

A SOUTH DELHI MUNICIPAL CORPORATION

v.

FEDERATION OF RESIDENTS WELFARE ASSOCIATION,
VASANT KUNJ (REGD.) AND ORS.

B (Civil appeal No. 7614 of 2022)

OCTOBER 21, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

C *Municipalities: Cremation ground – Shifting of – Dispute is with respect to the cremation ground at Masoodpur, New Delhi which as such is in existence since last more than 100 years – The original writ petitioner-Residents Welfare Association, Vasant Kunj filed writ petition before High Court for appropriate orders inter alia not to permit the use of land in question as cremation ground – Taking into consideration communication dated 27.12.1990 by DDA calling*
D *upon the Municipal Authorities to issue notification for closure of cremation ground at Masoodpur Village and for shifting it to enlarge cremation ground at Kishangarh Village and taking note of the provisions of the Delhi Municipal Corporation Act, 1957, more particularly, ss.390 and 391 of the Act, 1957, and observing that it*
E *was for the Standing Committee of the Municipal Corporation to take an appropriate decision, High Court while disposing of writ petition directed the Municipal Corporation to take an appropriate decision under s.391 of the Act, 1957 – High Court also directed that the Municipal Corporation to take possession of the land offered at Kishangarh and make all necessary arrangements to use the*
F *same as a crematorium – Thereafter, pursuant to the directions issued by the High Court in order dated 03.12.2003 in Writ Petition, the Standing Committee in exercise of powers under s.391 of the Act, 1957 took a conscious decision not to close the crematorium at Masoodpur Village, by observing that it was not in public interest*
G *to close crematorium at Masoodpur Village and that the same was used since long – Municipal Corporation application before the High Court for modification of order dated 03.12.2003 passed in writ petition – High Court dismissed the application – Hence instant appeal by Municipal Corporation – Held: The crematorium at Village Masoodpur was used for the village people since long, much prior*

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the Act, 1957 came into force – The residential colonies in Vasant Kunj came into existence in 1990 – Standing Committee had taken conscious decision not to close the crematorium on the grounds that (i) Masoodpur cremation ground has not become offensive to the health of persons residing in the neighbourhood; (ii) is running since long and (iii) its continuation is in the larger public interest – In view of conscious decision taken by the Standing Committee of the Municipal Corporation under s.391 of the Act, 1957 not to close the crematorium at Village Masoodpur, High Court ought to have modified its earlier order dated 03.12.2003 in writ petition by which the Municipal Corporation was directed to shift the crematorium to Kishangarh – Under s.42(f) of the Act, 1957, it is the duty cast upon the Municipal Corporation to make provision for regulation of places for the disposal of dead and the provision of maintenance of said places is an obligatory function of Municipal Corporation – Therefore, until and unless the conditions as mentioned in s.391 of the Act, 1957 are satisfied and it is specifically found that any burning or burial ground has become offensive, or dangerous to the health of the persons residing at neighbourhood, the burning and burial ground can be ordered to be closed with the previous sanction of the Standing Committee – High Court ought to have modified its earlier order dated 03.12.2003, by which it was directed to shift the crematorium at Village Masoodpur to Kishangarh – Consequently, order dated 03.12.2003 is hereby modified/quashed and set aside in view of subsequent decision dated 31.03.2016 of Standing Committee of the Municipal Corporation – However, at the same time, the Municipal Corporation to take steps to modernise the crematorium by shifting it to a modern electric crematorium which shall be in the larger public interest of the village people as well as the residents of the neighbourhood area – Delhi Municipal Corporation Act, 1957 – s.391.

