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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 8th September, 2026*# **CNR No. DLHC010182082026**+ **W.P.(C) 5743/2026, CM APPL. 28260/2026 & CM APPL. 42107/2026****SHRI JASWINDER SINGH AHUJA**

.....Petitioner

Through: Ms. R. Gayathri Manasa, Advocate
(Through *video-conferencing*) & Mr.
Navneet Kumar, Advocates.

versus

GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Ms. Arti Bansal, Advocate for MCD.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)****CM APPL. 28260/2026 (exemption)**

1. Allowed, subject to all just exceptions.

W.P.(C) 5743/20262. The present writ petition has been filed seeking a direction to the respondent-MCD to demolish the urinal/public toilet constructed alongside the wall of the park opposite to the residence of the petitioner at *E-365, E Block, Greater Kailash Part II, New Delhi-110048*.

3. It is the petitioner's grievance that the construction of the aforesaid toilet has been done without inviting any objections from the persons concerned or without publishing or serving any notice to the public or obtaining consent of the affected residents of the locality. The said public toilet has been constructed without proper sewage, drainage, maintenance,



water, or electricity supply.

4. Attention of the Court has been drawn to a response dated 1st July, 2022 filed by MCD to an RTI application, wherein it is stated that no permission has been given for construction of the aforesaid toilet.

5. Notice in the present petition was issued *vide* order dated 28th April 2026.

6. Status report has been filed on behalf of the respondent/MCD.

6.1. However, the same is not on record.

6.2. A copy of the status report has been handed over in the Court today. The same is taken on record.

7. As per the status report, it is stated as follows:

- i. The public urinal is next to *Sehgal Market-2, E-Block, Greater Kailash-II, New Delhi* in Ward No.171 (C.R. Park) and was constructed by the MCD, considering the requirement/footfall in the area at the relevant point of time.
- ii. Since the aforesaid urinal was not in good condition, the MCD has carried out work for upgradation of the said urinal to a public toilet. The toilet has been constructed/upgraded taking into account the growth of Sehgal Market and its surrounding area and the increase in footfall with the passage of time.
- iii. Upon upgradation of the existing urinal to a public toilet, proper hygiene shall be maintained.
- iv. The house of the petitioner is more than 30 ft away from the said urinal.

8. Counsel appearing on behalf of the petitioner submits that the existence of the toilet is causing nuisance to the petitioner as well as other



residents of the locality. Counsel for the petitioner submits that the stench from the toilet is causing inconvenience to the petitioner. She further submits that there is another toilet within 500 mtrs from the said toilet and therefore, there is no requirement to construct a toilet at the same place.

9. I have heard counsel for the parties.

10. MCD, as a civic body, has the obligatory function to construct public toilet/urinal in the areas falling within its jurisdiction in terms of Sections 42 and 359 of the Delhi Municipal Corporation Act, 1957 (hereinafter ‘DMC Act’). The said provisions are set out below:

“42. Obligatory functions of the Corporation

Subject to the provisions of this Act and any other law for the time being in force, it shall be incumbent on the Corporation to make adequate provision by any means or measures which it may lawfully use or take, for each of the following matters, namely:—

(a) the construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences;

...

359. Public latrines, urinals, etc.

(1) The Commissioner shall provide and maintain in proper and convenient places a sufficient number of public latrines and urinals.

(2) Such public latrines and urinals shall be so constructed as to provide separate compartments for each sex and not to be a nuisance, and shall be provided with all necessary conservancy establishments, and shall regularly be cleansed and kept in proper order.”

11. Section 359 of the DMC Act specifically requires MCD to provide and maintain a sufficient number of public latrines and urinals at proper and convenient places. The jurisdiction to determine the requirement of a public toilet in a locality has been vested in the Commissioner under the said provision.



12. It is a matter of record that in the present case, the toilet is next to a market and in a public park. A park or a market is itself a public space frequented by members of the public and MCD is obliged to provide appropriate civic amenities for persons using the park/market and the surrounding areas. It is common knowledge that public urinal/toilet have been constructed in various parks and markets across Delhi. The public toilets have to be constructed taking into account the footfall in the area and the requirement of the public at large.

13. A reference may be made to an order passed by this Court in ***Muni Lal v. MCD***, 1997 SCC OnLine Del 678, where a challenge to the construction/reconstruction of public latrines in front of a residence was rejected. Taking note of the statutory obligation under Section 359 of the DMC Act to provide public latrines and urinals at proper and convenient places, the Court held that the municipal authority cannot be prevented from discharging its statutory obligation in the absence of any legal infirmity.

14. Similarly, in ***Nizamuddin East Colony Association and Ors. v. Union of India and Ors.***, MANU/DE/0629/2000, the Division Bench declined to interfere with the construction of public toilets and observed that action undertaken in larger public interest cannot be interdicted merely because it may cause inconvenience to some persons. The decision regarding the location and provision of a public utility primarily falls within the domain of the competent authority, and this Court, in exercise of jurisdiction under Article 226, cannot substitute its own assessment regarding the suitability of the site unless the decision is shown to suffer from mala fides, arbitrariness or any other legal infirmity.

15. The aforesaid order/judgments have been followed by this Court in



judgment dated 13th July 2010 in W.P.(C) No. 4562/2010 titled “*Shri Manish Gupta v. MCD*” and in order dated 21st October 2010 in W.P.(C) No. 13803/2009 titled “*Ashok Sharma v. MCD*”.

16. To be noted that, other than the petitioner, no other resident of the locality has joined the present proceedings or independently challenged the construction of the said public utility, and the grievance appears to be confined to the petitioner alone.

17. On a pointed query from the Court as to how long the said toilet has existed, counsel for the petitioner is unable to answer. However, in the status report, it has been stated that the public urinal in question is very old.

18. In the status report, it has specifically been stated that the residence of the petitioner is situated more than 30 feet away from the public toilet/urinal in question.

19. This Court, in exercise of its jurisdiction under Article 226, cannot question the wisdom of the MCD to construct a toilet in a particular area. There is no mala fide in said decision as the said construction of a public toilet is towards a public utility.

20. In light of the aforesaid discussion, this Court does not find merit in the present petition. Accordingly, the petition is dismissed.

21. As stated in paragraph 14 of the status report, MCD shall take proper steps so as to maintain proper hygiene as well as sewage facilities in the public toilet as well as the area surrounding the said public toilet/urinal.

AMIT BANSAL, J

SEPTEMBER 8, 2026/at