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

+ **W.P.(C) 1994/2025**

BHAGWAT PRASAD

.....Petitioner

Through: Mr. S.K. Mishra and Mr. Amit
Mishra, Advocates.

versus

COMMISSIONER , MCD & ORS.

.....Respondents

Through: Mr. Siddhanth Nath, Standing
Counsel with Mr. Bhavishya Makhija and Mr.
Amaan Khan, Advocates for MCD.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

17.02.2025

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CM APPL. 9376/2025

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 1994/2025

3. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“(a) direct the respondent No.1 to 5 to clear the illegal encroachment of government land/street situated at Main Jaitpur-Badarpur Road, Molarband in front of property bearing No.2-C, Gali No.14, Molarband Extension, Badarpur, New Delhi encroached by the respondent no. 7

(b) further direct the respondent no. 1 to 5 to demolish the illegal and unauthorized construction on the said government land/street situated in front of the house of the petitioner and further direct the respondent no. 1 and 2 to stop the illegal activities which is being done by the Imam Hussain/respondent no.8 who is running illegal and unauthorized meat shop at situated at in front of property no.2/C, Gali no. 14 Molarband Extension, Badarpur, New Delhi-110044 and selling meats and chicken



after cutting goats by not complying the terms and conditions mentioned in the veterinary department

(c) and further direct the respondent no.6 to disconnect/remove the electricity meter installed at the meat shop situated at in front of property no.2/C, Gali no.14 Molarband Extension, Badarpur, New Delhi-110044."

4. It is evident from a plain reading of the writ petition that Petitioner is aggrieved by the illegal encroachment of Government land/street situated at main Jaitpur-Badarpur Road, Molarband in front of property bearing No.2-C, Gali No.14, Molarband Extension, Badarpur, New Delhi. Petitioner had admittedly approached this Court earlier in W.P. (C) No.12104/2024 which was disposed of on 02.09.2024 granting liberty to the Petitioner to agitate his grievance before the respective authorities instead of entertaining the same in a writ petition. Relevant part of order dated 02.09.2024 is as follows:

"5. Having considered the submissions made by learned counsel appearing for the petitioner, the Court is of the considered opinion that the petitioner can approach the Special Task Force ["STF"] constituted by the Delhi Development Authority vide notification dated 08.03.2019 with respect to the alleged illegal encroachment and to approach the concerned Executive Magistrate as per the provisions of Sections 152 to 163 of Bharatiya Nagarik Suraksha Sanhita, 2023 with respect to the alleged nuisance.

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8. Looking at the nature of the grievance, the Court also takes note of the provisions enshrined in Chapter XI (B) and (C) of Bharatiya Nagarik Suraksha Sanhita, 2023 ["Sanhita"] and finds that Sections 152 to 163 of the said Sanhita provide a mechanism as to how such a grievance can be redressed by the District Magistrate or by a Sub-Divisional Magistrate or any other Executive Magistrate especially empowered in this behalf by the State Government.

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10. This Court, vide order dated 20.08.2024 in W.P.(C.) 11400/2024 titled



as *Sh. Nilabh Sharma v. Municipal Corporation of Delhi*, wherein, the issue revolved around the causing of public nuisance due to placement of dustbins near the petitioner's house, dismissed the petition while reserving the right in favour of the petitioner to avail the remedy under Section 152 of Sanhita. The relevant observations of the Court in the said case read as under:-

“9. In another case titled as *Gobind Singh v. Shanti Sarup*, which involved the magistrate directing the owner of the bakery to demolish his oven and chimney as it caused inconvenience to the public at large, the Supreme Court has held as under:-

“7. It is true that the learned Additional Sessions Judge did not agree with the findings of the Sub-Divisional Magistrate, but considering the evidence in the case, the reasons given by the Magistrate in support of his order and the fact that the High Court was unable to accept the recommendation made by the Additional Sessions Judge, we are of the opinion that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the working of the bakery.”

(emphasis supplied)

10. The Division Bench of the Punjab and Haryana High Court in the case of *Vipan Kumar v. State of Punjab*, while dealing with a case where the prayer involved removal of garbage reinforced the position that the subdivisional magistrate is invested with the powers under Section 133 of CrPC to remove nuisance. The relevant paragraphs of the said decision is reproduced herein for reference:-

“6. It is to be noticed that the Sub-Divisional Magistrate, Mukerian who is present in Court has powers under Section 133 of the Code of Criminal Procedure (Cr.P.C. - for short) for removal of nuisance.

