

Bhagwat Prasad vs Commisioner Mcd And Ors on 2 September, 2024

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 12104/2024
BHAGWAT PRASAD

COMMISSIONER MCD AND ORS

Through: Mr. Umang Tyagi, Ms.
& Ms. Aishwarya Kap
R-1 & R-3.
Mr. Nitinjya Chaudh
Counsel, UOI Adv. f
Mr. Rishab Raj Jain
Counsel for BSESRL
Sharique Hussain, A

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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CM APPL. 50320/2024 (Ex.)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 12104/2024

3. The grievance raised in the instant writ petition is with respect to alleged illegal encroachment of the 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.

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4. As per the submissions made by learned counsel appearing for the petitioner, respondent No.7 has illegally encroached the aforesaid land. Learned counsel further submits that respondent No.7,

while illegally encroaching the open land situated at the gate of the petitioner, has further illegally allowed a person, namely Imam Hussain/ respondent No.8 to cut mutton and chicken in open land by putting temporary tin shed and throwing all the garbage in the open area. Learned counsel, therefore, submits that the aforesaid illegal activity is causing great nuisance to the members of the petitioner's family.

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.

6. Having perused the documents enclosed along with the petition, it appears that the petitioner has made various representations to multiple authorities, however, there does not seem to be any formal application either to the STF or to the concerned Executive Magistrate in terms of the relevant provisions of law.

7. The Court vide order dated 30.08.2024 in W.P. (C) 12033/2024 titled as Pravin Singhal v. Municipal Corporation of Delhi and Ors., has examined the scope, role and functions of STF constituted by the DDA vide notification dated 08.03.2019 and has held as under:-

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/09/2024 at 01:54:30 "6. It is discernible from the aforesaid notification that STF has been constituted with an aim of comprehensively addressing the issue of illegal construction and encroachment, including on public land, parking spaces, roads, pavements, etc., and to oversee the enforcement of provisions of MPD-21 and the Unified Building Bye Laws for Delhi. The composition of STF would indicate that the same consists of various Officers from different Departments, including municipal, civic, revenue and law enforcement agencies. The Vice Chairman of DDA is the Chairman of STF and the Commissioner (Planning) of DDA appears to be its Member Secretary.

7. The said notification further stipulates that STF shall meet at least once every month. Additionally, the monthly report of STF is required to be sent to the Hon'ble Lieutenant Governor of Delhi, the Ministry of Housing and Urban Affairs, GoI, and the Secretary of the Ministry of Environment, GoI, who are also required to review the progress achieved quarterly and assess future plans. In essence, STF has been vested with comprehensive powers to regulate construction activities and to act decisively against the erring builders, officials, encroachers, violators of building norms etc.

14. In LPA 245/2019 titled as Sneh Lata & Anr. v. North Delhi Municipal Corporation & Anr., the Division Bench of this Court, while highlighting the composition and functioning of STF, has held that STF is a specialised agency which offers an alternate efficacious remedy to the litigants aggrieved by the unauthorised construction. The relevant paragraphs of the said decision are reproduced as under:-

"The Special Task Force comprises 15 members from various municipal, civic, revenue and law enforcement agencies of Delhi; and even has its own dedicated website and mobile application to facilitate making of complaints. The Special Task Force is therefore a specially constituted agency to address grievances relating inter-alia to unauthorised construction; and an aggrieved person may avail the alternate, efficacious remedy before the Special Task Force.

In view of the setting-up of the Special Task Force under directions of the Supreme Court even the respondent No.2 has a forum to agitate any grievance that may remain. It is therefore not appropriate for our court to exercise its appellate jurisdiction in the matter.

Accordingly, the appellants are free to avail their statutory remedies before the ATMCD in respect of action initiated by the corporation by issuing notices under Delhi Municipal Corporation Act, 1957. On the other hand respondent No.2 may, if aggrieved, approach the alternate forum of the Special Task Force to seek amelioration of any grievances or invoke any other remedy available under law. Accordingly, This is a digitally signed order.

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15. A similar view has been taken by the Division Bench of this Court in a Public Interest Litigation being W.P. (C) 8104/2022 titled as Himanshu v. East Delhi Municipal Corporation & Anr., in W.P. (C) 4649/2017 titled as Fazruddin v. DDA & Ors., in W.P. (C) 5988/2019 titled as Jaladhar Das v. North Delhi Municipal Corporation & Ors. and in W.P. (C) 11873/2023 titled as RWA Sunlight Colony v. GNCTD & Ors."

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.

9. A perusal of Section 152 of Sanhita (erstwhile Section 133 of CrPC, 1973) would indicate that the underlying rationale behind the enactment of such provision is to prevent public nuisance. This

Section empowers a magistrate to deal with specific public nuisance and it provides a summary remedy for their removal. The remedy is efficacious as the concerned Magistrate will have first-hand information about the ground reality. The scope and extent of Section 152 of Sanhita can be understood from the following discussion in the case of *Ratlam v. Vardichan*³, wherein, it was held as under:-

"9. So the guns of Section 133 go into action wherever there is public nuisance. The public power of the magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "All AIR 1980 SC 1622 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/09/2024 at 01:54:31 power is a trust -- that we are accountable for its exercise -- that, from the people, and for the people, all springs, and all must exist." [Vivian Grey, Bk. VI Ch. 7, Benjamin Disraeli] Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise."

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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 04/09/2024 at 01:54:32 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.

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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.

13. Reserving all rights and contentions, the instant writ petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J SEPTEMBER 2, 2024/p This is a digitally signed order.

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