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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 27th September, 2024

+ **W.P.(C) 7869/2014 & CM APPL. 18462/2014**

SUHAIL AHMED KHANPetitioner

Through: Mr. D.P. Singh, Sr. Adv. with Mr.
Manu Mishra & Mr. Imaan Khera,
Advs.

versus

UNION OF INDIA & ORSRespondents

Through: Mr. Anil Soni, CGSC for UOI.
Mr. Anuj Aggarwal, ASC GNCTD
with Mr. Yash Upadhyay & Mr.
Siddhant Dutt, Advs. for R-3 & 7(M-
9891363718)

20 AND

+ **W.P.(C) 7976/2014 & CM APPL. 41421/2017**

AJAY GAUTAMPetitioner

Through: Petitioner in person.

Versus

DELHI WAQF BOARD & ORSRespondents

Through: Mr. Manish Mohan, CGSC with Mr.
Jatin Teotia & Mr. Samarth Talesara
Advs. for UOI (M- 9953615076)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. **W.P.(C) 7976/2014** has been filed by the Petitioner - Ajay Gautam, seeking directions *inter alia* to the Respondent No. 1-Union of India to prevent Respondent No. 2-Maulana Sayyed Ahmed Bukhari from using the title of '*Shahi Imam*'. **W.P.(C) 7869/2014** has been filed by the Petitioner-Suhail Ahmed Khan, seeking a writ of *quo warranto* in respect of the



appointment of Maulana Sayyed Ahmed Bukhari as the Shahi Imam of Jama Masjid.

3. Vide order dated 20th November, 2014, this Court summed up the issues arising out of the present petitions, and issued notice. The Petitioners in both the writs have raised the following issues:

- (i) The Union of India, Archaeological Survey of India (*hereinafter*, 'ASI') and Govt. of NCT of Delhi having failed to protect, promote and develop the Jama Masjid, a monument with historical and archaeological significance.
- (ii) Need for the Jama Masjid to be declared as a protected monument.
- (iii) Need to take steps for grant of status of World Heritage site to the Jama Masjid.
- (iv) The Delhi Wakf Board having not performed its statutory duties in relation to the Jama Masjid.
- (v) Maulana Syed Ahmed Bukhari has made the monument of Jama Masjid his personal estate, and has been using the platform thereof for non-Islamic and for political purposes.
- (vi) The Bukhari family of which Maulana Syed Ahmed Bukhari is a member having made the post/office of Imam of the Jama Masjid a hereditary one and to which they are not entitled.
- (vii) Maulana Syed Ahmed Bukhari has, for the last several years, appropriated all earnings from Jama Masjid exclusively for himself and has also failed, despite the Court's directions, to provide an account of the same.
- (viii) The said Maulana Syed Ahmed Bukhari has used the title of



Shahi Imam, to which he is not legally entitled.

- (ix) There is a need to prevent the Bukhari family from using Jama Masjid as their residence.
- (x) Hence, there is a need for directions to the Delhi Wakf Board to take over the affairs of Jama Masjid.
- (xi) Appropriate guidelines should be framed for governing the appointment of Imams.

4. These two petitions raise issues regarding Maulana Syed Ahmed Bukhari, who had self-proclaimed himself as the Shahi Imam of Jama Masjid. The main contention that led to the filing of these two petitions is the public announcement to anoint his youngest son as *Naib Imam*, with the *Dastarbandi* ceremony which was scheduled for 22nd November 2014. In the present petitions, the Petitioners challenged the legality of this anointment, claiming that it was unauthorized and sought directions to stop the ceremony. It is their contention that the Bukhari had no legal authority to appoint his son.

5. On 20th November, 2014, the Delhi Wakf Board, which oversees Wakf properties like Jama Masjid, submitted that while the mosque is a Wakf property, no *Mutawalli* had been appointed. It further acknowledged that Maulana Bukhari was appointed Imam in 2000, but his appointment was only ratified in 2006. Upon being questioned as to why the Board had given control of Jama Masjid's management to Maulana Bukhari and why no rights or supervisory control had been exercised by the Board, the Id. Counsel could not provide clear answers on the said date.

