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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31.01.2020

+ W.P.(C) 6265/2018 & CM No.53787/2019

**AVEDH NIRMAN & POLLUTION CONTROL
SANSTHA REGD.**

..... Petitioner

Through Mr.Mohan Aggarwal, Adv.
with Mr.Vinay Kumar, Adv.

versus

THE COMMISSIONER NDMC & ORS Respondents

Through Mr.Ajjay Aroraa, Adv. with
Mr.Kapil Dutta, Adv. for
NDMC.
Mr.Jagdeep K. Sharma, Adv.
for R-2/DDA.
Mr.Anjum Javed, Adv. with
Mr.Faran Ahmed, Adv. for
R-3.
Mr.Anunava Mehta, Adv. with
Mr.Akshay Deep Singhal, Adv.
for R-4.
SI Usman, PS Anand Parbat.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This so-called Public Interest Litigation has been preferred for the following prayers:-

“A. Issue a writ of mandamus, or any other appropriate writ order or direction to the respondent no. 1, 2 and 3 to

enforce the provisions of DMC Act, 1957 qua the respondent no. 4.

B. Direct the respondent no. 1, 2 and 3 to carry out the demolition of the illegal construction which has been done over the Govt. land by making encroachment in file property bearing no. RA-10, Ram Dharam Kata, Road No. 10, Vishwakarma Marg, Anand Parbat Industrial Area, New Delhi-110005, Plot No. P-1, Road No. 10, Anand Parbat Industrial Area, New Delhi-110005, 17/16 & 17/17, New Rohtak Road, Side Road of Zakhira Fly over. New Delhi-110005, H-20, Gali No. 7, Nehru Nagar, New Delhi-110008, H-21, Gali No. 8, Nehru Nagar, New Delhi-110008, because the respondent no. 4 have grabbed the above said Govt. land and not obtained the required sanction and approved plan from the respondent no. 1.

C. Direct the respondent no. 1, 2 and 3 after demolition in the above said properties proper fencing be done to protect the above said Govt land.

D. Pass any other order or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Having heard learned counsel for the parties and looking to the facts and circumstances of the case, it appears that several grievances have been ventilated by the petitioner about the so-called encroachments and illegal constructions by the respondent no.4 at the place mentioned in the aforesaid prayer clause as well as in the writ petition, which are required to be removed by the respondent nos.1 & 2.

3. It ought to be kept in mind that the legality and otherwise of the constructions carried out by respondent no.4 cannot be decided on the basis of annexures. The same has to be decided on the basis of cogent

evidence/documents led before the Trial Court or before the concerned authorities.

4. We, therefore, direct the concerned authorities of respondent nos.1 & 2 to appreciate the illegality and otherwise of the constructions carried out by respondent no.4 at the premises mentioned hereinabove.

5. The decision will be taken by the respondent no.1 about the legality and otherwise of the constructions carried out by respondent no.4 in accordance with law, rules, regulations & Government Policies applicable to the facts of the case and after giving adequate opportunity of being heard to the owner/occupier of the super structures.

6. If the respondent nos.1 & 2 come to the conclusion that the constructions are illegal and unauthorised and in violation of the Delhi Municipal Corporation Act, 1957, the same shall be removed in accordance with the law, rules, regulations & Government Policies applicable to the facts of each case. This exercise shall be done as early as possible and practicable.

7. The petition and pending application are disposed of in the aforesaid terms.

CHIEF JUSTICE

JANUARY 31, 2020/aa

C.HARI SHANKAR, J