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

+ W.P.(C) No.4942/2014 & CM No.9894/2014 (for stay).

NEETI BAGH WELFARE ASSOCIATION (REGD.) Petitioner

Through: Mr. A.S. Chandhiok, Sr. Adv. with
Mr. Rishi Aggarwal, Ms. Sweta
Kakkad, Mrs. Aayushi Sharma and
Mr. Chaitanya Kaushik, Advs.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS. Respondents

Through: Mr. Gaurang Kanth, Adv. for R-1.
Mr. Arun Panwar, Ms. Aayushi Gupta
for Mr. Raman Duggal, Standing
Counsel for GNCTD for R-2.
Ms. Perna Kumari, Adv. for PGC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.08.2015**

1. The petitioner, a Welfare Association of the residents of the colony of Neeti Bagh registered as a Society, has filed this writ petition under Article 226 of the Constitution of India, (i) impugning the orders dated 28th April, 2014 and 22nd July, 2014 of the respondent no.2 Public Grievances Commission (PGC); (ii) seeking a direction to the respondent no.1 Municipal Corporation of Delhi (MCD) succeeded by the South Delhi Municipal Corporation (SDMC) to restrain itself from taking any measures contrary to order dated 5th December, 2003 in CW No.6995/2000; (iii) impugning the Notice dated 25th July, 2014 of the respondent no.1 SDMC; and, (iv) seeking to restrain the respondent no.1 from taking any coercive

steps pursuant to the orders dated 28th April, 2014 and 22nd July, 2014 of the respondent no.2 PGC and pursuant to Notice dated 25th July, 2014 of the respondent no.1 SDMC.

2. Notice of the petition was issued; the counsel for the respondent no.1 SDMC appearing on advance notice on that date i.e. 5th August, 2014, stated that demolition drive was currently underway in the colony; vide ad interim order though the respondent no.1 SDMC was restrained from removing the kitchen gardens and green areas outside the houses in the colony, which did not impede the flow of traffic but was permitted to continue to remove the encroachment on the land and in the service lanes as well as unauthorised buildings; the petitioner was also directed to take steps to ensure that the residents of the colony voluntarily remove grills or any other construction put up by them outside their houses to protect the green patches and kitchen gardens. The said interim order has continued till date.

3. On 23rd April, 2015 it was observed that the issue stood narrowed down to the strips of land immediately in front of the houses, where either trees or other green plants had been planted by the respective house owner. It was the contention of the counsel for the petitioner that save for action with respect thereto, the petitioner has no objection to removal of any other encroachment as directed by the respondent nno.2 PGC. It was also recorded that the encroachments of side lanes, rear lanes and other parts of the residential colony could be removed.

4. The senior counsel for the petitioner as well as some of the members of the petitioner, being Advocates residents of the colony of Neeti Bagh appearing in person, the counsel for the respondent Government of National

Capital Territory of Delhi (GNCTD) and the counsel for the respondent no.1 SDMC have been heard.

5. The documents reveal that the Supreme Court Bar Co-operative House Building Society Ltd. being the housing society which developed the said colony of Neeti Bagh and one of the residents of the colony filed a complaint with the respondent no.2 PGC with respect to encroachment / illegal constructions in a temple and in the form of taxi stand in the colony. The respondent no.2 PGC vide order dated 28th April, 2014 directed the respondent no.1 SDMC, (i) to initiate a drive for removal of all the concrete slabs/covers covering the storm water drain and encroachment on the drain; (ii) to conduct a survey and identify the encroachments on the side lanes and back lanes and to remove them; (iii) to ensure that back lanes and streets are kept free of garbage by regular cleaning; (iv) to conduct a survey of the local market area with regard to unauthorised vertical extension of the shops and to initiate action for demolition of illegal constructions in the market; and, (v) to ensure that the temple in the colony does not keep its generator stationed on public road. Similar such directions were again issued by the respondent no.2 PGC vide impugned order dated 22nd July, 2014.

6. In pursuance to the above, the respondent no.1 SDMC vide impugned Notice dated 25th July, 2014 to the petitioner directed all the residents to remove encroachments from roads, footpath / drains in front of their houses by installation either of a wall, grill, fencing, ramps etc.

7. The senior counsel for the petitioner states that the residents have voluntarily themselves or the respondent no.1 SDMC has since removed most of the other encroachments including in the form of guard boxes and

ramps from in front of the houses in the colony and the respondent no.1 SDMC, if still finds any, may take action in accordance with law with respect thereto. He further states that the grievance of the petitioner is only with respect to the direction of the respondent No.2 PGC in so far as for removal of the green patches developed by the residents outside their respective houses in the colony, on the land between the boundary of the house and the road. It is stated that the same is essential for aesthetics and for providing greenery in the colony and is not obstructive of traffic or movement on the public streets in any manner whatsoever. With the help of photographs filed, the said position is sought to be explained.

8. It is further stated that the intent of the members of the petitioner and the owners / occupants of the houses in the colony in fencing the said area from the road is not to appropriate the land in front of their houses onto themselves or to claim any rights therein. It is explained that the said fences are put only to prevent street animals from damaging / spoiling the vegetation / greenery.

9. Per contra, the counsel for the respondent no.1 SDMC, who has today also handed over a Status Report along with photographs, has contended that the members of the petitioner have clearly included the land between the road and the boundary of their respective houses in their houses and to the detriment of pedestrians and space for parking of ever growing number of vehicles.

