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

+ **W.P.(C) 11127/2024 and CM APPL. 46009/2024 and 62938/2024**

**PUSHPANJALI FARM OWNERS AND RESIDENTS
ASSOCIATION**

.....Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Ms. Smiti Verma and Ms. Ankita Singh, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.....Respondents

Through: Mr. Ashutosh Gupta, ASC for MCD along with Mr. Sushil Kumar, AE.

Mr. Roopansh Purohit and Mr. R.K. Shokeen, Advocates for R4.

Mr. Akhil Sibal, Mr. Sunil Dalal and Mr. Ajaay Aroraa, Senior Advocates with Mr. Anirudh Sharma, Mr. Nikhil Beniwal, Ms. Sarah Haque, Ms. Vridhi Kashyap, Ms. Riya, Ms. Shipra Bali and Mr. Nitesh Dubey, Advocates for R5 and R6.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

21.01.2025

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

“a. Issue an appropriate writ, order and/ or direction in the nature of mandamus and/ or any other appropriate writ, order and/ or direction in favor of the Petitioner thereby directing Respondent Nos. 1 to 3 to immediately stop and remove the unauthorized and illegal construction carried out by the Respondent Nos. 4, 5 and 6 at Farm House No. G-7 and Farm House No. F-24;

b. Issue an appropriate writ, order and/ or direction in the nature of mandamus and/ or any other appropriate writ, order and/ or direction in favor of the Petitioner thereby directing Respondent Nos. 1 to 3 to ensure that the Respondent Nos. 4, 5 and 6 do not carry out any further illegal



construction at Farm House No. G-7 and Farm House No. F-24 henceforth;

c. Direct Respondent No. 3 to provide police assistance and/ or provide safe and convenient environment to the officials of Respondent Nos. 1 and 2 in demolishing/ removing illegal construction and encroachment;

d. Issue an order/ direction to Respondent Nos. 1 and 2 to immediately seal the Subject Farm Houses and to stop Farm House No. G-7 and Farm House No. F-24 from continuing with the illegal construction activity.”

2. During the pendency of the writ petition, some developments have taken place, which need to be captured at the outset. On 05.09.2024, Court recorded a *prima facie* opinion that there was unauthorised construction in the subject property and directed MCD to take the action initiated by it by giving work stop notice, to its logical end with due expedition. Status report was filed by MCD on 02.09.2024 stating that show cause notice dated 07.08.2024 was served on the owner(s)/builder(s) under Section 345A of Delhi Municipal Corporation Act, 1957 (‘DMC Act’), in response to which noticee had filed a reply and sought personal hearing. During the hearing, noticee stated that no unauthorised construction was carried out at site and only a temporary structure was being erected for holding social functions as permissible under Circular dated 17.08.2022 issued by MCD.

3. On 11.11.2024, Court took notice of the fact that an order dated 01.10.2024 had been passed by MCD withdrawing the show cause notice and closing the sealing file after coming to a conclusion that the structure was a temporary structure in terms of the policy guidelines issued vide Circular dated 17.08.2022. Petitioner disputed that the construction was in consonance with the policy and in this light, Court recorded the undertaking of MCD and Respondents No.5 and 6 that no further construction will be permitted until further orders of the Court and the structure constructed by



Respondents No.5 and 6 will not be used for any social functions, till the Court considers the matter.

4. Be it noted that a fresh status report dated 09.01.2025 has been filed by MCD in compliance of order dated 11.11.2024 in which it is stated that order dated 01.10.2024 was passed by the then Deputy Commissioner, Najafgarh Zone, MCD under Section 354A of the DMC Act, exercising powers of a Quasi-Judicial Authority and that the order is appealable under Section 347B(1) of the DMC Act. It is further stated that show cause notice dated 07.08.2024 was served on the owner(s)/builder(s) of Farm No. F-24, Pushpanjali Farm, Bijwasan, New Delhi under Section 354A asking them to show cause why the property be not sealed and in reply dated 16.08.2024 it was brought forth that there was no authorized construction and the construction on site was in terms of the Policy of the MCD. Opportunity of personal hearing was sought. In the personal hearing, noticee submitted that the construction work in the farm house was being carried out as per the policy wherein eligible farm houses are allowed to organise marriage/social functions subject to certain conditions and that farm house in question was eligible under the policy and only a *pandal* was being erected in open space within the farm house. Copy of a certificate issued by a firm of civil and structural engineers was also submitted in support of the plea. Noticee also furnished copy of the plan indicating the *pandal* area, details of parking area, entry and exit gates etc.

