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

+ W.P.(C) 539/2016

RAJ KUMAR TANTI

..... Petitioner

Through: Mr.Arpit Bhalla and Mr.Rajesh  
Yadav, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms.Manjula Gandhi, Mr.Sarfaroj  
Ahmed and Mr.Himanshu Duby,  
Advocates for Union of India.  
Mr.Jayant Tripathi and Mr.Dinesh  
Dahiya, Advocates for R-2 & 3/ASI.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

**02.05.2016**

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1. The present public interest litigation is filed seeking a writ of mandamus directing the respondents to comply with the order dated 16.10.2008 passed by this Court in LPA No.123/2007 and to issue directions to the respondents to take action against the illegal structures by demolishing the same. The petition pertains to D'Eremao Cemetery, Kishan Ganj, Delhi (*in short the 'Cemetery'*) which is a monument protected under the provisions of the Ancient Monuments Act, 1904 and Ancient Monuments Archaeological Sites and Remains Act, 1958 and other statutory provisions.
2. In the writ petition, it is contended that the said Cemetery vide Notification dated 13.12.1922 was declared to be a protected monument. On

13.09.2005 respondent No.3, namely the Archaeological Survey of India (*in short* 'ASI'), issued a show cause notice to unauthorized occupants/encroachers in the Cemetery for eviction/demolition of unauthorized constructions/structures. On 17.10.2005, respondent No.3/ASI passed eviction orders. However, some of the unauthorized occupants/encroachers filed 'writ petition being W.P.(C) 20917-76/2005, titled as 'Roseline Wison & Ors. v. Union of India & Ors.' before this Court for quashing the eviction orders. The said writ petitions were dismissed on 12.01.2007. Thereafter, the unauthorized occupants/encroachers filed an appeal being LPA No.123/2007, titled as 'Roseline Wison & Ors. v. Union of India & Ors.' before the Division Bench of this Court. The said LPA was disposed of on 16.10.2008. Relevant para of the said order reads as follows:

“15. Accordingly, the impugned order dated 12<sup>th</sup> January, 2007 passed by the learned Single Judge is set aside and the order dated 17<sup>th</sup> October, 2005 passed by the ASI are hereby quashed. A direction is issued to the ASI to once again consider the reply dated 20<sup>th</sup> September, 2005 of the appellants, a copy of which is annexed to the writ petition as Annexure P-9, offer an opportunity of hearing to the appellants or their representatives and thereafter pass a reasoned order afresh within a period of four weeks from today. The reasoned order will be communicated to the appellants within one week thereafter. Till such time, the interim order dated 9<sup>th</sup> February, 2007 passed by this Court in appeal will continue to operate. It is needless to mention that it will be open to the appellants to seek whatever appropriate remedies are available to them in law if they are aggrieved by the fresh order passed by the ASI pursuant to the present judgment.”

These are the directions, which the present writ petitioner seeks to have enforced.

3. It is urged that despite these directions, the respondents have not taken any steps to stop illegal construction activity or remove encroachments. The petitioner states that in 2015 he visited the site and found that some encroachers are occupying the area and various illegal constructions/structures have been raised in the area even after order dated 16.10.2008.

4. Respondent No.3/ASI has filed a status report. In the status report, respondent No.3/ASI has tendered unconditional apology for the delay in the implementation of the order dated 16.10.2008 passed by this Court in LPA No.123/2007. The status report also states that on a survey being conducted of the monument in 2005, one Luice Jacob, himself an encroacher filed a suit before the Court of the learned ADJ, New Delhi in August, 2005 wherein an interim order was passed. The status report further states that respondent No.3/ASI issued notice to 52 other people who were found to be encroaching on 13.09.2005. These persons also filed writ petitions. The writ petitions/LPAs and suits are now disposed of. The delay took place due to these litigations.

5. The learned counsel appearing for respondent Nos.2 and 3 submits that presently there are no legal proceedings filed by any of the encroachers pending and that respondent No.3/ASI would issue fresh show cause notice to all the parties and after giving hearing to all the parties, would take a decision as per law.

6. In view of the above statement/submission of the learned counsel appearing for respondent Nos.2 and 3, we deem it appropriate to issue the following directions:

- (i) Respondent No.3/ASI will take expeditious steps for eviction of the unauthorized occupants and demolition of the unauthorized constructions from the site in question.
- (ii) Necessary compliance will be made of the directions passed by this Court on 16.10.2008. The parties to the appeal where this Court passed the order dated 16.10.2008 would be entitled to file any fresh response, if they so desire. Notice to the said effect will be sent by the ASI. This further opportunity is being given to them in view of the fact that much time has lapsed since the earlier order of the Division Bench dated 16.10.2008.
- (iii) If there are other unauthorized occupants in the area who entered the premises after the survey being conducted by respondent No.3, they would be dealt with as per law for the purpose of eviction/demolition.
- (iv) Respondent No.3 will ensure the compliance of these directions within a period of four months from today. In case, any police assistance is required, the SHO of the area concerned is directed to ensure the necessary police assistance.

In view of the above directions, the present writ petition is disposed off.

**(JAYANT NATH)**  
**JUDGE**

**CHIEF JUSTICE**

**MAY 02, 2016/v**