



2024 : DHC : 733-DB



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

+ LPA 78/2024 & C.M.Nos.5575-5577/2024

APEEJAY EDUCATION SOCIETY REGD. & ANR. Appellants

Through: Mr.Sanjeev Ralli, Sr.Advocate with
Mr.Shubham Yadav, Mr.Ravi Kant Yadav
and Mr.Chetanya Baweja, Advocates.

versus

**MUNICIPAL CORPORATION OF DELHI THROUGH ITS
COMMISSIONER & ORS. Respondents**

Through: Mr.Manu Chaturvedi, standing counsel for
MCD with Ms.Devika Singh Roy
Chowdhury, Advocate.

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Date of Decision: 31st January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present Letters Patent Appeal has been filed by the appellant-petitioner challenging the order dated 20th December, 2023 passed by the learned Single Judge in W.P.(C) No.16498/2023, whereby notice of the subject writ petition was issued but the learned Single Judge declined to grant any interim stay against construction of Fixed Compactor Transport Station ("FCTS") next to the appellants-school.
2. Learned senior counsel for the appellants states that the construction of FCTS ought to be stayed as it exposes students to serious health hazards and



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unhygienic conditions. He states that the FCTS site has been chosen without application of mind and by ignoring the norms under Development Code framed under MPD- 2021 and Construction Bye Laws 2016. He states that the learned Single Judge failed to consider the unhygienic, environmentally harmful and polluting site conditions which will prevail once FCTS in question becomes operational with a daily dumping capacity of about 10000 Kg. (approximate storage capacity of FCTS) of untreated municipal waste/garbage immediately adjoining the boundary wall of the appellants-school.

3. Learned senior counsel for the appellants points out that vide order dated 04th April, 2022 passed in WP (C) No.5529/2022 titled '*Nadira Sarkar v. NDMC*', this Court had restrained the NDMC from setting or operating the FCTS facility.

4. Learned standing counsel for the MCD, who appears on advance notice, states that the respondents are only implementing Solid Waste Management Rules, 2016 and SDMC Solid Waste Management Bye-Laws, 2017. He states that the FCTS is being constructed at the same site where there exists a dumping site/open *dhalao*. He submits that the facts in the case of *Nadira Sarkar v. NDMC* (supra) are not similar inasmuch as in the said case, FSTC facility was being set-up within the school premises.

5. In rejoinder, learned senior counsel for the appellants disputes the fact that the FCTS is being erected at the same site where open *dhalao* exists.

6. Having heard learned counsel for the parties, this Court is *prima facie* in agreement with the submission advanced by learned counsel for the MCD that the FCTS is being constructed in accordance with the Solid Waste Management Rules, 2016 and SDMC Solid Waste Management Bye-Laws, 2017.



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7. This Court is also in agreement with the view of the learned Single Judge that the proposed FCTS would be more hygienic and environmental friendly than the existing open dumping site/*dhalao*, whether at the same place or in the immediate neighbourhood. Even otherwise, the construction of the FCTS at the proposed site is subject to further orders in the writ petition.

8. The order passed in the case of *Nadira Sarkar v. NDMC* (supra) is also distinguishable as in the said case, FSTC was proposed to be constructed within the school premises. In the present case, the proposed FSTC is being constructed outside the school premises.

9. Consequently, this Court finds no reason to interfere with the impugned order dated 20th December, 2023. Accordingly, the present appeal along with the applications is dismissed. However, this Court clarifies that its observations in the present appeal are tentative and the parties are at liberty to raise all their submissions and contentions before the learned Single Judge-who shall decide the same uninfluenced by any observation in this order.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 31, 2024
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