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

+ W.P.(C) 5167/2016

BADARPUR TRADERS WELFARE
ASSOCIATION

..... Petitioner

Through: Mr. Rishi Pal, Adv.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Anuj Aggarwal, ASC
for GNCTD.

Mr. Sanjeev Sabharwal, Standing
Counsel for DDA.

Mr. Shadd Anwar, Adv. for applicant in
CM No.31133/2016 (*for intervention*).

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

24.05.2017

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1. This writ petition has been filed by the petitioner complaining of existing encroachments and ongoing illegal constructions on the Cemetery/Kabristan in Mustil No.36 Khasra No.26 & 27 admeasuring 3 bighas and 17 biswas at Village Badarpur, Tehsil Kalkaji, District South, New Delhi.

2. The Delhi Development Authority (DDA) has been impleaded as the respondent No.2 before us and has filed the status report by way of an affidavit setting out the factual narration. It is disclosed therein that as per Khatouni 1998-99 which has been filed by the petitioner along with the writ petition, the land and Khasra No.36/26 (01 bigha 02 biswa) has been recorded in the name of Gram Sabha as Kabristan and Chah (Well). The same

stands mutated in the name of Delhi Development Authority vide mutation dated 12.03.1994.

3. DDA has further disclosed that the land in Khasra NO.36/26 (01-02) and 36/27 (02-04) of Village Badarpur is a Gram Sabha land under the jurisdiction of DDA through the Notification No. S.O. 2190 dated 20.08.1974. A copy of the Notification has been placed on record (at pg. no.87).

4. DDA has also placed before us a complaint dated 13.06.2016 made by it to the Deputy Commissioner of Police (South East), Sarita Vihar, New Delhi complaining of illegal construction at Khasra No.26 and Khasra No.27 in Mustil No.36, Village Badarpur, New Delhi, which has been vested in the DDA by the aforesaid Government Notification. DDA has complained that despite requests, the Police have not taken any action against the encroachers or the unauthorized construction.

5. It becomes necessary to refer to certain record, which has been placed along with CM No.31133/2016 which stands filed by Intijamiyan Committee, Badarpur Shahi Masjid, Chhoti Masjid and Qabristan, a society registered under the provisions of the Societies Registration Act, 1860 as per the Certificate of Registration filed on 03.08.2011. This application was filed on 22.08.2016 for intervention on behalf of the Intijamiyan Committee, Badarpur Shahi Masjid, Chhoti Masjid and Qabristan. The said application has been filed through Mr. Abdul Sattar claiming to be the president of the said society. Reliance has been placed by him on the resolution dated 16.08.2016 passed by the Managing

Committee of the society. In this application, the applicant has placed reliance on Khatauni Paimaish claiming that Khasra Nos.36/26 and 36/27 were a graveyard and on 31.12.1970, the Delhi Administration notified the Masjid Takiya wali, within a graveyard in village Badarpur, New Delhi. It is urged that the Masjid is 500 years old wherein worship is going on.

6. So far as utilization of the land in question is concerned, reliance has been placed on photocopy of Khatauni Paimaish Year 1953-54 of Village Badarpur, Delhi. We have perused the copy of Khatauni Paimaish Year 1953-54 which shows that, so far as Khasra Nos.36/26 (1-2) and 36/27 (2-4) are concerned, the following is the position:

No. and Name of field	Name of well or other sources of irrigation
Khasra No.36/26 (1-2)	Uncultivable well for drinking water and graveyard.
Khasra No.36/27 (2-4)	Uncultivated graveyard.

This document is undisputed.

7. The Committee, Badarpur Shahi Masjid, Chhoti Masjid and Qabristan Committee and Mr. Abdul Sattar have further placed reliance on three documents addressed by the Delhi Waqf Board. In order to avoid any ambiguity, we extract these documents hereafter:

(i) Office Order dated 26.04.2016 (at pg. no.66)

*“DELHI WAQF BOARD
(Govt. of NCT of Delhi)
5028, Daryaganj, New Delhi – 110002*

No.GA/M&QW/10/GPXXIV/330/91/DWB/477 Dated:26-04-2016

OFFICE ORDER

There is a Waqf property known as “Shahi Masjid Badarpur and Chhoti Masjid and Qabristan” situated at Badarpur, New Delhi which is under the management and control of Delhi Waqf Board. A Managing Committee consisting of the following persons, to manage the day-to-day affairs of the said Mosque and Qabristan is being constituted for one year only. It is also clarified that in case of non-compliance of the terms and conditions given below, the Delhi Waqf Board will proceed under the Waqf Act, 1995, to dissolve the Managing Committee.

