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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11730/2021 & CM APPL. 36250/2021

KUSUM KUMARI AND ORS

.....Petitioners

Through: Mr. R.C. Pathak, Ms. Bhoomika,
Advocates.

versus

STATE GOVT OF NCT OF DELHI AND ORSRespondents

Through: Mr. Rishikesh Kumar, Mr. Sudhir
Kumar, Mr. Atik Gill, Mr. Sheenu
Priya, Advocates for GNCTD.
Mr. Anuj Chaturvedi, SC for MCD
with Mr. O.P. Ojha, Executive
Engineer.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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14.10.2024

1. The petitioners have filed this petition under Article 226 of the Constitution for a direction against the respondents from construction of a Fixed Compactor Transfer Station ["FCTS"] in Village Karkardooma.
2. The petitioners are ten individuals, including six minors, who are resident in the locality near the FCTS.
3. According to learned counsel for the petitioners, the location of the FCTS in the petitioner's locality is hazardous to their health and well-being. The petitioners have also filed an additional affidavit dated 06.07.2024, *inter alia* identifying alternative locations at which the FCTS could be established.
4. I am informed that the FCTS is a system that compacts and transfer solid waste in a centralised location. FCTSs are designed to handle waste



in a more hygienic way. The construction of the subject FCTS commenced on 29.01.2021 and was completed on 18.10.2022.

5. At the very outset, learned counsel for the respondent draws my attention to a judgment of this Court dated 09.09.2024 in W.P.(C) 6416/2021[*Muhammadi Jama Masjid Madarsa-Anwarul-Uloom Welfare Association (Regd.) v. NCT of Delhi & Ors*]. wherein a similar issue was considered. The following extracts of the said judgment are relevant:

“8. However, the respondent-Corporation has taken an unequivocal stand that the khatta in question has already been in existence for the last 20 years at the site which has been selected for setting up the upgraded khatta. The Court also takes note of the submissions made by the respondent-Corporation that it is not constructing any new khatta, rather a portable compactor is being installed at the same location. Therefore, in the considered opinion of the Court, the installation of the portable compactor would certainly serve the larger public interest by providing a sustainable solution to the issue of waste management. In fact, such an effort appears to be a genuine step in minimizing the public health hazards by reducing the volume of waste and thereby, resulting into an efficient waste handling mechanism.

9. In any case, the grievance sought to be agitated by the petitioner is a routine administrative matter which falls in the domain of municipal administration and requires a practical decision making. The municipal authorities are specially tasked to deal with such issues in our system of governance as they are better equipped to do an even-handed assessment of the local infrastructure, amount of waste generation, logistical constraints and other underlying factors involved in urban governance. If the Writ Courts were to readily interfere in such administrative minutiae of urban planning and waste management, the same would tantamount to diminishing the principle of separation of powers, which is the cornerstone of our constitutional democratic setup. Any interdiction in the day-to-day administration of public services would not only result in usurping the constitutional mandate of municipal authorities but it would also undermine the efficacy of local governance. Such an approach would also lead to flurry of writ petitions, diverting the attention of the Writ Courts from adjudicating pressing constitutional and legal disputes to exhausting judicial resources in micromanagement of public services.

10. Moreover, neither there appears to be any infraction of legal or



fundamental rights of the petitioner, in particular, nor violation of environmental laws or otherwise, in general, which would require an urgent intervention by this Court. Therefore, it is prudent to exercise judicial restraint in such cases which can be effectively resolved through local governance mechanisms.

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12. With respect to the argument of the petitioner that the same is likely to cause nuisance in the vicinity, it is apposite to lend credence to an order dated 20.08.2024 passed by this Court in W.P.(C.) No.11400/2024, whereby, while determining an almost similar controversy, it has been held that Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides a mechanism as to how such a grievance can be agitated before the District Magistrate or Sub-Divisional Magistrate or Executive Magistrate. The Court has also taken note of the decision of the Supreme Court in the case of *Municipal Council, Ratlam v. Vardichan*, wherein, it has been held as under:-

“13. Section 133 CrPC is categoric, although reads discretionary. Judicial discretion when facts for its exercise are present, has a mandatory import. Therefore, when the Sub-Divisional Magistrate, Ratlam, has before him, information and evidence, which disclose the existence of a public nuisance and, on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place which may be lawfully used by the public, he shall act. Thus, his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance, triggered by the jurisdictional facts. The Magistrate's responsibility under Section 133 CrPC is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by Section 188 IPC. Therefore, the Municipal Commissioner or other executive authority bound by the order under Section 133 CrPC shall obey the direction because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment, shall be punished with simple imprisonment or fine as prescribed in the section. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of Section 133 CrPC read with the punitive temper of Section 188 IPC make the prohibitory act a mandatory duty.



