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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4683/2014 & CM 17190/2014

VISHWAS NAGAR VIKAS SAMITI (REGD) Petitioner

Through: Mr.Shrey Danbhara, Mr.A.K.Dwivedi,
Advts.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Dr.Kumar Jwala, Adv. for EDMC

Mr.Naushad Ahmad Khan, ASC (Civil), GNCTD
for R-2/PWD

Mr.Manish Srivastava, Mr.Aditya Gupta,

Ms.Shagun, Advts. for R-3

Mr.Sumeet Pushkarna, SC with Mr.Sahil Ghai,
Adv. for DJB

Ms.Niharika Ahluwalia, Adv for DDA

Mr.Kuber Boddh, Adv. for intervener.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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30.05.2017

1. The petitioner seeks a direction that a temple (Kalka/ Kalli Mandir), located in the middle of Road no.72 Extension near Kasturba Drain in Vishwas Nagar, Shahdara should be removed as it obstructs and impedes traffic. The petitioner also claims directions to prosecute those who allow construction of unauthorized structures including religious buildings like the one involved in this petition, on public lands meant for use as public roads etc. Other consequential

directions have been sought.

2. The petitioner has in support of the claim made in this proceedings filed copies of photographs which clearly depicts location of the structure i.e. on the middle of the road. The petitioner further relies upon the order dated 18.01.2013 of the Supreme Court in *Union of India vs. State of Gujarat* in SLP (C) No.8519/2006 and further orders dated 5th July, 2013 and 21st February, 2014. In the order of 5th July, 2013, the Supreme Court had directed as follows:-

“5) We, accordingly, direct the Chief Secretaries of the States and Administrators of the Union Territories to state on affidavit the position with regard to unauthorized structures including unauthorised religious structures on public roads, pavements, sideways and other public utility places as existing on June 30, 2013 in their respective states and the steps taken up to June 30, 2013 for removal of such unauthorised structures. Each State except the States and Union Territory which have been exempted by order dated July 27, 2010 shall file affidavit within six weeks from today. Advocates-on-record for these States and Union Territories shall supply copy of the affidavit to Ms.Binu Tamta, counsel for the Union of India to enable her to place on record the position obtaining in all States in a consolidated form.

6) Learned counsel for the States of Madhya Pradesh, Kerela, Punjab and Rajasthan submit that they have already filed their affidavits. Moreover, as noted above, the fresh affidavit must indicate the position as obtaining on June 30, 2013. These States shall also file fresh affidavit indicating the position as on June 30, 2013.

7) We find from the record that the State of Bihar has framed the rules entitled “Bihar unauthorised religious structures, construction, survey and its regularisation, relocation and removal Rules, 2013”. We shall consider the efficiency of these rules at appropriate stage later on.

8) *The other States and Union Territories shall also take steps in framing appropriate policy/rules for removal and/or relocation of unauthorised religious structures on public land, if not done so far. This will be done preferably within four weeks from today. The States/Union Territories, which have already framed policy/rules for removal and/or relocation of unauthorised religious structures on public roads, pavements, sideways and other public utility places, shall place the same before this Court before the next date.*

9) *It is clarified that the above directions shall not apply to the States of Arunachal Pradesh, Sikkim, Mizoram, Nagaland and Union Territory of Lakshadweep.”*

3. After notice was issued and the respondents were required to furnish their replies/affidavits, Maa Kalka Sewa Samiti, which claims to be occupant of the site in question sought impleadment by filing CM no.17190/2017. It claims to have been registered long ago. These applicants contend that the present proceedings are motivated and meant to harass the Samiti and those who are devotees of the temple.

4. The Govt. of NCT of Delhi has filed ‘a short affidavit’. This affidavit states and learned counsel for Govt. of NCT of Delhi argues that *inter se* correspondence between the said authority and other local bodies such as DDA, DJB and the municipal corporation clearly reveal that the temple is unauthorized and located on public land. It also states that the location of the temple impedes smooth flow of traffic and in the larger public interest, it is, therefore, necessary to clear and demolish the structure. The Govt. of NCT of Delhi, however, at the same time, expresses its concern in the affidavit that

since the structure is a religious one and is likely to affect the local sentiments, the matter was referred to a Special Committee known as 'Encroachment of Religious Structure' Committee long ago i.e. sometime in 2010. Relevant letters/correspondence between the said Committee which is also a wing of the Govt. of NCT of Delhi comprising of various Secretaries and other personnel and the Public Works Department has been placed on record.

