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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1215/2017, CM APPL. 5507/2017, CM APPL. 14927/2017, CM APPL. 21906/2018 & CM APPL. 41734/2022

RESIDENTS WELFARE

ASSOCIATION (REGD.) AND ORS

.....Petitioners

Through: Ms. S. Janani, Sr. Advocate with
Ms. Sharika Rai, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS

.....Respondents

Through: Mr. Ajjay Aroraa, Mr. Kapil Dutta
and Mr. Nitish Dubey, Advocates
for MCD.

Ms. Prabhsahay Kaur and Mr. Bir
Inder Singh, Advocates for DDA.

Mr. Charanpreet Singh, Advocate
for R-6.

Mr. Hilal Haider, Mr. Butul Khan
and Ms. Neha Tiwari, Advocates
for DJB.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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13.11.2024

1. The petitioners are the Residents Welfare Association ["RWA"] and 9 individual residents of flats in H Block, Saket New Delhi-110017. They have filed this writ petition, under Article 226 of the Constitution, complaining of illegal and unauthorised construction and encroachment on their land by respondent No. 6-Gurudwara, Sri Guru Singh Sabha, which is located in the vicinity of their locality.

2. I have heard Ms. S. Janani, learned Senior Counsel for the



petitioners, Mr. Ajjay Aroraa, learned Standing Counsel for Municipal Corporation of Delhi [“MCD”], Mr. Charanpreet Singh, learned counsel for respondent No. 6 and Mr. Hilal Haider, learned counsel for Delhi Jal Board [“DJB”].

3. It is the accepted position that the Gurudwara was first constructed on a plot of approximately 418 sq. metres allotted to it by the Delhi Development Authority [“DDA”] under a letter of allotment dated 16.03.1979. According to the respondents, the Gurudwara was unfortunately destroyed in the 1984 riots, following which a new Gurudwara building was constructed. At this stage, alongwith the original plot of 418 sq. metres, an adjacent plot of 321.20 sq. metres was also incorporated in the Gurudwara plot. This land was subsequently allotted to the Gurudwara by the DDA on 18.02.2002, by way of regularisation.

4. The petitioner No. 1-RWA contended that the additional plot of 321.20 sq. metres was, in fact, originally allotted to the RWA itself and, therefore, challenged the allotment of the same plot to the Gurudwara. However, Ms. Janani accepts that the allotment of the said plot to the Gurudwara was upheld by this Court *vide* judgment dated 17.01.2013 in W.P.(C) 2370/2003. The said writ petition was filed by one of the residents of H Block, namely, Colonel V. Katju (since deceased), whose wife has been arrayed in this petition as petitioner No. 4. For the purpose of this writ petition, therefore, Ms. Janani accepts that the additional plot of 321.20 sq. metres was also validly allotted to the Gurudwara.

5. In these circumstances, the principal question raised concerns the legality of the structure erected by Gurudwara on the two plots in question. The MCD has filed two status reports in this regard.



6. In the first status report filed on 09.08.2023, it is stated as follows:

*“4. That on referring to the record, as provided by the Management of the subject property / Gurudwara at H-Block, Saket, it has been noticed that the land in respect of the said property was allotted by Delhi Development Authority (DDA) vide letter bearing No. F.2(27)77-HS dated 16/03/1979 and its possession was taken on 26/03/1979. The copy of the allotment letter and possession letter in this regard are annexed herewith as **Annexure-A (Colly)**.*

*5. That on inspection it has been noticed that the **subject property i.e. Gurudwara at H-Block, Saket, New Delhi consists of Ground floor, First floor, Second floor and Third floor which is old and occupied.***

*6. That further on local inquiry it has been revealed that the **Ground floor and First floor structure of the said property / Gurudwara was constructed in the year of 1984 and Second floor and Third floor constructed in the year 1995.***

*7. That furthermore, during said inspection it has also been noticed that in recent past some repair / renovation work of the nature of stone work, replastering and tiling work etc. has been undertaken in respect of the said property / Gurudwara. However, during the inspection neither any fresh / new construction activity noticed nor any building material was found stacked at site. The photographs showing the latest status of the subject property / Gurudwara are annexed herewith as **Annexure-B (Colly)**.”*

[Emphasis supplied.]

7. By the order dated 10.08.2023, the submission of Mr. Aroraa was recorded that the construction was without a sanctioned plan, but is protected by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. By the same order, the respondent No 6 was directed to file an affidavit stating the extent of construction, and referring to the sanctioned plan for the construction in question.

