



2025:DHC:11231



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 10th December, 2025**+ W.P.(C) 18712/2025, CM APPL. 77827/2025 & CM APPL.
77828/2025**RESIDENTS WELFARE ASSOCIATION**

.....Petitioner

Through: Mr. Arvind Chaudhary and Mr.
Sachin Chaudhary, Advds.

versus

GOVERNMENT OF NCT OF DELHI & ORS.RespondentsThrough: Mr. Tushar Sannu and Ms. Aqsa,
Advds. for MCDMr. Akhil Mittal, ASC with Ms.
Riddhi Jain and Ms. Shayna Das
Pattanayak, Advds. for R-4Mr. Sudhir Naagar, Mr. Piyush
Aggarwal and Mr. Aditya Chauhan,
Advds. for R-5Mr. Vivek Sharma, SPC with Ms.
Vinita Kakshi, Adv. for SHO**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J. (ORAL):**

1. The present writ petition has been filed seeking to restrain the respondent nos. 2 to 4 from demolishing the security gates installed under the MLA Local Area Development Scheme within the petitioner Society. There is further prayer for restraining the respondent nos. 1 and 4 from forcing the petitioner to allow ingress and egress of outsiders to use the passage for accessing Gate No. 2 of respondent no. 5- Bal Bhavan Public



School.

2. The petitioner also prays for direction to respondent nos. 1 to 4 to ensure strict compliance of the Conditional order passed by the Sub-Divisional Magistrate (“SDM”), Gandhi Nagar dated 15th September, 2010, under Section 133 of the Code of Criminal Procedure (“CrPC”) against respondent no. 5-School.

3. Learned counsel appearing for the petitioner submits that the respondents intend to demolish the security gates in question, which have been installed by the local Member of Legislative Assembly (“MLA”) from the funds allocated under the MLA Local Area Development Scheme for the safety and security of the petitioner Society. It is submitted that the said gates have been installed only in the month of October, 2025.

4. Learned counsel appearing for the petitioner Society submits that a demolition order has been passed for removal of the security gates installed in the petitioner Society, despite the fact that there have been previous orders passed by the SDM, and as affirmed by the Court, with regard to restraining the respondent no. 5-School from opening the back gate of the School.

5. Learned counsel appearing for the petitioner-Society draws the attention of this Court to the photographs attached with the present petition, to submit that there is only a 9 ft. wide passage between two clusters of flats. The photographs, as attached with the petition, are reproduced as under:



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6. Learned counsel appearing for the petitioner submits that the gates



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have been installed so as to secure the safety and security of the residents of the area.

7. Attention of this Court is drawn to the afore-noted conditional order dated 15th September, 2010, passed under Section 133 of CrPC, by the office of the SDM, Gandhi Nagar. Learned counsel for the petitioner, in particular, relies upon the following paragraphs of the said order:

“xxx xxx xxx

I, D.P. Singh, SDM (Gandhi Nagar) therefore, pass a conditional order that the respondent school should not use the back-gate on daily basis HENCEFORTH and this gate should be used only in case of dire emergency. The school should explore the possibility of opening another gate in the front side of the school.

If the respondent objects so to do, to appear before the undersigned on 29/9/2010 at 11 a.m. and show cause, why this order should not be made absolute.

8. Attention of this Court has also been drawn to the order dated 06th September, 2011, passed by the Additional Sessions Judge (“ASJ”)-II, East District, Karkardooma Courts, Delhi in *CR No. 46/2010*, wherein, it has been held as follows:

“xxx xxx xxx

11. I have considered the arguments of Ld. Counsel for revisionist in the light of the principles of law laid down in the above

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referred cases. I come to the conclusion that there is no illegality, inaccuracy, mistake or impropriety in the impugned order. The reasons which support my decision are firstly, the Ld. SDM has rightly and properly exercised his jurisdiction by passing impugned conditional order considering the discomfort of the residents whose houses are situated near gate no. 2. Physical discomfort is genuine ground for passing order u/s 133 of Cr.P.C.

12. Secondly, the complaint against the respondent/school was filed from the President and Secretary, Residential Welfare Association, Block B, Mayur Vihar, Phase II, Delhi. Thus, complaint was filed in representative capacity on behalf of the residents of the area. It is not a complaint of a single person. The Ld. SDM has rightly considered the aspect of physical discomfort of the inhabitants whose residents are situated near gate no.2.

13. Thirdly, on perusal of various photographs filed on record one can realize physical discomfort to the inhabitants whose houses are situated near gate no. 2.

14. Fourthly, Ld. SDM has passed only conditional order. Absolute order has yet to be passed after further hearing the parties. If the school has any grievance or plea, it can raise the same before Ld. SDM who is expected to consider the same as per law.

15. Fifthly, the principles of law laid down in the case of

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Makhan Lal Vs. Buta Singh, (Supra), Tarsem Singh and others Vs. Mukand Singh Mistri and others, (Supra), Madha Singh Vs. Sadha Singh & anr., (Supra) and Ishwar Singh vs. Varinder Kaur and anr., (Supra) will not provide any benefit to the revisionist/school as facts in those cases are different from the facts of the present case.

