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

Date of Decision: 24th December, 2021

+ **W.P.(C) 15100/2021 & CM APPLs. 47603-04/2021**

SARASWATI & ORS. Petitioners

Through: Mr. Haneef Mohammad, Mr. Sasi
Bhushan and Md. Maroof, Advocates.
(M:9818238292)

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vijay Joshi, Sr. Panel Counsel for
R-1. (M:9873677817)
Mr. Sameer Vashisht, ASC (Civil),
GNCTD with Ms. Sanjana Nangia,
Advocate for R-2 & 3.
Ms. Mini Pushkarna, Standing
Counsel for DUSIB with Ms.
Khushboo Nahar and Ms. Latika
Malhotra, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. This petition has been taken up on transfer in the typed supplementary list.
3. The present petition has been filed on behalf of three Petitioners namely - Mrs. Sarawati, Mr. Vinod Kumar Sharma and Mr. Gyan Singh Sharma, seeking the following reliefs:

“a) Direct Respondent Authorities (including the Ministry of Railways, Government of NCT of Delhi, DUSIB) to rehabilitate the Petitioners prior to eviction/demolition of the Dharmshalas;
b) Direct Respondent Authorities (including the Ministry of Railways, Government of NCT of Delhi, DUSIB) to follow the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 and the Protocol (for removal of Jhuggis) in letter and spirit;
c) Pass any other or such further order as be deemed fit in facts and circumstances of the present case.”

4. This petition finds its genesis in the order dated 27th September, 2021, passed by this Court in **FAO 36/2021** titled **Neeta Bhardwaj and ors. v. Kamlesh Sharma** and connected matters, in respect of various unauthorised occupants and illegal encroachers in the premises of the *Kalkaji Mandir*.

5. While hearing the bunch of appeals, petitions and suits related to the *Kalkaji Mandir*, vide order dated 27th September, 2021, considering the deplorable condition of the *Kalkaji Mandir* premises, this Court had passed, *inter alia*, the following directions:

- (i) Justice (Retd.) J.R. Midha was appointed as the Interim Administrator of the *Kalkaji Mandir* for the purposes of overall management, upgradation and re-development of the *Mandir*.
- (ii) All the encroachers and illegal occupants were directed to vacate the *dharamshalas* and other spaces, which were in their and their family's occupation. Most of the unauthorised occupants were not paying *tehbazari* and in any event, were conducting their businesses in the form of shops/stalls/kiosks in

the *Mandir* premises.

- (iii) While giving directions for removal of illegal encroachers and unauthorised occupants, the Id. Administrator was requested to, on a case to case basis, direct alternate accommodation with DUSIB/SDMC, in case of those entitled for rehabilitation in accordance with law.

6. This order was passed on 27th September, 2021, and was well within the knowledge of the Petitioners.

7. The Petitioners herein were residing in the *dharamshalas*, clearly in illegal occupation. All the three Petitioners had thereafter, appeared before this Court on 9th December, 2021, through their Counsel – Mr. Sasi Bhushan and had submitted undertakings to the following effect

“I, _____ undertake that, I am ready to vacate the above noted Dharmshala premises as directed by this Hon’ble Court subject to providing alternative accommodation by SDMC or DUSIB or JJ slum department, Delhi on rehabilitation scheme. That I have no shelter for myself and my family (consisting of _____) in Delhi or in _____. Since last 2 years due COVID19 I have no sources of earning to arrange any rented accommodation in Delhi, presently my condition is miserable and I am also unable to earn the bread and butter for my family. I have been running a small shop of Phool & Prasad shop since last 22 years, due to sudden closer of the said shop, my right to livelihood under Article 19(1)(g) also badly affected. Hence you honor may allot alternative area/premises on rehabilitation scheme under relevant provisions of Street vendors (Protections of livelihood and regulation of street vending) Act, 2014 or any other Act for the time being

in force. I also under take to pay the license fee/allotment charges, if any fixed by this Hon'ble Court or any Authority."