The names of the members and office bearers of the Managing Committee are as under:

<i>S. No</i>	<i>Name</i>	<i>Mobile No.</i>	<i>Designation</i>
<i>1.</i>	<i>Mr.Abdul Sattar Saifi</i>	<i>9210102114</i>	<i>President</i>
<i>2.</i>	<i>Mr. Shahbuddin Saifi</i>	<i>9312954374</i>	<i>Vice President</i>
<i>3.</i>	<i>Mr. Shamsuddin Saifi</i>	<i>9990065633</i>	<i>Secretary</i>
<i>4.</i>	<i>Mr. Abdul Hamid Saifi</i>	<i>9891053067</i>	
<i>5.</i>	<i>Mr. Mohd. Zakir</i>	<i>9811270952</i>	<i>Treasurer</i>
<i>6.</i>	<i>Mr. Fazal Mohammad</i>	<i>8742930003</i>	<i>Joint Treasurer</i>
<i>7.</i>	<i>Mr. Akbar Khan Saifi</i>	<i>9891717221</i>	<i>Member</i>
<i>8.</i>	<i>Mr. Mohd. Yasin</i>		<i>Member</i>

9.	Mr. Yamin Malik		Member
10	Mr. Gaffar		Member
11	Mr. Badruddin		Member
12	Mr. Mohd. Firoz		Member
13	Mr. Mohd. Zakir Saifi		Member
14	Mr. Mohd. Razzaq		Member
15	Mr. Mohd Usman		Member”

(Emphasis Supplied)

(ii) N.O.C. FOR REPAIR OF MOSQUE (at pg. no.67)

*“DELHI WAQF BOARD
(Govt. of NCT of Delhi)
5028, Daryaganj, New Delhi – 110002*

No.GA/M&Q/10/GPXXIV/330/91/DWB/478 Dated:26-04-2016

N.O.C. FOR REPAIR OF MOSQUE

There is a Waqf property known as “Shahi Masjid Badarpur and Chhoti Masjid and Qabristan””situated at Badarpur, New Delhi. The Delhi Waqf Board has no objection in carrying out certain repair work of the above-stated Mosque. The expenses thereof shall be borne by the Namazees of the Mosque.

This N.O.C. is subject to the compliance of all Municipal-by-laws and to any other law as prevalent in the Union Territory of Delhi.

This issues with approval of the competent authority of Delhi Waqf Board.”

Sd/-

(K. Alam Farooqui)
Section Officer

*The Managing Committee,
Shahi Masjid Badarpur nad Chhoti Masjid
And Qabristan, Badarpur,
New Delhi*

Copy to:-

*The Area Z.W.O. to monitor the repair/renovation work and
ensure the fulfillment of the prescribed conditions”*

(Emphasis Supplied)

**(iii) N.O.C. FOR RE-CONSTRUCTION WORK (at pg.
no.68)**

*“DELHI WAQF BOARD
(Govt. of NCT of Delhi)
5028, Daryaganj, New Delhi – 110002*

No.GA/M&Q/10/GP/XXIV/330/91/DWB/814 Dated:29-06-2016

N.O.C. FOR RE-CONSTRUCTION WORK

An application dated 27-06-2016 received from Managing Committee, Shahi Masjid and Chhoti Masjid Qabristan, Badarpur, New Delhi – 110044 regarding new-reconstruction of Chhoti Masjid. The Waqf property is duly notified in the Official Gazette of Delhi Administration is under the management and control of Delhi Waqf Board through a Management Committee. The Delhi Waqf Board has no objection in carrying out necessary re-construction work of the above-stated Masjid by the Managing Committee. The expenses thereof shall be borne by the Managing Committee.

