



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

% **Judgment reserved on : 20 September 2024**

Judgment pronounced on: 23 September 2024

+ **W.P.(C) 12524/2024**

SHAHI IDGAH MANAGING COMMITTEEPetitioner

Through: Mr. Viraj R. Datar, Sr. Adv.
with Mr. Imran Ahmed, Mr.
Sajid Ahmed, Mr. Haji Mohd.
Iqbal, Mr. Shuaib Ahmed Khan,
Mr. Mohd. Shad, Mr. Shrikant
Singh and Mr. Shammi Alam
Khan, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

.....Respondents

Through: Ms. Shobhna Takiar, Standing
Counsel with Mr. Kuljeet
Singh, Adv. for R-1.
Mr. Manu Chaturvedi, Standing
Counsel with Ms. Devika Singh
Roy, Advs. for MCD.
Mr. Kirtiman Singh, CGSC
with Mr. Waize Ali Noor, Mr.
Ranjeev, Advs. for R-3 with
ACP Hira Lal and Inspector
D.V. Singh, PS Sadar Bazar.
Mr. Tushar Shannu & Mr.
Utkarsh Mishra, Advs. for
DWB.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

W.P.(C) 12524/2024 & CM APPL. 52044/2024 (Interim Relief)

1. Having heard the learned counsels for the parties and on perusal of the record, the present petition has come up for disposal.



2. The petitioner i.e., Shahi Idgah (Waqf) Managing Committee (Regd.), through its President Haji Shakir Dost Mohammad, is invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, for directions to the respondents to not encroach upon the Waqf property viz., Shahi Idgah (Khasra No. 11) at Motia Khan, Ram Kumar Marg, Sadar Bazar, Delhi-110006, including the Idgah Park, in any manner and restraining the respondent authorities viz., DDA/MCD from installing any statue or any other structure inside the Idgah Park; and further seeking directions to the respondents to install the statue at any of the sites admittedly identified by the DDA *vide* letter dated 22.07.2023, by virtue of a duly signed affidavit on 25.07.2023 filed by the DDA before the Delhi Minority Commission.

3. A short affidavit has already been filed on behalf of the respondent No.2/Municipal Corporation of Delhi [**'MCD'**]. No reply has yet been filed by the respondent No.1/Delhi Development Authority [**'DDA'**], despite time granted but the relief claimed in the application is opposed.

4. A short affidavit on behalf of respondent No.4/Delhi Waqf Board [**'DWB'**] has been filed as well.

5. Shorn of unnecessary details, the petitioner claims *locus-standi* to file the present petition by virtue of Section 3(k) of the Waqf Act, 1995:-

“(k) “person interested in a ¹[waqf]” means any person who is entitled to receive any pecuniary or other benefits from the ¹[waqf] and includes—



(i) any person who has right to [offer prayer' or to perform any religious rite in a mosque, idgah, imambara, dargah [khanqah] peerkhana and karbala], maqbara, graveyard or any other religious institution connected with the [waqf] or to participate in any religious or charitable institution under the [waqf];..."

6. Furthermore, it is asserted that the Shahi Idgah, constructed in the Khasra No. 11 at Motia Khan, Ram Kumar Marg, Sadar Bazar, Delhi-110006 (hereinafter referred to as 'subject property') is being managed by the petitioner/Committee. To substantiate its claim over the entire subject property, reference is invited to the Notification published in the Delhi Gazette dated 16.04.1970 at Serial No. 34, which apparently includes the Idgah Park, Mosque, which is stated to be an ancient property built during the Mughal period, and the said property is stated to be ad-measuring about 31 *Bigha* including the structures built on an area of 31,484 Sq. Yards of land, surrounded by thousands of square yards of open ground, which is being used for offering 'Namaz'. It is stated that such a vast property could accommodate as many as 50,000 namazis at one time.

7. The grievance of the petitioner/Committee is that on 29.08.2024, the petitioner/Committee was shocked when a JCB was brought to the site in question and it started digging in one of the parks adjoining the Shahi Idgah and on being enquired, it was revealed that the respondent No.1/DDA and respondent No.2/MCD in connivance with each other, are trying to encroach upon the said park and planning to install a statue of Maharani of Jhansi. The petitioner/Committee claimed that they preferred a representation on 30.08.2024, objecting to the installation of the said statute at the site



for the same being done on Waqf property, so much so that even the DWB made a representation dated 30.08.2024 against the proposed installation by the DDA and MCD. It is pointed out that aggrieved of the proposed action, the petitioner approached the Delhi Minority Commission, which *vide* order dated 10.12.2021 *inter-alia* noted that the statue presently installed at the roundabout of Rani Jhansi Road, Opposite Videocon Tower, Desh Bandhu Gupta Road, Near Jhandewalan Mandir, Delhi, is proposed to be shifted on account of the expansion plan by the Government for widening of the Rani Jhansi Road, but since concerns were raised that shifting and installation of the statute in the said park inside the subject property might adversely affect the public sentiments and create a law & order situation, therefore, a *status-quo* was ordered to be maintained at the site.

