

(2019) 11 DEL CK 0589

Delhi High Court

Case No: Criminal Writ Petition No. 1322 Of 2019

B.B. Oberai

APPELLANT

Vs

State (Nct Of Delhi) &
Ors

RESPONDENT

Date of Decision: Nov. 19, 2019

Acts Referred:

Constitution Of India, 1950 " Article 226#Code of Criminal Procedure, 1973 " Section 482#Delhi Municipal Corporation Act, 1957 " Section 343, 344, 345A

Citation: (2019) 11 DEL CK 0589

Hon'ble Judges: Brijesh Sethi, J

Bench: Single Bench

Advocate: Arvind Singh, Vipin Singh Raghav, Sanjay Lao, Aakanksha Kaul, Manek Singh

Final Decision: Disposed Of

Judgement

Brijesh Sethi, J

1. Vide the instant writ petition filed under Article 226 of the Constitution of India r/w. Section 482 Cr.P.C, petitioner has prayed for issuance of a writ

of mandamus or any other writ, order or directions in the nature of mandamus directing the respondent no.1 & 2 to initiate appropriate department

action against the respondent 3 to 5 for illegal demolition of part of property bearing no. B-66, Amar Colony, Lajpat Nagar, New Delhi i.e. house of

the petitioner; directing the respondent no. 2 to lodge appropriate criminal complaint against the respondent no.3 to 5 and also to direct the respondent

no. 1 to provide police protection to the petitioner and his family members.

2. It is submitted by Ld. Counsel for the petitioner that petitioner had constructed his house bearing no. B-66, Amar Colony, Lajpat Nagar, New Delhi

as per the MCD Rules & Regulations in year 1959 and is residing there along with his wife Smt. Kailash Oberai. Respondent nos. 6, 7 & 8 are the

residents in the same neighbourhood and respondent no. 6 and 7 are owner of the property bearing no. B-63 & B-64, Amar Colony, Lajpat Nagar,

Delhi whereas the respondent no. 8 is the President of the Resident Welfare Association.

3. It is alleged that in the year 2012, the respondent no. 6 & 7 had extended their house from the back and front side by encroaching upon government

land which blocked the back lane of the property bearing nos. B-63 & B-64, Amar Colony, Lajpat Nagar, New Delhi. Due to this encroachment, the

lane has been narrowed down to a great extent creating a bottleneck. The respondent nos. 6, 7 & 8 have over constructed the area by occupying 110

square yards and have gone beyond their plot of 100 sq. and encroached upon the road and built four floors.

4. It is further submitted that petitioner made a complaint to the respondent no.2, but no action was taken against the illegal encroachment by the

respondent no. 6 & 7. Being aggrieved and disappointed by non-action of the respondent no.2, petitioner filed applications/complaints to the Lt.

Governor of Delhi dt. 06.07.2013 and 07.08.2014 for taking appropriate legal action against the illegal encroachment upon the government land but no

communication was received there from.

5. On 16.10.2015, the petitioner received a reply from the respondent no. 2 Maintenance division, in which it was stated that the encroachment has

been removed but the encroachment stood as it is except for removal of steel gates. On inquiry, it came to the knowledge of the petitioner that

petitioner nos 2 to 5 are hand in glove with respondent no. 6, 7 and 8 and respondent no. 3, 4 and 5 have submitted false report in their department

regarding removal of encroachment.

6. It is further submitted that several RTI applications and complaints were made by the petitioner against the said encroachment and against

respondent nos. 2 to 7 on which they got annoyed and made plan to demolish the house of the petitioner illegally for taking vengeance and also

threatened the petitioner that they will teach him a lesson if he will not stop filing RTI applications.

