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

+ **W.P. (CRL) 1101/2020 & CRL.M.A. Nos. 10283-84/2020**

MOHD. ARSHAD AHMAD

..... Petitioner

Through: Mr. M. Sufian Siddiqui, Adv.
Ms. Deepika V. Marwaha, Adv. for
applicant.

versus

THE STATE NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Richa Kapoor, ASC for State/R1
& 2.
Mr. Saleem Ahmed, Sr. Standing
Counsel with Ms. Charu Dalal,
Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 17.08.2020

The petitioner, who claims to be *Imam* of the Masjid Dargah of Hazrat Khwaja Baqi Billah (R.A.) situate at Eidgah Road, Singhara Chowk, Paharganj, New Delhi has made the following principal prayer :

“a. Direct the respondents, especially the respondent no.2, SHO, P.S. Nabi Karim, District-Central, Delhi to provide adequate protection to the petitioner by ensuring that no hindrance/obstruction/intimidation is caused to the petitioner whilst discharging his official duties as an Imam at Masjid Dargah of Hazrat Khwaja Baqi Billah (R.A) situated at Eidgah Road, Singhara Chowk, Paharganj, New Delhi.”

2. The essence of the grievance is that there have been certain encroachments on the *Qabristan* abutting the Masjid for a long time and that in various legal proceedings, including writ petition bearing W.P.(C) No. 12342/2019 pending before a Co-ordinate Bench of this court, certain orders have also been made for eviction of the encroachers.
3. Mr. Siddiqui, learned counsel for the petitioner however submits that during the prevalent coronavirus pandemic and the consequent lockdown, when all places of religious worship including the mosque, were closed, taking advantage of the situation certain further illegal structures have been constructed by the encroachers on the *Qabristan*.
4. Counsel alleges that upon re-opening, the petitioner also found that some encroachers were threatening him with violence and harm, including threats of false implication in criminal cases, to discourage the petitioner from seeking action against them; and were also interfering in the petitioner performing his official and religious duties as *Imam*.
5. Written complaints in this regard, including complaints dated 08.07.2020 and 10.07.2020, were made by the petitioner in relation to an incident of 05.07.2020 to the Commissioner of Police, to the concerned DCP as well as the concerned SHO PS : Nabi Karim, but to no avail. This led to the filing of the present writ petition.
6. Notice in this matter was issued on 21.07.2020. Consequent thereupon status report dated 11.08.2020 has been filed by respondents Nos. 1 and 2; and a reply dated 16.08.2020 has been filed on behalf of respondent No. 3/Delhi Waqf Board.

7. In the meantime, a society by name Anjuman Khuddam-e-Qabristan & Dargah Hazrat Khawaja Baqi Billah & Dargah Hazrat Akhundji & Ahata filed CRL.M.A. 10283/2020 seeking impleadment in the matter, alleging that the petitioner was not *Imam* of the Masjid at all; and that the applicant society was the rightful custodian of the mosque and was entitled to perform all religious and official duties in relation thereto.
8. Another application CRL. M.A. No. 10284/2020 was also filed by the same society seeking variation/discharge of order dated 21.07.2020 made in the matter, whereby an interim protective order was granted to the petitioner.
9. In status report dated 11.08.2020, respondents Nos. 1 and 2 have set-out the details of the complaints received from the petitioner as regards alleged unauthorised construction and encroachment in the property; as also of alleged harassment, misbehaviour and threats to the petitioner. Respondents Nos. 1 and 2 state that they have conducted an inquiry, which however does not bear-out the allegations.
10. In the status report, it is recorded that there has been no *fresh* unauthorised construction on the property of the *Dargah*; and that in any case, the agency to deal with unauthorised construction is the concerned municipal corporation and not the Delhi Police, which corporation has already been informed about the complaint.
11. The status report also points-out the pendency of the other writ petition being WP (C) No. 12342/2019 before a Co-ordinate Bench of this court. In conclusion, the status report says that in compliance of

the directions issued by this court *vidé* order dated 21.07.2020, adequate police protection is being provided to the petitioner for discharging his official and religious duties as *Imam*, as and when required. The status report also says that insofar as the dispute about the petitioner's authority to function as *Imam* is concerned, that is subject matter of civil disputes in which the rival claims of the parties may be decided.

