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

Date of Decision: 04.03.2020

+ W.P.(C) 13082/2019

JAMIA ARABIA NIZAMIA WELFARE EDUCATION SOCIETY

..... Petitioner

Through: Petitioner in person

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Pawan Mathur, Standing Counsel
for DDA

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL.53338/2019 (*Exemption*)

Allowed, subject to all just exceptions.

Application stands disposed of.

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

“(a) Issue a Writ in the nature of mandamus and or any other appropriate order or direction of like nature directing the Respondents Nos. 1 to 3 to forth with remove the encroacher and unauthorized building constructed in the land attached to

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Dargah Bibi Fatima Sam (one of the property among 123 valuable properties notified in the year 1984 to be given to Respondent no.4, DWB), which has been encroached by the respondent No.5 in connivance with respondent No.4 despite the stay granted by Hon'ble High Court of Delhi.

(b) Issue a Writ in the nature of mandamus and or any other appropriate order or direction of like nature directing the Respondents Nos. 1 to 3 to take stern action against respondent nos. 4 and 5 who are involved in the encroachment with sheer violation of stay order.

(c) Any other Order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may also be passed in favour of the Petitioner and against the Respondents.”

2. Having heard the petitioner in person and learned Standing Counsel for the Delhi Development Authority and looking to the facts and circumstances of the case, it appears that several grievances have been ventilated by this petitioner about the so-called illegal and unauthorised construction in the property attached to Dargah Bibi Fatima Sam, Kaka Nagar (one of the property among 123 valuable properties notified in the year 1984 to be given to the respondent No.4 (Delhi Wakf Board). It is submitted by the petitioner in person that the said illegal construction is upon the land and building bearing No.43/1, Kaka Nagar, Wallesly Road also known as ‘Dargah Bibi Fatima Sam’.

3. In our considered view illegality or otherwise of the construction and use thereof cannot be decided in the writ petition on the basis of mere assertions and annexures. To establish the legality or otherwise of the construction and the use thereof, cogent and convincing evidences are required to be led before the appropriate authority or court. Hence, we see

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no reason to entertain this writ petition. None the less, respondent No.1 shall look into the grievances of the petitioner and if there is any illegal construction/encroachment on the property in question, the same will be removed by respondent No.1 in accordance with law, rules, regulations and Government policy applicable to the facts of the present case after giving adequate opportunity of being heard to the owner/occupier of the premises in question.

4. With the aforesaid observations, this writ petition is hereby disposed of.

CHIEF JUSTICE

C.HARI SHANKAR

MARCH 04, 2020
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