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% **04.06.2012**

Present: Mr.V.K. Rao, Senior Advocate with Mr. Vaibhav Kalra & Mr.Sudeep Dey, Advocates for the petitioner.
Mr.Sumeet Pushkarna & Mr. Gaurav Varma, Advocates along with Mr. C.D. Mishra, ASI, for the respondents/UOI.

+ **L.P.A. No. 451/2012 and C.M. No. 10601/2012**

* The petitioner assails the order dated 21.05.2012 passed by the learned Single Judge, dismissing the petitioner's writ petition i.e. W.P.(C.) No. 515/1989. In the said writ petition, the petitioner assailed the order passed by the learned District Judge in appeal preferred under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The learned District Judge had upheld the order of eviction dated 11.12.1987 passed under the aforesaid Act.

The petitioner claims that the Mandir in question- situated within the Purana Qila precincts is an ancient Mandir, wherein his forefathers have been performing puja. He submits that the said Mandir was not notified as an ancient monument and is, therefore, not public premises. The submission of learned counsel for the petitioner is that the Puja in the temple is required to be performed, firstly, at Brahm Muhurat at 04:00 a.m. in the morning, and in the evening time at sunset. The Parikrama is required to be performed by reciting the holy mantras.

A perusal of the appellate order passed by the learned District

Signature Noted by shows that in the Government notification Nos. 7911-Education
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By:AMULYA

dated 28.10.1978 issued under Section 3 of the Ancient Monuments Preservation Act, 1904, Purana Qila was notified with all its walls arcades, gateways, and bastions and gardens, the mosque of Shershah (Qila Kohna Masjid), the Sher Mandal and entrances to sub terrains and passages, which fell within the protected monument. Pertinently, there was no mention in this notification of the temple, wherein the plaintiff claims to be performing the Puja.

The petitioner has sought to place reliance on the Wajib-ul-Arz and the Khasra girdawaris, However, none of these materials was placed before the learned Estate Officer. It appears that the petitioner sought to place reliance on these documents only in the writ proceedings. The respondents have denied the veracity of the documents relied upon by the petitioner and, consequently, the learned single Judge has held that such disputed facts could not be determined in writ proceedings. We find no infirmity in this finding of the learned single Judge.

The learned Single Judge has permitted the petitioner to perform Puja between the hours when the Purana Qila is accessible to the public. The petitioner, it appears, has no right in the premises and it appears that the petitioner has encroached in the said premises.

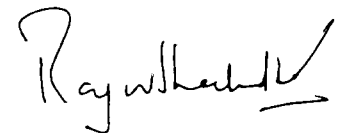
The issue, whether, or not, the petitioner should be permitted to perform Puja during the early hours, and at the time of sunset, can be gone into once the scientific study of the temple is carried out to

determine its age. It shall be open to the respondents to raise all their defences at the appropriate stage.

We find no merit in this petition. Dismissed. Dasti.



VIPIN SANCHI
(VACATION JUDGE)



RAJIV SHAKDHER
(VACATION JUDGE)

JUNE 04, 2012
'BSR'

S-1

06.12.2013

Present: Mr. R.K. Saini, Ms. Vivya Nagpal and Mr. Mayur Sharma,
Advocates for the petitioner
Mr. Rajeeve Mehra, ASG with Mr. Sumeet Pushkarna, CGSC
with Ms. Sara Sundaram, Advocates for UOI a/w Mr. C.D.
Mishra, S.O./ASI

R.P. No.384/2012 in LPA No.451/2012

1. The captioned petition has been filed to seek review of the order dated 04.06.2012. To be noted, vide order dated 04.06.2012, we had dismissed the appeal preferred by the review petitioner against the order dated 21.05.2012 passed by the learned Single Judge in W.P.(C). No.515/1989.
2. The learned Single Judge had sustained the order passed by the District Judge in an appeal preferred by the review petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("PP Act") and pertinently the eviction order dated 11.12.1987.
3. The reason, we had entertained the review petition, was on account of the fact that the review petitioner placed reliance on a lease deed dated 29.11.1939 (in short the lease deed) executed by the then Governor General in Council in favour of the Secretary, Shri Sanatan Dharam Sabha (Sabha). The document was presented by one Mr. Kesar Chand, s/o late Mr. Thakar Das Khatri; "service of 14 Mahadev Road, New Delhi", in his capacity as the Secretary of the said Sabha.
4. The review petitioner, is the son of late Mr. Mange Ram Bhardwaj, who claims to be a licensee of the aforementioned Sabha.

5. Since determination of this issue would require evidence to be led, we propose to remand the matter to the Estate Officer. The Estate Officer will determine as to whether rights, if any, flowed in favour of Mr. Mange Ram Bhardwaj, and thereafter, in favour of the review petitioner. Needless to say, the Estate Officer will also determine whether the lease deed in issue, would come in the way of the respondents taking out proceedings against him under the PP Act.

6. We must note before concluding, broadly, the stand of the respondents herein i.e. Union of India. The respondents claim that they have the requisite authority to take out proceeding under the PP Act, by virtue of notification dated 23.10.1913; which is appended at page 29 of the paper book and marked as Annexure A-3.

7. It is made clear that the Estate Officer will conclude the proceedings in this behalf, with expedition, though not later than three months. No accommodation shall be accorded to the parties except for exceptional grounds.

8. It is also made clear that the Estate Officer shall be free to pass an appropriate order after returning a finding on the aforesaid issues.

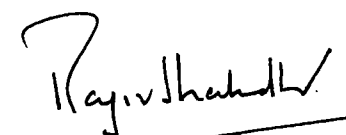
9. The parties and the counsel shall appear before the Estate Officer on 04.01.2014 at 11:00 a.m. The registry will send a copy of this order to the Estate Officer; albeit without insistence on the process fee. The registry would also send a copy of this order to the District Judge, who should ensure that the record in the case, if any, available with him is remitted forthwith to the Estate Officer.

10. In the interregnum, the review petitioner shall not be dispossessed in respect of the area which is covered by the Mandir as mentioned in Appendix A attached to the lease deed.

11. Resultantly order dated 04.06.2012 is recalled. Appeal is allowed. Needless to say, the direction contained in paragraph 10 above will abide by the final order of the Estate Officer. The petition is disposed of in the aforesaid terms. Dasti.



VIPIN SANGHI, J



RAJIV SHAKDHER, J

DECEMBER 06, 2013

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