Allowing the appeal, the Court

HELD: 1. In the earlier round of litigation, the Division Bench of the High Court directed the Municipal Corporation/ Standing Committee of the Municipal Corporation to take an appropriate decision under Section 391 of the Act, 1957. That thereafter the Standing Committee of the Municipal Corporation has taken a conscious decision not to close the crematorium at Village Masoodpur. From the resolution of the Standing

A Committee, it appears that the Standing Committee has taken a conscious decision not to close the crematorium on the grounds that (i) Masoodpur cremation ground has not become offensive to the health of persons residing in the neighbourhood; (ii) is running since long and (iii) its continuation is in the larger public interest. Therefore, when a conscious decision has been taken
B by the Standing Committee of the Municipal Corporation under Section 391 of the Act, 1957 not to close the crematorium at Village Masoodpur, the High Court ought to have modified its earlier order dated 03.12.2003 in Writ Petition No. 3687/1995 by which the Municipal Corporation was directed to shift the
C crematorium to Kishangarh. [Para 5.2][994-C-F]

2. Under Section 42(f) of the Act, 1957 it is the duty cast upon the Municipal Corporation to make provision for regulation of places for the disposal of dead and the provision of maintenance of said places is an obligatory function of Municipal Corporation.
D Therefore, until and unless the conditions as mentioned in Section 391 of the Act, 1957 are satisfied and it is specifically found that any burning or burial ground has become offensive, or dangerous to the health of the persons residing at neighbourhood, the burning and burial ground can be ordered to be closed with the previous sanction of the Standing Committee. A conscious
E decision has been taken by the Standing Committee not to close the crematorium at Village Masoodpur looking to the public interest and in the interest of village people of Village Masoodpur. If the request made on behalf of respondent No. 1 is accepted in that case on the settlement of the residents subsequently every
F crematorium in the city/town will have to be shifted outside the town/city, which shall not be in the interest of the residents of the village/city/town. Therefore, the High Court ought to have modified its earlier order dated 03.12.2003, by which it was directed to shift the crematorium at Village Masoodpur to Kishangarh. However, at the same time taking into consideration
G need of the day the Municipal Corporation has to modernise the crematorium and to shift it to a modern electric crematorium which shall be in the larger public interest of the village people as well as residents of the neighbourhood area. [Para 5.3][994-F-H; 995-A-C]

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3. The impugned order passed by the High Court refusing to modify its earlier order dated 03.12.2003 in Writ Petition No. 3687/1995 directing to shift the crematorium at Village Masoodpur to Kishangarh is hereby quashed and set aside. However, at the same time, the Municipal Corporation to take steps to modernise the crematorium by shifting it to a modern electric crematorium which shall be in the larger public interest of the village people as well as the residents of the neighbourhood area. [Para 6][995-D-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7614 of 2022.

From the Judgment and Orders dated 06.12.2016 of the High Court of Delhi at New Delhi in C.M. No.34439 of 2016 in W.P. No.3687 of 1995.

Ms. Vandana Sehgal, Adv. for the Appellant.

Vikramjit Banerjee, ASG, Gp. Capt. Karan Singh Bhati, Ms. Chitrangda Rastravara, Manvendra Singh, Ms. Gunjan Negi, Dashrath Singh, Shiv Autar Singh Sengar, Abhijeet Singh, Aditya Pratap Singh Chauhan, Aishwary Mishra, Shreekant Neelappa Terdal, Rajesh Kr. Singh, Merusagar Samantaray, Ms. Shruti Agarwal, Ms. Janhvi Prakash, Kartik Dey, T. S. Sabarish, Amrish Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.12.2016 passed by the High Court of Delhi at New Delhi in C.M. No.34439/2016 in Writ Petition No. 3687/1995, by which, the Division Bench of the High Court has dismissed the said application preferred by the South Delhi Municipal Corporation (hereinafter referred to as the Municipal Corporation) and has refused to modify the earlier order dated 03.12.2003 passed by the High Court in Writ Petition No. 3687/1995, the Municipal Corporation has preferred the present appeal.