10. The senior counsel for the petitioner assures that whatsoever encroachments in the form of guard houses / guard boxes, ramps etc. are remaining and are visible in the photographs handed over by the counsel for

the respondent no.1 SDMC today shall be removed forthwith and if not removed the respondent no.1 SDMC is free to take action with respect thereto. He reiterates that all reasonable steps shall be taken to allay the impression of inclusion of land outside the boundaries within the boundary of the house but pleads for the green patches so developed to be permitted to be retained.

11. I have considered the rival contentions and having visited the subject colony am also personally aware of the scenario therein.

12. The subject colony was developed by the Supreme Court Bar Co-operative. House Building Society Ltd., membership whereof was confined to the members of the Supreme Court Bar Association and axiomatically the plots carved out on the land allotted by the Government to the said Society were limited only to Advocates. The colony remains a colony largely of the Advocates though over the years on re-sale some non-lawyers also own houses / residences in the colony.

13. It is not the case of the respondent no.1 SDMC that the internal roads of the colony were / are metalled right till the boundary walls of the houses thereon. The metalling of the internal roads of the colony was / is at a distance from the boundary walls of the houses thereon, with *kuchcha* land on which no concrete pavements also were / have been built between the metalled road and the boundaries of the houses and rightly so in as much as concretisation thereof is not only not required on the internal roads of the colony but would also have prevented recharging of the soil water during the rains. It is such *kuchcha* land outside their respective houses which the members of the petitioner have beautified by greening the same. The

explanation rendered by the senior counsel for the petitioner that without fencing such greening would not have been possible owing to likelihood thereof being crushed either by the stray animals or by vehicles plying carelessly, is a perfectly acceptable explanation.

14. Though there is merit in the contention of the counsel for the respondent no.1 SDMC of such greenery eating away into the parking space but it has to be remembered that the sizes of the most of the plots in the colony are large enough to accommodate several cars within the boundary walls of the houses. It is a different matter that the residents, instead of choosing to park their vehicles within the boundaries, may for whatsoever reason choose to leave them outside.

15. I am of the view that without any proper assessment of the requirement for the purposes of parking, in the name of parking, greenery should not be done away with. We are everyday flooded with news reports of the pollution levels in the city. The lack of greenery is one of the contributors thereof. We should be reluctant to direct the existing green spaces to be converted to parking spaces without any definite finding in that regard. Greenery is not only soothing to the eyes and the mind but also for the spirit. It is necessary to maintain physical and mental health of the residents. Supreme Court also, in ***Bangalore Medical Trust Vs. B.S. Muddappa*** (1991) 4 SCC 54 emphasised the need for greenery.

16. I am also of the view that any effort on the part of the residents of the colony, to beautify the same and to leave it for the next generation in a better state than what they had received it in, should not be lightly interfered with. It would also not be out of place to refer here to the oath of

the Athenian City State which has been reproduced in the book titled “The Urban World” by J. John Palen as under:

“We will ever strive for the ideals and sacred things of the city, both alone and with many, we will unceasingly seek to quicken the sense of public duty, we will reverse and obey the city's laws, we will transmit this city not only not less, but greater, better and more beautiful than it was transmitted to us.”

17. In my opinion such colonies developed by Co-operative Group Housing Societies have to be treated differently in this respect than other colonies. Such colonies have come up over land provided to them for the said purposes and in accordance with the layout plans submitted by the developers of the colonies themselves though of course approved by the Municipal Authorities. The internal roads of such colonies though are also constructed over land originally allotted to the House Building Society, of course now vest in the Municipalities. No layout plan has been produced by the respondent no.1 SDMC to show the treatment of the land between the boundaries of the houses and the metalled road in the same. My experience tells that it must have been shown as open common land. I am of the view that when the Resident Welfare Association of the Society is of the view that the said land be permitted to be left green rather than left barren or be concretised, considerable weightage is due thereto. The whims and fancies of one or two residents of the colony at whose instance the respondent no.2 PGC appears to have issued the directions should not be allowed to come in the way. The subject colony is unique in certain ways. The owners of all the houses thereof belong to the same profession and practicing in the same Court who inspite of fighting each other in the Courts on a daily basis enjoy a relationship of bonhomie with each other. The said Society, for this reason

also, has in my opinion has to be treated differently and if the residents thereof feel a particular way about use of public spaces therein, the respondent no.1 SDMC without good reason or for the reason of the same if permitted in this colony being likely to be demanded in other colonies also, should not be allowed to interfere therewith.

18. I also find that earlier also in order dated 5th December, 2003 in Civil Writ Petition No.6995/2000 it was observed that the said green areas should not be disturbed as long as the traffic flow is not affected. There is no report of the traffic flow being affected.

19. The counsel for the respondent no.1 SDMC has also contended that there is an open storm water drain running in front of the houses and in the process of greening, has been blocked in front of some of the houses.

20. The senior counsel for the petitioner assures that each house owner shall take care to ensure that the flow of storm water in the said open drain is not affected in any manner whatsoever. He has further assured that the fencing of the said green areas would be done only to prevent vehicles and stray animals from straying there into and not in a manner to show the same as a part of the respective houses.

21. Accordingly, this petition is disposed of in terms of above and restraining the respondent no.1 SDMC from interfering with the greening of the land in front of the respective houses in the colony and up to the metalled road. The petitioner in turn is directed to ensure, (i) that the said green area is not included within the boundary of the houses and is demarcated from the boundary of the houses; (ii) that the see through fencing of the green area is only to prevent vehicles and stray animals from

straying there into and not a barricade; (iii) storm water drain in front of every house remains unobstructed; and; (iv) to devise a system for addressing the complaint if any of blockage of storm water drain in front of any house.

22. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 26, 2015

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(corrected & released on 21st October, 2015)