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

+ CONT.CAS(C) 692/2021, CM APPL. 32712/2021, CM APPL. 36775-36776/2021, CM APPL. 36885-36886/2021, CM APPL. 42721/2021, CM APPL. 1874/2022, CM APPL. 12821-12822/2022, CM APPL. 14382/2022 & CM APPL. 10565/2023

YUVA SANGHARSH SAMITI (RWA REGD.) Petitioner

Through: Mr. Hemant and Mr. Akhil Kumar,
Advs.
M:9891384449

versus

VIJAY KUMAR DEV - CHIEF SECRETARY OFFICE
& ORS.

..... Respondents

Through: Mr. Anupam Srivastava, ASC with
Ms. Sarita Pandey, Adv. for R-1 to 3.
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Date of Decision: 10th May, 2024

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)



1. The present petition had been filed alleging violation of the order dated 16th July, 2021 passed in *W.P.(C) No. 6649/2021*, wherein, the Division Bench of this Court had directed the respondent-authorities to look into the issue of alleged encroachment in the area in question, i.e., unauthorized and illegal construction/structure over public as well as Delhi Gate Qabristan, also known as Jaded Islamic Qabristan Land at Bahadur Shah Zafar Marg, behind Times of India Building, Delhi, in the shape of offices, eating point, shops, etc., on the way to Qabristan, and outside Qabristan.
2. There was a direction by the Division Bench to look into the grievances of the petitioner, and decide its representations, in accordance with law. In case any encroachment was found, requisite action was directed to be taken.
3. Since the requisite action was stated to not have been taken by the authorities, the present contempt petition had come to be filed.
4. Learned counsel appearing for the petitioner states that he needs time to file rejoinder. However, considering the fact that compliance affidavits have been filed by the respondents, long back in July, 2022 and October, 2023 respectively, and submissions have been made by the respondents with respect to the requisite action being taken by the respondents in terms of the order dated 16th July, 2021 passed by the Division Bench, this Court has proceeded to hear the present matter.
5. Learned counsel appearing for the respondent no.5-Municipal Corporation of Delhi (“MCD”) has drawn the attention of this Court to the compliance affidavit filed on its behalf, wherein, it has been stated as follows:



“xxx xxx xxx

6. That pursuant to the aforesaid direction passed by this Hon'ble Court the grievances and the representation were taken into consideration by the competent authority, and also in consonance with the directions passed by this Hon'ble Court, in total 51 occupants were found to be encroacher on the government land.

7. That it would be again pertinent to mention here that office of the Answering respondent on 22/06/2022 had planned a massive encroachment removal action at the site in question consequently out of all the 51, all the 49 illegal structures were completely removed. The two remaining structures are in the form of Electricity Transformers maintained by the BSES Yamuna for feeding electricity to all the surrounding areas, and the site in question was made encroachment free by removing all the malbas and building rubbish. The photographs indicating the action taken are annexed herewith as **Annexure-B (Colly)**.

8. That it is most respectfully submitted on behalf of the answering Respondent that the order dated 16/07/2021 stands complied with in toto and deponent herein tenders his unconditional apology for any delay which might have occurred and assured this Hon'ble Court to be more vigilant in complying with the Hon'ble Court order.”

6. Perusal of the aforesaid affidavit, clearly shows that requisite action has already been taken by the MCD and all the encroachments existing outside the graveyard in question, stand removed.

7. Learned counsel appearing for the MCD submits that there are no instances of re-encroachments in the area, and that the area in question, has been maintained, as an encroachment free area.

8. Learned counsel appearing for respondent no.4-Delhi Waqf Board, likewise, draws the attention of this Court to the reply filed on behalf of the Delhi Waqf Board, pursuant to the application being *CM APPL. No. 10565/2023*, having been filed on behalf of the petitioner.

9. This Court has perused *CM APPL. No. 10565/2023* filed by the petitioner, which had been filed *inter-alia*, with the following prayer:



“A. Allow the present application of the petitioner, thereby direct the Respondent no. 4 to remove the encroachment in the form of unauthorized & illegal construction / structure inside at graveyard land i.e., Delhi Gate Qabristan also known as Jadeed Islamic Qabristan ITO.

xxx xxx xxx”

10. In reply to the aforesaid application, the respondent no.4-Delhi Waqf Board, has filed its reply, in the following terms:

“xxx xxx xxx

6. That notice under section 54(1) of the Waqf Act was again issued on 09.10.2023 to 7 encroachers namely (a)Mr. Madood Rasheed, (b)Mr. Shanker Das, (c)Mr. Jawaid Rasheed, (d)Mr. Mansoor Rasheed, (e) Mr. Siddiqui and Mr. Shamim, (f) Mr. Mashkoor Rasheed, (g) Mr. Shahid and Noor Nabi regarding the encroachment on the Waqf property “Inside Graveyard West side, Jadeed Able Islam Qabristan (Delhi Gate Qabristan) behind Indian Express building”. The encroachers were given the opportunity to appear before the CEO, DWB along with relevant documents for hearing on 11.10.2023 and service of the notice was made by hand, by pasting and by post. Copy of the notices dated 09.10.2023 issued to the 7 encroachers is annexed as Annexure R-4/A (Colly.).