8. The petitioner/Committee has now approached this Court due to the absence of a current incumbent in the Delhi Minority Commission, as the tenure of the previous incumbent has expired. Thus, interim relief is sought, for directing the respondents to not encroach upon the Waqf property i.e. Shahi Idgah (Khasra No. 11) including the land pertinent thereto, and thereby maintain *status quo* at the site.

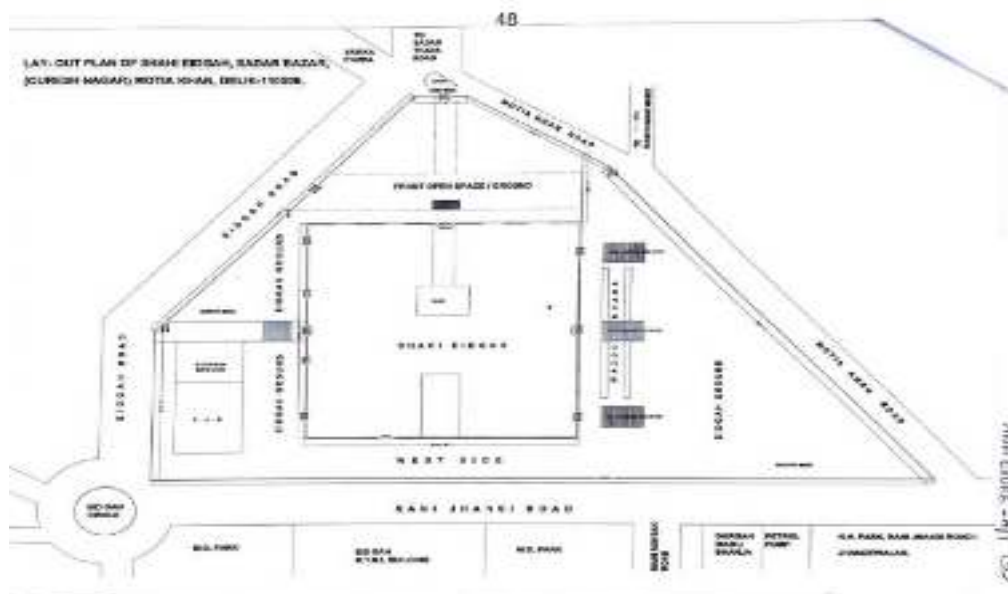
FACTS DISCLOSED IN THE SHORT AFFIDAVIT FILED BY DWB

9. In the short affidavit filed on behalf of the respondent No.4/DWB, it is pointed out that a joint inspection has been conducted on 13.09.2024 by the officials of DDA and MCD, as well as the members of the DWB, and upon physical measurements of the entire property including the Shahi Idgah and its surroundings having been



conducted on such date, it has been verified that the Shahi Idgah belonging to the respondent No.4/DWB, is measuring 31601 Sq. Yards, which area is the same area as mentioned in the Notification issued in Delhi Gazette on 16.04.1970 *vide* Serial No. 34 to the effect that “(Idgah Wall Type Mosque with Land appertenant thereto) falling in Ward No. XIV, Delhi Idgah Road Qasab Puyra, Delhi in Khasra No. 11 measuring 31601 Square Yards in village Jhandewalan”. It is acknowledged by the respondent No.4/DWB that the rest of the area i.e., the park surrounding the Idgah’s boundary belongs to the Government i.e. respondent No.1/DDA, which has been maintaining it since very long.

10. During the course of the arguments, the attention of this Court is invited to the layout plan of the Shahi Idgah, that presents the status/layout of the entire subject property as under: -



11. It was explained that the ‘squarish region’ in the centre of the somewhat triangular shape in the aforesaid site plan is the Shahi



Idgah, which is measuring 31601 Square Yards and the surrounding area, which is falling in the said triangular region, are the parks/open ground which belong to the DDA, for which reference has been invited to even the *Jamabandi* Record pertaining to the year 1973-1974, the certified copy of which was availed on 06.09.2024, and a separate *Jamabandi* Record of 1973-1974, certified copy of which is dated 25.11.2021, to the effect that the rest of the portions surrounding the Shahi Idgah are falling in Khasra No.8, 196/10 and 12 measuring 19400; 28790 and 11284 Sq. Yards respectively and belonging to the respondent No.1/DDA.