6. Regarding the ceremony scheduled for 22nd November 2014, for the anointment of Maulana Syed Ahmed Bukhari's youngest son as Naib Imam, the Id. Counsel for the Delhi Wakf Board submitted on 20th November, 2014



that while the Wakf Board had not granted any permission for the ceremony, it was further stated that the appointment lacked any legal sanctity unless ratified by the Delhi Wakf Board, and no application for such ratification had been received. However, during the proceedings, Ms. Rana Parveen Siddique, a member of the Delhi Wakf Board, confirmed that Maulana Bukhari's announcement of his son's appointment as *Naib Imam* did not have any legal validity. She emphasized that in a mosque, prayers ought to be led by a legitimate Imam. Despite this, the Court observed that there was still no explanation from the Wakf Board as to why Maulana Bukhari had been allowed to manage the mosque's earnings and why no action had been taken to ensure proper financial accountability

7. Considering that the Wakf Board had declared itself the *Mutawalli* of Jama Masjid, and that under the Wakf Act, 1995, there are provisions for the appointment of a *Mutawalli* but not for the appointment of *Imams* for Wakf properties, this Court vide order dated 20th November, 2014 directed as follows:

“10. We further record that the counsels for the petitioners controvert appointment of Maulana Syed Ahmed Bukhari even as the Mutawalli and contend that the Wakf Board has declared itself to be the Mutawalli of Jama Masjid.

11. The matter requires consideration.

12. Issue notice.

13. For the sake of convenience W.P.(C) No.7869/2014 is to be treated as the lead petition and the pleadings be completed therein only. The other two petitions be simply tagged to W.P.(C) No.7869/2014.

14. The counsels for the respondent Union of India, Archaeological Survey of India, Government of National Capital Territory of Delhi, Delhi Wakf Board, Municipal Corporation of Delhi, Delhi Development Authority,



Delhi Police and Central Bureau of Investigation appearing on advance notice accept notice. Issue notice to Maulana Syed Ahmed Bukhari by all modes including dasti, returnable on 28.01.2015.

15. We are of the opinion that in the face of the contentions of the petitioners that Maulana Syed Ahmed Bukhari has no right in law or otherwise to anoint his son as the Naib Imam and which is supported by the Delhi Wakf Board, the anointment ceremony (Dastarbandi) scheduled on 22nd November, 2014 even if not stayed would not amount to anointment/appointment of the said son of Maulana Syed Ahmed Bukhari as the Naib Imam of the Jama Masjid. We therefore do not feel any need to pass any ad interim order restraining the same.

16. The counsels for the petitioners have further contended that the ceremony be not allowed to be held at the Jama Masjid, a public place.

17. In view of the admitted position of Maulana Syed Ahmed Bukhari and his family for the last several years having used Jama Masjid as their residence, we at this stage do not feel any need for any such ad interim order also.

18. However, we clarify that the ceremony so held and the anointment / appointment made therein of the youngest son of Maulana Syed Ahmed Bukhari or any other person as the Naib Imam of the Jama Masjid shall be subject to further orders in this petition and shall not vest/create any rights or special equities in favour of any person.”

8. Thereafter, the matter was adjourned from time-to-time, to enable the parties to file their respective counter-affidavits in these two petitions.

9. On 23rd August, 2017, this Court was apprised of the order dated 27th April, 2005 passed in *W.P.(C) No.6846/2004* titled '*Heritage and Culture Forum v. Union of India & Ors*' which directed the Ministry of Culture to produce the record of Ministry of Culture. Thus, on the said date, the Ministry



of Culture was directed to produce the file in Court with regard to the subject wherein decision was taken not to declare the Jama Masjid as a protected monument.