*7. That the encroachers/ their representatives were present during proceedings on 11.10.2023 but were unable to provide any relevant documents in support of their title. It is respectfully submitted that the CEO, DWB is in process of referring the matter to the Waqf Tribunal under section 54(4) of the Waqf Act 1995. As per the provisions of the Waqf Act, 1995, an application is made to the Tribunal by the CEO for of the order of eviction for removing the encroachment and upon grant receipt of such application, the Tribunal makes an order of eviction. Copy of the attendance list dated 11.10.23 is annexed as **Annexure R-4/B**.*

xxx xxx xxx”

11. Learned counsel appearing for the Delhi Waqf Board, has further handed over a copy of the order dated 06th February, 2024, that has been passed by the Delhi Waqf Board under Section 54 of the Waqf Act, 1995.



The said order dated 06th February, 2024, passed by the Delhi Waqf Board, is taken on record. The relevant portions of the order dated 06th February, 2024, passed by the Delhi Waqf Board, read as under:

“xxx xxx xxx

And whereas, on the basis of above mentioned facts, I am convinced that Mr. Mansoor Rasheed S/o late Mr. Masood Ahmed along with Mr. Madood Rasheed S/o late Mr. Masood Ahmed, Mr. Jawaaid Rasheed S/o late Mr. Masood Ahmed, Mr. Mashkooor Rashid S/o late Mr. Masood Ahmed, Mr. Shahid and Mr. Noor Nabi S/o Mr. Fazluddin, Mr. Siddiqui and Mr. Shamim S/o Mr. Shahbuddin, Mr. Shanker Das, all (07) are an encroachers and are in unauthorized occupation of the Waqf property mentioned below, and are liable to be evicted.

Details of Waqf property:

West side towards Indian Express Building: Jadeed Ahle Islam Qabristan (Delhi Gate Qabristan), New Delhi-110002.

Encroachers Mr. Mansoor Rasheed S/o late Mr. Masood Ahmed along with Mr. Madood Rasheed S/o late Mr. Masood Ahmed, Mr. Jawaaid Rasheed S/o late Mr. Masood Ahmed, Mr. Mashkooor Rashid S/o late Mr. Masood Ahmed, Mr. Shahid and Mr. Noor Nabi S/o Mr. Fazluddin, Mr. Siddiqui and Mr. Shamim S/o Mr. Shahbuddin, Mr. Shanker Das House No. 1, 2, 3, 4, 5, 6 & 7 Jadeed Ahle Islam Qabristan (Delhi Gate Qabristan), New Delhi-110002.

And therefore, in view of the above facts and circumstances, I precede u/s 54 of the Waqf Act, 1995 by filing an application before the Waqf Tribunal for passing an eviction order against the notice/encroacher.

xxx xxx xxx”

12. Perusal of the aforesaid order shows that the Delhi Waqf Board will now proceed to file an application under Section 54 of the Waqf Act, 1995 before the Waqf Tribunal, for passing of an eviction order against the aforesaid encroachers.

13. Learned counsel appearing for the Delhi Waqf Board, has handed



over a copy of the order dated 06th May, 2024 passed in W.P.(C) No. 6382/2024, to submit that the Waqf Tribunal, has not been functional since April, 2022 and the aforesaid petition is pending before the Coordinate Bench of this Court, wherein, there is a prayer for constitution of the Waqf Tribunal. Order dated 06th May, 2024 passed in W.P.(C) No. 6382/2024, titled as ***Masjid and Dargah Shah Abdul Salam through its Mutawalli Shri Mohd. Mohiuddin Versus The Government of NCT of Delhi through Office of Lieutenant Governor Delhi & ANR.***, reads as under:

“CM APPL. 26515/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 6382/2024, CM APPL. 26514/2024

The Petitioner has approached this Court for constitution of a Tribunal under Section 83(1) of the Waqf Board under the Waqf Act, 1995.

It is stated that the Tribunal is not working since April, 2022.

Learned Counsel for the GNCTD seeks some time to get instructions List on 29.05.2024.”

14. Thus, learned counsel appearing for the Delhi Waqf Board submits that as soon as the Waqf Tribunal is constituted, requisite action shall be taken by the Delhi Waqf Board, for the purposes of filing an application for eviction of the encroachers from the land in question.

15. Accordingly, it is directed that as soon as the Waqf Tribunal is constituted, the Delhi Waqf shall within a period of four weeks from the said date, file the requisite petition before the Waqf Tribunal, seeking eviction of the encroachers from the land in question.

16. Considering the aforesaid facts and circumstances of the case, it is manifest that substantial compliances have been done by the respondents, of



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the order dated 16th July, 2021, passed by the Division Bench.

17. Accordingly, there is no occasion for this Court to proceed any further against the respondents in the present proceedings. In view thereof, the notice of contempt is discharged.

18. The present petition is disposed of, in the aforesaid terms.

MINI PUSHKARNA, J

MAY 10, 2024/kr