6. Learned counsel for Govt. of NCT of Delhi submits that there cannot be any doubt that the temple is located on public land and there is therefore, encroachment as well as an unauthorized construction however the likelihood of public disturbance if demolition order were to be resorted to cannot be ruled out and therefore, it is necessary that a religious structure Committee should indicate an appropriate response to its re-location. It is also argued that the Govt. of NCT of Delhi is unable to, as of present, locate any suitable alternate land.

5. From the pleadings and materials on record, it is clear that the location of the structure i.e. the temple is on public lands; the affidavit in fact states that the temple is on an intersection of two roads and covers 700 sq. ft. in Khasra no.181 of Village Karkadooma. The relevant part of the DDA's affidavit is as follows:-

"4) That in compliance to the directions of this Hon'ble Court, the Respondent-DDA carried out an inspection of the said area, on 30.09.2016. At the site, it was found that 'Kalkaji Temple' existed at the inter-section of PWD and DDA Roads covering approximately area of 700 sq. ft. In khasra No.181 at village Karkadooma.

Page 4 of 7

5) It is submitted that the Road has been constructed by DDA, cannot be realigned and therefore the only remedy is to relocate the

said Temple. It is further submitted that the said temple causes obstruction in free flow of traffic and infact there has been several correspondences between PWD and DDA in this regard. The DDA

Page 4 to 6

has been informed by PWD that the matter is under consideration with the Religious Committee of Government of NCT of Delhi. In view of the same, it is submitted that the status/decision of the Religious Committee in this regard, is imperative for the answering Respondent to take further steps.”

6. As far as the Samiti's application for impleadment is concerned, no attempt has been made on its part to show how it acquired possession of the land either lawful or otherwise and when it put up the structure in question. Furthermore, other particulars such as whether, building plans were at all cleared and if so by whom, are missing. The entire endeavour of the Samiti is to say that the petition is motivated. It, however, does not attempt to justify occupation of public lands in any manner. Nor does it deny that the unauthorised building, used as a temple is at an intersection of public roads and obstructs traffic.

7. The directions of the Supreme Court are categorical that obstruction on the public land and highways, roads etc. by all kinds of religious structures or building ought to be removed and cleared by the concerned agencies/authorities. In the present case, none of the public authorities; neither the DDA nor Govt. of NCT of Delhi, or local Corporation have any doubt as to the nature of occupation by the

religious structure in question. All of them are unanimous in that the temple building is encroachment of public land and also unauthorized. Even the Samiti does not claim that the temple land was allotted to it or that the building structure was permitted by any manner known to law in accordance with any procedure. It neither has permission nor does it rely upon any plan or even an allotment letter. Therefore, in the opinion of the Court, there can be no doubt that the temple in question is located on public land.

8. There is no denial to the fact that the location of the temple causes obstruction to the smooth flow of traffic and according to the DDA, impedes the re-alignment of roads which is necessary. The long pendency of the proceeding on the other hand, and the inaction of the Government Authorities, especially the religious Committee would show that the Govt. of NCT of Delhi and the concerned agencies are not willing to shoulder their responsibilities.

9. In view of the foregoing reasons, this Court hereby directs the Govt. of NCT of Delhi, in co-operation with the Deputy Commissioner, Delhi Police of the concerned area and all other appropriate agencies having jurisdiction to ensure that demolition of the said building i.e. Kalka /Kalli Mandir (which is the subject of this petition) is carried out within eight weeks.

10. This order however, does not preclude the Samiti or the devotees from claiming allotment of any other land in accordance

with any existing policy in that regard. If an application for that purpose is made, the same shall be considered on its merits and having regard to such policy.

11. The writ petition and the application are disposed of in the above terms.

Order dasti.

S. RAVINDRA BHAT, J

NAVIN CHAWLA, J

MAY 30, 2017
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