



2024:DHC:5135-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 498/2024 & CM APPL. 35262/2024**

PRACHEEN SHIV MANDIR AVAM

AKHADA SAMITI

.... Petitioner

Through: Mr. Kamlesh Kumar Mishra, Ms.
Many Mishra, Ms. Renu and Mr.
Deepak Raj Singh, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

& ORS .

..... Respondents

Through: Ms. Shobhana Takiar, Standing
Counsel for DDA/R-1
Ms. Mehak Nakra, ASC with Mr.
Umang Aditya and Mr. Devansh
Solanki, Advocates for R-2 to 6

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Date of Decision: 10th July, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed under clause X of the Letters Patent Act read with Delhi High Court Rules against the final Order/Judgment dated 29th May, 2024 passed in W.P. (C) No. 12817/2023 whereby the learned Single Judge dismissed the writ petition and further passed directions to remove the idols from the Pracheen Shiv Mandir and other ancillary directions.



2. The appellant-society in the present appeal is Prachin Shiv Mandir, formally registered under the Societies Registration Act, 1860, as "*Prachin Shiv Mandir Avam Akhada Samiti*" bearing registration no. District East/Society/2053/2018, claimed to have been established by a distinguished priest, renowned for founding 101 Shiv Lingas, and the temple on the site stands on one of such revered Shiv Lingas. It is averred that the temple acts as a central hub for spiritual community activities. The appellant claims that the temple draws approximately 300 to 400 devotees regularly.

3. The appellant states that the temple has been existing for a long time on the subject site and regular devotees throng the temple every day. More particularly, on religious and festive occasions. Learned counsel submits that while things stood thus, the SHO of Police Station-Geeta Colony visited the temple and informed the appellant's society of the intended demolition of the temple on 25th September, 2023. He states that no formal notice was furnished to the appellant. Urgently, the appellant submitted a formal representation on 25th September, 2023 to the Commissioner of Police and Lt. Governor of Delhi requesting immediate intervention to halt the intended demolition of the temple.

4. Apprehending that there would be no halting of the intended demolition, the appellant's society filed the underlying writ bearing W.P.(C) 12817/2023. By way of the order dated 27th September, 2023, learned Single Judge passed interim orders of restraint on demolition and directed that no coercive steps be taken against the appellant. It is stated that the said interim orders continued till the impugned judgment was



passed on 29th May, 2024. He submits that by way of the impugned judgment, the learned Single Judge dismissed the writ petition granting the appellants society fifteen days time to remove the idols and other religious objects. Learned Single Judge had granted liberty to DDA to carry out demolition of the unauthorized construction of the temple thereafter.

5. Learned counsel contends that no notice was ever given to the appellants/society before the demolition was sought to be carried out. He submits that the same is contrary to the law inasmuch as no demolition can be carried out without following the principles of natural justice. He further submits that apart from the above, the Religious Committee also did not consider the case of the appellants in the writ prospective. He submits that the Religious Committee convened on 17th August, 2023 to deliberate upon the case of the appellants, however, without granting an opportunity of hearing, recommended removal of unauthorized religious structures. He submits that it was only due to the interim order passed by the learned Single Judge that the demolition was restrained so far as the appellants/society's temple is concerned. In short, learned counsel submits that here too, the principles of natural justice were violated by the Religious Committee. According to learned counsel, the appellants ought to have been given an opportunity to explain its position to the Religious Committee before the recommendation for removal of unauthorized construction was passed. He states that having not been done; the demolition carried out consequent upon the recommendation of the Religious Committee would stand vitiated.



6. He next argues that even the land where the temple was situated did not belong to the DDA and actually belongs to the State of Uttar Pradesh. He seeks to submit that since the land did not belong to the DDA, it had no right, authority or jurisdiction to carry out any exercise of demolition of any structure on such land. He states that, without prejudice to the rights of the appellant, if at all any such action could have been undertaken; it may have been by any authority under the State of Uttar Pradesh. That having not been done, according to learned counsel, the action of demolition of the temple is void *ab initio*.

