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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9419/2024**
NEW RESIDENTS WELFARE ASSOCIATION BALI NAGAR
AND RAJA GARDENPetitioner
Through: Mr. Bibhuti Bhushan Mishra, Mr.
Anubhav Gupta, Ms. Shivalika and
Mr. Dipak Raj, Advs.

Versus
GOVT OF NCT OF DELHI & ORS.Respondents
Through: Ms. Aditi Saraswat, Adv. for Mr.
Jawahar Raja, ASC, GNCTD for R-1,
2, 5 & 8 with SI Robin Khatana, P.S.
Moti Nagar
Mr. Manu Chaturvedi, SC for MCD
with Ms. Devika Singh Roy
Chowdhury, Adv.
Mr. Balendu Shekhar and Mr.
Krishna Chaitanya, Advs. for DPCC

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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07.08.2024

1. The petitioner in the instant writ petition seeks for the following reliefs:-

"1. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents, more so specifically Respondent Nos. 1, 2, 5 & 6 to take strict action against the offenders and stop the Illegal Activities of consuming liquor and Hookahs in car parked on Major Sunil Bakshi Marg in Bali Nagar, West Delhi.

2. Issue a writ of mandamus or any other writ order or direction In the nature of mandamus directing the Respondents to ensure that provisions of Delhi Excise Ad, 2009, Delhi Shops and Establishments Act & The Cigarettes and Other Tobacco Products (Prohibition Of advertisement And Regulation of Trade and Commerce, Production, Supply and Distribution) Ad, 2003 are strictly complied with regarding serving of alcohol and



hookah on Major Sunil Bakshi Marg.

3. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents , more so specifically Respondent Nos 1, 5 & 6 to take appropriate action against open consumption of Liquor in the cars parked on Major Sunil Bakshi Marg, West. Delhi - 110015.

4. Issue a writ of mandamus or any other writ order or direction In the nature of mandamus directing the respondents, more so specifically Respondent Nos. 2, 3, 5 & 6 to restrain the Restaurants/cloud kitchens & Food outlets on Major Sunil Bakshi Marg from operating after 11 PM every night and further Stop the Illegal parking of cars in No parking Zone, late night honking and playing loud music in car and dancing on road so that residents of the colony can enjoy the right to peaceful life and sleep.

5. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents, more so specifically Respondent No 2, 5 & 6 to ensure that no public nuisance is carried out on Major Sunil Bakshi Marg.

6. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents, more so specifically Respondent Nos.. 3, 5 & 6 to take appropriate action against the encroachment on public land, footpaths and remove the street vendors and hawkers illegally operating from thereon.

7. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents, more so specifically Respondent Nos. 3 and 4 to take action against the Polluting activities being carried out by Restaurant/cloud Kitchen owners and Car Mechanics and Painters thereby harming environment and polluting the neighborhood and further ensure these activities do not resume in the future.

8. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents to ensure that regular action Is taken against the illegal and unlawful activities as described above being carried out in the area.

9. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents and especially to Respondents 6 and 7 to ensure that Major Sunil Bakshi Marg, West Delhi remains free from traffic congestion and illegal parking so that essential services like Ambulance, PCRs and Fire Brigades can have medical



patients can access ESI Hospital Basai Darapur from Najafgarh Road.

10. Issue a writ of mandamus or any other writ order or direction in the nature of mandamus directing the respondents to take appropriate action on representations {annexed as Annexure P3} made by the petitioner within a stipulated time as deemed fit by this hon'ble court.

11. Issue a writ of certiorari or any other writ order or direction in the nature of certiorari directing the respondents to place on record the details of the action taken, if any, in pursuance to representations (annexed as Annexure P3) made by the petitioner.”

2. The Status Report filed by respondent No.3 reads as under:-

“1. The instant Status Report is being filed on behalf of Respondent No.3/ MCD in pursuance of order dt. 11.07.2024 of this Hon'ble Court.

2. That the Petitioner Association has filed the present writ petition against nuisance created by activities such as the running of restaurants, cloud kitchens and food outlets, presence of auto repair activities, violations of Fire NOC, haphazard parking of visitors, night time gathering of people for drinking and smoking purposes etc. taking place in Major Sunil Bakshi Margin Bali Nagar area that are in violation of provisions of the following Acts:

- a. Delhi Excise Act, 2009,*
- b. Delhi Shops and Establishments Act, 1954, and*
- c. Cigarettes and Other Tobacco Products (Prohibition of advertisement And Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.*

3. It is submitted that the necessary remedial action to be taken falls majorly within the agencies under the jurisdiction of Govt. of NCT of Delhi. The scope of remedial action on behalf of the answering Respondent is limited to removal of minor illegal encroachments and licensing of restaurants.

4. It is submitted that the issue pertaining to drinking liquor and smoking hookah on public land or in private vehicles on public roads is the subject matter of Delhi Police and Traffic Police. Furthermore, the issue of alcohol being served in restaurants illegally is the subject matter of the Delhi Excise Department.