LEGAL SUBMISSIONS ADVANCED AT THE BAR

12. Learned counsel for the petitioner/Committee, however, disputed the accuracy of the facts presented in the short affidavit filed on behalf of respondent No. 4/DWB. It is pointed out that the facts stated in the affidavit are diametrically opposed to the "written submissions" filed by respondent No. 4/DWB before the Delhi Minority Commission. In those submissions, it was claimed that the Shahi Idgah has a total area of 31 Bigha and 8 Biswa (i.e., 78,751 square meters), including the entire adjoining area up to the road from all sides, as per the map filed. It was further stated that the property has been under continuous use and occupation by their religious community since the Mughal period, and that the property was acquired by Sunni Majlis-e-Auqaf, the predecessor of the DWB, without any interference from anyone, including the respondent authorities.



13. Learned counsel for the petitioner/Committee pointed out that the respondent No.4/DWB, in proceedings before the Delhi Minority Commission, had even challenged the 'No Objection Certificate' issued by the respondent no.1/DDA for the installation of a statue on a portion of the open land of the Idgah directly facing the front portion of the Shahi Idgah, whereat Eid Namaz is offered. It was further asserted that the respondent no.4/DWB had only allowed/permitted the DDA, through its Horticulture Department, to beautify and remove illegal occupation from the open land surrounding the said Idgah, but the land itself was never transferred to the respondent no.1/DDA in any manner.

14. Learned counsel for the petitioner/Committee also pointed out that in the proceedings before the Delhi Minority Commission, the respondent no.1/DDA filed a letter dated 22.07.2023 in compliance with the directions dated 10.12.2021 of the Delhi Minority Commission, by way of which three alternative sites for the relocation of the statue were offered:

- (1) M/o Park at Mama Bhanja Wali Bazar,
- (2) Peer at Rani Jhani Road- Preferred; M/o at Telephone Exchange; and
- (3) M/o. Green Belt at Faiz Road.

15. Learned counsel for the respondent No.2/MCD vehemently urged that the Delhi Minority Commission had no jurisdiction to pass any order for maintaining the *status-quo* at the site and it was canvassed that the proposal for shifting of the statue to a park inside the complex has been taken by the Standing Committee of the MCD



and the same cannot be questioned in law. It was also canvassed that the issue of widening of the Rani Jhansi Road is pending since the past four years and the delay in shifting of the statue is thwarting the proposed work of the widening the Rani Jhansi Road at huge to the public exchequer.

ANALYSIS AND DECISION

16. First things first, the assertions made by the petitioner/Committee that the entire property including the surrounding park/open ground outside of the periphery of the Shahi Idgah also belongs to the DWB, is clearly belied from the short affidavit placed on the record by respondent No.4/DWB, in as much as the notification dated 16.04.1970, clearly demarcates that the Shahi Idgah is falling in Khasra No. 11 measuring 31601 Sq. Yards, which is supported by the *Jamabandi* records for the year 1973-1974 referred to hereinabove; and therefore, the plea of the petitioner/Committee that the entire property falling within the Idgah's walls is the property of the Shahi Idgah, cannot be sustained on facts as well as the law.

17. The aforesaid position has since been substantiated on joint inspection carried out by the respondents/DDA and MCD besides members of the DWB on 13.09.2024 and there is no denying the fact that the surrounding area inside the Idgah boundary, which are the parks/ open ground, belongs to the respondent No.1/DDA.

18. It is pertinent to mention here that a co-ordinate bench of this Court, in a case titled **State Education Committee (Regd.) v. DDA**¹ *vide* order dated 23.07.2024, dealt with an issue regarding unlawful



activities being carried out on the premises of the Shahi Idgah, the public park adjoining the Shahi Idgah, and other nearby places such as footpath etc., surrounding the Shahi Idgah, Quresh Nagar, Sadar Bazar, Delhi-110006 and the version of the respondent No.1/DDA, as stated in its affidavit, was quoted with approval, which goes as under:-

4. The respondent-Delhi Development Authority (DDA) in terms of paragraph no.3 onwards in its affidavit, states as under:-

" 3. That the public park adjoining the Shahi Idgah, Quresh Nagar, Sadar Bazar, Delhi-11 0006 known as Idgah Park (hereinafter referred to as "Park") is admeasuring 12.27 acres and is being maintained by Horticulture Division-II of the Respondent No. 1/DDA. In this regard, it is humbly submitted before this . Hon'ble Court that the Park is not being misused and the Park's regular upkeep is being done so as to facilitate accessibility to the public visitors for recreational purposes.

