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

+ W.P.(C) 1477/2024

**MUNTAZMIA COMMITTEE MADARSA BEHRUL ULUM AND
KABARSTAN** Petitioner

Through: Mr. Shams Khwaja, Adv.
versus

DDA AND OTHERS Respondents

Through: Ms. Shobhana Takiar, SC along with
Mr. Sanjay Katyal, Mr. Nihal Singh
and Mr. Kuljeet Singh, Advs. for
DDA.

Mr. Prashant Manchanda, ASC along
with Ms. Nancy Shah, Ms. Medha
Haridass and Mr. Vishal, Advs. for
GNCTD.

Mr. Ajjay Arora, Mr. Kapil Dutta,
Advs. for MCD (through v/c)
Insp. Akhilesh, SHO, PS Mehrauli
and SI Lokendra, PS Mehrauli.

**CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA**

ORDER
11.03.2024

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CM APPL.14795/2024

1. The present application has been filed by the petitioner/applicant seeking the following reliefs:-

"a) Pass suitable Directions with operational mandate addressing concerns raised in paras 7, 8, 9 and 10 above;

b) Order to allow unhindered entry into the site of Masjid Akhoundji of persons wanting to offer the Tarawih prayers during the month of Ramzan Shareef, beginning Sunset of 11 of March 2023 till Eid-ul-Fitr prayers in the morning of 11" of April, 2024, as per arrangements to be made by the Petitioners;



c) Be pleased to ensure due operationalization of its Interim Directions per instant motion by directing the Counsels for Respondent Nos. 1 and 3 to communicate the instant Orders of this Hon'ble Court to District Police and Civic Authorities exercising jurisdiction over the concerned area so that all needful be done by them to operationalize the instant Order;

d) Direct the Respondents herein and through them the concerned District Magisterial, Law & Order and Civic Authorities to coordinate and render all due cooperation in operationalizing the Hon'ble Court's Directions per the instant motion;

e) Be pleased to allow Dasti Copy to all parties herein;

f) Pass such further or other orders as may deem fit and proper in the facts and circumstance of the case.”

2. In essence, what has been sought is that the petitioner/applicant be allowed to have entry to the site of “Masjid Akhoundji”. It is noticed that in W.P.(C) 4757/2022, which is also a writ petition concerning the same “Madarsa-Masjid Akhoundji and Kabarstan situated in Khasra No. 1151/2, situated at Village Mehrauli, Ward No.2, Tehsil Mehrauli, New Delhi”,an application being CM. APPL. No. 11308/2024 came to be filed by the petitioner therein seeking *inter alia* the following reliefs:-

“b) Order to allow unhindered entry into the Graveyard and site of Masjid Akhoundji of persons wanting to offer night-long prayers and do visitation at graves/site of graves of departed elders beginning from thirty minutes before Sunset on Sunday, the 25th of February, 2024 and ending thirty minutes after Sunrise on Monday, the 25th February, 2024;

c) Direct the Respondents and through them the concerned Magisterial, Law & Order and Civic Authorities to provide temporary basic lighting via bamboo poles and light bulbs and water availability by means of a couple of mini tankers and in case that it is not found feasible, permit and facilitate the Petitioner Managing Committee to themselves make temporary arrangements for the same;

d) Be pleased to ensure due operationlization of its Interim Directions per instant motion by directing the Counsels for



Respondent Nos.1 and 3 to communicate the instant Orders of this Hon'ble Court to District Police and Civic Authorities exercising jurisdiction over the concerned area so that all needful be done by them to operationize the instant Order;”

3. The said application was disposed of by a co-ordinate Bench of this Court *vide* order dated 23.02.2024 taking note of the Status Report filed on behalf of DDA with regard to the concerned property/land in question. The said order dated 23.02.2024, *inter-alia*, holds as under:-

“16. The petitioner has also stated in its application that various further necessary arrangements will have to be ensured to facilitate the aforesaid has also stated in its application that various further necessary arrangements will have to be ensured to facilitate the aforesaid prayer. It is to be noted that the prayer in question, as has been made in the instant application, is in the nature of mandatory injunction.

17. The respondent, in their status report, have unequivocally stated that the structure in question has already been demolished and further, the order status quo granted by this court is being maintained on the site in question. The extract of the status report reads as under:-

“STATUS REPORT BY WAY OF AFFIDAVIT ON BEHALF OF RESPONDENT NO.2 (DDA)

I, Surender Kumar, son of B. L. Meena, aged about 46 years, posted as Deputy Director (Hort.), Horticulture Division IV, DDA, having office at Sheikh Sarai, Phase-I, Malviya Nagar, New Delhi-110017 do hereby solemnly affirm and declare as under:-

1. That at present I am working as the Deputy Director (Hort.), Horticulture Division IV, with Respondent No.2 DDA. As such I am conversant with the facts and circumstances of the present case on the basis of information derived from official records and I am competent and authorized to depose the present affidavit for and on behalf of the Respondent DDA and I have read and understood the contents of the Writ Petition filed by the Petitioner.

2. That I am filing the present Status Report in compliance with the Order dated 16.02.2024 passed by this Hon'ble Court.

*3. That I state that a demolition program was carried out on 30.01.2024 by the officials of the Respondent No.2 with the assistance of the law enforcement agencies. The demolition program was carried out after approval from the Religious Committee *vide* letter No. F. 11/33/RC/2023/HP-II/1246 dated 27.01.2024.*

4. That I state that all the structures i.e., Shahi Masjid & Madarsa/Kabristan, Temple near gate No.4, Ancient Shiva Temple, Shiva



Temple, Kali Mandir and 77 Nos. of mazaar were completely removed from Sanjay Van (Reserve Forest) and approximately 5,000 square metres of DDA land has been reclaimed. Photographs showing the status of different locations as on 16.02.2024 are annexed herewith as Annexure R-1{Colly.}

5. That I state that no new activity was undertaken by the Respondent No.2 Department after the demolition at Shahi Masjid & Madarsa/Kabristan on 30.01.2024.

6. That the present Status Report is being filed limited to presenting the status on site as on 16.02.2024 in compliance with this Hon'ble Court's Order dated 16.02.2024. The answering Respondent shall be filing a detailed affidavit along with necessary documents on the merits of the matter"

18. Admittedly, as of now, the site in question is in the possession of the respondent-DDA and this Court is seized with the main writ petition which is slated to be heard on 07.03.2024 at 2.30 PM. At this stage, under the facts of the present case, this Court is not inclined to pass any direction. Accordingly, the instant application stands dismissed."

4. As such, the Court rejected a similar prayer seeking access to the site for performing prayers etc., taking note of the fact that (i) that the said prayer was in the nature of a mandatory injunction and hence untenable at the interim stage; (ii) the structure in question has already been demolished ; (iii) this Court has already ordered that *status quo* shall be maintained on the site in question.

5. The reasoning given in the aforesaid order dated 23.02.2024 squarely applies in the context of the present application as well. In the circumstances, there is no justification for this Court to take a different view.

6. As such, this Court is not inclined to grant the relief/s sought in the present application and the same is consequently dismissed.

SACHIN DATTA, J

MARCH 11, 2024/AT