2. That the dispute is with respect to the cremation ground at Masoodpur, New Delhi which as such is in existence since last more than 100 years and the same is for the benefit of village people of village Masoodpur, New Delhi. That the original writ petitioner – Residents

A Welfare Association, Vasant Kunj approached the High Court by way of Writ Petition No. 3687/1995 for appropriate orders inter-alia not to permit the use of land in question as cremation ground. It was the case on behalf of the original writ petitioner that Delhi Development Authority (DDA) has already provided cremation ground at other place in the same area. Taking into consideration communication dated 27.12.1990

B by DDA calling upon the Municipal Authorities to issue notification for closure of cremation ground at Masoodpur Village and for shifting it to enlarge cremation ground at Kishangarh Village and taking note of the provisions of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Act, 1957), more particularly, Sections 390 and 391 of the Act, 1957, and observing that it was for the Standing Committee of the Municipal Corporation to take an appropriate decision, the High Court while disposing of the aforesaid writ petition directed the Municipal Corporation to take an appropriate decision under Section 391 of the Act, 1957. The Division Bench of the High Court also directed that the

D Municipal Corporation shall take possession of the land offered at Kishangarh and shall make all necessary arrangements to use the same as a crematorium. That thereafter, pursuant to the directions issued by the High Court in order dated 03.12.2003 in Writ Petition No. 3687/1995, the Standing Committee in exercise of powers under Section 391 of the Act, 1957 had taken a conscious decision not to close the

E crematorium at Masoodpur Village, by observing that it is not in the public interest to close the crematorium at Masoodpur Village and that the crematorium at Masoodpur Village is being used for the village since long. That thereafter, the Municipal Corporation filed the present application before the High Court for modification of order dated 03.12.2003 passed in Writ Petition No. 3687/1995. By the impugned

F order the High Court dismissed the said application hence, the present appeal at the instance of the Municipal Corporation.

3. Ms. Vandana Sehgal, learned counsel appearing on behalf of the Municipal Corporation has vehemently submitted that pursuant to earlier order dated 03.12.2003 passed by the Division Bench of the High Court in Writ Petition No. 3687/1995, the Standing Committee of the

G Municipal Corporation has taken a conscious decision not to close the crematorium at Village Masoodpur. It is submitted that the decision of the Standing Committee not to close the crematorium is in exercise of powers under Section 391 of the Act, 1957. It is submitted that having

H considered the fact that the crematorium at Village Masoodpur is in use

since long, much prior the society at Vasant Kunj came into existence and having considered that it is not in the public interest and/or in the interest of the village people to close the crematorium at Village Masoodpur, the High Court ought to have modified its earlier decision dated 03.12.2003 in Writ Petition No. 3687/1995. A

3.1 It is submitted that under Section 42 of the Act, 1957 it is the duty cast upon the Corporation to make provision for regulation of places for disposal of dead. It is submitted that therefore, the provision of maintenance of places for disposal of dead is an obligatory function of Municipal Corporation. It is submitted that merely because subsequently the society/residential colonies might have come into existence it cannot be a ground to close the crematorium which is in use since long. B C

3.2 It is submitted that when a conscious decision has been taken by the Standing Committee of the Municipal Corporation not to close the crematorium at Village Masoodpur the High Court ought to have modified its earlier order. D

4. While opposing the present appeal Shri Karan Singh Bhati, learned counsel appearing on behalf of respondent No. 1 – Federation of Residents Welfare Association, Vasant Kunj has vehemently submitted that the crematorium is nearer to the residential complexes of Vasant Kunj and therefore, it is not in the interest of residents of Vasant Kunj to continue the crematorium at Village Masoodpur. E

4.1 It is vehemently submitted that as such the DDA has already allotted and/or allowed a crematorium at Kishangarh to use the same as crematorium, the crematorium at Village Masoodpur ought to have shifted to Kishangarh which is just seven k.m. away. F

4.2 It is submitted that therefore when earlier the High Court directed the Municipal Corporation to shift the crematorium at Village Masoodpur to Kishangarh, the same is not rightly modified by the High Court by impugned order. F

