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

+ **W.P.(C) 171/2025**

MUHAMMAD HASAN SIDDIQUIPetitioner

Through: Mr. Imran Ali, Advocate.

versus

**MUNICIPAL CORPORATION OF DELHI
& ORS.**

.....Respondents

Through: Mr. Harshit Chopra, Advocate for
R-1/MCD.

Mr. Nune Balraj, SPC with Ms. Meghna Rao, Mr.
Harshit Goel, Advocates for Delhi Police with SI
Shajid Hussain, PS: Malviya Nagar.

Mr. Rishabh Raj Jain, Standing Counsel for BSES
RPL with Mr. Sharique Hussain, Advocate for
R-4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

09.01.2025

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CM APPL. 761/2025

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a direction to Respondent No. 1/MCD to remove the encroachment by Respondent No. 5 opposite 39, Begumpur Park, Malviya Nagar, New Delhi in accordance with the orders passed by this Court in the earlier writ petition as also a direction to Respondent No. 2/SHO, PS: Malviya Nagar to assist Respondent No. 1 in



taking action. Direction is sought to Respondent No. 3/Traffic Police to ensure that there is no traffic jam near the encroached area and to Respondent No. 4/BSES Rajdhani Power Limited to disconnect illegal connection of Respondent No. 5, who is also impleaded as a party and against whom direction is sought to remove the goods sold by him from encroached area.

4. This writ petition is the second round of litigation by the Petitioner. Respondent No. 5 is a mattress seller who has allegedly encroached the area opposite 39, Begumpur Park, Malviya Nagar, New Delhi. The location is opposite the residence of the Petitioner and on a public street. It is also alleged that Respondent No. 5 is engaged in illegal parking of trucks and other vehicles and charges parking fee for the same during night time allowing vehicles to be parked in unauthorized areas.

5. It is averred in the writ petition that Petitioner had earlier filed W.P. (C) 15964/2022 for removal of illegal encroachment by Respondent No. 5, both for the purpose of sale of mattresses and unauthorized parking. By order dated 21.11.2022, writ petition was disposed of directing MCD to treat the writ petition as a representation and dispose of the same expeditiously with liberty to the Petitioner to approach the Court if still aggrieved. However, no action was taken and Petitioner filed an application being CM APPL. 36651/2023, which was decided on 20.11.2023 recording the stand of MCD in the status report that action was taken in July and August, 2023 and inspection on 18.11.2023 revealed no encroachment on the site. However, noticing the perpetual problem of illegal encroachment over public property, it was observed that consistent and regular action will be required by Municipal Authorities and in this backdrop, assurance on behalf



of MCD that it will take all actions as possible and practicable in co-ordination with the concerned SHO to ensure that the site remains free of encroachment, was accepted. Learned Standing Counsel for MCD had also stated that telephone number of the concerned Licensing Inspector will be provided to the Petitioner so that he could approach the concerned person, if necessary. As the site is allegedly again encroached by Respondent No. 5, Petitioner has filed this petition urging that MCD and other authorities are not taking appropriate steps to remove the illegal encroachment.

6. It is brought forth in the petition that Respondent No. 5 also filed a writ petition being W.P. (C) 1761/2024, titled '**Maksood v. Municipal Corporation of Delhi and Others**' before the Division Bench seeking direction to MCD and other authorities to allow the Petitioner to peacefully vend at his vending site without any hindrance and comply with provisions of Section 20 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. This writ petition was disposed of by the Division Bench on 07.02.2024 with a direction that Petitioner therein will not be disturbed in carrying out the vending activities subject to compliance with the terms of Certificate of Vending (COV) in respect of the trades for which the certificate was issued. The Division Bench noted the stand of MCD that Petitioner therein was permitted to carry out vending activities but not from a fixed spot for more than 30 minutes as per the conditions of COV. In light of this, the Court directed that Petitioner will not be disturbed in carrying out the vending activities subject to terms and conditions of the COV.

7. Petitioner herein filed an application before the Division Bench being CM APPL. 29869/2024 for recall of the order dated 07.02.2024 and CM



APPL. 29554/2024 under Section 340 Cr.P.C. contending that Petitioner therein was illegally encroaching on the site in question. Order dated 07.02.2024 was clarified by the Division Bench to the extent of the trades in which vending could be carried out by the Petitioner therein, in terms of the COV and Petitioner could only vend from a fixed spot for a period not exceeding 30 minutes. It was further clarified that Petitioner will confine his vending activities to a space not exceeding 6 feet x 4 feet open to sky and subject to complying with the said conditions, Petitioner will not be disturbed from carrying on the activities. Be it noted that the Division Bench also observed that in case the Petitioner attempted to establish a permanent structure or carry out vending activities from a fixed spot for more than the time so fixed, concerned authorities will not be precluded from taking action of removal.

