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

+ **CONT.CAS(C) 778/2021**

BHAVREEN KANDHARI

..... Petitioner

Through: Mr. Aditya N. Prasad and Ms. Dhriti Chhabra, Advocates.

versus

GYANESH BHARTI & ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, Standing Counsel for SDMC/R-1.

Mr. Aditya Nair, advocate for Mr. Gautam Narayan, ASC for GNCTD.

Mr. Naushad Ahmed Khan, ASC (Civil), GNCTD along with Mr. Zahid and Ms. Manisha Chauhan, advocates for Delhi Police.

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SI Deepak Tanwar, PS-Vasant Vihar.

Mr. ShadanFarasat, Counsel for PWD. (sfarasat@farasatlaw.com)

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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15.11.2021

The hearing has been conducted through hybrid mode (virtual and physical hearing).

1. The learned Standing Counsel for SDMC has shown to the court a compilation of photographs supported by an affidavit of the Deputy

Commissioner of the Corporation. The numerous photographs show efforts made by the said Municipal Corporation since the last date to rectify the anomaly apropos the lack of care of trees in Vasant Vihar. The court is assured that the efforts will continue in right earnest so that public amenities, like clear footpaths, are made available in their fullest, for all users.

2. The learned Additional Standing Counsel for Delhi Police submits that all assistance will be given to SDMC for carrying out the court's directions and for removal of encroachments and/ or obstructions on footpaths and other public places, which the Municipal Corporation may seek to free up or remove hindrance from.
3. Let another affidavit be filed by the SDMC before the next date in this regard.
4. The Tree Officer, GNCTD too shall assist in every way possible and shall either be present at site or depute a senior officer in the exercise proposed to be carried-out by SDMC.
5. It is agreed by all parties that removal by the SDMC of encroachments including concrete ramps from the footpaths, will facilitate movement in the colony of the elderly, children and the wheel-chair bound. Let remedial measures be initiated in right earnest. All concretization beyond the road and the walking-paths aid by the MCD/ PWD, shall be removed from the earth, no matter how deep the concrete.
6. The learned counsel for the petitioner submits that the unfortunate conditions, recorded on the previous date have come about primarily because of non-monitoring of the wanton concretization of the side-

walks and other constructions on public land, throughout the residential colony; this has inexorably led to drying-up of the tree roots; weak and poor health of the trees and their continuous victimization. He has shown some photographs online, which depict complete concretization of the earth in front of some houses. The court is assured by SDMC that all such concretization shall be removed; the footpaths shall be levelled, repaired and made amenable for unhindered use for all, especially for the physically challenged.

7. To ensure the usability of the footpaths, the Executive Engineer/ Assistant Engineer/ Junior Engineer of the SDMC, shall traverse the entire colony's footpaths on a wheelchair without any aid or assistance from anyone. This will test the efficacy of the SDMC's efforts to make the streets and footpaths user-friendly. While freedom of movement is a constitutional guarantee, it should not be hemmed-in by the lack of requisite civic amenities. Citizens need to be empowered and facilitated in the enjoyment of their constitutional rights, for which provision of basic civic amenities is essential, like a safe and secure neighbourhood, tree-lined avenues and footpaths, where an endeavour of a leisurely stroll is actually a pleasurable exercise and not an obstacle-dodging, harrowing experience. The latter would discourage walking to neighbourhood shopping centres, to community-bonding cultural events and for leisure-time in colony parks. Instead, people would use motor-vehicles, adding to the city's ever-burgeoning traffic congestion and unmitigated air pollution. So, it all starts with taking care of the neighbourhood trees and

greenery and ensuring that the footpaths winding through the tree-shaded avenues are obstacle-free. Let this exercise be carried out preferably before the next date.

8. Photographs of each stretch so repaired, restored and made user-friendly shall be filed, showing the before and after scenario. The petitioner too shall be taken into confidence during the said exercise. Delhi Police shall render all assistance in the matter, so shall the Tree Officer. Requisite equipments shall be procured, if not already available with the Horticulture Department, SDMC for future care, nursing and treatment of the trees.
9. Amended Memo of Parties is taken on record.
10. Towards treatment of the trees afflicted by disease, the court is assured by the SDMC that all requisite equipments, tools etc. shall be acquired by its Horticulture Department.
11. None appears for Public Works Department ('PWD').
12. Mr. Shadan Farasat, the learned Addl. Standing Counsel, GNCTD is directed to accept notice on behalf of PWD. E-copy of the petition be served upon him.
13. A senior officer of PWD shall coordinate with the Office of the Deputy Commissioner, SDMC, and shall be present at site on all dates when the exercise of removal of encroachments and restoration of trees is undertaken by the respondent. PWD shall also take remedial measures apropos streets maintained by it.
14. The learned counsel for the parties assure the court that they will coordinate with each other to facilitate compliance of the directions.
15. Compliance affidavit be filed before the next date.

16. List on 26.11.2021.

NOVEMBER 15, 2021/RW

NAJMI WAZIRI, J