



2023:DHC:8249



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 16.11.2023***

+ W.P.(C) 687/2023 & CM APPL. 2684/2023.

SUPREME COURT BAR CO-OPERATIVE**HOUSE BUILDING SOCIETY LTD & ANR. Petitioners****Through: Mr. Aayush Agarwala, Mr. Auritro
Mukherjee, Mr. Siddham Nahata,
Advocates.**

versus

MUNICIPAL CORPORATION OF DELHI Respondent**Through: Mr. Manu Chaturvedi, Advocate.****CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

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1. The petitioners, being the Cooperative Housing Society and the Resident Welfare Association ["RWA"] of Neeti Bagh locality, have filed the present petition challenging a decision of the Municipal Corporation of Delhi ["MCD"] dated 04.11.2019 declining their application for regularisation of gates installed in the locality.

2. The petitioners have installed a total of eleven gates in Neeti Bagh colony. They applied for regularisation of the gates by a letter dated 05.03.2019. While the scope of their original application is a matter of dispute, Mr. Aayush Agarwala, learned counsel for the petitioners, submits that in the course of correspondence, the petitioners have produced no objection certificates in respect of ten out of the eleven gates. The application for regularisation was rejected by the impugned



communication dated 04.11.2019 on the ground that the petitioners had not responded to certain queries raised by MCD.

3. In an earlier round of proceedings filed by the Market Association of Neeti Bagh, challenging the installation of the said gates, the petitioners herein (respondent Nos. 4 and 5 therein) were permitted to approach MCD for regularisation, by judgment dated 22.02.2019. The petitioners applied in terms of the said judgment, but their application was rejected by the impugned communication dated 04.11.2019.

4. The petitioners filed CM No. 50950/2019, challenging the said decision. In the course of those proceedings, MCD had filed a reply dealing with the status of the eleven gates installed by the petitioners. As far as seven of the gates are concerned, it was contended that they do not meet the minimum width required of five meters. In respect of one of the gates (gate No. 11), it was contended that the no objection certificate from the traffic police and Assistant Commissioner of Police had not been obtained. The application was disposed of by order dated 09.12.2022, permitting the petitioners to challenge the aforesaid communication dated 04.11.2019. This writ petition has been filed pursuant to such liberty.

5. The principal contention raised at this stage by Mr. Agarwala is that the MCD has erroneously applied the criterion of minimum width of five meters to all the gates installed by the petitioners.

6. The case turns upon an interpretation of a Circular dated 25.06.2007 issued by MCD containing the 'Policy/Guidelines for Installation of Gates for Security Purposes in Colonies' ["Circular"]. The Circular was issued pursuant to an order of this Court dated 08.09.2005 in



writ petitions filed by some RWAs. For the present purposes, the following clauses of the Circular are relevant:

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2. RWA will have to obtain no objection certificate (NOC) from Traffic Police Department of Delhi Police before applying to Dy. Commissioner of concerned MCD Zone.

3. RWA will have to full fill following points:

a) The RWAs must be registered with the Registrar of Societies.

b) Gate should be installed in colonies where the right of way of road is upto 18.3 meter. The gates would be provided only if it is internal road of the colony and does not have buses plying on it.

c) The minimum width of the gate should be 5.0 meter and height of the gate should not be more than 3.0 meter. There should not be any barrier/advertisement on the top of gate so that the gate is free from any horizontal/vertical obstruction. However, if any board is needed, it should be more than 5.0 meter from the ground level.

d) Gates would be allowed only at main access point of the colony/block/pocket. The gates inside the block lanes/bye-lanes/back lanes, and service lanes shall be allowed only on the specific recommendation of local police and only if these lanes have their opening towards the roads outside the colony.

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[Emphasis Supplied.]

7. It is the contention of the petitioners that, as far as lanes inside block lanes/bye-lanes/back lanes and service lanes are concerned, the minimum width requirement of five meters cannot be made applicable as these lanes are, by their very nature, normally less than five meters in width and do not serve vehicular traffic.

8. The contentions of MCD in the affidavit filed by it are that gates can only be on roads which are more than five meters in width, even if the roads are classified as “block lanes/bye-lanes/back lanes and service lanes.”



9. Having heard learned counsel for the parties, I am of the view that MCD's contention is inconsistent with the policy condition which permits gates inside block lanes/bye-lanes/back lanes, and service lanes, albeit on the specific recommendation of the local police and if these lanes have their opening towards the roads outside the colony. The purpose of the Circular, as recorded therein, is to provide for installation of gates for security purposes. To completely prevent installation of gates in smaller lanes of residential colonies, even if the police recommendations are to the contrary, is antithetical to the avowed purpose of the Circular. Clause 3 (c) provides that the minimum width of the gate should be five meters and Clause 3 (d) limits the installation of gates to main access point of the colony/block/pocket. However, it also provides that gates inside the block lanes/bye-lanes/back lanes, and service lanes shall be permitted on certain conditions. As far as the gates on the main access points of the colony are concerned, the width and height required are provided in Clause 3 (c). The petitioners' specific assertion that block lanes/bye-lanes/back lanes and service lanes are often less than five meters in width is not controverted by MCD. The conditions stipulated in clause 3 (d) of the Circular, of specific recommendation of the local police and in respect of the opening of the roads outside the colony, stipulate the conditions in which gates may nevertheless be installed on roads by less than five meters width.

10. Having regard to the aforesaid facts, the writ petition, alongwith the pending application, is disposed of with the direction that the petitioners may make a further representation to the MCD in terms of the aforesaid interpretation of the Circular, and in compliance of all other



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conditions in the Circular within two weeks from today. Subject to the representation being made within the aforesaid period of two weeks, MCD may consider the same in terms of the Circular, read with this judgment. The interim order passed in this petition on 20.01.2023 shall continue until the disposal of the representation by MCD. However, if no representation is made by the petitioners within the said period of two weeks, the interim order shall stand vacated on expiry of the said period.

PRATEEK JALAN, J

NOVEMBER 16, 2023

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