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

Date of Decision: 30th January, 2023

+ **W.P.(C) 10205/2022 and CM APPL. 29513/2022**

WAZIRPUR BARTAN NIRMATA SANGH (THROUGH ITS
SECRETARY) & ORS. Petitioners

Through: Mr. Pavan Narang, Sr. Panel counsel,
UIO with Ms. Aishwarya Chhabra,
Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vivek Goyal (CGSPC) With Mr.
Gokul Sharma, Advocate.
Mr. Rishikesh Kumar, ASC, GNCTD
with Mr. Mohd. Zaid, Mr. Sumit
Chaudhary and Ms. Sheenu Priya,
Advocates for R-2, 3 & 7 with SI
Vishal PS Ashok Vihar.
Mr. Ramkumar and Mr. Sushil
Kumar, Advocates for R-6.
Mr. Arjun Pant, Advocate for
DDA/R-4 (M:9811071260).
Mr. Vivek Goyal, CGSC with Mr.
Gokul Sharma, Advocate for R-8.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. Vide the previous order dated 17th August, 2022, specific directions were given to the Respondent No. 5- MCD in the following terms:

“Consequently, let the MCD take further steps to ensure that all encroachments existing on the road in question are removed in accordance with law. MCD shall file a further affidavit specifically disclosing

whether the road in question has been rid of all encroachments and whether further steps remain to be taken.

The Court also takes note of the stand of MCD that it had after undertaking the drive for removal of encroachments addressed various letters to the Station House Officer requiring him to ensure that fresh encroachments are not made. The grievance of the Corporation is that those communications have gone unheeded by the concerned SHO.

Mr. Kumar, learned counsel representing the Station House Officer states that the concerned SHO shall be duly instructed to provide all assistance to the MCD as also to ensure that no fresh encroachments are made once the drive for their removal is completed by the MCD. Let the concerned SHO also file its affidavit in these proceedings on or before the next date fixed.

The Court further observes that both MCD as well as the local police officials stand placed under a collective duty and obligation to ensure that public roads are maintained free of encroachments and illegal structures. The authorities consequently shall undertake periodical joint exercises to ensure that the public road is kept free of encroachments.”

3. The Court is constrained to observe that there is an unhealthy pattern of governmental authorities, state departments and corporations not filing the Counter Affidavits and Status Reports as per the timelines prescribed by the Court. In the present petition as well, neither the MCD has filed its affidavit, nor has any affidavit been filed on behalf of the concerned SHO. Both have only been handed over in the Court today and these are stated to have been filed on 26th January, 2023 and 28th January, 2023 itself.

4. It is observed that usually all the governmental authorities, despite specific directions, are unable to file the affidavits within the specified time

schedule and choose to do so only within the same just one or two days before the date of hearing. It is made clear that costs would be liable to be imposed, if the time schedule for pleadings fixed by the Court, are not adhered to.

5. A perusal of the MCD's affidavit along with photographs annexed with the said affidavit, which have been handed over, shows that some demolition action has been taken by the MCD. As per the said affidavit, removal of encroachment took place on 25th August, 2022, 26th August, 2022, 27th August, 2022, 28th August, 2022, 29th August, 2022 and 30th August, 2022 and again on 17th January, 2023 and 19th January, 2023.

6. The MCD's stand is that after the said removal of encroachments, the Assistant Commissioner of Police, (North West) has been issued a letter to ensure that no further encroachment or illegal construction takes place and a strict watch is kept.

7. Mr. Yadav, Id. Counsel appearing on behalf of the Petitioner, on the other hand, submits that not only has the *malba* been removed from the area, but fresh construction is also seen. According to the Id. Counsel for the Petitioner, all the encroachments have also not been removed.

8. The order dated 17th August, 2022 is very clear that the MCD and local police both are placed under collective duty and obligation to ensure that the public roads are made clear of encroachment and illegal structures. It is usually seen that even if the demolition or encroachment removal takes place, the local police does not thereafter, ensure that no fresh encroachments are made. Moreover, the *malba* in the area is left lying as it is which inconveniences the public. Whenever unauthorised construction and encroachments are removed, cleaning up of the said area is an obligation

of the MCD, which they have to undertake without fail. The SHO of the concerned area would also be responsible to ensure that no further unauthorised construction is made out after encroachments are removed.

9. Accordingly, under these circumstances, it is directed that Mr. Praveen Kumar Singh, Assistant Commissioner, Keshav Puram Zone, MCD, along with three to four representatives of the Petitioner association, and the concerned SHO shall do a joint inspection of the area.

10. After the said joint inspection, a joint status report shall be filed. This shall be the last and final opportunity to the Assistant Commissioner, Keshav Puram Zone, MCD, as also to the concerned SHO to ensure that there are no more encroachments in the area failing which the action would be liable to be taken against these officials personally.

11. At this stage, Ld. Counsel for the MCD submits that further action is already planned on 9th February, 2023 and 10th February, 2023. Accordingly, all the encroachments and illegal constructions, pointed out, shall be removed and a comprehensive status report shall be placed at least one week before the next date of hearing failing which the concerned Divisional Commissioner and SHO shall remain present in the Court on the next date of hearing.

12. Let the joint inspection take place from 9th February, 2023 at 11:30 am.

13. List on 10th April, 2023.

PRATHIBA M. SINGH
JUDGE

JANUARY 30, 2023/dk/AM