

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7436/2011 and CMs 16858-60/2011**

Decided on 12.10.2011

SHIV MANDIR COMMITTEE REGD AND ORS Petitioners
Through: Mr. Anil Hooda, Advocate

versus

DDA AND ORS Respondents
Through: Ms. Shobhana Takiar, Adv. for R-1/DDA.
Mr. Dev P. Bhardwaj, Standing Counsel for R-2/MCD.
Mr. O.P. Saxena, Advocate for R-3/DUSIB.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioners praying *inter alia* for directions to the respondents not to demolish the temples, Shiv Mandir and Balmiki Mandir situated at P & Q Block, Mangolpuri and 21 shops built up in the same Mandir complex.

2. It is relevant to note that this is the third round of litigation initiated by the petitioners based on the same grievance. In the first petition filed

by the petitioners, registered as **W.P.(C) 2481/2011** entitled Umesh Gambhir & Ors. vs. DDA & Anr, the petitioners sought similar directions against respondent No.2/MCD for restraining it from demolishing the shops owned by 'Shiv Mandir Committee' and 'Balmiki Mandir Committee' situated at P & Q Block, Mangolpuri, Delhi. After examining the counter affidavit filed by respondent No.2/MCD in the aforesaid writ petition, wherein it was stated that the subject land was transferred by the respondent No.1/DDA to respondent No.2/MCD in the year 1988 and that the temples and the shops are encroachment on government land and further, after recording the statement of the counsel for respondent No.1/DDA therein to the effect that no allotment of the subject land was ever made by DDA to any private party, including the purported 'Shiv Mandir Committee' and 'Balmiki Mandir Committee' as alleged by the petitioners, this Court concluded that the petitioners had not been able to demonstrate that either of the two committees had any legal title on the subject land, which remained government land. While dismissing the writ petition in *limine*, the respondent/MCD was directed to remove the encroachment existing on the public land in a time bound manner.

3. Aggrieved by the aforesaid order dated 13.09.2011, the petitioners preferred an intra court appeal, registered as LPA 807/2011, which was sought to be withdrawn by them. Vide order dated 29.09.2011, the appeal was permitted to be withdrawn by the Division Bench, with liberty granted to the petitioners to approach the Single Judge, after impleading

the necessary party.

4. Counsel for the petitioners states that in the earlier writ petition, respondent No.3/Delhi Urban Shelter Improvement Board (DUSIB) had not been impleaded as a party and that the said respondent is a necessary and proper party in the present proceedings as it is the owner of the subject land and not the respondent No.2/MCD. The aforesaid submission of the counsel for the petitioners is controverted by the counsels for respondent No.2/MCD and respondent No.3/DUSIB, who appear on advance copy. It is submitted by the counsel for respondent No.2/MCD that a categorical stand to this effect had been taken by the MCD in the writ petition filed earlier by the petitioners, as is reflected from the written comments (Annexure P-7) submitted in the said writ petition, particularly, para 3 thereof, wherein it was averred that the land on which the two temples are constructed, is meant for public park/MCD park and the total area of the park is 1173.07 square meters and further, that the temples are constructed on an area of 1025.68 square meters and the 21 shops are constructed on an area measuring 147.39 sq. meters. Hence, both the temples as also the shops constructed on the land are existing on government land and the petitioners are encroachers on government land meant for a park.

5. Counsel for the petitioners draws the attention of this Court to the letter dated 28.07.2011 emanating from the office of respondent No.3/DUSIB to contend that the subject land is owned by respondent

No.3/DUSIB and the petitioners are in negotiation with respondent No.3 for allocation/regularization of the shops in their favour. The said submission is however denied by the counsel for respondent No.3/DUSIB, who states that the subject land is owned by respondent No.2/MCD and that as far as the letter dated 28.07.2011 is concerned, it was only a reply forwarded by respondent No.3/DUSIB to the Treasurer of the Shiv Mandir Committee in response to their letter dated 25.07.2011, wherein they were requested to submit a copy of the letter dated 02.07.1981 as mentioned in their letter dated 25.07.2011. He further states that a bare perusal of the aforesaid reply sent by respondent No.3/DUSIB reveals that an amount of ₹80,000/- stated to have been deposited by Shiv Mandir Committee was in respect of institutional allocation of land and not in respect of the subject shops and hence, no vested right can be claimed by the petitioners on the basis of the aforesaid reply dated 28.07.2011. The aforesaid submission made by counsel for respondent No.3/DUSIB is borne out from a perusal of the reply dated 28.07.2011 addressed by respondent No.3/DUSIB to the Treasurer of the Shiv Mandir Committee (Annexure P-9). Apart from the aforesaid letter, there is no other document on which reliance is placed by the petitioners to fortify their claim that the subject land is not a government land or that it is not owned by respondent No.2/MCD, but vests in respondent No.3/DUSIB.

6. In view of the categorical submission made by the counsel for

respondent No.2/MCD that the subject land belongs to MCD and is meant for a park and further, in view of the submission made by the counsel for respondent No.3/DUSIB reiterating that the subject land is not owned by it, the case of the petitioners remains on the same footing as it was when the order dated 13.09.2011 was passed in W.P.(C) 2481/2011, whereby the said writ petition was dismissed. There is no new material placed before this Court for it to reconsider the submission made by the petitioners that respondent No.3/DUSIB is the owner of the subject land and it is in negotiations with the petitioners for allocation/regularization of the shops constructed thereon. In this view of the matter, the present petition fails, and is dismissed in *limine* alongwith the pending applications.

7. At this stage, counsel for the petitioners states that this being the festival season, the petitioners may be permitted to remain in occupation of the shops in question till the end of October 2011. The said submission is made in the light of the statement made by the counsel for respondent No.2/MCD that demolition action in respect of the shops in question is fixed for tomorrow, i.e., 13.10.2011.

8. Having regard to the aforesaid submission made by the counsel for the petitioners, it is directed that subject to each of the petitioners filing their affidavits in Court within two days with copies to the counsel for respondent No.2/MCD, undertaking *inter alia* not to create third party interest in the shops occupied by them and to hand over vacant peaceful

possession of the said shops to the respondent/MCD on or before 01.11.2011, the respondent No.2/MCD shall not take any coercive action against them till 01.11.2011. It is further directed that in case any of the petitioners do not file such an affidavit, the respondent No.2/MCD shall be at liberty to take demolition action against the concerned shops occupied by them. It is also made clear that this Court shall not entertain any request for grant of further time for vacating the shops in question and failure on the part of the petitioners to abide by their respective undertakings to vacate their shops on or before 01.11.2011 shall result in the respondent No.2/MCD proceeding to forthwith demolish the said shops as per law.

DASTI to the parties.

OCTOBER 12, 2011
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HIMA KOHLI,J