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

+ W.P.(C) 4090/2022

MOHD ARIF & ORS.

..... Petitioner

Through Mr. Imran Ali and Mr. Maneesh
Saxena, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondent

Through Mr. Tushar Sannu, Standing Counsel,
SDMC with Ms. Priyansha Sinha,
Advocate.

Mr. Arun Panwar, Advocate for R-2
with SI Manish Tyagi and Mr. Amar
Pal Singh, PS-Jamia Nagar.

Mr. M.N. Siddiqui and Mr. Vishal
Raj Sehijpal, Advocates for R-4 and
R-5.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

10.03.2022

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1. Issue notice. Notice is accepted by learned counsel appearing for respondents No.1 and 2, 4 and 5.
2. Notice shall issue to respondent No.3.
3. Learned counsel appearing the respondent/Corporation submits that the property has been booked and appropriate action in accordance with law has been initiated.

4. Learned counsel appearing for respondents No.4 and 5 objects to the maintainability of the petition. He submits that a civil suit has been filed by the petitioner seeking partition of the property and identical prayer for restraining the respondents from raising unauthorized construction has been made in the suit and no interim order has been granted in favour of the petitioner.

5. Learned counsel for the petitioner submits that first of all, the Municipal Corporation is not a party in the Suit and secondly, the restraint sought on the respondents is a personal civil right and the present petition is a petition seeking a mandamus to the respondent/Corporation to prevent illegal unauthorized construction activity.

6. The question as to whether a petitioner who has filed a civil suit claiming certain private rights is disentitled to seek a direction to the Municipal Corporation to carry out its duty.

7. The power exercised by a High Court under Article 226 of the Constitution of India is for ensuring that the administrative authorities perform their duties and this is clearly distinct from a civil right that a private party may exercise against another private party.

8. Merely, because petitioner has filed a civil suit for partition and claimed the relief for injunction and no interim order has been granted does not in any manner condone the illegal action of a private entity of carrying out illegal unauthorised construction contrary to municipal bye-laws and the Master Plan or preclude a High Court from

exercising powers under Article 226 of the Constitution to ensure compliance of the municipal bye-laws as well as the Master Plan.

9. Accordingly, I find no merit in the preliminary objection raised by respondents. 4 and 5. The same is rejected.

10. List on 14.11.2022.

11. In the meantime, respondents shall ensure that no unauthorized construction activity is permitted in the subject property, except in accordance with a sanctioned building plan, if any.

SANJEEV SACHDEVA, J

MARCH 10, 2022

NA