



2024:DHC:4076-DB



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

+ **W.P.(C) 6883/2024 & C.M.Nos.28704-28706/2024**

KHIRKI VILLAGE RESIDENT WELFARE ASSOCIATION

..... Petitioner

Through: Mr.Gaurav Goel with Mr.Tarun
Kumar and Mr.Vikas Gautam,
Advocates.

versus

MUNICIPAL CORPORATION DELHI & ORS. Respondents

Through: Ms.Puja Kalra, standing counsel for
MCD with Mr.Virendra Singh,
Ms.Ankita Sharma, Advocates with
Mr.Itifikar Ahmad, School Inspector
for R-1.
Mr.Amit Tiwari, CGSC with
Ms.Shaurya Rai and Mr.Amit Ranjan,
Advocates for UOI.

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Date of Decision: 17th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present public interest petition has been filed seeking issuance of directions to respondent no.2/Archaeological Survey of India (ASI) and respondent no.3/Union of India (UOI) through Secretary, Ministry of Culture, National Monument Authority) to reconstruct Municipal Corporation School at Khirki Village, New Delhi-110017.



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2. Learned counsel for the petitioner states that the Delhi Municipal Corporation Primary School (“school”) was constructed sharing a wall with the Tomb of Yusuf Qattal in 1949 for imparting primary education to the children of Khirki Village.
3. He states that after a span of 60 years, the petitioner felt the necessity for the school to be reconstructed as population of Khirki Village and adjoining areas had increased. He states that the petitioner wrote a letter on 25th May, 2009 to the then councillor, Ms.Jai Shri Pawar, for the re-construction of the school.
4. He states that on the petitioner’s proposal, respondent no.1 through Deputy Education Officer Capital Branch approved office order vide letter bearing no.D/3461/DE0/2009 dated 4th January, 2010 for re-construction of the school after demolition of the old structure. He further states that respondent no.1 through office of Executive Engineer EE Project South vide letter dated 7th December, 2012 issued tender work of re-construction of the school.
5. He states that the school was demolished in the beginning of 2012 for re-construction by respondent no.1 and more than 350 students were shifted to another Municipal Corporation school at Savitri Nagar, which is two kilometers away from present demolished school at Khirki village. He further states that foundation stone for re-construction of the school was laid on 6th April, 2013.
6. However, respondent no.2 stopped the construction of the school stating that no construction is allowed in the prohibited area of Tomb of Yusuf Qattal and an NOC is required from it for re-construction of the school.



7. He further states that vide order dated 4th May, 2016, respondent no. 3 wrote a letter to respondent no.2 rejecting the permission to re-construct the school. He contends that no reason was specified with respect to the adverse impact on the preservation, safety, security of, or access to the Tomb of Yusuf Qattal by the re-construction of the school. In support of his submission, he relies upon Section 2(dc) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as the ‘Act, 1958’), which reads as under:-

“2.....

(dc) "construction" means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or provision for similar facilities for public.”

8. Learned counsel for ASI states that the application for construction was rejected as the area in which the school was proposed to be reconstructed fell within the prohibited zone.

9. Learned counsel for MCD states that after rejection order dated 04th May, 2016, MCD has applied for fresh permission from the Competent Authority vide letters dated 05th October, 2020 and 08th October, 2021. She states that the permission sought can be granted by the Competent Authority under Section 20C of the Act, 1958. The said Section reads as under:-

“20C.....

(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director-General and desires to carry out any repair or renovation of such building or structure,



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may make an application to the competent authority for carrying out such repair or renovation, as the case may be.”

10. Keeping in view the aforesaid, this Court disposes of the present writ petition along with the applications with a direction to the Competent Authority to decide the applications dated 05th October, 2020 and 08th October, 2021 filed by the MCD in accordance with law as expeditiously as possible preferably within six weeks. The rights and contentions of all the parties are left open.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 17, 2024
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