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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3270/2017, CM APPLs. 14232 & 16870-72/2017
OM PRAKASH JAIN Petitioner
Through Mr.Ashish Upadhayay, Adv.

versus
MANOJ JAIN & ANR Respondent
Through Mr.Aman Nandrajog and Mr.Ashish
Tiwari, Advs. for R-1.
Mr.Mukesh Gupta, Standing Counsel
for R-2/North DMC.
Ms.Arush Khanna and Ms.Shreya
Singh, Advs. for applicant in CM
APPL. 19563/2017.
SI Rakesh Kumar, PS Kotwali, Delhi.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **19.02.2020**

CM APPL. No. _____/2020(to be numbered)

Learned counsel for respondent No.1 states that respondent No.1 has expired. He also states that he has moved an application for impleadment of the applicants as LR's of deceased respondent No.1.

Registry may number this application. As there is no objection to the present application, the same is allowed. The applicants are impleaded as legal representatives of deceased respondent No.1.

W.P.(C) 3270/2017

1. This writ petition is filed by the petitioner seeking a direction to respondent No.2/North DMC to construct the public urinal exactly at the same place and location from which it was demolished.

2. The case of the petitioner is that the entire ground floor of the property bearing No.1397, Katra Nageen Chand, Gali Mem Wali, Chandni Chowk, Delhi is a market with number of shops. Since inception, there was a provision of chowkidar rest room, common space, urinal and toilet on the one corner of the ground floor of the said property.

3. On the public land, which was adjoining to the wall of the said property No.1397, Katra Nageen Chand, Gali Mem Wali, Chandni Chowk, Delhi wherein chowkidar rest room, common space, urinal and toilet were situated, one public toilet was constructed and maintained by respondent No.2/North DMC since time immemorial. It is pleaded that respondent No.1 illegally encroached upon the half of the portion of the area meant for chowkidar rest room, common space, urinal as well as toilet.

4. In August, 2016 the public urinal made on the public land was initially covered with the Tin Sheets by the respondents so as to portray to the public at large that some repair work is going on. On 4th and 5th September, 2016, the public urinal was completely demolished by respondent No.1 in connivance with respondent No.2/North DMC. It is further claimed that respondent No.1 in connivance with respondent No.2/North DMC also started raising illegal construction on the first floor of the property No.1397, Katra Nageen Chand, Gali Mem Wali, Chandni Chowk, Delhi by installing steel and iron bars.

5. Respondent No.2/North DMC has filed a status report on 18.05.2017. In the status report, it was confirmed that there was a MCD urinal in existence. However, on inspection on 04.09.2016 by the official of respondent No.2/North DMC, it was noticed that the same has been demolished. An FIR to this effect was lodged with e-Police Station, Crime

Branch, Delhi under section 379 IPC for taking action in the matter against the offenders. It is further stated that immediately thereof, the maintenance department had issued work order and awarded the contract for reconstruction of the public urinal. It is further stated that GI sheets have been fixed on 05.05.2017 and the reconstructed urinal has been covered. However, on account of the interim order passed by this court, the urinal constructed is not functional. It is further stated that brick/tile work of the urinal is almost complete and the water tank has also been installed.

6. On 17.04.2017, this court passed the following orders:

“W.P.(C) 3270/2017 & CM 14232/2017

1. Issue notice. Learned counsel for respondent no.2 accepts notice.
2. Notice to respondent no.1 be issued by ordinary mode as well as Regd. AD Post, returnable on 12th July, 2017.
3. Learned counsel for the petitioner submits that respondent no.1 has illegally demolished the public urinal and installed a shutter to open a portion behind the urinal and operate it as a shop in connivance with the officers of respondent no.2 as well as the local police.
4. On the oral prayer of learned counsel for the petitioner, SHO, P.S. Kotwali is impleaded as respondent no.3. Mr.Sanjay Ghose, learned Additional Standing Counsel for GNCTD accepts notice on behalf of respondent no.3.
5. The Commissioner, North Delhi Municipal Corporation as well as DCP - North are directed to depute a senior officer to inspect the site in question within one week from today and submit a status report along with the photographs before this court within one week of the inspection. The intimation of the inspection be given to the petitioner as well as respondent no.3.

