

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) 295 OF 2022

IN THE MATTER OF:

JAMIAT ULAMA-I- HIND

.....PETITIONER

VERSUS

NORTH DELHI MUNICIPAL
CORPORATION & ORS

...RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT
NO.1/ NORTH DELHI MUNICIPAL CORPORATION.**

I, Sanjay Goel S/o Shri Ishwar Prasad Goel, aged 46 years, Commissioner, North DMC, Delhi, do hereby solemnly affirm and declare as under:

1. That in the above capacity, I am fully conversant with the facts and circumstances of the case and also competent to swear this affidavit. I am authorized to swear this affidavit on behalf of Respondent No. 1.



2. That the present affidavit is being filed in compliance of the directions passed by this Hon'ble Court on 21.04.2022.

At the outset, I beg to place the following facts:

3. The petitioner has unfortunately projected a completely false picture with a view to create a prejudice and to achieve some other object. The said mis-representation before this Hon'ble Court is as under:

- (i) The respondent Corporation demolished the properties without notice; and
- (ii) This was done selectively targeting a particular religion.

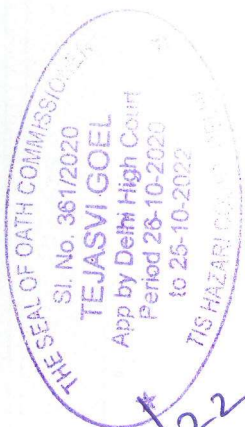
Both the above referred facts are false and the petition deserves to be dismissed only on the ground that the petitioner has, while invoking the equity jurisdiction of this Hon'ble Court, resorted to falsehood and has, unfortunately attempted to sensationalize a routine administrative exercise by giving it an unwarranted communal colour.

4. That I beg to state and submit that exercise undertaken on 20.4.2022 was in compliance of the directions issued by the Hon'ble High Court of Delhi in WP. [C] No.462 of 2021 titled as B/C Block, Market Association (Regd.) Vs. The Chairman North DMC & Ors. The Hon'ble Courts have time and again issued orders to the Municipal Authorities to clear the right of ways and the footpaths from the



encroachments and the Municipal Authorities try to comply the said directions leaving no stone unturned in that direction. It is submitted that in the abovementioned Public Interest Litigation pending before the Hon'ble High Court of Delhi, directions have been sought to remove the unauthorized hawkers/vendors etc. from the B & C Block of Jahangirpuri. The Hon'ble High Court has vide orders dated 15.11.2021, 06.04.2022, 12.04.2022 & 02.05.2022 issued various directions for removal of encroachment from the roads and footpaths etc. since they curtail the right of freedom of movement of citizens. The Hon'ble High Court has directed the North DMC to ensure that appropriate measures are put in place. True copy of the orders of the Hon'ble High Court of Delhi at New Delhi dated 15.11.2021, 06.04.22 and 12.04.22 & 02.05.2022 in W.P. (C) No No.462 of 2021 are marked hereto as ANNEXURE CA-1(Pages 13-14), CA-2 (Pages 15-16)), CA-3 (Pages 17) and CA-4(Pages 18).

5. It is further submitted that during the drive, in compliance with the aforesaid directions, the heaps / sacks of garbage, unauthorized projection on public land, unauthorized temporary structures well beyond the boundary of the houses and shops were removed for which no notice is necessary under the provisions of the scheme of Section 320, 321 and 322 of the Delhi Municipal Corporation Act, 1957 [hereinafter referred to as the Act]. In the WP. [C] No.2190/1991 & Cont. Cas.(C) No.153 /2008, the Hon'ble High Court of Delhi has held



that “However Sections 320 to 322 of the DMC Act, which deal with “Streets” and “Public Places” shows that the MCD is entitled to remove encroachments from public land without notice. This is the view of the court in the aforesaid decisions as well”. True copy of the order dated 21.11.2011 passed by the High Court of Delhi in Cont. Cas.(C) No.153 /2008 marked hereto as ANNEXURE –CA-5 (Pages 19-23).

Sections 320 to 322 of the DMC Act are reproduced below for ready reference:

320. Prohibition of structures or fixtures which cause obstruction in streets—(1) No person shall, except with the permission of the Commissioner granted in this behalf, erect or set up any wall, fence, rail, post, step, booth or other structure whether fixed or movable or whether of a permanent or temporary nature, or any fixture in or upon any street or upon or over any open channel, drain, well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy any portion of such street, channel, drain, well or tank. (2) Nothing in this section shall apply to any erection or thing to which clause (c) sub-section (1) of section 325 applies.

