



\$~40

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

+ **W.P.(CRL) 3198/2024 & CRL. M.A. 30945/2024 & 30947/2024**

MOHD UMAR

.....Petitioner

Through: Mr. Shahzeb Ahmed, Mr. Adeel Ahmad Khan, Mr. Wasil Khan and Mr. Shashi Kumar, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Anand V. Khatri, ASC for R-1 along with SI Pardeep Malik P.S. Jamia Nagar.
Mr. Sharique Hussain, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

%

23.10.2024

CRL.M.A. 30946/2024 & CRL.M.A. 30947/2024

Exemption allowed, subject to just exceptions.

Applications stand disposed of.

W.P.(CRL) 3198/2024 & CRL. M.A. 30945/2024

1. Writ petition under Section 226 of the Constitution of India read with Section 528 of Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023 has been preferred on behalf of the petitioner with the following prayers:

“i) Issue a writ, order or direction in nature of Mandamus or such other writ, order or direction that this Hon'ble Court may deem fit Restraining the Respondent No. 2 from cutting the electricity connection of the



Subject Property of the Petitioner in furtherance of the impugned Order dated 29.02.2024 passed by the Ld. Metropolitan Magistrate, South East, Saket Courts, Delhi in the case bearing no. Cr Cases 9090 of 2023 titled "State v. Mohd Umar".

2. Learned Additional Standing Counsel for respondent no.1 and learned counsel of respondent no.2 appear on advance notice.
3. Learned counsel for the petitioner submits that a Writ Petition (Crl.) 2640/2024 was earlier preferred on behalf of the petitioner with the prayer that the respondent no.2 be restrained from disconnecting the electricity connection of the subject property of petitioner in furtherance of impugned order dated 29.02.2024 passed by the Metropolitan Magistrate-01, (South East), Saket Courts, since even cognizance of case in FIR No. 213/2023 for the alleged unauthorized construction was yet to be taken.
4. The aforesaid writ petition was disposed of vide order dated 11.09.2024 passed by Coordinate Bench of this Court and observations in paragraphs 2 to 4 may be reproduced for reference:

"1.

*2. The record shows that an FIR bearing No.213/2023 has been registered against the petitioner on 18.05.2023 in regard to the alleged unauthorised construction carried out by respondent No.3. It is submitted that the learned M.M without taking cognizance or without summoning the petitioner, has sought compliance of the order of this Court in **Kalyan Sansthan Social Welfare Organization Vs. Union of India**. It is submitted that no punitive action by way of disconnection of electricity can be directed by the learned M.M without the trial and finding the petitioner guilty of unauthorised construction. Such Order seeking compliance from BSES is contrary to law.*

3. Perusal of the record shows that no directions of any



kind have been issued by the learned M.M for directing disconnection of electricity. It has been rightly submitted by the petitioner that no directions of this kind can be issued by the learned M.M without adjudication. However, from tone tenor of the Order it is evident that the learned M.M has merely sought the status of compliance of the judgment of this Court. In case the parties are aggrieved by such action of BSES, it is at liberty to take recourse to appropriate remedy. 4. There is no infirmity in the order and is hereby dismissed. The pending application also stands disposed of.”

5. Learned counsel for the petitioner submits that pursuant to order dated 29.02.2024, an order dated 16.10.2024 has been further passed by learned MM directing SHO, P.S. Jamia Nagar to provide requisite police force to BSES to disconnect the electricity connection. He further submits that cognizance of the said complaint for alleged unauthorized construction is even yet to be taken by the learned Trial Court and the directions are contrary to the observations made in order dated 11.09.2024 passed in W.P.(CRL) 2640/2024.

6. A bare perusal of order dated 16.10.2024 reflects that learned Trial Court has directed the SHO P.S. Jamia Nagar to provide the requisite police force to assist BSES to disconnect the electricity connection of unauthorized construction, contrary to observations in order dated 11.09.2024 in W.P. (Crl.) 2640/2024, that no directions for the purpose of disconnection could be issued by the learned Metropolitan Magistrate without adjudication. The cognizance of the case is yet to be taken by learned MM and any such direction for disconnection of electricity except for the purpose of obtaining status report is uncalled for.

In the facts and circumstances of the case, the impugned order dated



16.10.2024 is set aside to the extent of directing the SHO, P.S. Jamia Nagar to provide the police force for purpose of disconnecting the electricity connection in the premises, without prejudice to the rights of BSES for initiating action in accordance with orders passed in ***Kalyan Sansthan Social Welfare Organization v. Union of India***, 2006 SCC OnLine Del 86.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J

OCTOBER 23, 2024/ssc