5. It is stated in the report that based on the response of the noticee, matter was forwarded to Building Department (Headquarters), MCD to seek opinion on certain issues and on examining the Circular dated 17.08.2022 which pertains to '*Policy for Holding Social Functions in Eligible Farm*



Houses within the jurisdiction of Municipal Corporation of Delhi', Building Department rendered an opinion that as per Clause 3 of the Circular, social function activity is permissible in respect of existing farm houses with sanctioned building plans/regularization plans as per relevant Gazette Notifications/Regulations/MPD-2021 for holding social functions outside the building in open area within the premises. Owner of an eligible farm house can erect a *pandal* for holding social functions as per Clause 2(b) of the Circular dated 17.08.2022 after following the procedure prescribed for getting permission under Clause 4 and subject to fulfilling other mandatory conditions stipulated in the Circular.

6. Based on the opinion of the Building Department and the reply of the noticee as also looking into the Circular dated 17.08.2022, a speaking order was passed by MCD on 01.10.2024, holding that *pandal* erected at the site was covered under the existing Circular dated 17.08.2022 and accordingly, show cause notice was withdrawn and sealing file was closed. However, noticee was directed to abide by and fulfil all conditions mentioned in Clauses 4(a) and (b) and 5(a) to (o) of the Circular, before putting the subject property to use to organize social functions. It is also stated in the status report that after passing of the order dated 11.11.2024 by this Court, no further construction has taken place in the subject property.

7. At the outset, on a pointed query to Mr. Sudhir Nandrajog, learned Senior Counsel for the Petitioner whether the Petitioner wishes to withdraw the writ petition to challenge the speaking order dated 01.10.2024, it is submitted that there is no need to challenge the order as the grievance of the Petitioner is that Respondents No. 5 and 6 are carrying out unauthorized construction in the teeth of Circular dated 17.08.2022 and in the absence of a



sanctioned building plan for the subject property being Farm No. F-24, Pushpanjali Farm, Bijwasan, New Delhi. It is urged that it is the obligation of MCD to ensure that no unauthorized construction takes place and no permission is accorded to hold social functions/marriages till parties are compliant with the guidelines in the Circular. Broadly understood, the argument is that under the Circular, permission to raise even a temporary structure i.e. *pandal* as defined in the Circular, can only be granted in cases of eligible farm houses i.e. farm houses having sanctioned building plans/regularization plans as per relevant Gazette Notifications/Regulations/MPD-2021 and in the present case, the subject property does not have a sanctioned building plan. It is repeatedly urged that if the private Respondents/MCD are able to produce the sanction plan, Petitioner will not press the petition.

8. In response to this submission, Mr. Akhil Sibal, learned Senior Counsel appearing for Respondents No.5 and 6 argues that the stand of the Petitioner is factually incorrect as the property in question has a sanctioned building plan and was regularized, which fact finds mentioned in the order dated 01.10.2024. It is urged that erection of a temporary structure as a *pandal* for organizing social functions is legally permissible under the Circular dated 17.08.2022 issued by MCD, subject to the applicants following the procedure prescribed under Clause 4 and fulfilling other conditions stipulated in the Circular. In fact, it is strenuously argued that the writ petition is pre-mature inasmuch as by order dated 01.10.2024 only the show cause notice was withdrawn and sealing file was closed and noticees have been directed to fulfil all the conditions mentioned in the Circular, more particularly, those stipulated in Clauses 4(a) and (b) and 5(a) to (o) of



the Circular, but even before that stage could reach, Petitioner filed this petition and is attempting to stall the process. It is only natural that permission will be granted to the Respondents for holding social functions only once they are compliant with the guidelines laid down in the Circular and the construction and usage are both subject to inspection by the MCD and this should allay the apprehension of the Petitioner that there will be unauthorized construction or usage of the *pandal*. In this backdrop, it is submitted that the writ petition be dismissed and Respondents No.5 and 6 be absolved of their undertaking not to proceed with the construction of the *pandal*.

