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

+ W.P.(C) 8006/2017, CM No. 33011/2017

SAGAR VENTURES

..... Petitioner

Through: Mr. Chandan Kumar and Mr. Rakesh
Kumar, Advs.

versus

THE GOVERNMENT OF NCT OF DELHI

& ORS

..... Respondents

Through: Mr. Sanjeev Sabharwal, Standing
Counsel with Mr. Kush Sharma, Adv.
for DDA.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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17.01.2018

1. The present petition has been filed with the following prayers:-

“In the facts and circumstances mentioned above, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to:

i. Pass a writ of mandamus or any other writ, order or direction in the nature of mandamus restraining the Respondent No.2 or their agents, representatives or assigns from constructing the public toilet near the Petitioner’s commercial premises at Mother House, 22, Community Centre, Yusuf Sarai, Delhi-110049.

ii. Pass a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondents

to formulate and promulgate appropriate rules/regulations/guidelines for identification of sites for construction of public toilets.

iii. Pass such other order as this Hon'ble Court may deem fit and proper."

2. It is the case of the petitioner and contended by Mr. Chandan Kumar, learned counsel for the petitioner that the petitioner is a partnership firm running its commercial activities from Mother House, 22, Community Centre, Yusuf Sarai, Delhi-110049. In August, 2017, the representative of the petitioner has noticed that the respondents have commenced constructing a public toilet/urinal on a plot of land adjacent to the entrance of the commercial building. It is his submission that apart from their benefits, public toilets/urinals come with their own set of hazards including sanitation, pungent stinking odour, threat of outbreak of life threatening diseases etc. The hazards are similar to the one emanating from the hospitals. He would submit that the respondents have no policy, guidelines, rules or regulations for making choice of site for construction of a public toilet meaning thereby the respondents are at liberty to choose a place of their liking overlooking the surroundings of the area for constructing a toilet.

3. It is also his submission that the market area of Yusuf Sarai, where the respondents have commenced construction of a public toilet is abundant with commercial buildings all of which have public toilets/urinals. That apart, Green Park metro station is nearby, within 15-20 meters and has a public toilet. In other words, it is his submission, there is no need for construction of a public toilet on the site at which, it is being constructed by the respondents. He would rely upon clause 4.35 of the Model Building

Bye-Laws, which stipulates toilet/urinal facilities shall be provided within 60 meters of the site, which shall not be closer than 15m of dining area or kitchen and the toilet area is cleaned at least once per day and it is adequately lighted and is employee safe. In other words, it is his submission that even a temporary camp toilet is not to be built within 15 meters of someone's eating place. He states, that the area in question is within 20 meters approx of the petitioner's commercial premises and is arbitrary and uncalled for.

4. The respondent SDMC has filed a counter affidavit, wherein it is their stand that the impugned action is an obligatory function of the Corporation under DMC Act, 1957 to make adequate provision for and to construct the urinals/toilets etc in the areas falling within its jurisdiction, considering the footfall and its requirement/need etc for the benefit and use of the public at large. Further, having responsibility for maintaining hygienic living conditions, Corporation keeps endeavouring their best possible effort to fulfil their statutory obligations. It is the case of the SDMC that as per record, the work with regard to the construction of toilet is being carried out by the Maintenance Division-I of South Zone/SDMC, under Swachh Bharat Abhiyaan undertaken by the respondents in order to stop/prevent the open urination/defecation so as to maintain hygienic living conditions within the areas of its jurisdiction for the benefit of public at large.

5. The SDMC has justified the location at which the toilet/urinal is being constructed. According to the SDMC, the same will have a separate facility for women and for physically challenged persons. For the purpose of construction, the Department has followed the due process and awarded the work to a Contractor on July 12, 2017. They also justify the requirement of

toilet/urinal in the area in question considering the growth of Yusuf Sarai Market and its surrounding and also its increase in footfall with the passage of time. It is also stated that already constructed urinal/toilet meant for the said market was constructed way back in 1982 considering the then requirements/footfall of the area in question but it is devoid of any facility for physically challenged persons. Hence, the toilet/urinal is the need of the area in question. The SDMC has also stated after the construction of the urinal/toilet at site, its hygiene will be maintained properly and it is also stated, the same is in fact more than 15 feet away from the entry of the building of the petitioner herein and the same will not lead to any health hazard as alleged being consisting of a compact shape and design. The SDMC seeks the dismissal of the writ petition.

6. A rejoinder to the counter affidavit has been filed.

7. Having heard the counsels for the parties and perused the record, the only issue, which arises for consideration is whether the respondents were justified in constructing the toilet/urinal at the site where it is being constructed. At the outset, I may state that the learned counsel for the petitioner, during his arguments conceded that constructing a toilet/urinal is for a larger public good. It necessarily follows that the same shall prevent people urinating/defecating in open area. There cannot be any dispute, the same would prevent unhygienic conditions. It is not the case of the petitioner that any provisions/stipulations of a Statute have been violated. The only reliance placed by the petitioner is with respect to clause 4.35 of the Model Building Bye-Laws, which has been referred above, which has no applicability. Suffice to state, it is the case of the respondents that the toilet is more than 15 feet away from the entrance of the commercial building, in

which the petitioner's premises is situated. That apart, I take note of the fact that the respondents are constructing toilet/urinal for the benefit of the physically challenged persons, which facility appears to be not there in the existing toilets. That apart, the plea of the learned counsel for the petitioner that the commercial buildings have toilets would surely be not convenient for physically challenged persons. On the same ground, even the existence of toilets in Green Park metro station would not be of any help for such persons. Further, the decision to construct a toilet/urinal because of the increase in footfalls is appealing. Such a decision of the Municipal Corporation, which has the mandate under the DMC Act, 1957 to maintain hygienic conditions cannot be disputed nor can be interfered with. It is for the Corporation concerned, which has the necessary obligation/statistics to take such a decision, which has to be upheld.

8. In the facts, I do not see any merit in the petition. The same is dismissed.

CM No. 33011/2017

In view of the order passed in the writ petition, the application is dismissed.

V. KAMESWAR RAO, J

JANUARY 17, 2018/ak