8. While accepting the undertakings, insofar as the shops are concerned, the following directions were issued:

"a) All the shopkeepers are acceptable to vacate the existing spaces in their occupation. Accordingly, without going into the contents of the actual documents signed and placed before the Court, all the undertakings to vacate the premises are accepted by this Court and taken on record.

b) The Id. Administrator has placed on record 'standard undertakings' which are being sought from all the shopkeepers for the purpose of vacation and consideration for reallocation. The format of the same has been publicly displayed at the Mandir premises. This Court has perused the same, and the revised version of the said undertaking is attached with this order as Annexure-I. Accordingly, all the shopkeepers shall identify their respective shops, their own identity and give undertakings in the format as attached with this order, to the Id. Administrator. Each of the shopkeepers shall, in paragraph 6 of the undertaking, mention the amount of monthly licence fee that they are willing to pay for the alternate premises, which is now proposed to be allotted to them, if eligible. For the said purpose of furnishing the undertakings, all the said shopkeepers shall appear before the Id. Administrator from 11th December, 2021- 3:00 P.M. onwards.

c) Upon the said exercise and verification being completed on or before 14th December, 2021, the shopkeepers shall be given reasonable time by the Id. Administrator for removing their articles and belongings from the premises, from the shops lying sealed.

d) Upon their articles and belongings being removed, the Administrator shall, along with the cooperation of the civic agencies including the SDMC, DDA, Delhi police and all other governmental authorities whose assistance would be requisitioned by the ld. Administrator, remove all the unauthorised construction/encroachment in the area and fully clear up the area that has been occupied by the shopkeepers. The said clearing up shall be completed on or before 25th December 2021.”

9. Insofar as the Petitioners who were, apart from running kiosks/stalls, also residing in the *dharamshalas*, the following additional directions were issued:

“11. Insofar as those persons who are residing within the Mandir premises, including within the Dharamshalas, i.e., the three clients of Mr. Bhushan, ld. Counsel-Ms. Saraswati, Mr. Vinod Kumar Sharma and Mr. Gyan Singh Sharma, and one client of Mr. Dewan, ld. Counsel- Ms. Suman Shahi/Mr. Ram Vilas Shahi and their respective families, are concerned, the following directions are issued:

a) They shall vacate their residences along with their families, positively, on or before 25th December, 2021. It is made clear that no extension shall be granted in respect of the same, i.e., in respect of vacating the residences.

*b) The said families, whose residences are being vacated, are free to approach the DUSIB/DDA for any alternate accommodation. Ms. Malhotra, ld. Counsel appearing on behalf of Ms. Mini Pushkarna, ld. Standing Counsel, who appears for DUSIB, submits that *रैनबसेरा* (Night shelters) are available to persons who are using the Kalkaji Mandir premises as residences and they may approach DUSIB for the*

same. However, the use of the same would be on a temporary basis and no permanent rights shall be claimed by the said persons. Accordingly, the families who have been asked to move their residences, may contact the official of DUSIB namely Mr. Rajender Gosain, Deputy Director-Night Shelter, (M:9560596102), for the purpose of allotment of रैनबसेरा (Night shelters), if needed. It is however made clear that irrespective of the allotment of the said shelters/ alternate accommodation, the families in the residence at the Mandir shall vacate the space occupied by them, on or before 25th December, 2021.”

10. In the said order dated 9th December, 2021, extracted above, it was clearly mentioned that in respect of the Petitioners and their families residing in the *dharamshalas*, unauthorizedly, they were to vacate the said premises, however they were free to approach the DUSIB/DDA for alternate accommodation. The name of the official, who was to deal with such requests, was also provided in the order. However, today, i.e., one day before the deadline to vacate the *dharamshalas* i.e. 25th December 2021, expiring, the present writ petition has been filed by the Petitioners.

11. Ld. Counsel for the Petitioners submits that the Petitioners ought to be given alternate accommodation and ought not to be evicted from their residences, especially since they are large families with children.

