

\$~

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

Date of Decision:- 20.12.2021

+ **W.P.(C) 10949/2021 & CM APPL. 33752/2021 (directions).**

**SH. VIRAHT SAHNI THROUGH HIS POWER OF ATTORNEY
HOLDER, SHRI SIDHANT KAPUR & ANR. Petitioners**

**Through Mr. P. V. Kapur, Sr. Adv. with Mr. V.
K. Nagrath, Ms. Kaveri Kapur and
Mr. Jitender Kumar, Advs.**

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Through Mr. Anupam Srivastava, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioners have approached this Court inter alia seeking a direction to the respondent no.1 for removal of an unauthorized construction just outside their house/property bearing No. B-72, Defence Colony, New Delhi. The petitioners submit that the structure in question is a raised platform around a tree, which platform is painted orange and some idols and photographs of Hindu Gods and Goddesses have been placed thereon, photographs of which have been annexed as Annexure P-1 to the present petition.
2. The grievance of the petitioners is that the aforesaid illegal construction not only amounts to encroachment but is also causing nuisance by allowing congregation of various elements indulging in

unlawful activities behind the said structure, which according to the petitioners poses security hazards not only to them but also to the public at large. It is the petitioner's case that the respondent no. 1 has been negligent in discharging its duties and despite various representations made by them, the said respondent has failed to free the public land from the said encroachment.

3. On the last date, keeping in view the petitioner's plea that the encroachment was not even a religious structure where any prayers were being offered, this Court had directed the SHO of the area to file a report regarding the number of visitors, to the site in question with details of offerings, if any being made by them to the idols on the site. It was also directed that the report would be prepared on the basis of a vigil to be kept on the site by police personnel for atleast 24 hours. The said report has been filed and the relevant extract of the same reads as under:

"1) That in compliance with the order of this Hon'ble Court dated 7th December 2021, I had deputed two constables to maintain vigil on the subject "Chabutara" constructed around a tree on the Bhishma Pitahmah Marg, New Delhi. The constables were deployed for a period of 24 hours from 8 AM on 8th December 2021 till 8 AM on 9th December 2021.

2) That I say the Chabutra contains some idols and pictures of Hindu Gods. During this period neither Pooja/Aarti was performed, nor anyone stopped to worship the idols. There is no priest on the subject site and no one offered any offerings to those idols. However, some passer-by did fold hands before the idols."

4. By placing reliance on the orders passed by the Apex Court in SLP No. 8519/2006 on 29.09.2009, 07.12.2009 and 31.01.2018, Mr. P.V Kapur, learned senior counsel for the petitioners submits that the Apex Court as way back as on 29.09.2009 directed that no unauthorized construction shall be permitted to be carried out in the name of a Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places. The relevant extract of the said order reads as under -

“No unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places etc. In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case-to-case basis and take appropriate steps as expeditiously as possible” In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible”

5. He therefore contends that keeping in view the aforesaid directions issued by the Supreme Court, the respondents had themselves informed this Court on the very first date of hearing, i.e., 29.09.2021 that they are conscious of their duties to remove all unauthorized constructions and had therefore assured this Court that they will take immediate steps to demolish the aforesaid unauthorized construction. However, the respondents have not only failed to carry out the demolition but have now sought to take a wholly baseless stand that

the encroachment cannot be removed without the prior approval of the Religious Committee constituted under the orders of Hon'ble the Lieutenant Governor of Delhi (Lt. Governor) passed on 12.02.1991.

6. Learned senior counsel for the petitioners submits that the aforesaid stand overlooks the fact that in 2009, the Apex Court had in no uncertain terms directed that no such encroachment can be permitted. Furthermore, any earlier directions to the contrary, passed by the Hon'ble Lt. Governor in 1991 could not absolve the respondent of their duty to take appropriate steps to ensure that no further unauthorized construction takes place after 2009.
7. Without prejudice to his aforesaid submissions, he submits that even otherwise, the unauthorized construction in question merely appears to be an attempt by some unscrupulous persons to take possession of the said land as the report filed by the SHO pursuant to an inspection carried out under the orders of this Court dated 07.12.2021 makes it evident that there is neither any priest available on the site nor are any offerings ever being made to the idols on the site in question. He, therefore, contends that the unauthorized encroachment would not even qualify as a temple or a religious structure and therefore prays that the respondents be directed to forthwith demolish the unauthorized structure.
8. On the other hand, Mr. Srivastava, learned counsel for respondents while not denying that neither any devotees nor any priest were found at the site as per the report of the SHO, prays for time to send a proposal for demolition of the encroachment in a proper format to the religious committee for its consideration. He submits that in the light