7. It is submitted by Ld. Counsel that on 04.05.2016 in the morning at about 10-11 a.m., the respondent nos. 2 to 8 came at the residence of the

petitioner with appropriate police protection and SDMC labor and machinery and without any notice and without giving any time to the petitioner to

even transfer and remove his personal things from his house illegally demolished part of the property of the petitioner. When petitioner tried to know

the matter, Respondent no. 5 Mr. Bhopinder Kumar, JE replied that they warned him and directed him to stop filing the RTI applications and

complaints but he did not understand the same. It was further stated that the petitioner should give in writing that he would not file any RTI and would

withdraw all the complaints. Thereafter, despite showing sanctioned plan issued by the MCD, respondent no. 5 gave direction to the labourers to

demolish the property of petitioner quickly and they demolished the part of the house of the petitioner.

8. It is further alleged that officials of Respondent no. 2 did not follow the law prescribed in Delhi Municipal Corporation Act, and they have not given

previous notice prior to demolition which is necessary as per Section 345A of Delhi Municipal Corporation Act.

9. It is further submitted that on the same day in the evening, the respondent no. 4 came to the spot and inspected the entire situation. Thereafter, he

met and discussed with respondent no. 6, 7 and 8 and came to the house of the petitioner and spoke loudly

“Kam thoda hai, isko aur todo, maine to location pahle se fixed kari thi kitna todna hai aur kis makan ko todna hai” and he marked the wall of

property to increase the area to be demolished and ordered his labourers to again demolish the house of the petitioner up to the marked portion mark

and the same was demolished again.

10. It is further submitted that on 05.05.2016, the respondent no. 8 came to the house of the petitioner and mocked the situation saying that "jo kuch

bhi SDMC walo ne kiya hai bilkul thik kiya, per unhe notice to dena chahiye tha aap ko atleast or vaise apko ab akal aa gayi hogi faltu me panga lene

ka matlab" and again threatened the petitioner that entire house of the petitioner will be demolished and petitioner his family will be thrown out on the

road with the connivance of respondent no.2 to 5, if the petitioner would not stop filing complaints against them. In the evening again the Respondent

no. 4 and 5 came at the property of the petitioner and with the connivance of respondent no. 6 to 8 deliberately again demolished the house of the

petitioner from back side in such a manner that it could not be repaired in a day or two.

11. On 23.05.2016, petitioner filed an RTI to Police Commissioner of Delhi and sought police protection from respondent no. 2. On 04.09.2018, the

Building Department of Respondent no. 2 replied and attached a letter dated 26.04.2016 in which the Assistant Engineer N.S.Meena i.e. Respondent

no. 4 was requested to provide adequate police along with lady police.

12. On 06.10.2018, the petitioner again filed a detailed RTI application addressed to Mr. Deepak Kumar Khosla, Ex.Engineer(M)-I PIO of respondent

no. 2 and sought information of illegal demolition of property no. B-66, Amar Colony, Lajpat Nagar-IV, New Delhi and asked why illegal

encroachment of property bearing no. B-63 and B-64, Amar Colony, Lajpat Nagar, New Delhi was not removed. On 23.10.2018, the respondent sent

reply to the petitioner in which they accepted that the encroachment removal was being carried out by the Maintenance Department in respect of

encroachment on public streets/lanes.

13. It is further submitted that the petitioner has filed a written complaints dated 08.03.2019 to Commissioner of South Delhi Municipal Corporation

against the respondent no.3, 4 & 5 for illegal demolition of his property and complaint dated 18.03.2019 to the Deputy commissioner of Police South

East Delhi against respondent nos. 3, 4, 5 and 6 but no action has been taken till date.

14. It is lastly submitted that petitioner had approached many authorities and filed many RTI applications and complaints before respondent no.2 and

other authorities regarding encroachment on government land by respondent no. 6 and 7 but no appropriate action has been taken till date against them.