9. Learned Additional Standing Counsel for MCD in the same vein submits that property in question bearing No.F-24, Pushpanjali Farms, Bijwasan, New Delhi, has a sanctioned building plan and was regularized and to support this plea, hands over copies of sanctioned building plan and regularization letter dated 20.05.2009. It is submitted that in the personal hearing granted to Sh. Sandeep Bawa on behalf of Sh. S.S. Jaspal, the sanctioned building plan was submitted to MCD and the speaking order dated 01.10.2024 reflects this position. It is further submitted that as per Circular dated 17.08.2022, eligible farm houses can hold social functions subject to fulfilment of the conditions mentioned therein. It is explained that a detailed policy in the form of Circular dated 17.08.2022 was brought out by MCD laying down guidelines for holding social functions/marriages in eligible farm houses and the term *pandal* has been defined in Clause 2(b) as a temporary structure. Procedure to be followed for getting permission is stipulated in Clause 4 while liability of owner/occupier is mentioned in Clause 5. Clause 8 provides for punitive action for violations and periodical



inspections. Speaking order dated 01.10.2024 was passed on being satisfied that the property in question has a sanctioned building plan and the noticee has been directed to comply with all conditions prescribed in the Circular dated 17.08.2022 before organizing any social function. Besides this, there is also a requirement of taking statutory clearances from the Fire Department, Pollution Control Board, etc. On instructions, it is assured that before according permission to Respondents No.5 and 6 to organize/hold social functions in the temporary structure, it will be carefully scrutinized that the policy guidelines have been followed in letter and spirit and periodical inspections will be carried out to ensure that there are no violations.

10. From the status reports filed by MCD, speaking order dated 01.10.2024 and copies of sanctioned building plan as also regularization letter, it is manifest that property bearing No.F-24, Pushpanjali Farms, Bijwasan, New Delhi, has a sanctioned building plan and was regularized in 2009. It is only after the sanctioned building plan was furnished by the noticee, show cause notice dated 07.08.2024 was withdrawn by MCD and the sealing file was closed. Be it noted that challenge to order dated 01.10.2024 has been given up by the Petitioner during the course of hearing. In light of the aforesaid, learned Senior Counsel for the Petitioner is not right in his submission that the subject property in question does not have a sanctioned building plan, the only point that was canvassed today during the course of hearing.

11. There is merit in the contention of Mr. Sibal, learned Senior Counsel that Respondents No.5 and 6 are yet to complete the process of complying with the procedure and other formalities required under the Circular dated



17.08.2022 and the writ petition to this extent is pre-mature. It is also rightly urged that only once the occasion to comply with conditions stipulated in Clauses 4(a) and (b) and 5(a) to (o) of the Circular dated 17.08.2022 arises, it would be ascertained by MCD if Respondents No.5 and 6 are compliant with the policy guidelines and it is not for the Petitioner to pre-empt or hazard a guess at this stage that there will be any violation of the prescribed conditions in the Circular dated 17.08.2022.

12. In view of the aforesaid, no further order is required to be passed in the present petition. MCD and Respondents No.5 and 6 are absolved of the undertakings given to the Court on 11.11.2024. Respondents No.5 and 6 can proceed in accordance with the procedure laid down in the Circular dated 17.08.2022 and take steps to fulfil the conditions laid down in Clauses 4(a) and (b) and 5(a) to (o) as also seek other clearances including statutory clearances, in accordance with law. As undertaken, MCD shall ensure that all necessary compliances are made by Respondents No.5 and 6, before according permission to organize/hold any social function in the subject property, in terms of Circular dated 17.08.2022. Periodical inspections shall be carried out by MCD, as assured.

13. Writ petition is disposed of in the aforesaid terms with liberty to the Petitioner to take recourse to legal remedies in case of further grievance.

14. Pending applications stand disposed of.

15. Copies of the sanctioned building plan and regularization letter are returned to learned Additional Standing Counsel for MCD.

JYOTI SINGH, J

JANUARY 21, 2025/YA