12. Ld. Counsels representing DUSIB, Union of India and the GNCTD, have appeared on advance notice. Ms. Mini Pushkarna, Ld. Standing Counsel appearing for DUSIB opposes the petition and submits that only one telephone call was made on behalf of the Petitioners to the Deputy Director, Night Shelters, for the purposes of making some enquiry. However, thereafter, no attempts are stated to have been made by the Petitioners to

obtain the *रैन बसेरा* (Night shelters) facility from DUSIB. She further submits that even today, if the Petitioners approach the said official with a request, the *रैन बसेरा* (Night shelters) would be made available temporarily, on a 24x7 basis for the next few days.

13. Ld. counsel for the Petitioners, submits that the *रैन बसेरा* (Night shelters) is only a night shelter, and the families availing the same cannot stay in these accommodations during the day time. This submission is controverted by Ms. Pushkarna, Id. Standing Counsel, who submits that owing to the policy of DUSIB, though the alternate temporary space which is made available is called *रैन बसेरा* (Night shelters), children/women would are not moved from the same even during the day time.

14. Mr. Vashisht, Id. Counsel appearing on behalf of the GNCTD, submits that the Petitioners have already given undertakings, which have been accepted, and this Court has already permitted the Petitioners to contact the Id. Administrator as well as DUSIB for alternate space. However, they have obviously not done so and have rather preferred the present writ petition one day prior to the deadline of vacation of *dharmashala* premises.

15. On behalf of Union of India, Mr. Joshi, Id. Counsel, submits that there is a prayer in the writ petition concerning the Ministry of Railways, which is in fact, in no way concerned with the present Petitioners or the subject matter of the present petition. To this, Id. Counsel for the Petitioners submit that insofar as the Ministry of Railways is concerned, there is an inadvertent error in the prayer (b) sought in this writ petition. Accordingly, the prayer relating to Ministry of Railways is not being pressed. But the said prayer is

stated to be *qua* the Ministry of Housing and Urban Affairs, which is the intended department of Respondent No.1- UOI.

16. Heard Id. Counsels for the parties and perused the record.

17. While passing the orders dated 27th September 2021 and 9th December 2021, in **FAO 36/2021** and connected matters, this Court was conscious of the position that there are several illegal encroachers and unauthorized occupants who have created a deplorable situation in the *Kalkaji Mandir* premises, in complete violation of interests of safety and security of devotees. This Court had observed as under:

“On the basis of all the submissions, reports and proposals, it is clear that directions are required to be issued, in order to ensure that the safety and security of the devotees, who come in large numbers on a daily basis, is safeguarded, and also to provide them with proper convenience and civic amenities

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99. *The manner in which the shopkeepers have constructed their shops has created obstructions in the movement of devotees, as is evident from the photographs which have been placed on record. For the purpose of the safety of devotees and others in the Mandir, it is essential that unauthorised occupants/shopkeepers/tehbazari holders/Chabutara holders who do not have any valid legal rights to occupy the same, are liable to be removed in coordination with the Delhi Police and the SDMC.”*

18. After perusing the various reports filed by the Local Commissioner, Court Receivers, and various civic agencies, it was found that the condition in the *Mandir* in respect of civic amenities, day to day safety and security of the devotees and others in the *Mandir*, space for access to ingress and

egress, etc., was found to be pathetic and requiring emergent remedial measures. Accordingly, this Court had passed various orders directing removal of unauthorized encroachers and the illegal occupants from the *Mandir* premises, both in the form of those running and unauthorizedly occupying shops, stores, *kiosks* as well as those residing with large families in the *dharamshalas* within the *Mandir* premises.

19. Primarily, the *dharamshalas* in the *Mandir* premises are expected to be catering to the devotees who come from outside Delhi, and who may need temporary spaces while they visit the *Mandir* for *darshan* purposes. However, on a query from the Court, the Id. Counsel for the Petitioners, on 9th December 2021, as also today, has submitted that these Petitioners have been residing in the *dharamshalas* for several years, ranging upto 40 years. This is obviously without paying a single penny, in a *Mandir*, which is run by the *baridaars* and other stakeholders with whom litigation is currently pending before this Court. There are more than 60-70 suits which were transferred from various District Courts to this Court, so that the issues could be resolved comprehensively.