15. In reply to the above petition, respondent no.2, SDMC through Sh. Deepak Kumar Khosla, Ex. Engineer (M)-I, Central Zone, SDMC filed status

report submitting therein that as per available records and information gathered from the field staff (particularly Sh. Bhupinder Kumar, JE/ respondent

no.5), Sh. M. K. Munjal, R/o B-64, Amar Colony, Lajpat Nagar, New Delhi has filed a complaint in the Maintenance Division of the SDMC (vide

diary no. 11252 dated 03.03.2016) regarding "encroachment & Possession over Government land property bearing No. B-66, Amar Colony, Lajpat

Nagar-IV, New Delhi owned by petitioner Sh. B.B. Oberoi. With the said complaint Sh. M.K. Munjal had also enclosed the earlier letters dated

12.10.2015 and 11.02.2016 alleging that the owner of property No. B-66, Amar Colony has encroached the Govt. land and constructed rooms etc. on

encroached area about 6 feet x 15 feet and requested that action may be taken at an early date.

16. It is further submitted in the status report that pursuant to the aforesaid complaint, the Maintenance Department of SDMC carried out the site

inspection of the back lane from House Nos. B-57, to B-68, Amar Colony, Lajpat Nagar. The property no. B-66, amar Colony pertaining to Sh.

B.B.Oberoi also falls in the same back lane. During the inspection, the said field staff found that structures were temporary in nature (i.e. in the shape

of iron grills and iron gates, steps etc.) and were encroaching the area of street/lane beneath the projected portions of balconies which belonged to the

government. Thus, the officiating staff of Maintenance Division-I, Central Zone scheduled necessary programme for removal of encroachment from

B-Block, Amar Colony for 04.05.2016. Accordingly, a request letter was written to Deputy commissioner of Police(South-East District), New Delhi

for providing the police force vide letter no. D/EE (M)-I/CNZ/2016-17/276 dated 26.04.2016. In addition to above, the said field staff also noticed

certain encroachments which were pucca in nature i.e. load bearing brick walls etc.(Monolithic with the structure of the main building) on street/lane

forming part of government land. However, removal of such pucca structures falls within the domain of Building Department, Central Zone. Thus, the

action against such pucca encroachments was to be initiated by the office of Executive Engineer (Building)-I, Central Zone under the provisions of

DMC Act-1957.

17. It is further submitted that on 04.05.2016, the said field staff removed temporary structures that were encroaching upon Government land,

including the encroachments by property No.B-66, Amar Colony, owned by the petitioner, property no. B-64, Amar Colony owned by Sh. M K

Munjal, respondent no.7 and property no.B-63, Amar Colony owned by Sh. B.S.Ahuja, respondent no.6.

18. It is further submitted the aforesaid action to remove encroachments was carried out by the said field staff in the appropriate legal manner and

procedure. The instant petition has been filed by the petitioner merely to harass SDMC and its officials.

19. As per record, subsequent to the encroachment removal action conducted on 04.05.2016, the petitioner filed various applications under RTI Act,

2005 seeking the information regarding the encroachment removal action taken on 04.05.2016 viz ID No. 75/AC/RTI/CNZ/2019 date 09.04.2019,

34848/AC/RTI/CNZ/2018 dated 19.12.2018, 34419/AC/RTI/CNZ/2018 dated 15.10.2018, 154/Dy. A&C/R.K.Puram, New Delhi dated 28.08.2018.

20. In response, the Maintenance Division of SDMC provided the requisite information under RTI Act-2005 in ID No. 34419/AC/RTIO/CNZ/2018

dated 15.10.2018 and inter alia stated as under:-

“Point no. A:- the encroachment removal action is being carried out by the Maintenance Division in respect of encroachments on public

streets/lanes, as and when noticed. Further, the alleged illegal construction/encroachment on public streets/lanes which forms the part of main building structures and monolithic in nature, the action is being initiated by the Building Department. As such, the RTI application is being transferred to the PIO/EE(Building)-I, Central Zone.

21. It is further submitted in the status report that subsequent to the aforesaid encroachment removal action, the owner/ occupier of the property bearing no. B-66, Amar Colony reconstructed a new building after demolishing the old structure which was subjected to inspection and removal action. Upon noticing deviation/excess coverage against Sanction Building Plan No. 12/Saral/CNZ/16 dated 28.09.2016 and construction of room at stilt and parking in the said new construction, the building-I Department of Central Zone, South DMC has initiated the proceedings under Sections 343, 344 of the DMC Act- 1957 against the owner/occure of property no. B-66, Amar Colony, Lajpat Nagar-IV, New Delhi i.e. the petitioner vide file No. 247/B/UC/EE(b)-I/CNZ/2019 dated 13.05.2019. It is, therefore, prayed that petition filed by the petitioner is without any substance and it should be dismissed in the interest of justice.