10. The directions contained in the order dated 23rd August, 2017 were not complied with, and on 16th November, 2017, further time was sought by the Union of India to produce the same. On the said date, it was submitted that the requisition had been made by the ASI to the Ministry of Culture, Govt. of India for the file. Thus, the Court again directed that the said file be produced. Again, on 27th February, 2018, the position remained the same. Thus, this Court directed the Union of India to file an affidavit disclosing the position of the Jama Masjid, and status of the file. Thereafter, on 21st May, 2018, the said file was placed before the Court. The said file was again directed to be produced again on 31st July, 2018.

11. On 28th August, 2024, this Court reiterated its directions, and directed the ASI to produce the original files relating to *Jama Masjid*. This Court directed as follows:

“5. This matter has been received on transfer.

6. The present application has been filed seeking the production of a file of the Ministry of Culture relating to Jama Masjid. It is seen that this application was filed on 16th March, 2018.

7. On 27th February, 2018 the Court had reiterated the order dated 23rd August, 2017 directing the Ministry of Culture, Union of India to produce the file wherein a decision was taken not to declare the Jama Masjid as a protected monument. The said file, as per the previous order, was to be produced before the Court on 21st May, 2018, and on that date, it was recorded as under:

“2. Ms. Maninder Acharya, learned ASG submits that the file record of Ministry of



Culture wherein the decision was taken not to declare the Jama Masjid as a protected monument which was directed to be produced has been placed. The same shall be produced again on the next date of hearing.”

8. Thus, the file records were produced on the said date. Thereafter, again the records were directed to be produced on 31st July, 2018. As can be seen from the above orders, the file of the Ministry of Culture ought to keep the file ready for hearing in this matter.

9. Today, it is submitted by an official on behalf of the Archaeology Survey of India ('ASI') that the original letter dated 20.10.2004 written by the former Prime Minister of India - Mr. Manmohan Singh is missing in the concerned file. However, he is taking steps to trace the same.

10. It is made clear to both the ASI and the Ministry of Culture, that the original file shall be produced before the Court on the next date of hearing, and the same shall be complete in all respect with regard to the documents, failing which the concerned official(s) would be held responsible.

11. The application is disposed of in these terms.”

12. Mr. Pradeep Kumar Pandey, ASA working in Delhi Circle of the ASI has produced some note sheets and one file numbered as '*T 19043/59/2023-M*'. A perusal of these note sheets produced by the ASI shows that they mostly relate to the follow-up relating to the present writ petition and the action taken in respect of the writ petition.

13. On a perusal of the note sheets and the file produced before the Court today, it is noticed that the file relating to the *Jama Masjid* does not mention its status as a protected monument, nor does it include details about the maintenance activities that are being undertaken by the ASI, the current occupants of the *Jama Masjid* or how the revenue is generated and utilised



etc.

14. Let a short affidavit be filed by the competent official of the ASI in respect of the above aspects, and the original file relating to the Jama Masjid be produced before Court on the next date of hearing. This shall be undertaken directly under the supervision of the Director General, ASI, who shall hold a meeting with Mr. Anil Soni and Mr. Manish Mohan, Id. Standing Counsels so as to ensure that a comprehensive affidavit is filed as to the above aspects in respect of the *Jama Masjid*. This shall be the final opportunity for the production of the original file in relation to the *Jama Masjid*.

15. A competent official from the ASI shall be deputed by the Director General, ASI who is aware of the facts for filing of such affidavit. Let the said affidavit be filed by the next date of hearing. Copy of this order be communicated to the following person by the Registry on the mobile and email address:

Name: *Dr. Y.S. Rawat, Director General, ASI.*
Mobile: *9978405661*
Email: dg.asi@gov.in

16. List on 23rd October, 2024.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

SEPTEMBER 27, 2024/nk/dn/Pc

Corrected & released on 1st October, 2024