of the orders passed by the Lt. Governor on 12.02.1991, no demolition of any religious structure, whatsoever, can take place in the city without the prior approval of the religious committee. Mr Srivastava further draws my attention to the communication dated 18.10.2021 issued by the Home Department (Police-II) to contend that once the relevant proposal is forwarded by the Public Works Department to the religious committee, the same will be considered expeditiously. Finally he submits that there is nothing in the directions issued by the Apex Court in *Union of India v State of Gujarat & Ors.* SLP (C) No. 8519/2006 which would in any manner nullify the directions issued by the Lt. Governor and therefore prays that time be granted to the respondents to refer the matter to the religious committee for further appropriate actions.

9. Since from the rival submission of the parties, it emerges that the respondents are justifying their failure to take their action against the evidently unauthorized constructions by placing reliance on the orders of the Lt. Governor passed on 12.02.1991 based on which the circular dated 18.02.1991 was issued, it would be at this stage appropriate to refer to the note containing the said order. The said note reads as under:

“It was felt that the present system whereby the land owning agencies take orders of L.G. directly on file regarding demolition of religious structures on public lands which are in the nature of encroachment needs to be discontinued.

Henceforth a committee comprising of Secretary (Home) Addl. C.P. Special Branch), Addl. C.P. of the Range concerned and the representatives of the land

owning agency may be authorized to take such decisions.”

10. A perusal of the aforesaid note in itself shows that the circular dated 18.02.1991 on which heavy reliance has been placed by the respondents was only to ensure that orders for demolition of religious structure on public land are not directly referred to the Lt. Governor and are instead referred to a four-member committee constituted under the directions of the Lt. Governor. The aforesaid order, however does not state that demolition should not take place even if the same is contrary to the orders passed by a competent court of law. In my opinion, the order issued by the Lt. Governor cannot be read out of context as the same appears to have been issued so that the Lt. Governor does not pass orders for removal of unauthorized religious structures without taking into consideration all relevant factors for which purpose, a four member committee was constituted. As noted above, once the Apex Court had way back in the year 2009 directed that no such unauthorized construction would be permitted by any of the States or the UTs, in the name of any temples, church, mosque etc., it was incumbent upon the respondents to ensure that these directions of the Apex Court are meticulously complied with. In my view, in the light of these directions issued by the Apex Court way back in 2009 and lastly in 2018, the respondents could not have been permitted to carry out any unauthorized constructions on any public land. The encroachment in question which has taken place only on account of the utter negligence on the part of respondent no. 1, is clearly in blatant violation of the specific directions issued by the

Supreme Court. In the light of these facts, the respondents cannot be permitted to take the plea that the matter still needs to be referred to the religious committee for its approval. From a perusal of the report of the concerned SHO noted hereinabove, it is crystal clear that the aforesaid unauthorized platform is not really being used as a religious structure as neither any prayers are being held there nor any offerings being made nor is any priest available at the site.

11. I therefore do not find any merit in the submission of learned counsel for the respondent that since the Home Department of Govt. of NCT of Delhi had on 18.10.2021 has directed the PWD to submit a fresh proposal after removal of structures except the *sanctum sanctorum* where the idols are placed so that the same can be placed for consideration by the religious committee, this Court should grant time to the respondents to place the proposal in terms of the directions issued by the Home Department (Police-II), New Delhi before the religious committee. Once it is the respondents' own stand based on the report from the concerned SHO that the encroachment is on a public land and is not being used for any religious purpose, I do not see any reason as to why the said encroachment should be permitted to continue any further.

12. For the aforesaid reasons, the writ petition is allowed by directing the respondent no.1 to remove within 10 days, the aforesaid illegal platform on public land, the photographs of which have been annexed as Annexure P-1 to the writ petition. The respondent no.3 will render full co-operation to respondent no.1 in carrying out the said demolition and will provide the necessary police assistance if

required. However, since certain unclaimed idols and photographs are lying on the site in question, the SHO Kotla Mubarakpur is directed to ensure that the said idols and photographs are safely shifted to any nearby temple in the vicinity.

(REKHA PALLI)
JUDGE

DECEMBER 20, 2021
acm/ms