16. Lastly, the principles of law laid down in *In Re: Noise Pollution-Implementation of Laws, 2005 AIR SC 3136* support the case of respondent/ RWA as in the similar circumstances *Ld. Magistrate/ SDM* has power to make conditional order for stopping the nuisance. It was observed by Apex Court that:

108. We have referred only to a few and not all available judgments. Suffice it to observe that Indian Judicial opinion has been uniform in recognizing right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution and noise pollution beyond permissible limits as an in-road on that right. We agree with and record our approval of the view taken and the opinion expressed by the several High Courts in the decisions referred to hereinabove.

17. In view of the above reasons and discussion I am of the view that there is no infirmity, illegality or impropriety in the impugned order. There is no merit in the revision. Therefore, revision is dismissed.

xxx xxx xxx”

9. By referring to the aforesaid orders, it is the submission on behalf of the petitioner that the respondent no. 5-School has been disallowed from using the back gate, and thus, the action of the respondent no. 5-School in opening the back gate, is in violation of the order dated 15th September, 2010 passed by SDM, Gandhi Nagar, as well as the order dated 06th September, 2011 passed by the learned ASJ, Karkardooma Courts, Delhi.

10. *Per contra*, learned counsel appearing for the respondent no.1 submits that the aforesaid orders were passed only for a limited period. He submits that the respondent no. 5-School is within its authority to open a gate towards the public street. He further submits that the School needs to access the said gate only for a limited period, from 07:00 to 09:00 in the morning



and from 12:30 to 02:30 in the afternoon. He, thus, submits that the School has no objection if the gates installed by the petitioner continue to be installed at the place they presently are, except that the right of ingress and egress is given to the respondent no.5-School, for the aforesaid limited period.

11. In contrast thereto, learned counsel appearing for the respondent-Municipal Corporation of Delhi (“MCD”) submits that the gates have been installed by the petitioner-Society without any permission.

12. He, thus, submits that as the gates installed by the petitioner are unauthorized, therefore, the MCD is rightly seeking to take action against such unauthorized installation of gates. He further submits that the petitioner needs to apply for permission from the MCD, which shall be considered by the MCD as per the policy relating to installation of gates.

13. Having heard learned counsels appearing for the parties, this Court notes the submission of the petitioner that the back gate has been opened by the respondent no. 5-School towards a narrow street of 9 ft. width, between two clusters of flats within the colony, on account of which, nuisance is being caused to the residents of the colony. Thus, the gates in question have been installed by the petitioner-Society. Nevertheless, the fact remains that the gates installed by the petitioner are without any permission from the MCD.

14. This Court notes the Circular dated 25th June, 2007, issued by the Engineering Department, MCD, which contains the policy/guidelines for installation of gates for security purposes in colonies.

15. Accordingly, as per the said Circular, a procedure has to be followed for the purposes of seeking permission, including, obtaining a No Objection



Certificate (“NOC”) from the Traffic Police, before applying for the requisite permission from the MCD for installation of a gate. It is only after considering the particular facts of a case that the MCD processes the application for installation of gates, in terms of its aforesaid Circular dated 25th June, 2007.

16. This Court also takes note of the submission made by learned counsel appearing for respondent no. 5-School, wherein, the respondent no. 5 has relied upon the Office Memorandum dated 22nd July, 2005, issued by the Government of India (“GOI”), with regard to activities/functions of the Residents Welfare Association (“RWA”), including, manning of gates in the localities.

17. This Court also takes note of the submission made by learned counsel appearing for the petitioner that the policy of the MCD regarding installation of gates would not be applicable to the petitioner, as the said policy is applicable to only public roads, whereas, the area in question where the gates have been installed by the petitioner, is only a small passage/street within the colony, situated between two clusters of flats.

18. Accordingly, liberty is granted to the petitioner to make a representation to the MCD in this regard.

19. The representation of the petitioner shall be duly considered by the MCD. A hearing shall be granted in respect of the representation of the petitioner. During the course of hearing to the petitioner, an authorized representative of respondent no. 5 shall also be allowed to be present.

20. The MCD shall consider the representation of the petitioner and assess whether any permission is required by the petitioner under the policy of the MCD for installation of gates.



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21. In case, the MCD comes to a conclusion that prior permission is needed for installation of the gates in question, the petitioner shall be duly intimated in this regard, which shall then, accordingly take action in terms thereof.

22. Let a representation as aforesaid be made by the petitioner-Society within a period of two weeks, from today.

23. It is further directed that in case, the representation is made by the petitioner within a period of two weeks, till the representation of the petitioner is considered by the MCD and a Speaking Order in that regard is passed, no coercive action shall be taken against the gates installed by the petitioner.

24. However, the petitioner shall ensure that the gates that have been installed by the petitioner are manned and that no hindrance is created to the ingress and egress of the pedestrians using the said gates.

25. As far as the prayers of the petitioner with regard to non-compliance of the order dated 15th September, 2010 of the SDM, Gandhi Nagar and the order dated 06th September, 2011 of the ASJ, Karkardooma Courts by the respondent no. 5-School are concerned, the said issue is kept open and the petitioner is granted liberty to seek remedies in that regard, in accordance with law.

26. With the aforesaid directions, the present writ petition, along with the pending applications, stands disposed of.

MINI PUSHKARNA, J

DECEMBER 10, 2025/KR