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

Date of Decision: 20th November, 2019

+ W.P.(C) 1846/2018

MAHTAB AND ORS.

..... Petitioners

Through: Ms. Preeti Gupta & Mr. Sitab Ali,
Advs.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Devesh Singh, ASC (Civil) with
Ms. Sukriti Ghai & Mr. Rahul Adhana, Advs. for
GNCTD

Mr. Hasmat Nabi, ASC with Ms. Farah Naaz,
Adv. for R-3

SI Naveen Kumar, PS S.L. Colony

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, Chief Justice (Oral)

1. This Public Interest Litigation has been preferred with the following prayers:

“a) A writ of certiorari calling for the records of the case and peruse the same;

b) A writ, orders or directions in the nature of certiorari to quash the action/ inaction on the part of the Respondents as an illegal, arbitrary, malafide, discriminatory, vindictive, unjust, unwarranted, uncalled for and without jurisdiction action/inaction, FIRSTLY, not taking 'necessary and appropriate' legal action as mandatory under Section 55 of the Wakf Act, 1995, SECONDLY, not removing the Encroachers

on public land/graveyard), at Muslim Graveyard/Qabristan admeasuring 1 Bigha 6 Biswa, situated at Khasra No. 124/84, Village Sarai Kale Khan, Delhi-110013 and THIRDLY, not demolishing the said "illegal construction and un-authorized encroachment" thereof, in gross violation of the rules, regulation, and policy in this regard and also in gross violation of the settled law declared by the Hon'ble Supreme Court of India beside being in violation of the legal and fundamental rights of the Residents of the area;

c) A writ, orders or directions in the nature of mandamus commanding/ directing the Respondents to take 'necessary and appropriate' legal action as mandates Section 55 of the Wakf Act, 1995 and further direct to remove Encroachers on public land / graveyard), situated at Khasra No. 124/84, Village Sarai Kale Khan, delhi-110013 and further direct them to demolish the said illegal and un-authorized construction thereof;

d) A writ, orders or directions directing / prohibiting any further "illegal encroachment & unauthorized construction" at Muslim Graveyard/ Qabristan, situated at Khasra No. 124/84, Village Sarai Kale Khan, Delhi-110013, in violation of law, rules, regulations, bye-laws and policy in this regard."

2. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, it appears that there are allegations by these petitioners that living persons are encroaching upon a graveyard – a place where dead persons are buried and hence, the petitioner is seeking demolition of such unauthorized construction made at the behest of the respondents. Counsel appearing for the respondent No.3 – Delhi Wakf Board submitted that it has already filed a counter affidavit. It is further submitted by the counsel for respondent No.3 that they are in the process of removing the said encroachment by giving notice under Section 54 of the Wakf Act, 1995 to the encroachers and the proceedings pursuant thereto are already going on. Counsel for respondent No.3 has relied upon the

“Procedure for removal of encroachment from Wakf property” under Section 54 of the Wakf Act, 1995.

3. In view of the aforesaid submissions and also looking to the fact that the respondent No.3 has already started action for removal of the encroachments under Section 54 of the Wakf Act, 1995, no much directions are required to be given to the respondent No.3, nonetheless, we expect from the respondents that they shall complete the process of removal of the encroachments from the property of the Wakf Board under the Wakf Act, 1995 in accordance with law, rules, regulations and Government policy applicable to the facts of the present case.

C.M. No. 7695/2018 (Stay)

4. In view of the final order passed in W.P.(C) 1846/2018, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 20, 2019

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