4. That there is a community centre just opposite Shahi Idgah, Quresh Nagar, Sadar Bazar, Delhi-11 0006 and the same is being used for the purpose of organizing marriage ceremonies, functions, etc. It is submitted that the community centre is not a part of the park.

5. That there is no encroachment on the land of the park, therefore, the allegations made against the encroachment on the land of Park as also against the officials of Respondent No. 1/DDA are wrong and unfounded. It is incorrect to state that the Park is being let out for commercial purposes.

6. That the Deponent undertakes to abide by any directions passed by this Hon'ble Court in this regard. In light of the status given herein, the instant petition be dismissed."

19. It would further be relevant to note the other observations made by the co-ordinate Bench of this Court, which go as under:-

"5. As per the stand taken by the respondent-DDA, it is seen that the aforesaid park is maintained by the Horticulture Division-II of DDA and the park is not being misused and regular upkeep is being done in order to facilitate accessibility to the public visitors for recreational purposes.

¹ WP(C) 197/2020 and CM APPL. 51223/2022



6. The Delhi Waqf Board (DWB) has also placed on record its Status Report and in terms of paragraph no. 5 therein with respect to encroachment, it has been asserted that the responsibility would lie with respondent-DDA and Municipal Corporation of Delhi. However, the DWB has not authorized any individual to use the park apart from religious activity.

7. It is thus seen that as on date, there is nothing on record to infer as to whether the aforesaid park is being misused or is under encroachment. Hence, the Court is not inclined to keep the instant writ petition pending. Liberty is reserved in favour of the petitioner to take appropriate remedy in case the petitioner finds any misuse or encroachment of the park.

8. With the aforesaid liberty reserved in favour of the petitioner, the instant petition stands disposed of alongwith the pending application.”

20. To sum up, the aforesaid decision has also clarified that the parks/open ground surrounding the Shahi Idgah are the property of respondent No.1/DDA, and have been maintained by the Horticultural Division-II of the DDA, which is responsible for ensuring that the site is used by public visitors for recreational purposes. Furthermore, even the DWB does not authorize the use of the park for any purpose other than religious activities. The bottom line is that, since the parks/open ground adjoining the Shahi Idgah and located within the Idgah walls are the property of respondent No.1/DDA, it is solely the DDA's responsibility to allocate portions of the said land for public use as it deems fit.

21. It would not out of place to observe that the real bone of contention seems to be the installation of the statue of the Maharani of Jhansi at the inner corner section of the property in question, where the road from Motia Khan and Rani Jhansi Road are converging. Although, apprehension has been expressed that the installation of the statue at the site might create a law-and-order situation, inasmuch as a



decision has already been taken by the Standing Committee of the MCD to relocate the statute at the aforesaid site, this Court cannot go into the issue of administrative wisdom of the MCD in the implementation of such a resolution.

22. Even assuming for the sake of convenience that the petitioner/Committee has *locus-standi* to prefer the instant writ petition, this Court does not see as to how their right to offer prayers or to perform any religious rights is being endangered in any manner. It goes without saying that the *status quo* order passed by the Delhi Minority Commission was palpably without any jurisdiction.

23. That being the case, the petitioner has no legal or fundamental right to oppose the maintenance and upkeep of the parks/open ground surrounding the Shahi Idgah, by the respondent No.1/DDA and thereby oppose the installation of the statue by respondent no.2/MCD at its behest.

24. In view of the above, the present writ petition appears to be without any cause of action, and is based on certain facts which were incorporated in *the written submissions* filed by the DWB before the Delhi Minority Commission without any foundation. There is no gainsaying that evidently the facts stated in the aforesaid written submissions filed before the Delhi Minority Commission were neither based upon any physical inspection nor based on the correct measurements of the subject property, and there is nothing to discern that the respondent No.4/DWB has not placed the correct factual status of the property on the record.



25. In view of the foregoing discussion, the present writ petition is dismissed. All pending applications also stand disposed of.

DHARMESH SHARMA, J.

SEPTEMBER 23, 2024/*sp*