The N.O.C. shall be subject to following terms and conditions:

- (i) The fresh construction shall form part of Waqf.*
- (ii) The Managing Committee shall not violate any law or byelaws related to building construction.*
- (iii) The Managing Committee shall not use the fresh*

construction for any commercial activity.

- (iv) *The Managing Committee shall keep true account of income and expenditure under the head of construction.*

The N.O.C. is subject to the compliance of all Municipal-by-laws and to any other law as prevalent in the Union Territory of Delhi.

Sd/-
(Mohd. Haider Ali Khan)
Section Officer (R&P)

*The Managing Committee
Shahi Masjid & Chhoti Masjid Qabristan,
Badarpur, New Delhi -110044”*

(Emphasis Supplied)

8. It is important to note that other than these documents and some photographs which are placed on record, the Society - Intijamiyan Committee Badarpur Shahi Masjid, Chhoti Masjid and Qabristan has not placed any evidence to support the construction over the land in question which the Committee is claiming entitlement to in the application. None of the revenue records or the Government Notification support the plea set up before us.

9. The first document which is relied upon extracted above is the Office Order dated 26.04.2016. It is important to note that this document is relied by the Intijamiyan Committee Badarpur Shahi Masjid, Chhoti Masjid and Qabristan to claim that this Society was managing certain properties. However, the documents show that the Delhi Waqf Board had merely permitted 15 people to manage “day-to-day” affairs of the mosque and Kabristan. It had not authorized or conferred any right on any society or the applicant to

do so.

10. So far as the photographs enclosed with the application are concerned, they also do not relate to a 500 hundred year old mosque or structure as has been factually stated in CM No.31133/2016. The photographs which are placed (on pages 72-75) show large scale brand new construction being raised which clearly establishes the attempt to effect encroachments and raise unauthorized constructions under the guise of repairs. The scale of the scaffolding in the photographs reflects the magnitude of the constructions being undertaken.

11. It is noteworthy that Delhi Waqf Board while granting NOC has very carefully endorsed that the same was being issued “*subject to the compliance of all Municipal-by-laws and to any other law as prevalent in the Union Territory of Delhi*”. The Delhi Waqf Board has also not permitted any fresh construction to be raised by any person. Thus, the applicant Society Intijamiyan Committee certainly has not been authorized or recognised by the Delhi Waqf Board and the illegal attempt to encroach on property cannot be permitted.

12. So far as existence of the graveyard is concerned, the same stands recognized in the above records. So far as its existence on Khasra Nos.36/26 is concerned, the same stands recognized by the DDA and has been notified by authorities.

13. Mr. Sanjeev Sabharwal, learned Standing Counsel for the DDA/respondent No.2 submitted that the intervener - Intijamiyan Committee Badarpur Shahi Masjid, Chhoti Masjid and Qabristan

has no right, title and interest in the graveyard or on the Government land over which several unauthorized constructions have been made.

14. The petitioner complains that the intervener is effecting large scale unauthorized and commercial activities on the land in question.

15. It is thus directed as follows:

- (i) The Intervener/Intijamiyan Committee Badarpur Shahi Masjid, Chhoti Masjid and Qabristan shall forthwith remove all illegal and unauthorized constructions carried out on the Government land and the graveyard which is being managed by the Delhi Waqf Board. Such action shall be completed within four weeks from today. In case, it does not remove the illegal and unauthorized encroachments/constructions, it shall be the responsibility of the respondent Nos.1 and 2 to get the same removed.
- (ii) A direction is also issued to the Deputy Commissioner of Police (South East) to ensure adequate Police assistance to the respondent Nos.1 and 2 to execute this order.
- (iii) DDA is also directed to demarcate the portion of Khasra No.36/26 and Khasra No.36/27 and ensure that the same is properly protected.
- (iv) It is also directed to the respondents to ensure all the

commercial activities on Khasra No.36/26 and Khasra No.36/27 are brought to an end.

(v) Status report in this regard shall be filed by the respondent Nos.1 & 2 before us within four weeks.

(vi) A direction is also issue to the DCP (South East) to place a compliance report of our above directions before us.

16. Writ petition is disposed of in above terms.

Dasti.

ACTING CHIEF JUSTICE

REKHA PALLI, J

MAY 24, 2017/pmc