5. We have heard learned counsel appearing on behalf of the Municipal Corporation as well as learned counsel appearing on behalf of respondent No. 1 – Residents Welfare Association, Vasant Kunj. G

5.1 At the outset it is required to be noted that the dispute is with respect to the crematorium at Village Masoodpur. The crematorium at Village Masoodpur is being used for the village people since long and it H

A appears that the same is being used much prior the Act, 1957 came into force. The residential colonies in Vasant Kunj have come into existence in 1990. So, at the relevant time when the residential colonies at Vasant Kunj came into existence there was already a crematorium at Village Masoodpur. The residential colonies came into existence subsequent to the crematorium at Village Masoodpur. Therefore, when the residents of Vasant Kunj started residing on and after 1990, there was already a crematorium at Village Masoodpur. Merely because subsequently the residents of Vasant Kunj/locality have started residing, it cannot be a ground to shift the crematorium and/or not to use the crematorium at Village Masoodpur.

C 5.2 In the earlier round of litigation the Division Bench of the High Court directed the Municipal Corporation/Standing Committee of the Municipal Corporation to take an appropriate decision under Section 391 of the Act, 1957. That thereafter the Standing Committee of the Municipal Corporation has taken a conscious decision not to close the crematorium at Village Masoodpur. From the resolution of the Standing Committee, it appears that the Standing Committee has taken a conscious decision not to close the crematorium on the grounds that (i) Masoodpur cremation ground has not become offensive to the health of persons residing in the neighbourhood; (ii) is running since long and (iii) its continuation is in the larger public interest. Therefore, when a conscious decision has been taken by the Standing Committee of the Municipal Corporation under Section 391 of the Act, 1957 not to close the crematorium at Village Masoodpur, the High Court ought to have modified its earlier order dated 03.12.2003 in Writ Petition No. 3687/1995 by which the Municipal Corporation was directed to shift the crematorium to Kishangarh.

G 5.3 At this stage it is required to be noted that as such under Section 42(f) of the Act, 1957 it is the duty cast upon the Municipal Corporation to make provision for regulation of places for the disposal of dead and the provision of maintenance of said places is an obligatory function of Municipal Corporation. Therefore, until and unless the conditions as mentioned in Section 391 of the Act, 1957 are satisfied and it is specifically found that any burning or burial ground has become offensive, or dangerous to the health of the persons residing at neighbourhood, the burning and burial ground can be ordered to be closed with the previous sanction of the Standing Committee. A conscious

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decision has been taken by the Standing Committee not to close the crematorium at Village Masoodpur looking to the public interest and in the interest of village people of Village Masoodpur. If the request made on behalf of respondent No. 1 is accepted in that case on the settlement of the residents subsequently every crematorium in the city/town will have to be shifted outside the town/city, which shall not be in the interest of the residents of the village/city/town. Therefore, the High Court ought to have modified its earlier order dated 03.12.2003, by which it was directed to shift the crematorium at Village Masoodpur to Kishangarh. However, at the same time taking into consideration need of the day the Municipal Corporation has to modernise the crematorium and to shift it to a modern electric crematorium which shall be in the larger public interest of the village people as well as residents of the neighbourhood area.

6. In view of the above and for the reasons stated above the present appeal succeeds. The impugned order passed by the High Court refusing to modify its earlier order dated 03.12.2003 in Writ Petition No. 3687/1995 directing to shift the crematorium at Village Masoodpur to Kishangarh is hereby quashed and set aside. Consequently, order dated 03.12.2003 passed in Writ Petition No. 3687/1995 directing to shift the crematorium at Village Masoodpur to Kishangarh is hereby modified/quashed and set aside in view of subsequent decision dated 31.03.2016 of Standing Committee of the Municipal Corporation. However, at the same time we direct the Municipal Corporation to take steps to modernise the crematorium by shifting it to a modern electric crematorium which shall be in the larger public interest of the village people as well as the residents of the neighbourhood area. The said exercise be completed within a period of twelve months from today. The present appeal is accordingly allowed. No costs.