16. In this view, the Magistrate's approach appears to be impeccable although in places he seems to have been influenced by the fact that "cultured and educated people" live in this area and "New Road, Ratlam is a very important road and so many prosperous and educated persons are living on this road". In India "one man, one value" is the democracy of remedies and rich or poor, the law will call to order where people's rights are violated. What should also have been emphasised was the neglect of the Malaria Department of the State of Madhya Pradesh to eliminate mosquitoes, especially with open drains, heaps of dirt, public excretion by humans for want of lavatories and slums nearby, had created an intolerable situation for habitation. An order to abate the nuisance by taking affirmative action on a timebound basis is justified in the circumstances. The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile. Therefore, the court, armed with the provisions of the two Codes and justified by the obligation under Section 123 of the Act, must adventure into positive directions as it has done in the present case. Section 133 CrPC authorises the prescription of a time-limit for carrying out the order. The same provision spells out the power to give specific directives. We see no reason to disagree with the order of the magistrate."

(emphasis supplied)

13. Furthermore, a perusal of Section 350 of the DMC Act, 1957, which is relied upon by the petitioner, would indicate that the same deals with the daily cleaning of streets and the removal of filth and rubbish. Undeniably, the decision of the upgradation of khatta by the respondent-Corporation is in furtherance of the objective stipulated in the said provision. Therefore, no positive directions in that regard are required to be passed qua the Commissioner as the petitioner is at liberty to approach the respondent-Corporation to agitate his grievance.

14. It is, thus, seen that the respondent-Corporation would be well within its authority and jurisdiction to decide as to where the public utility should situate as the same is relatively more aware of ground realities and other relevant factors which may be required to be considered. Unless the decision taken by the respondent-Corporation is shown to be wholly illegal, arbitrary, discriminatory or malafide, which is not the case at hand, the Court, while exercising writ jurisdiction, may not be required to interfere."



[Emphasis supplied]

6. Pursuant to the order dated 17.09.2024 in the present petition, Municipal Corporation of Delhi [“MCD”] has filed an additional status report dated 13.10.2024, a copy whereof is handed up in Court and is taken on record.

7. The status report filed by the MCD notes that the location of the FCTS was finalised after a local survey in the ward and consideration of various factors, such as the availability of land and operational requirements/parameters for operation of FCTS, such as maneuvering and lifting of bucket etc. The chosen location was the only one which was found suitable. With regard to the alternative locations proposed by the petitioners, it has been stated that the said locations were not suitable due to reasons such as the land belonging to other departments, inadequate availability of area, proper maneuvering and lifting of bucket etc.

8. The MCD has also annexed photographs of the location at present, which are reproduced below:





9. The arguments of learned counsel for the petitioners are only that alternative sites were available for location of the FCTS, which would have been better for this purpose, and that the present location is detrimental to the petitioners, who live in the vicinity.

10. I am unable to find any legal justification for these arguments. As held by this Court in the aforesaid judgment, the location of the FCTS, absent any legal impediment, is a matter for the municipal authorities. The case of the petitioners, at the highest, is that there is some inconvenience to the neighbouring residents, but that does not in itself enjoin the municipal authorities to relocate the facility. As in the case of *Muhammadi Jama Masjid Madarsa-Anwarul-Uloom Welfare Association (Regd.)* [Supra], the FCTS in the present case has also been established at the site of a pre-existing dumpyard/*dhalao*. No legal provision or constitutional right has been cited before me, which would prohibit the location of the FCTS at the site in question. Even if the Court mandates that the FCTS must be located at a place far from the petitioners'



residence, that place would almost inevitably be close to some other residents. No such relief can be granted in law.

11. In the event of any particular nuisance caused due to lack of maintenance or accumulation of garbage in the area, the petitioners are free to approach MCD for remedial action, or to take proceedings under the relevant provisions of Bharatiya Nagarik Suraksha Sanhita, 2023, as held by the Court in *Muhammadi Jama Masjid Madarsa-Anwarul-Uloom Welfare Association (Regd.)* [Supra].

12. The petition is, therefore, disposed of with the same liberty granted by the judgment dated 09.09.2024, to the petitioners to invoke their statutory remedies in the event of any specific instance of nuisance.

13. Pending application also stands disposed of.

PRATEEK JALAN, J

OCTOBER 14, 2024
'Bhupi'/'