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

Date of decision: 22nd February, 2021

+ **W.P.(C) 4927/2020 & CM APPL.17794/2020**

SMT. GEETA SINGH & ANR.

..... Petitioners

Through: Mr. Rajesh Yadav, Advocate.
(M:9811006760)

versus

THE SUB DIVISIONAL MAGISTRATE
(KAPASHERA) & ANR.

..... Respondents

Through: Mr. Zahid, Advocate for Mr. Naushad
Ahmed Khan, ASC. (M:9868111799)
Mr. Amit Bhagat, Mr. Siddarth
Bhatnagar, Senior Advocate with Mr.
Amit Bhagat, Advocate for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioners, who are resident of Kapashera Estate i.e., Petitioner No.1 is resident of Farm House No.1, Kapashera Estate, New Delhi and Petitioner No.2 is resident of Farm House No.1A, Kapashera Estate, New Delhi. By way of the present petition, both the Petitioners have challenged the impugned order dated 16th July, 2020 passed by the Sub-Divisional Magistrate (“SDM”), Kapashera in respect of installation of gates in the Estate. The operation portion of the SDM’s order is set out herein below:

“Observation:-

After hearing both the parties and all the above facts as well as keeping in mind the safety and security of all residents living in the Kapashera Estate, the undersigned is of view that the request of RWA Association Kapashera is liable to be allowed and hereby allowed that the gate should be installed at point ‘A’ and ‘B’ instead of point ‘C’ as shown in the map enclosed herewith because gates are being erected at the ends of roads & I am of the view that there is no partiality.”

3. In order to get a better understanding of the dispute in this matter, the map of Kapashera Estate, which has been annexed with the counter affidavit, is set out herein below:



4. There are a total of 53 farm houses in the Kapashera Estate. The Respondent no.2 is the local Kapashera Estate Resident's Welfare Society ('RWA'). Only a few occupants of farmhouses are members of the RWA. The Petitioner's husband was stated to have historically been a member of the Society. However, the admitted position currently, is that the Petitioner no.1 has not paid the dues of the RWA for several years.

5. The objection by the Petitioners in the present case in respect of the impugned order is that the same is contrary to the MCD circular dated 25th July, 2007. Mr. Rajesh Yadav, Id. Counsel appearing for the Petitioners submits that the installation of gates at points 'A' and 'B' has, in fact, exposed the Petitioners to higher risk as there is no gate enclosing their farm houses. However, as per the MCD circular, the gates are to be installed at the main access to the colony/block/pocket. Gates inside the block lanes/bye-lanes/service lanes would be allowed only if the local police recommends the same. Thus, according to the Petitioner, the permission by the SDM to install gates merely enclosing the 15 farmhouses coloured in green is impermissible. It is submitted by him that the application of Kapashera Estate's Residents' Welfare Association (*hereinafter referred "RWA"*) was also totally misleading and has been wrongly interpreted by the SDM.

6. Mr. Siddarth Bhatnagar, Id. Counsel appearing for the RWA submits that the Petitioners are not entitled to any relief in the present case as they are not fulfilling the membership conditions of the RWA. The Petitioner being the resident of Farm House No.1 has not paid dues of the Association since several years. He further submits that the SDM order is quite reasoned and all parties agreed to the order of the SDM except the Petitioners, who

are the living in Farm House No.1 and Farm House No.-1A. There was complete consensus between the residents of Farm Houses No.2 to 11. In any event, Mr. Bhatnagar submits that the RWA has no difficulty in also installing the gate at point 'C' provided all the residents contribute equally. Insofar as the installation of gate at point 'C' is concerned, the same was under consideration before the SDM.

7. Insofar as the SDM is concerned, the SDM has defended his own order, however, stated that any amendment in the installation of gates could also be considered.

8. The Court has perused the maps filed by the Petitioners and by the RWA on record. Since the map filed by the RWA is clearer, the same has been extracted above. One thing is clear that the gates as being installed currently would provide security only to the residents of Farm House Nos.2 to 11 and not to Farm House Nos.1 and 1A. Considering that there is enormous grievance of the Petitioners, who are residents of Farm House Nos.1 and 1A, there ought be not difficulty in installing gates at point 'Z1' and 'Z6', which are one of the main entrances and exits of the Kapashera Estate. However, the same cannot be only at the cost of a few farm house occupants. The cost of the additional gates ought to be borne by all the occupants of the Kapashera Estate who would be benefited from installation of the said gates.

9. Insofar the gates at points 'A' and 'B' are concerned, due to interim orders passed in this writ petition, the gates have not been installed. RWA is permitted to go ahead for installation of the gates. It is made clear that the entry and exit through these gates at all times 24 X 7 shall be available to all the residents of the area including the visitors to their respective farm

houses, though they may be manned with security guards. The security guards are free to check and ensure genuinity of the visitors and to carry out regular checks, which are required to ensure that the safety and security of the area is not compromised in any manner whatsoever.

10. Accordingly, the following directions are issued:

- i. Within a period of two weeks, the cost of installation of four gates Z1, Z6, A and B shall be worked out by the RWA. The RWA may then approach all the residents of the 53 farmhouses if they are willing to contribute for the four gates i.e., Z1, Z6, A and B. If so, the cost of the gates shall be equally be borne by all farmhouse residents.
- ii. The RWA shall receive contributions for two weeks thereafter. If the contributions are made for the installation of the said four gates, the same may be got installed by the RWA within a period of eight weeks from today.
- iii. If however, the contributions are not received for installation of Z1 and Z6, then the RWA may go ahead and install gates at points 'A' & 'B'. Access through the said two gates shall however be open 24x7 to all residents of their Kapashera Estate and their visitors.
- iv. Any other parties, who are residents of Kapashera Estate and who wish to install any other gates, may approach the SDM with a request for the same. The same shall be decided in accordance with law.

The above order shall be implemented only after the Petitioners pay all their dues of RWA within two weeks. If they do not clear their dues, they shall not be permitted to contribute for the gates at points 'Z1' and 'Z6' and neither shall the same be installed. In such an eventuality gates at point 'A' and 'B' shall be installed.

11. Mr. Yadav insists that the costs of the gates at points 'Z1' and 'Z6' ought to be borne by the RWA. Mr. Bhatnagar on the other hand submits that the said association has only 15 members and none of the other residents are contributing. In view thereof, all or at least a majority of the other residents of Kapashera Estate shall contribute for installation of the gates. Only then the said gates at points 'Z1' and 'Z6' would be installed. It would be unreasonable to impose the burden of installing gates for all 53 farmhouses on the owners/occupants of 15 farmhouses.

12. The petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 22, 2021/dk/Radha