5. That the answering Respondent has issued 4 Health Trade Licenses [HTL] to restaurants in the subject area as per the existing policy of Health Trade Licensing. The HTL issued to M/s Sher-e-Punjab is only to



run an Eating Establishment for take-away purposes. A copy of the HTL issued to M/s Sher-e-Punjab is annexed herewith and marked as Annexure A. Copies of the 3 other HTLS issues to restaurants in the subject area of the present writ petition are annexed herewith and marked as Annexure B (colly).

6. It is submitted that the subject matter road i.e. Major Sunil Bakshi Marg falls under the jurisdiction of PWD and removal of major encroachments in shape of constructed thadas/platforms, if any, come under the jurisdiction of PWD. However, in order to reduce civic and traffic disruption, the answering Respondent takes removal action against minor encroachments that are temporary in nature.

7. The answering Respondent has conducted several such removal actions on the subject matter road in recent past to ensure that no such denting and painting takes place on footpaths wherein, several vehicles have been seized and repairing tools found therein have been kept under the custody of the answering Respondent in the Municipal Store. Additionally, it is submitted that further removal action by the answering Respondent of the same nature is scheduled for 16.07.2024.

8. In light of the above, it is humbly submitted and prayed that this Hon'ble Court may be pleased to grant an opportunity to the answering Respondent to file a detailed status report in the present matter on the next date of hearing, i.e. 18.07.2024."

3. The Status Report filed by the respondent-SHO reads as under:-

"1. That the petitioner has filed the petition before the hon'ble court mentioning that the Sunil Bakshi Marge in Bali Nagar, Moti Nagar has become excessively crowded with cars being parked in No Parking Zone and visitors indulge in illegal activities of drinking and smoking hookahs in their cars.

2. That the petitioner further mentioned that a lot of restaurants have propped up in the area which have been working without the fire clearance, food license, trade license and health license which serve food and hookas on the road to the parked cars. The restaurants operate as late as 4 am every night without permission from the competent authority.

3. That in reply to the petition, it is respectfully submitted that all beat staff have already been sensitized and directed to be vigil in the area and do effective patrolling. Strict actions against the violators were taken time to time whenever any violation came to notice.



4. In this regard, it is submitted that beat officers during patrolling of the area take regular actions on the public drinking violators.

5. In this regard, it is submitted that regularly action in under section u/s 28/112 DP Act (15 Kalandras) and 40A Delhi Excise Act (63 Kalandras) have been registered in PS Moti Nagar, New Delhi against the violators on Sunil Bakshi Marg in Bali Nagar, Moti Nagar in the year 2024 till date. The list of the same are annexed as "Annexure-A".

6. It is worth to mention here that no permanent encroachment is there on the road of Sunil Bakshi Marg in Bali Nagar, Moti Nagar. If any encroachment comes to notice, concerned MCD staff are intimated accordingly. Furthermore, staff has been briefed regularly to close monitor upon the violators on the mentioned road.

7. However, the undersigned is duty bound to abide by any further directions/orders passed by this Hon'ble Court."

4. That apart, the Status Report is also filed by PWD which states that PWD is only a road-maintaining agency whereas the Corporation is road-owning agency.

5. Looking at the nature of the grievance and the stand which has been taken by the SHO and Corporation, this Court deems it appropriate to direct the concerned DCP to look into the grievance raised in the instant writ petition and to issue necessary directions

6. The petitioner is also at liberty to approach the concerned DCP as and when the petitioner has any grievance with respect to the concerned unauthorized activities. If the petitioner points out the aforesaid aspect to the concerned Officer, the same shall be dealt with in accordance with law. The issue in question seems to be of recurring in nature. Its not possible for the writ Court to exercise power of issuance of continuing mandamus. This Court in the case of W.P.(C) 4206/2024 titled as ***Jangpura Extension Residents Forum RWA v. Delhi Urban Shelter Improvement Board & ors.***



has held as under:-

“6. It is well-established that while the Court is vested with extraordinary jurisdiction under Article 226 of the Constitution of India, the essence of the remedy of continuing mandamus lies in eliminating the uncertainties of adjudication. This remedy empowers courts to supervise, superintend, and intervene to actualize specific socio-economic rights and rectify administrative non-compliance.

7. Examining the prevailing jurisprudence, the remedy of continuing mandamus is invoked exclusively in exceptional circumstances where persistent executive recalcitrance obstructs the delivery of justice. In such instances, judicial follow-up becomes imperative in accordance with the Court’s constitutional and moral obligations to uphold the rule of law.”

6. More importantly, Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023 empowers the executive magistrate to take action pursuant to the public nuisance or unlawful obstruction. That apart, there exists power under section Order 1 Rule 8 of the CPC to file a suit in a representative capacity.

7. With aforesaid observations, the petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 7, 2024/p'ma