7. Hon'ble the Supreme Court in *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162 : AIR 1980 SC 1622 has held that the Magistrate's responsibility under Section 133 Cr.P.C. is to order removal of nuisance within a time to be fixed in the order. This it was said is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. It was said that Section 133 Cr.P.C., permits enforcement of civic rights under the Municipal Law where the neglect had led to a public nuisance. The Section permits affirmative action to abate the nuisance on a time bound basis by



issuing specific directives. Failure to comply with the directions issued by a Magistrate would be visited with the punishment contemplated by Section 188 of the Penal Code, 1860 (“IPC” – for short). The Municipal or other Executive Authorities are bound by the order under Section 133 Cr.P.C. and they are to obey the directions of the Sub Divisional Magistrate because disobedience, if it causes obstruction or annoyance or injury to any persons lawfully pursuing their employment is to be punished with simple imprisonment or fine as prescribed in Section 188 IPC. The offence is aggravated if the disobedience tends to cause danger to human health or safety. The imperative tone of Section 133 Cr.P.C. read with the punitive temper of Section 188 IPC makes the prohibitory act a mandatory duty.

9. In the circumstances, there is no reason whatsoever as to why the Municipal Authorities at Mukerian should not undertake the task of removing the garbage from the city to make the city clean and habitable for its residents. They are under a statutory duty and obligation to remove the garbage from the city. The Sub Divisional Magistrate, Mukerian is invested with the powers under Section 133 Cr.P.C. to remove the nuisance.

10. Therefore, the learned Sub Divisional Magistrate, Mukerian shall ensure that she performs her statutory duty and ensures that the garbage is removed from Mukerian Town preferably within a period of three months as has been submitted.

11. It is made clear that the Sub Divisional Magistrate shall exercise all powers contemplated by Section 133 Cr.P.C. for the removal of garbage and would be at liberty to initiate action under Section 188 IPC against those disobeying her orders.

12. The writ petition is accordingly disposed of with liberty to the petitioners to seek revival of the same, if need be.”

(emphasis supplied)

*13. The Court finds it pertinent to refer to a judgment rendered by a Division Bench of this Court in *Surender Kumar Sood v. MCD*, wherein, it was observed that a remedy under the writ jurisdiction is to be invoked as a measure of last resort, only after the petitioner has exhausted all other available remedies. The relevant paragraph is referred below:*

“4. It is a well settled principle of law of mandamus that before approaching the High Court for such a writ the petitioner



should first approach the authority concerned for the relief he wants and only if that is not granted to him, then he can file a writ in the High Court. The party cannot directly come to the High Court for making such a grievance vide”

14. It is thus discernible from the aforesaid discussion that the concerned magistrate under Section 152 of BNSS, 2023 has the power to remove public nuisance in circumstances which warrant exercise of such powers. Therefore, in the instant case, the petitioner can duly approach the magistrate to ventilate his grievance rather than directly invoking writ jurisdiction under Article 226 of the Constitution of India.”

11. In view of the aforesaid, at this stage, instead of entertaining the instant writ petition, the Court grants liberty to the petitioner to agitate his grievance before the respective authorities and the concerned authorities are also directed to look into the same in accordance with law.

12. The petitioner, however, shall be at liberty to take appropriate recourse in accordance with law if his grievance is not mitigated.”

5. Petitioner avers that he is compelled to approach this Court again since his representations dated 17.09.2024 to the Special Task Force (‘STF’) as well as MCD and SDM (South), Badarpur and District Magistrate (South-East) have not been redressed and the illegal encroachment continues.

6. Issue notice.

7. Mr. Sidhant Nath, learned Standing Counsel accepts notice on behalf of Respondents No. 1 to 3.

8. Learned counsel for the Petitioner urges the Court to interfere in the matter as the concerned authorities are not taking any action and are in collusion with the encroachers. This Court does find merit in the submission of the Petitioner to the extent that despite direction of this Court granting liberty to the Petitioner to approach the appropriate authorities and his having made the representations in September, 2024, till date there is total inaction.



9. Accordingly, this writ petition is disposed of directing STF and the District Magistrate of the concerned area to look into the grievance of the Petitioner with respect to illegal encroachment as brought forth in the representation dated 17.09.2024. After examining the grievance, STF will issue necessary direction to the concerned authorities for appropriate action, as warranted in the facts of the case and in accordance with law.
10. Needless to state, if the Petitioner has any surviving and/or further grievance, he will be at liberty to take recourse to legal remedies.
11. Copy of this order will be sent to the Standing Counsels, DDA and Government of NCT of Delhi, for information and necessary compliance.
12. Petition stands disposed of.

JYOTI SINGH, J

FEBRUARY 17, 2025/jg