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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th July, 2016

+ **W.P.(C) 116/2007**

JAMES MASSEY & ORS. Petitioners

versus

U.O.I. & ANR. Respondent

+ **W.P.(C) 4047/2008**

DELHI CEMETERIES COMMITTEE AND ANR. Petitioner

versus

COMMISSIONER MCD & ORS. Respondents

+ **W.P.(C) 802/2015**

UTSAV KUMAR Petitioner

versus

COMMISSIONER OF POLICE & ORS. Respondent

Counsel for the petitioners : Mr. Pratap Sahani and Dr. S. N. Singh, Advocates; Mr. Vivek Ojha, Advocate.

Counsel for the respondents : Mr. Ajay Arora with Mr. Kapil Dutta, Advocate for NDMC; Mr. Anuj Aggarwal, Mr. Santosh Kumar Tripathi, ASCs with Mr. Subhanshu, Advocate for GNCTD; Mr. Vivek Goyal, CGSC for UOI; Mr. Anurag Ahluwalia, CGSC for UOI; SI Rohit/P.S. Maurice Nagar.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

MS. G.ROHINI, CHIEF JUSTICE (ORAL):

1. The Petitioners in W.P.(C) No.116/2007 claim to be in occupation of certain areas located in Christain Colony near Rajpur Cemetery. This writ petition has been filed with a prayer to set aside the orders dated 15.12.2006 passed by the Archaeological Survey of India directing removal of encroachments from Rajpur Cemetery and to declare that the area of Rajpur Cemetery does not fall within the parameters of a "protected monument" and further to declare that the Archaeological Survey of India has no jurisdiction to deal with Rajpur Cemetery area.

2. So far as W.P.(C) No.4047/2008 is concerned, the same has been filed by Delhi Cemetery Committee and its members seeking directions to the respondents to take action regarding the alleged illegal encroachments and unauthorized construction, alterations, repairs and additions in the area of Rajpur Cemetery within the Christain Compound, Delhi which is a centrally protected monument in North Campus. Similar relief has been sought in W.P.(C) No.802/2015, filed as a Public Interest Litigation by a student of the University of Delhi claiming that he is residing in the area in question.

3. In W.P.(C) No.116/2007, this Court while directing notice to the respondents passed the following interim order on 09.01.2007:

"It is directed that the petitioners be not dispossessed from their occupation by any coercive process till the

next date provided that the petitioners maintain status quo as to construction and occupation."

4. By order dated 15.09.2009, the above interim order dated 09.01.2007 was made absolute.

5. In W.P.(C) No.116/2007, a counter affidavit has been filed on behalf of the Archaeological Survey of India dated 02.05.2008 denying the allegations made by the petitioner. Counter affidavits have also been filed on behalf of the respondents in W.P.(C) Nos.4047/2008 and 802/2015.

6. We have heard the learned counsel for both the parties. As could be seen from the material placed on record the Rajpur Cemetery lies in the outskirts of Delhi University. There is a church in the area which has been declared as a monument and protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958. It is alleged by the petitioners in W.P.(C) Nos.4047/2008 and 802/2015 that despite ban, the whole area inside the Cemetery has been encroached by some persons and illegal constructions have been carried out.

7. Be that as it may, it was brought to our notice by the learned standing counsel for the Union of India on 17.02.2016 that Rajpur Cemetery has been identified as one of the monuments which has lost the aesthetic, archaeological and architectural value and, therefore, the Archaeological Survey of India has been contemplating to declare that the same has ceased to be of national importance for the purpose of Ancient Monuments and Archaeological Sites and Remains Act, 1958. The statement of the learned standing counsel that the de-notification policy was drafted by the

Archaeological Survey of India and the same was submitted for approval of the Ministry was placed on record by order dated 17.02.2016.

8. Reiterating the said submission, it has now been represented by the learned standing counsel for the Union of India that once the policy is approved, the matter for de-protection of Rajpur Cemetery would be processed and the necessary further steps would be taken following due process of law.

9. Having regard to the fact that de-notification policy is under consideration and that steps are proposed to be taken under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 for de-protection of Rajpur Cemetery, it appears to us that the matter needs no consideration on merits at this point of time and no purpose would be served by keeping the writ petitions pending.

10. We, therefore, consider it appropriate to dispose of the writ petitions with the following directions:

- (i) The respondents shall finalize the de-notification policy at the earliest preferably within a period of six months from today.
- (ii) Thereafter, appropriate decision be taken as to whether Rajpur Cemetery may be declared de-protected in terms of the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Rules made thereunder.
- (iii) Till such decision is taken, the interim order granted by this Court on 09.01.2007 in W.P.(C) No.116/2007 shall continue.

(iv) If aggrieved by such decision, the petitioners in W.P.(C) No.4047/2008 and W.P.(C) No.802/2015 are at liberty to approach this Court.

10. All the writ petitions are accordingly disposed of.

CHIEF JUSTICE

JULY 13, 2016
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SANGITA DHINGRA SEHGAL, J

