

(2023) 04 DEL CK 0112

In the Delhi High Court

Case No : Letter Patent Appeal No. 319 Of 2019, Civil Miscellaneous No. 22355 Of 2019

Pradeep Gupta

APPELLANT

Vs

South Delhi Municipal Corp. & Ors

RESPONDENT

Date of Decision : 19-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 21
Delhi Municipal Corporation Act, 1957 — Section 344(1)

Citation : (2023) 04 DEL CK 0112

Hon'ble Judges : Vibhu Bakhru, J; Amit Mahajan, J

Bench : Division Bench

Advocate : Anil K. Aggarwal, Nitu Yadav, Ajjay Aroraa, Kapil Dutta, Anuj Bhargava, Yashwant, Divyam Nandrajog, Mayank Kamra, Pranav Jain, Srishti Govil, Tanish Manuja

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The appellant has filed the present appeal impugning an order dated 19.02.2019 passed by the learned Single Judge in W.P.(C) 10775/2017 captioned Shri Pradeep Gupta v. South Delhi Municipal Corporation and Ors.

2. The appellant is, essentially, aggrieved by the construction in his neighbouring house, bearing the address W-18, Green Park, New Delhi. The appellant claims that the said building has been constructed without a proper sanction plan and is contrary to the building byelaws. On the aforesaid basis, the appellant prayed for the following reliefs in his writ petition (W.P (C) 10775/2017):

"1. Issue an appropriate writ, order or direction to Respondent no. 1 and 2 to register a complaint against the illegal construction which has been carried out on the house number W-18, Green Park, New Delhi-110016, seal the same and demolish the said property under section 344 (1) of the Delhi Municipal

Corporation Act, 1957.

2. Issue an appropriate writ, order or direction to Respondents no. 3 and 4 restraining them, their agents, assignees from raising any further illegal construction in property i.e. W-18, Green Park, New Delhi-110016, till the final disposal of the present writ petition in the interest of justice.

3. To direct the Respondent No.2 and 3 to take the necessary steps and precautions to ensure the safety of life and property of all the people living within the vicinity of the Writ Property.”

3. The learned Single Judge had disposed of the aforementioned writ petition while noticing that a Special Task Force had been appointed pursuant to the orders passed by the Supreme Court in Writ Petition (Civil) No. 4677/1985 captioned M.C. Mehta v. Union of India & Ors. By an Office Memorandum dated 25.04.2018 and 23.05.2018, the Government of India had constituted a Special Task Force to comprehensively address violations of the provisions of the Unified Building Byelaws and the Master Plan for Delhi 2021.

4. The learned Single Judge also noted that in Devender v. Government of NCT of Delhi & Ors.: Writ Petition (Civil) No. 1807/2018, the Division Bench of this Court had, after noticing the constitution of a Special Task Force, observed that it was not appropriate for the court to exercise jurisdiction in matters relating to unauthorised construction.

5. The Division Bench had disposed of the said petition by permitting the petitioner therein to raise a grievance before the Special Task Force.

6. The learned counsel appearing for the appellant submits that the learned Single Judge had erred in disposing of the writ petition by relegating the petitioner to agitate his grievance before the Special Task Force. He submits that the issue involved in the present appeal relates to the violation of Article 21 of the Constitution and that a decision in that regard cannot be outsourced to any other agency.

7. He also submits that the constitution of the Special Task Force was for limited purposes and in any event the same, is unconstitutional. He also referred to the decision in M.C. Mehta v. Union of India & Ors.: (2004) 6 SCC 588 and drew the attention of this Court to observations to the effect that the Municipalities have constitutional responsibilities in town planning and in respect of matters enumerated in the twelfth schedule of the Constitution of India. He submits that the present case relates to disregard of their responsibilities by the respondents.

8. Mr Arora, the learned counsel appearing for MCD submits that the excess construction raised in W-18, Green Park, New Delhi has been compounded by the developer on the payment of compounding fees. He submits that the regularisation plan was submitted and was accepted.

9. In view of the above, we are unable to accept that the excess construction can

now be considered as unauthorised or illegal.

10. The prayer made by the appellant in the writ petition was limited to registering a complaint for an illegal construction and to demolish the same. The appellant had also prayed for an order directing that no further illegal construction be carried out on the property in question (W-18, Green Park, New Delhi).

11. In our view, the said prayers no longer survive, since the construction raised has been regularised.

12. This Court is also informed by the learned counsel appearing for respondent no.4 that the appellant has also filed a suit on 07.04.2018, inter alia, praying for an amount of Rs. 15,00,000/- on account of damages suffered by the appellant on account of illegal construction raised by respondent nos. 3 and 4 (arrayed as defendant nos.1 and 2) and to stop the illegal construction. It is material to note that the petition filed by the appellant also claims a relief for restraining respondent nos.3 and 4 from raising any illegal construction. The plaint was filed after the appellant had filed a writ petition. But that did not absolve the appellant from disclosing the same in proceedings before the learned Single Judge. This fact has also been concealed from this Court in the present appeal, which was filed after the suit.

13. The learned counsel appearing for the appellant submits that since he was not a counsel in the matter, he has no knowledge of the same.

14. We find no merit in the present appeal. In any event, considering that the construction raised by respondent nos. 3 and 4 has been regularised by a regularisation plan approved on 12.07.2019, which was released on 17.07.2019, no relief can be granted to the appellant in the present appeal.

15. We are also of the view that the appellant has deliberately concealed filing of the suit, and consider it apposite to impose costs quantified at Rs. 25,000/-. The costs shall be deposited with the Delhi High Court, Legal Service Committee within a period of two weeks from today.

16. The appeal is dismissed in the aforesaid terms. The pending application is also disposed of.