321. Prohibition of deposit of things in streets—(1) No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street,



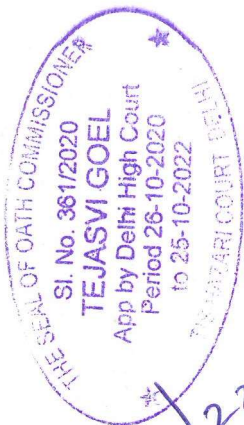
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or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon. (2) Nothing in sub-section (1) applies to building materials.

322. Power to remove anything deposited or exposed for sale in contravention of this Act. The Commissioner may, without notice, cause to be removed (a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon from or to any place in contravention of this Act; (b) any article whatsoever hawked or exposed for sale on any public street or in other public places in contravention of this Act and vehicle, package, box or any other thing in or on which such article is placed.

6. It is submitted that some temporary projections on public road / footpath are of such nature, for which, bulldozer is required to be used, while exercising powers under section 322 of the Act.

7. The petitioner has deliberately and wilfully suppressed the fact while sensationalizing the matter. The exercise undertaken on 20.04.2022 was in compliance with the directions of the High Court and earlier also such an exercise was undertaken on 19.1.2022, 01.02.2022 and 17.2.02022 & 11.04.22 in the same area namely Jahgirpuri B & C Block area.

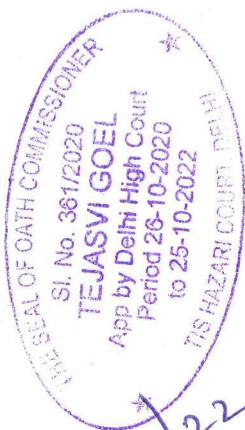


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I beg to annex herewith the list of such actions taken under section 322 of the Act on 19.01.22, 1.02.22, 17.02.22 & 11.04.22 which would completely nullify an unfounded and motivated assertion that any particular religion or community was targeted. When a road or footpath is cleared, the process goes on from one end to another without any distinction of the religion or owner / occupier who has unauthorizedly occupied footpath or public road. True copy of the action taken on different dates i.e. 19.01.22, 01.02.22, 17.02.22 & 11.04.22 as mentioned above is marked hereto as ANNEXURE-CA-6(COLLY) (Pages 24-31).

I also beg to annex herewith copies of the photographs taken during and after the incident which would clearly substantiate that what was removed was the heaps / sacks of garbage, unauthorized projection on public land, unauthorized temporary structures well beyond the boundaries of houses and shops. True copies of the Photos taken during and after the drive are marked hereto as ANNEXURE-CA-7 COLLY(Pages 32-56).

It is unfortunate that after the petitioners who are not the affected parties approached this Hon'ble Court and after the order passed by this Hon'ble Court to maintain status quo, it is submitted that in most of the places, the position before the exercise has reoccurred. In other words, after the status quo order, those who were removed from the public



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road have come back and have occupied footpath / public road again. This is usually the result when a party having no stake files public interest litigation and prays for an order. If the affected parties would have approached this Hon'ble Court, they would have truthfully required to point out that what was being undertaken was removal of unauthorized projection on footpath or public road and such private parties also would have been bound by the order of status quo. True copy of the list of the affected parties during the earlier and present encroachment drive marked as ANNEXURE-CA-8 COLLY(Pages 57-61).

It clearly appears that it is for this very reason that the petitioner has lent its name suppressing the above referred facts and has attempted to communally sensationalize an otherwise routine administrative exercise which was being undertaken under the orders of the High Court of Delhi and not targeting any religion or community. The above referred facts and the list will also show that the petitioner chose to refer to any particular religion or community but the law enforcing authorities while exercising their powers under section 322 of the Act exercised their powers based only on the illegality being dealt with irrespective of the religion. In my most respectful submission, this Hon'ble Court should take a serious view of an organisation filing such litigation without any *locus standi* and clearly with intent to



communally sensationalize exercise of statutory powers in compliance with the orders of the Hon'ble Court.

8. The petitioners have resorted to absolutely false fact only with the sole purpose of persuading this Hon'ble Court to pass an order.

9. The petitioner has made the following averments on oath before this Hon'ble Court in para 4 of its I.A. dated 21.04.2022:

“ 4. It appears that during the demolition drive by the Respondent No.1, about 20 houses, 25 shops and certain portion of the mosque has been demolished. In addition to that, many thelas and reris street hawkers have been dismantled.”

