation and encroachment.
4. Learned counsel appearing for respondent no. 3, on advance notice, submits that petitioner has made several concealments and misrepresentations. He submits that petitioner has filed a suit for specific performance based on forged and fabricated document against respondent no. 3 and there was no interim

order granted. He submits that the subject property was sold to Mohd. Kasif and Mohd. Hashim.

5. Learned counsel further submits that petitioner had even entered into a Memo of Understanding with the subsequent purchasers to give up his alleged rights for a sum of Rs. 1 crore 98 lakhs out of which Rs. 1 crore 68 lakhs have been already received by the petitioner.

6. Learned counsel submits that without disclosing all this, petitioner filed an application before the trial court seeking a restraint on raising construction but thereafter did not press the application before trial court in the said Suit and the application now stands adjourned to 01.11.2021.

7. Learned counsel submits that clearly the petition is motivated and petitioner has filed this petition with ulterior motive and for the purpose of extorting money. He further submits that despite the fact that petitioner is aware of the owners of the property he has purposely not impleaded them in these proceedings.

8. Learned counsel for respondent no. 3 has over e-mail of the Court Master shared certain documents. The same are taken on record.

9. Learned counsel appearing for respondent-Corporation, on advance notice, submits that the property was inspected and has been booked and appropriate action in accordance with law is being taken.

10. No doubt the Corporation is entitled to take action in case any breach or violation is brought to its notice, however, what is relevant in the facts and circumstances of the present case is as to whether the petitioner who approaches this Court by making misrepresentations and concealments should be permitted to invoke the jurisdiction of this court under Article 226 of the Constitution of India.

11. Perusal of the petition clearly shows that there is no disclosure made by the petitioner about the pending litigation. Petitioner has also not impleaded the owners i.e. Mohd Kasif and Mohd Hashim as respondents in this petition despite the fact that he has mentioned their names in the prayer paragraph.

12. Learned counsel for the petitioner submits that petitioner in one of the documents annexed to the petition i.e. a complaint to the Police Commissioner has mentioned about the Suit and the details of the owners.

13. The fact that petitioner has specifically mentioned about the names of the owners and the civil litigation in the Police Complaint but has completely kept silent about the same in the petition filed before this court, goes on to show that petitioner has purposely made misrepresentations and concealments in the petition. When petitioner mentioned the details to the Commissioner of Police in a complaint made to him, what precluded him from disclosing the same in the petition?

14. The answer to the above question is clearly obvious. The intention of the petition was to obtain orders from the Court, which petitioner has not been able to obtain in the civil proceedings.

15. Though unauthorized illegal construction, which is becoming rampant, cannot be countenanced however, I am of the view that a party that does not approach the Court with clean hands and files a petition with ulterior motives should not be permitted to invoke the extra ordinary Writ jurisdiction of this court. I am of the view that the petition deserves to be dismissed.

16. Accordingly, the petition is dismissed. It would, however, be open to the Municipal Corporation to take action in accordance with law.

17. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.