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

+ W.P.(C) 3245/2020

GRAM SUDHAR SAMITI (REGD) & ANRPetitioners
Through: Mr. Anand Yadav, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent
Through: Mr. Mukesh Gupta, Standing Counsel with
Mr. R.K. Jain, AE Rohini Project, North
MCD.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **26.05.2020**

CM APPL. 11318/2020 (Exemption)

1. Exemption allowed, subject to the condition that the petitioner/respondent will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.
2. The application stands disposed-off.

W.P.(C) 3245/2020, CM APPL. 11317/2020

3. The hearing was conducted through video conferencing.
4. This petition, *inter alia*, questions the right of the North Municipal Corporation of Delhi (North MCD) to enter upon the village cremation ground, an area admeasuring 4 bighas 16 biswas, which the petitioner has traditionally been administering for decades. It is stated to be a part of Shamlat Deh i.e. common area which is to be

administered by the Gram Sabha. The learned counsel for the petitioner contends that the Corporation has entered upon the land for construction of a number of cremation sheds, an increase from two to a dozen sheds. The six-fold increase in the utility is an unnecessary and superfluous expense of Government monies. It is stated that the said construction will alter the nature of the village itself which has merely about 1,000 residents. He further submits that the Gram Sabha has vested right in Shamlat Deh lands under section 154 of the Delhi Land Reforms Act, 1954 and unless the area is excluded by the Chief Commissioner, the land will continue to vest with the Gram Sabha. He further submits that therefore is to be examined whether the Corporation has any right to administer/manage the Gram Sabha land/utility, unless such right has first been taken away from the Gram Sabha and then handed to the Corporation. The learned counsel for the North Delhi Municipal Corporation (North MCD) submits that the land was handed over to the Corporation by the Director Panchayat, GNCTD, for managing it as a cremation ground and the Corporation is carrying out the construction activity in the larger public interest.

5. Evidently, the Government of NCT of Delhi is a necessary party, hence it is impleaded as respondent no.2.
6. The petitioner apprehends that a numbers of trees which have been nursed caringly over the years in the said land, are likely be cut down for the aforesaid construction. He submits that the trees be not cut and the old cremation structures be not demolished. He further submits that in any case because of the pandemic/lockdown, building construction activity has been prohibited in Delhi. Therefore, the

Corporation's actions at this stage are unusual. He therefore requests that, till the next date *status quo* be maintained.

7. The learned counsel for North MCD, submits that till the next date of hearing, no trees/green area in the said land will be cut. He submits that the old structures have already been demolished. Therefore, he disputes the existence of the old structures as shown in the photographs annexed to the petition (Annexure P7) as of 20.05.2020. To a query as whether an alternate cremation shed has been made available before demolishing the earlier one, the Corporation answers in the negative. It would have been prudent to ensure that the use of an existing essential facility i.e. for performing the last rites of a deceased, is not disturbed in the process of trying augment or modernise the facilities. Where will the people of the area go for performing the last rites of their departed relatives, friends and neighbours. All-the-more, in these trying times of the pandemic lockdown. In the circumstances it is expected that the Corporation will restore/construct preferably within a week, at least two cremation sheds, whether temporary or permanent, so that citizens are not prejudiced, inconvenienced or deprived of this essential utility/facility.
8. Since the right of the MCD to undertake further construction is under challenge, it is expected that till the next date of hearing, no additional construction except as stated in this order shall be carried out. However, access to the cremation grounds/sheds shall be cleared of building material, etc. so as to obviate any inconvenience in cremation.

9. Issue notice. Learned Counsel as noted above accepts notice on behalf of R.1 Notice to respondent no. 2, be served through Standing Counsel (Civil), GNCD by e-mail, etc. Reply be filed within a week. Rejoinder, if any, be filed before the next date of hearing.
10. List on 10.06.2020.
11. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

NAJMI WAZIRI, J

MAY 26, 2020/kb