7. *Per contra*, Ms. Shobhana Takiar, learned standing counsel for the DDA who appears on advance notice, submits that the appeal has become infructuous inasmuch as the entire temple stands demolished as on date. She submits that the appellant/society miserably failed to produce any documents pertaining to its ownership of the land on which the temple was built and as such, the structure being absolutely unauthorized, the DDA was under an obligation to remove all such unauthorized construction and structures. That apart, she submits that even the Religious Committee has also recommended that such structures being unauthorized, stand on Yamuna floodplains and ought to be removed. She submits that the present appeal being devoid of merit, ought to be dismissed.

8. This Court has heard the submissions of learned counsel for the appellant as also the respondent-DDA and has also perused the impugned judgment passed by the learned Single Judge.

9. At the outset, to the query put by us, learned counsel for the appellant admits that there is no document worth its name to show the



ownership of the appellant/society over the said site whereon the said temple was built. Further, no sanction building plan has been placed on record by the appellant. He also does not dispute that the said temple was on a site which is located within the Restoration and Rejuvenation of Yamuna River Floodplain Asita, East U.P. land (86 Hectares) from ITO Barrage to old Iron Railway Bridge. In such fact situation as obtaining in the present case, it is apparent that the temple has been constructed unauthorizedly on encroached land in an eco-sensitive zone area. If that is so, no structure, religious or otherwise, can be permitted to stand and have to be necessarily removed. More so, the Yamuna River Floodplain has to be zealously protected from such encroachment and unauthorized constructions. We have in a recent judgment also reiterated the same principles. (See *Yamuna Khadar Slum Union vs. Delhi Development Authority and Ors.*, LPA 544/2024 decided on 5th July, 2024; *Shabnam Burney vs. Union of India and Ors.*, W.P.(C) 8035/2024 decided on 8th July, 2024)

10. Even otherwise, learned counsel unwittingly admits that the said area belongs to the State of U.P. Even in such a case, the appellant obviously would have no right to carry out unauthorized constructions over the land belonging to the government. We notice that the learned Single Judge in his impugned judgment had taken note of the final judgment and decree dated 3rd October, 1997 in Civil Suit No.10/1969 captioned “*State of U.P. Vs. DDA*” wherein it was decreed that the subject land in the suit belongs to the State of Uttar Pradesh. That apart, it was also taken note of the fact that the Memorandum of Understanding dated 16th February, 2022 was



executed between the State of U.P. and DDA. There too, the DDA was conferred with the task of removal of any type of encroachment from the land required for the project as per the MoU. Thus, looked at in any which way, the construction of temple over the said land was not only unauthorized but also the DDA had proper authority to remove any such unauthorized construction or pre existing structures.

11. We observe from the impugned judgment that the learned Single Judge, apart from examining the fact in detail, has also relied upon the judgment of the Division Bench of this Court in the case of ***Court On its Own Motion Vs. Union of India*** bearing W.P.(C) No. 7594/2018 and 9617/2022 decided on 8th April, 2024. It is observed that in that case too, the Division Bench had passed directions for removal of encroachment etc. from the Yamuna River Floodplains by the DDA with the assistance of the Delhi Police.

12. So far as the argument regarding violation of principles of natural justice by the Religious Committee is concerned, suffice it to state that a rank encroacher on public land carrying out unauthorized construction cannot make a grievance of the same. There is not even a single scrap of a document placed on record by the appellant/society to show any kind of legitimacy it exercises, either over the land or the illegal structure built thereon. Thus, this argument is noted only to be rejected.

13. That apart, it is admitted by the appellant that the entire structure comprising the temple already stands demolished. In that view of the matter, we are of the opinion that even otherwise, nothing survives for further consideration.



2024:DHC:5135-DB



14. Though this Court would have imposed costs against the appellant, yet, refrains from doing so keeping in view the facts of the present appeal.

15. In view thereof, the appeal is devoid of any merit and is dismissed without any orders as to costs.

16. Pending application also stands disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

July 10, 2024

ms/rl