It is emphatically submitted that no house or shop was demolished at all, either on 20.4.2022 or in any of the previous drives. This is a blatant falsehood for which the deponent who has affirmed the affidavit containing para 4 needs to be prosecuted so as to maintain the sanctity of averments being made on affidavit before this Hon'ble Court.

10. It is submitted that this Hon'ble Court, being a Court of record, decides the issues on facts and law based upon the affidavit. This Hon'ble Court is also a court of record apart from being the highest Constitutional Court of the Country. Any litigant coming before this Hon'ble Court must place true facts on affidavit and can never resort to



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falsehood. The Respondent No.1 calls upon the petitioner to substantiate false assertions made in para 4 mentioned above and prays that this Hon'ble Court be pleased to direct prosecution of the deponent for having filed false affidavit.

11. That I state and submit that so far as the service of the order passed by this Hon'ble Court is concerned, the same was complied with. I respectfully submit that I hold this Hon'ble Court and all Courts in high esteem and always comply with any directions issued. So far as the present case is concerned, the facts are as under:-

The drive in question on 20.4.2022 commenced at around 10 a.m in the morning. Whenever such drive takes place, all responsible officers are present at the site along with police presence to ensure law and order situation. It is always a common experience that whenever the law enforcing agencies exercise their powers of removal of unauthorized projections and other encroachments under section 322 of the Act, the affected parties mislead the authorities by wrongly contending that there is stay by some Competent Court. It is therefore that unless such a stay order is shown, the drive continues. The Officers on site on a working day while supervising the drive would not be looking at the television reports or social media reports. Though, some people did intimate the officials present vaguely about the stay having been granted, the process of removal of unauthorized encroachment and projections on public road and footpath continued till the authorities



verified the information in a short time. I state that when some media personnel also informed me that there is a stay granted by the Hon'ble Supreme Court, I asked Legal Consultant/ former Chief Law Officer of the Corporation to immediately verify the fact. The Legal Consultant verified this fact and informed me about the status-quo order and advised me to immediately stop the on-going process. Having learnt about the order, I immediately instructed the team of the corporation to stop the on-going process at around 12 noon. I respectfully submit that after having come to know about the order of this Hon'ble Court, the on-going process was immediately stopped.

It was, however, found prudent to remove the debris lying on the road so as to ensure that there was no hindrance to the traffic movement and that the bricks and other things lying may not be used for any other unlawful purposes. That process of removal of above hindrances continued for some time.

I emphatically submit that only the activity of removing unauthorized projections on public road, unauthorized temporary structures well beyond the boundary of houses and shops took place. The "building-line" has remained intact during the present drive as well as the earlier drives.

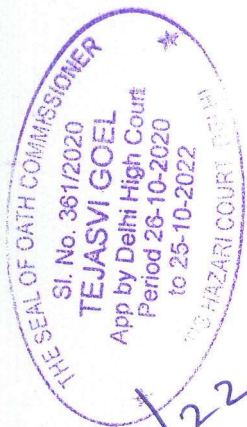


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12. That it is respectfully submitted that impugned communication dated 19.04.2022 was issued in respect to special joint encroachment removal programme in Jahangirpuri, Delhi. The same was addressed to the DCP (North- West) P.S. Ashok Vihar, Delhi whereby a request was made to provide police personnel for maintaining law and order during the encroachment removal action for three days.

13. That it is submitted that the affected parties are fully aware of the above position and they are unable to point out any legal vested right to continue with such unauthorized encroachment. It is for this very reason that the petition has been filed in the name of the petitioner organization without the affected parties coming forward with their right to occupy the part of the area which was being cleared as a part of an ongoing process. The petitioner is connecting some riotous incidents which took place in Jahagirpuri area on 16.04.2022 in an attempt to stall the lawful exercise of the North DMC by deliberately tendering misleading submissions and by giving it a political colour as earlier also such similar drives in the same and neighboring areas were undertaken as referred above 19.01.22, 12.02.2022, 17.02.2022 and 11.04.22.

14. The petitioner was duty bound to bring the true facts before the Hon'ble Court by pointing out that the drive which took place on 20th



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April, 2022 was only one of the drives in the series of many such drives undertaken in this very area.

15. That in view of the facts and circumstances mentioned above, the Writ Petition deserves to be dismissed with costs.