8. Respondent No. 6 has filed an affidavit on 21.12.2023, in which it is contended that the Gurudwara building was raised on both the plots as a single unit. It is, however, admitted that no sanctioned plan for construction of the building was obtained. Mr. Singh, on instructions,



confirms this position.

9. MCD has thereafter filed a second status report on 14.09.2024, a copy whereof is handed over in Court and is taken on record. The additional status report states as follows:

“3. That as per record, a copy of Sanction Building Plan in respect of Subject property / Gurudwara situated at H-Block, Saket, New Delhi has been provided / obtained from Building Headquarter of Respondent – MCD.

4. That on perusing the same, it has been observed / revealed that the said Sanction Building Plan was sanctioned by the Delhi Development Authority (DDA) vide its File No. F13(7)80/5638 dated 11/08/1980 for proposed construction in the shape of Ground Floor, First Floor and Second Floor (part) with Barsati, in respect of the subject property for the purpose of Gurudwara, H-Block. The plot size as shown therein admeasuring 417.036 Sq. Mtr. Copy of Sanctioned letter dated 11/08/1980 along with copy of Sanctioned Plan are also annexed herewith as Annexure-A (Colly).

5. That it is also relevant to state here that on inspection carried out by the area filed staff of Building Department –II of South Zone – MCD, it has also been merged with by the Gurudwara Management with the already existing land 417.036 Sq. Mtr. land.

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8. That as regards, the repair / renovation work as carried out in the Gurudwara, on again inquiring the same, it has been informed that the said work has been undertaken / carried out in the year 2016 by the respondent No. 6.

9. That in view of the above, it is submitted that that since the construction carried out in respect of the subject property / Gurudwara pursuant to the aforementioned Sanctioned Building Plan and further construction has been carried out therein after merging the additional plot with the same though it is without permission of the Respondent -MCD, but since it was carried out prior to the cut of date i.e. 08/02/2007, hence, in light of the provisions as contained in the “The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, the said construction is eligible for protection till 31st December – 2026, presently.”

[Emphasis supplied.]

10. The position that emerges from the above discussion, as far as the



Gurudwara building is concerned, is that the building has been erected without a sanctioned plan, but no action can be taken in view of the fact that the structure is protected by the moratorium provided under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. The moratorium has been continued until 31.12.2026. The applicability of the moratorium to religious structures constructed on or before 01.01.2006 is not disputed. In these circumstances, no directions can be passed with regard to action in respect of the Gurudwara building, at this stage, in the present writ petition.

11. Ms. Janani disputes that the Gurudwara was in fact constructed prior to the year, 2006. In this regard, Mr. Singh points out that, in the writ petition filed by Colonel V. Katju in the year 2003, an averment was made that the four-storey structure already existed in the Gurudwara. I am of the view that, it is neither necessary nor appropriate for the writ Court to enter into this factual dispute. In the event the petitioners wish to contest this position on factual grounds, they will have to file a civil suit for this purpose.

12. Ms. Janani similarly raises a contention that the wall of the Gurudwara has been built on the boundary wall of the colony, without any setback, as required in law. Mr. Singh disputes this position. If the allegation is of encroachment into private property of the Society, or of any of the individual petitioners, their rights and title would have to be established in ordinary civil proceedings. If the allegation is again of construction in excess of the permissible construction, the moratorium remains in effect.

13. As far as the issues of the unauthorised construction is concerned,



therefore no direction can be passed at this stage, until the moratorium provided under the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, remains in force. Once the moratorium is lifted, it will be open to the MCD to take necessary action in accordance with law, subject to the legal remedies available to respondent No. 6.

14. Two further issues are raised by Ms. Janani. The first concerns the flow of sewage from the Gurudwara into the manhole of the petitioners' colony. The aforesaid arrangement was apparently put in place pursuant to an order dated 10.04.2019, by which the flow of sewage from the Gurudwara into the petitioners' storm water drain was restrained. Ms. Janani submits that the volume of sewage from the Gurudwara leads to blockage in the manhole and Delhi Jal Board ["DJB"] is required for constant repair work. As far as this aspect is concerned, Ms. Janani states that the petitioners will make a representation to the DJB, which may be considered in accordance with law, after consultation with all stakeholders.

15. It is also contended that certain CCTV cameras have been installed near the periphery of the Gurudwara which look into the accommodation in the petitioners' colony, including flats and servant quarters. As far as this aspect is concerned, Mr. Singh states that the Gurudwara will take necessary remedial action within a period of four weeks from today.

16. The writ petition, alongwith pending applications, stands disposed of with the aforesaid directions.

PRATEEK JALAN, J

NOVEMBER 13, 2024/MR/