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

+ W.P.(C) 6313/2011

% **Judgment dated 11.02.2013**

GIRI NAGAR SUDHAR SAMITEE REGISTERED Petitioner

Through : Mr.Rama Shankar and Ms.Kamlesh,
Adv.

versus

GNCT OF DELHI AND ORS Respondent

Through : Mr.Shoaib Haider, Adv. for Mr.N.
Waziri, Adv. for GNCTD respondent
no.1.
Ms.Mansi Gupta, Adv. for MCD.
Ms.Beenashaw Soni, Adv. for respondent
no.3.
Mr.Akhil Purwar, Adv. for Mr.Parvinder
Chauhan, Adv. for DUSI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Present writ petition has been filed by petitioner Giri Nagar Sudhar Samiti, under Article 226 of the Constitution of India seeking a direction to the respondents not to open the gate in the colony and carry out demolition for opening of the gate.
2. Petitioner claims itself to be a registered society, registered under the Societies Registration Act and formed with the aim and objective to protect the interest and welfare of the residents of the colony. As per the petition, the colony is thickly populated and more than 10,000 people and their family members are residing in the aforesaid colony.

3. It is the case of the petitioner that the sub-roads, service roads and galis are narrow and only small vehicles can pass through the lane. It is further the case of the petitioner that with the passage of time the population of the colony has increased and there is paucity of common space including facilities for parking and other community activities except two or three temples.
4. Learned counsel for the petitioner submits that at one corner of the colony facing Govind Puri main road, respondent no.3 college is situated and the college has one of its gates opening at the main road and corner of the said main road. There is another gate of the college opening in one corner adjacent to the road in front of Govind Puri, gali no.1, which is convenient for the college staff and students. Counsel further submits that both these gates have been in existence for more than twenty years. Since respondent no.3 was intending to open another gate, which according to the petitioner is in the middle of the colony, the petitioner has filed the present writ petition. The petitioner has opposed the opening of another gate in the mid of the colony, as the space, where respondent no.3 is trying to open the gate, is being used by the residents of the colony for parking of their vehicles and by opening of the gate in question the teachers and students of the college would have to pass through the entire colony, which would be a nuisance to the residents of the colony.
5. Learned counsel for the respondent no.2/ MCD submits that by a communication dated 14.9.2010 the Principal of respondent no.3 College had requested the MCD to remove the jhuggis in the nearby area of the College and also sought permission to erect an additional new gate for the college. Counsel further submits that a representation dated 22.4.2010 was also received from the petitioner opposing the erection of an additional gate in the colony. She submits that MCD has no objection if another

gate is open by the college.

6. Learned counsel for respondent college submits that the college had deemed it appropriate to open another gate so that in case of any untoward incident the fire tenders can reach the college as the two gates already provided to the college do not have adequate width through which a fire tender can access the building. Counsel further submits that the width of the existing gate no.1 cannot be increased in view of the wall erected by the college. In support of her submission, photographs have been handed over in Court by the counsel for the college to highlight the problem. The said photographs have been taken on record. Counsel for the petitioner has also examined the photographs, which have been handed over to him in Court, and submits that the colony will have no objection in removing the wall in photograph and the gate to enable the college to increase the width of gate no.5 to solve the problem of the college and the colony.
7. I have heard learned counsel for the parties, considered their rival contentions and also perused the documents placed on record including the status report filed by the MCD. As per the status report filed by the MCD, a copy of the representation of the petitioner dated 22.4.2010 was forwarded to the Delhi Urban Shelter Improvement Board for removal of the illegal jhuggis and also to the Chief Fire Officer Headquarters, Delhi Fire Service, requesting for their opinion whether the existing gates are adequate for movement of fire fighting in the college. The letter dated 11.11.2010, addressed to the Chief Fire Officer was followed by two reminders dated 14.12.2010 and 9.11.2011. In addition thereto, the opinion of the Building Headquarters, MCD, was also obtained regarding opening of additional gate in respondent no.3 college.
8. It would be useful to reproduce the operative portion of the opinion of the Building (Headquarters) of MCD:

“The matter has been examined. Building Bye-Laws-1983 regulate all kind of buildings. The BBLs are silent on as to how many gates can be permitted. However, Clause 6.4.1 of Building Bye-laws 1983 lays down a provision that no notice and building permit is necessary for certain kind of alterations, which do not otherwise violate any provisions regarding general building requirements, structural stability and fir (sic. fire safety requirement, of the Bye-laws. One of such alterations is that “Opening and closing windows, ventilators and doors not opening towards other’s property”. If the additional gate meets the terms of the above provision, the same is not objectionable from the building bye-laws point of view.”

9. This Court had also issued notice to the Chief Fire Officer, who has filed the status report. As per the status report filed, the gates in respondent no.3 college do not have sufficient width for fire tenders to enter into the college in case of emergency and it has been recommended that the width of the existing gates be increased to five meters. It has also been opined that the opening of a new gate will not serve any purpose as there is no viable road for free movement of motorized vehicles to access the college premises in case of any unfortunate emergency.
10. Having regard to the submissions made by learned counsel for the parties and taking into consideration the status report filed by MCD and the Chief Fire Officer, it is clear that there is no bar for the college respondent no.3 to erect any gate in the college and the opening of a new gate will also not serve any purpose with respect to access of fire tenders in case of emergency. Accordingly, present writ petition is disposed of with the following agreed directions:
 - (i) Petitioner will remove the gate and the wall, as shown in photograph no.5 handed over in Court, within a period of four weeks from today as prayed; *and* thereafter

- (ii) Respondent no.3 college will increase the width of the gate by 5 meters or as required by the Fire Department within four weeks thereafter.

G.S.SISTANI, J

FEBRUARY 11, 2013

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