22. I have heard the rival submissions and gone through the entire material placed on record.

23. It is mainly contended by learned counsel for the petitioner that property of the petitioner bearing no. B-66, Amar Colony, Lajpat Nagar, New

Delhi was illegally demolished by the respondent no. 2 at the instance of respondents nos. 3 to 5 in collusion with respondent no. 6 to 8 as he has made

complaint against unauthorized constructions raised by respondent no. 6 and 7 with the respondent no. 2 i.e. South Delhi Municipal Corporation. It is

further contended that house of the petitioner was demolished on 04.05.2006 without giving any notice under Section 343 of DMA Act, 1959 and

thereby Respondent no. 2 violated the law prescribed under the Act.

24. Having perused the entire material placed on record, particularly the status report filed by the respondent no. 2, I am not in agreement with the

contention of learned counsel for the petitioner that he is being harassed and his property was demolished just to take vengeance from the petitioner by

respondent nos. 2 to 8 because petitioner took a stand against the illegal encroachment carried out by the respondent nos. 6, 7 and 8. Perusal of status

report, filed by the respondent no.2, reveals that Respondent no. 7 made a compliant in the Maintenance Division of the SDMC vide diary no. 11252

dated 03.03.2016 regarding encroachment and possession over the Government land by Mr. B.B.Oberai, owner of property bearing no. B-66, Amar

Colony, Lajpat Nagar, New Delhi. On the basis of said compliant, an inspection was carried out at the back lane of house nos. B-57 to N-68, Amar

Colony, Lajpat Nagar-IV. Perusal of status report further reveals that demolition process of illegal construction was carried out not only at B-66,

Amar Colony, owned by petitioner but at property no. B-63 and B-64, Amar Colony owned by respondent no. 6 and 7 respectively. So in view of

status report, it cannot be said that only the house of petitioner was targeted for the purpose of demolition of illegal construction. It has also come on

record that petitioner no.1 who is the owner/ occupier of the property bearing no. B-66, Amar Colony has reconstructed a new building after

demolishing the old structure and, therefore, proceedings under Section 343 & 344 of DMC Act 1957 have been initiated against him. From the entire

facts on record, it transpires that petitioner has not come in court with clean hands. He has suppressed material facts of illegal construction raised by

him over his property i.e. B-66, Amar Colony, Lajpat Nagar, and New Delhi and is, therefore, not entitled for any equitable relief. Reliance in this

regard is placed upon in *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 44 9, 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)

25. 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 from this court is not entitled to the relief claimed by him. It is also a settled law that when an equal efficacious remedy is

available, a writ petition should not be entertained by the court. In the present case, the petitioner has got an equal efficacious remedy by filing civil

suit for damages for alleged wrongful demolition, if any, of some portion of his house. He can also file a criminal complaint against the officials of the

respondents for wrongful or illegal acts committed by them which were beyond the scope of their duty. In view of the fact that petitioner has

concealed the material facts from the court that he has also carried out illegal construction/encroachment on Govt. land and he is himself guilty of

violating the building by laws and proceedings under Sections 343, 344 of the DMC Act-1957 have been initiated against him, he is, therefore, not

entitled to any equitable relief from the court.

26. Thus, in view of the fact that the petitioner has not come to the court with clean hands and has also got an equally effective remedy for redressal

of his grievance and further keeping in mind the fact that the disputed question of facts cannot be decided in the writ petition, the petition filed under

Section 226 of the Constitution of India read with Section u/s 482 Cr.P.C by the petitioner is dismissed, being not maintainable.

27. The petition stands disposed of accordingly.