20. This position, in the opinion of this Court, is completely apposite to the interest and rights of the devotees who visit the *Mandir* premises. A careful balance needs to be struck between the rights of encroachers, residing within a *Mandir* premises, and using the spaces for commercial interests, like the Petitioners on the one hand and the rights of the lakhs of devotees who visit the *Mandir*. The *dharamshalas* within the *Mandir* are not meant to be occupied permanently by shopkeepers, or their families running shops/*kiosks* in the *Mandir* premises. Further, such occupation is clearly illegal, as no license fee or *teh bazari* was even being paid by the

Petitioners.

21. Further, as against what is attempted to be canvassed by Id. Counsel for the Petitioner today, as also as is visible from a perusal of the grounds in the present writ petition, this writ petition is not in the context of *jhuggi jhopri* dwellers requiring alternate premises, as they are occupying a public land. All the three Petitioners, in the present petition, were not only residing, but through their families, were also running shops/*kiosks*/stores. A perusal of the order dated 9th December 2021, which records the undertakings given by the shopkeepers clearly records undertakings by Mr. Sanjay Baral and Mr. Ajay Baral, who are children of Petitioner No. 1- Mrs. Saraswati. These persons were running their shops/*kiosks* and have been conducting their businesses within the said *Mandir* premises, apart from occupying the *dharamshalas*. Thus, they cannot be compared with the *jhuggi jhopri* dwellers, who occupy public land, and in respect of whom, judgments of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545* and *Sudama Singh v. Deepak Mohan Spolia and ors. (2018) 14 SCC 756*, and of the Id. Division Bench of this Court in *Ajay Maken v. Union of India 260 (2019) DLT 58* have been passed. The Petitioners herein have been unauthorizedly occupying the premises in the *Mandir* and have also been, through their families, unauthorizedly running commercial shops/*kiosks* within the *Mandir* premises for many years now, and a comparison of their situation with the situation of poor *jhuggi jhopri* dwellers is not a fair comparison.

22. Further, this Court while passing directions for vacation of premises, both on 27th September 2021 and on 9th December 2021, in *FAO 36/2021* and connected matters, was clearly conscious of the fact that some kind of

temporary alternate accommodation may be required for them, and for this purpose clear directions were given for them to contact the Id. Administrator appointed by this Court, as well as the concerned officer from DUSIB. The said orders have already been extracted above. Even today, Id. Counsel for DUSIB has made it clear that the Petitioners and their family would be offered **रैन बसेरा** (Night shelters) on a temporary basis, till they make arrangements for their residences, for the whole day. However, yet it seems that no substantial attempt has been made to contact either the Id. Administrator nor DUSIB to attain the said accommodation in **रैन बसेरा** (Night shelters). Further, inspite of the order dated 27th September 2021, asking them to contact the Id. Administrator having been passed more than 2 months before the deadline of vacation, and the recent order dated 9th December 2021, giving them opportunities to contact DUSIB for alternate accommodation in **रैन बसेरा** (Night shelters) having been passed, it is today, i.e., one day before the date of vacation stipulated in the order, that the present writ petition has been filed.

23. Accordingly, in view of the above position, as also the previous orders and directions passed in **FAO 36/2021** and connected matters, this Court does not find any merit in the present writ petition. The writ petition is accordingly dismissed, with no order as to costs. All applications are disposed of.

24. It is however, made clear that the Petitioners are still free to contact either the Id. Administrator, as per the earlier directions or DUSIB for allotment of alternate accommodation, in accordance with law, and upon being contacted, they shall be allotted **रैन बसेरा** (Night shelters), as soon as

possible, either from tonight or from tomorrow night itself i.e. 25th December, 2021. It is further made clear that irrespective of the said request being made or not, the deadline for vacating the *Mandir* premises does not deserve to be extended and the same shall expire on 25th December 2021 itself. The authorities concerned i.e. the SDMC/DDA/Delhi Police and all other authorities shall ensure that the orders passed by this Court in **FAO 36/2021** and connected matters, as also the present writ petition are given effect to, and are implemented in order to remove all illegal encroachers within the *Kalkaji Mandir* premises, as per the deadline stipulated by this Court.

25. No further orders are called for in this petition.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 24, 2021/dk/Rahul/Ak