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

+ LPA 414/2026

NILABH SHARMA

.....Appellant

Through: Petitioner in person with Mr. Nitin Kumar, Adv.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondent

Through: Mr. Abhinav Singh and Mr. Nikhil Rajput, Advs. for R-1.

Mr. Kapil Dutta, SC, MCD.

Mr. Sahaj Garg, SPC for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

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26.05.2026

CM APPL. 36593/2026

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

LPA 414/2026 & CM APPL. 36594/2026

3. Having heard the petitioner, who appears in person and learned counsel for the respondents, the delay in filing the accompanying LPA is hereby condoned. The application being CM APPL. 36594/2026 is, thus, allowed.

4. By instituting the proceedings of the instant Letters Patent Appeal, the appellant seeks exception to an order dated 06.04.2026 passed by the learned Single Judge whereby W.P.(C) 1969/2025 has been disposed of.



5. Prior to instituting the proceedings of the underlying writ petition, the appellant had approached this Court by filing W.P.(C) 11400/2024 which was disposed of by a learned Single Judge of this Court observing therein that the concerned magistrate under Section 152 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the '**BNSS**') has been empowered to remove the public nuisance. The learned Single Judge, therefore, granted liberty to the appellant to approach the Magistrate to ventilate all his grievances by invoking the remedy available under Section 152 of the BNSS. After the said decision by the learned Single Judge, dated 20.08.2024 in W.P.(C) 11400/2024, the appellant instituted the proceedings under Section 152 of the BNSS before the Sub Divisional Magistrate, Hauz Khas by filing an application on 05.09.2024. The Sub Divisional Magistrate concerned, while dealing with the application filed by the appellant under Section 152 of the BNSS passed various orders for keeping the *dhalao* area in question clean and ultimately vide order dated 06.12.2024 disposed of the proceedings by recording a satisfaction that public nuisance exists on the spot and further directing the MCD to clean the *dhalao* area regularly and ensure that there will be no environmental pollution and health hazards due to this *dhalao*. A direction was also issued by the Sub Divisional Magistrate to the Station House Officer concerned to keep a strict vigil in the area to prevent misuse of the area by anti social elements, if any.

6. The submission on behalf of the learned counsel for the appellant is that the W.P.(C.) No. 1969/ 2025 was instituted by the appellant praying for a writ of certiorari quashing the order passed by the Sub Divisional Magistrate, dated 06.12.2024, however, the learned Single Judge, without adjudicating the said prayer has disposed of the writ petition by observing



that on behalf MCD it was stated that the directions contained in the order dated 06.12.2024 are being fully adhered to. His submission is that once the Sub Divisional Magistrate in the proceedings instituted by the appellant under Section 152 of the BNSS records a categorical finding in his order dated 06.12.2024 to the effect that there exists public nuisance, it was incumbent upon him to have passed an order for removal of the said public nuisance, otherwise, the very purpose of institution of proceedings under Section 152 of the BNSS would get defeated. It has also been argued that Section 152 of the BNSS clearly stipulates that once any public nuisance is found, an order needs to be passed by the Magistrate concerned for its removal.

7. It has been argued by Mr. Sharma, the appellant that it is in the light of this legal position emanating from Section 152 of the BNSS and by instituting W.P.(C.) No. 1969/2025 that a prayer was made seeking quashing of the order of the Sub Divisional Magistrate. Mr. Dutta, learned counsel representing the MCD has, however, submitted that in terms of the order passed by the Sub Divisional Magistrate on 06.12.2024, the *dhalao* area is being kept clean and all sanitary standards have been maintained.

8. Having considered the submissions made by learned counsel for the parties, what we find is that in the proceeding under Section 152 of the BNSS, one of the permissible prayer is to remove the public nuisance in case the Sub Divisional Magistrate comes to the conclusion that public nuisance exists. It is in this background that the appellant while instituting the writ petition had prayed for quashing of the order dated 06.12.2024, however, the learned Single Judge does not appear to have considered, much less, adjudicated the said prayer.



9. Accordingly, the instant appeal is allowed and the order dated 06.04.2026 passed by the learned Single Judge so far as it does not adjudicate the prayer made by the appellant for seeking quashing of the order dated 06.12.2024 passed by the Sub Divisional Magistrate is set aside.
10. The writ petition is restored to its original number with the request to the learned Single Judge to decide the same with expedition.
11. No order as to costs.

DEVENDRA KUMAR UPADHYAYA, CJ

TEJAS KARIA, J

MAY 26, 2026

N.Khanna