The Commissioner, North Delhi Municipal Corporation and DCP - North shall also examine whether there is involvement of their officers in the alleged demolition of the public urinal and construction a shutter thereon.

6. Learned counsel for respondent no.2 submits that respondent no.2 has initiated action for removal of the shutter and the work for reconstruction of the urinal has also been awarded. In that view of the matter, the shutter installed by the respondent be sealed immediately till it is actually removed by respondent no. 3.
.....”

7. Later on, this court on 04.05.2017 passed the following orders:

“C.M. Appl. Nos.16870/2017, 16871/2017 & 16872/2017

1. Issue notice to the petitioner through counsel by ordinary mode as well *dasti*, as returnable on 22nd May, 2017.

2. Learned senior counsel for the respondent No.1 further submits that the counsel for the petitioner was intimated today's date of hearing and the counsel for the petitioner is deliberately not appearing before this Court.

3. Learned senior counsel for the respondent No.1 submits that the petitioner has concealed relevant facts from this Court to obtain an interim order. It is submitted that the urinal in question is opposite a Shani temple and several letters/communications were sent to respondent No.2 for removal of the urinal. The Wards Committee of respondent No.2 took a decision to shift the aforesaid urinal to a different location in the vicinity. The Standing Committee of respondent No.2 also deliberated upon this issue and referred the issue of removal of the urinal to the Commissioner. Learned senior counsel for the respondent No.1 has shown the photographs of the urinal as well as the temple opposite the urinal.

4. Learned counsel for respondent No.2 submits that the

shutter of the shop of respondent No.1 has already been removed and the brick/tile work of the urinal is almost complete and the water tank has also been installed.

5. Learned counsel for respondent No.1 seeks interim order for closing the structure constructed by respondent No.2 with tin sheets.

6. Respondent No.2 is directed to stop further work in respect of the urinal till the next date of hearing. With respect to the construction work already done by respondent No.2, respondent No.2 is directed to cover the same by tin sheets so that it is not used as a urinal till the next date.

7. The status report along with the photographs of the compliance of this order be produced before the next date of hearing.

.....”

8. I have heard learned counsel for the parties.

9. Learned counsel for respondent No.1 has denied the abovesaid contentions. He also relies upon the order dated 25.10.2005 passed by the Civil Judge where directions were issued for demolition of latrine in question. It is also pleaded that standing committee of respondent No.2 has proposed removal of this urinal and it is a pending issue. Hence, it is pleaded that appropriate direction be given to the MCD to deal with the said resolution/issue of the committee as per law. The above submission is reiterated by the applicant in CM APPL No.19563/2017.

10. I may only note that it is a position which has not been denied that the urinal in question has existed for a long time. It has suddenly been demolished by some miscreants to suit their own needs. This conclusion is supported by the order dated 25.10.2005 passed by the civil court in Sh.Manoj Dissoria v. MCD, where the civil court in its order notes that the

grievance of the plaintiff is that a latrine has been constructed, which is encroachment of municipal land, which is adjoining the urinal maintained by MCD. The report concludes that there is one urinal and one latrine both adjoining to each other. The urinal is being maintained by MCD whereas the latrine is an encroachment of municipal land. Based on this, the Commissioner, MCD was directed to remove the latrine in question.

11. It is manifest from the reading of the said order passed by the civil court on 25.10.2005, that urinal is existed even at that time when the interim order was passed.

12. It is a matter of fact that some miscreants have demolished the urinal. It is also a fact that urinal has more or less been reconstructed but is not functional. Given the facts of the case, namely, that the urinal has been in existence from some decades, it would be in the interest of justice that the same is made functional again.

13. Let MCD make the same functional within four weeks from today. Regarding the plea of respondent No.1, they are free to make a representation to respondent No.2/North DMC regarding shifting of the urinal. In case, such a representation is made, respondent No.2/North DMC may deal with the same as per law uninfluenced by any observations made by this court herein within three months from the date of receipt of the representation.

14. With the above direction the present writ petition is disposed of. All pending applications, if any, are also disposed of.

JAYANT NATH, J.

FEBRUARY 19, 2020/v