12. In reply dated 16.08.2020 filed by the Delhi Waqf Board, it has *inter alia* been stated :

“3. That the contents of the para under reply are wrong and denied. It is submitted that the petitioner Mr. Mohd Arshad Ahmad has been appointed as Imam of Masjid Dargah on 01.01.2001 by Delhi Waqf Board and is still continuing at the Post of Imaam. As per the records available with the Delhi Waqf Board, the petitioner is the Deputy/Naib-Sajadanashin of Dargah, Masjid Hazrat Khwaja Baqi Billah (R.A.) and the Imam duly appointed at the mosque in question by the Islamic Scholars of eminence in the meeting dated: 18.03.1996. Significantly, in the aforesaid meeting, consequent upon the death of petitioner's father who was the Sajjadanashin of the aforesaid waqf property in question, the petitioner's eldest brother namely Dr. Mohd. Mujeeb Ahmed Sb was appointed as the Sajjadanashin of the Dargah, Masjid Hazrat Khwaja Baqi Billah (R.A.). The said event is documented in the form of a Resolution dated: 18.03.1996. Subsequently, the petitioner's such appointment was also ratified by the Delhi Waqf Board vide an office order dated: 01.01.2001 whereas the petitioner's eldest brother's appointment as Sajjadanashin was ratified vide an Office Order dated: 30.06.2001. the copy of the office order dated 30.06.2001 is annexed as Annexure-R-4.

It is pertinent to mention that though Delhi Waqf Board, in exercise of its powers set-out in various Sections of the Waqf Act, 1995, is competent to appoint any person in place of the petitioner, however, the Delhi Waqf Board has neither removed the petitioner nor has any intention to remove the petitioner in future from the position of Imam, save and except for the reason when it becomes necessary. Thus, the petitioner

continues to be Delhi Waqf Board's Imam at the mosque in question and has been discharging his duties as Imam without any complaint from any worshipper since his ratification as an Imam in the Year 2001 to till date.

It is submitted that though the office order dated 01.01.2001 issued by the Delhi Waqf Board in favour of the petitioner stipulates that the petitioner will receive a monthly honorarium for performance of the functions of an Imam at the mosque in question, however, the petitioner has neither claimed nor has received any amount towards that. It is pertinent to point-out that non receiving of honorarium does not make the petitioner's position any better or worse. The petitioner still remains under the administrative control of the Delhi Waqf Board bound by the directions of the Delhi Waqf Board."

(emphasis supplied)

13. Accordingly, the Delhi Waqf Board has in effect affirmed the petitioner's position as *Imam* of the Masjid.
14. Ms. Deepika Marwah, learned counsel appearing for the society seeking impleadment, vociferously disputes the position of the petitioner as *Imam* and presses her impleadment and modification applications. Counsel contends that by way of the present proceedings, the petitioner, in connivance with the Delhi Waqf Board, is attempting to legitimise his position as *Imam*, which he is not.
15. Be that as it may, what weighs with the court is the following :
 - a. *Firstly*, that the limited prayer in the present *criminal* writ petition is for the petitioner's protection against hindrance, obstruction, intimidation and threats in the discharge of his duties as *Imam* of the Masjid ;
 - b. *Secondly*, that the Delhi Waqf Board has clearly asserted in its reply that the property in question is *waqf* property and that the Delhi Waqf Board affirms the position of the petitioner as *Imam* of the Masjid ;
 - c. *Thirdly*, that there is a writ petition in relation to alleged encroachment and unauthorised construction in the property

property which is pending before the concerned Bench; and those issues are not, and indeed cannot be, the subject matter of the present *criminal* writ petition; and

- d. *Fourthly*, that insofar as the allegations made by the impleadment applicant as to the status of the petitioner as *Imam* are concerned, that issue is also not within the scope of the present petition; and that issue would also involve complex questions of fact, which must be raised, if at all, in separate and substantive legal proceedings, in accordance with law.
16. In view of the above, the present petition is disposed of with a direction to respondents Nos. 1 and 2, namely the State (NCT of Delhi) and SHO, PS : Nabi Karim, to ensure that no hindrance or obstruction is caused to the petitioner in performing his official and religious duties as *Imam* of the Masjid in the context of the allegations contained in this petition; and in case of any eventuality, to respond and deal with any breach of peace or law and order, in accordance with law.
17. It is made clear that nothing in this order shall be construed as an adjudication or affirmation of the position of the petitioner as *Imam* of the Masjid; nor will this order in any manner prejudice the claim, if any, that the applicant society may have against the petitioner or against the Delhi Waqf Board in that regard.
18. The present petition stands disposed of.
19. Pending applications, if any, also stand disposed of.
20. CRL.M.A. Nos. 10283/2020 and 10284/2020 are dismissed.

ANUP JAIRAM BHAMBHANI, J.

AUGUST 17, 2020/uj