

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

+ W.P.(C) 3768/2007 & CM No. 7090/2007

GOMATH MANDIR RELIGIOUS TRUST Petitioner

Through Mr. B.S. Mor, Advocate.

versus

N.C.T. OF DELHI & ORS. Respondents

Through Ms. Ruchi Sindhvani, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% 21.02.2008

1. In the last order it is incorrectly recorded that the respondents should file their counter affidavits. On the last date, the matter was adjourned for today to enable the petitioner to argue the matter. Reference in this regard may be made to the order dated 18th May, 2007 in which it has been recorded that the writ petition seeks to challenge notification dated 2nd April, 1996 in the year 2007 and is clearly barred by laches.

2. The present writ petition has been filed challenging notification No. F-1(29)/PA/DC/95 dated 2nd April, 1996 published in the Delhi Gazette of National Capital Territory of Delhi stating that property/land comprising in khata/khatoni No. 198 Min/194 situated in revenue estate of village Maidangarhi, Tehsil Mehrauli, District Delhi, are handed over to the Forest Department, Government of NCT of Delhi under Section 154 of the Delhi Land Reforms Act, 1954.

3. The petitioner submits that a temple was constructed in the aforesaid land, subject matter of notification dated 2nd April, 1996 and has been in existence for about last five centuries. Learned counsel for the petitioner further submits that a dharamshala, goshala and resident of mahant have also been constructed near the said temple. It is submitted that these constructions and land adjacent thereto is not covered by the said notification.

4. Learned counsel for the petitioner relies upon alleged resolution dated 18th September, 1986 passed by Gram Panchayat, village Maidangarhi whereby a decision was taken to handover 120 acres of Gaon Sabha land in khasra Nos. 529, 527, 633 and 635 to the said temple. He also relies upon entry made in khasra girdawari for the year 1987-88. In the said document Gaon Sabha has been shown to be the owner of the land but it has been mentioned that some portion of the said land is in occupation of Gair Mumkin Johar Baba Gomath.

Learned counsel for the petitioner has also drawn my attention to alleged trust deed executed by one Swami Karam Pal.

5. I have considered the contentions of the learned counsel for the petitioner but do not find any merit in the same.

6. The Supreme Court in its order dated 25th January, 1996 passed in the case of ***M.C. Mehta versus Union of India & Others*** had directed as under:-

“We have heard learned counsel for NCT, Delhi Administration regarding the Gaon Sabha area forming part of the Ridge. Learned counsel states that various proposals regarding handing over the Gaon Sabha area (part of the Ridge) to the Forest Department have been examined by a committee appointed by the Administration. Finally, the Committee has taken a decision that a Notification under Section 35 of the Indian Forests Act, 1927 be issued. We are of the view that the Notification under Section 35 will not solve the problem which we are facing. The learned counsel states that the Committee was of the view that the provisions of Section 154 of the Delhi Land Reforms Act, 1954 are not attracted because in view of the expression “on the commencement of the Act” in Section 154, power under the proviso to Section 154 could only be exercised at the time of the commencement of the Act and not thereafter. That may be one way of looking at the Section but since it is for the first time that a Committee has been appointed to examine this aspect and it was never examined earlier by the Delhi Administration at any point of time, we are prima facie of the view that the provisions of Section 154 can even now be invoked especially when it is crystal clear that this area is of no utility to the Gaon Sabha and in any case cannot be permitted to be used by

Gaon Sabha for any purpose. This is Ridge area which has to be preserved. No cultivation or any type of construction can be permitted on this area. In this view of the matter, we request the committee to reconsider the question of issuing the notification under the proviso to Section 154 of the Act.”

7. I may also note here another order passed by the Supreme Court, reported in 1996 (3) SCALE (SP) 20, wherein it has been recorded as under:-

“We do not agree with Mr. GS Patnaik. In view of the order quoted above, nothing more remains to be done by the NCT, Delhi Administration, except to issue the necessary notification. We direct that the necessary notification be issued within three weeks from today. We further request the Lt. Governor, to have the matter expedited. The land is part of the ridge area. Even though it is not a reserved forest, it happens to be a forest. This area cannot be utilised in any manner in view of the prohibitions contained under the Forest Conservation Act, 1980. In this view of the matter, issuing of notification is a simple formality to secure the area. We, therefore, reiterate and request the Lt. Governor to have necessary notification issued within time specified by us.”

8. In compliance with the said orders, notification dated 2nd April, 1996 was issued transferring the land at Maidangarhi to the Forest Department.

9. Under the provisions of Rule 185 of The Delhi Panchayat Raj Rules, 1959, no immovable property vested or belonging to a Gaon Sabha can be transferred by way of sale, mortgage or exchange except on the resolution of

a Gaon Panchayat and with the sanction of the Chief Commissioner. The petitioner has not placed any document on record to show that after the alleged resolution dated 18th September, 1986, the same was sanctioned by the Chief Commissioner or the Lieutenant Governor of Delhi. Gaon Sabha land, therefore, could not have been transferred to a third person without compliance of Rule 185 of The Delhi Panchayat Raj Rules, 1959

10. I may also note here that even as per the khasra girdwari for the year 1987-88, Gaon Sabha has been shown to be the owner of the land. The petitioner has not been shown as the owner of the land.

11. On the question of Mandir, the matter was examined by the Religious Committee and it was decided that all encroachments around the mandir will be removed and barricaded to prevent any entry thereon. Access to the mandir has not been denied in view of the order passed by the Religious Committee. The mandir, therefore, as per the directions of the Religious Committee remains protected and is not to be demolished. The Committee did not consider it appropriate to encompass and give any direction for alleged dharamshala, goshala or the residence of the mahant. Demarcation in terms of the order passed by the Religious Committee has already been carried out as is clear from public notice dated 23rd May, 2006 and it has been directed that except for the old structure of gomath mandir, other constructions and

encroachments should be demolished by the petitioner, otherwise action in accordance with law shall be taken to recover the encroached land from the encroachers. The action of the respondents is in accordance with law and no error can be found in the same.

12. In view of the findings given above, the writ petition has no merit and is dismissed. No costs.

SANJIV KHANNA, J.

FEBRUARY 21, 2008

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