8. Petitioner herein alleges that Respondent No. 5 is not carrying on the vending activities as per law and/or as permitted by the Division Bench and continues to encroach the public land as also permit unauthorized parking by charging illegal fee and in support draws the attention of the Court to the photographs appended to the writ petition. He further submits that despite making multiple representations to all the concerned authorities, encroachments are not being removed and consequentially there is also a traffic jam in the concerned area.

9. Issue notice.

10. Counsels, as above, accept notice on behalf of the respective Respondents.

11. Learned counsel for MCD submits that directions of this Court are being complied with in letter and spirit and as and when encroachment is



brought to the notice of MCD officials, steps are taken for immediate removal. It is also urged that it is not possible for the MCD officials to be monitoring the encroachments on a minute to minute basis and the onus must be placed on the Beat officer of the concerned area to inform the MCD office as soon as he finds encroachment by Respondent No. 5 and necessary action will be taken on receipt of any such information. As far as counsel for Delhi Police is concerned, it is submitted that it is for the MCD to discharge the burden of removing illegal encroachments and the Police can only assist and facilitate in the encroachment action, which it is willing to do as and when assistance is sought by MCD. Counsel for BSES states that no complaint has been received of an illegal electric connection, however, BSES will inspect the concerned site and take necessary action in accordance with law.

12. Heard learned counsels for the parties and examined their submissions.

13. The narrative in the writ petition and perusal of the orders passed by the Division Bench in *Maksood (supra)* and the Co-ordinate Bench in W.P. (C) 15964/2022 shows that there has been earlier litigation in this Court pertaining to an alleged illegal encroachment by Respondent No. 5 on public property opposite 39, Begumpur Park, Malviya Nagar, New Delhi. Petitioner filed W.P. (C) 15964/2022 for a direction remove the encroachment, which was disposed of 21.11.2022 with a direction to treat the same as a representation. When allegedly no action was taken, Petitioner filed CM APPL. 36651/2023, which was disposed of recording the stand of MCD that encroachment on the site in question was removed and inspection carried out on 18.11.2023 revealed no encroachment. The application was



disposed of taking the assurance of the MCD on record that the site will be kept free of encroachment and telephone number of Licensing Inspector will be provided to the Petitioner for seeking necessary action. Petitioner again alleges in the present writ petition that encroachment continues inasmuch as Respondent No. 5 continues to sell mattresses on the site in violation of the terms of COV and is also indulging in unauthorized parking of vehicles during night time by charging illegal parking fee.

14. In my view, this writ petition reflects a sorry state of affair where repeated directions are being issued to remove encroachment from the site in question. Delhi Police blames the MCD and the stand of the MCD is that the Beat Officer of the area must be vigilant to bring to the notice of the MCD officials any encroachment. It is primarily the duty of MCD to ensure that there are no illegal encroachments over public properties and streets and for this regular action is required to be taken. In the present case, this obligation is more onerous due to the assurance given to the Court on 20.11.2023 in W.P. (C) 15964/2022. Therefore, it is directed that MCD will ensure regular monitoring and inspection of the site in question and take action in accordance with law, as and when there is encroachment by Respondent No. 5. Needless to state that the Beat Officer of the concerned area will remain vigilant and as and when the encroachment comes to his notice or intimation is given by the Petitioner, he will inform the MCD official In-charge of the concerned area and Police will render assistance in facilitating the removal of the encroachment.

15. It is however necessary to pen down that the Division Bench in a writ petition filed by Respondent No. 5 herein namely, Maksood being W.P. (C) 1761/2024, has permitted him to vend in consonance with his Certificate of



Vending and as per the terms and conditions of TVC with a clear restraint that he will not carry out vending activities from a fixed spot for more than 30 minutes or the time fixed by TVC, as the case may be and that he will confine his vending activities to a space not exceeding 6 feet x 4 feet which is open to sky. Therefore, while taking any action against Respondent No. 5 herein, Respondents No. 1 to 4 will bear the directions and observations of the Division Bench in mind and ensure that there is no violation of both the orders passed by the Division Bench on 07.02.2024 and 27.08.2024.

16. Writ petition is disposed of with the aforesaid directions and observations with liberty to the Petitioner to take recourse to legal remedies, in case of any surviving grievance.

JYOTI SINGH, J

JANUARY 09, 2025/shivam