

2022 LiveLaw (Del) 191

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: JUSTICE PRATHIBA M. SINGH
7th March, 2022

NEETA BHARDWAJ & ORS. versus KAMLESH SHARMA

FAO 36/2021 & CM APPLs.2914/2021, 10442/2021, 10444/2021, 20904/2021, 23819/2021, 25868/2021, 25869/2021, 25870/2021, 25884/2021, 26495/2021, 29121/2021, 25885/2021, 43944-46/2021, 3172/2022, 3455/2022, 5641/2022, 5642/2022, 38063/2021, 38289/2021, 39643/2021, 5803/2022, 5865/2022, 7745-46/2022 WITH, CS (OS) 518/2021, CS (OS) 520/2021, CS (OS) 521/2021, CS (OS) 546/2021, CS (OS) 552/2021, CM (M) 323/2021, CM (M) 575/2021

Appearances:- Mr. Lokesh Bhardwaj, Advocate. Mr. Arun Birbal, Ms. Sonia Singhani, Mr. Sanjay Singh & Ms. Vidhi Gupta, Advocates for DDA and SDMC (sanjaybhy2011@gmail.com)with Mr. Manish Gupta, Vice Chairman, DDA and Gyanesh Bharti, Commissioner, SDMC. Ms. Santosh Kumar Tripathi, Standing Counsel, GNCTD with Mr. Arun Panwar & Mr. Siddharth Krishna Dwivedi, Advocates, Ms. Sampika Biswal & Ms. Shambhavi Kala, Advocates for Id. Administrator, Mr. Krishan Gopal Chhokar, Advocate Mr. R.K. Sinha, Advocate, Ms. Mini Pushkarna, Standing Counsel, DUSIB with Ms. Garima Gupta, CEO, DUSIB, Ms. Khushboo Nahar, Ms. Latika Malhotra & Ms. Shikha Baisoya, Advocates, Ms. Sonia Singhania & Ms. Vidhi Gupta, Advocate for DDA (M-9810172501) Mr. Kush Bhardwaj, Advocate. Mr. Nitin Jain, Mr. Vishal Chauhan, Mr. Shivya Sharma, Mr. K.P. Singh, Mr. Harshil Gupta & Mr. Himanshu Chauhan, Advocates for Shopkeepers. Mr. R.K. Bhardwaj & Mr. Neeraj Bhardwaj, Advocate for Mr. Vipul Gaur, Advocate, Mr. Rohit Kishan Naagpal & Mr. Dipanshu Gaba, Advocates. Mr. Sarvesh Bhardwaj, Advocate for Plaintiff. Mr. Vishal Bhardwaj, Advocate. Mr. Goonmeet Singh Chauhan, Architect. Ms. Esha Pandey, DCP South-East District, Delhi.

1. This hearing has been done through hybrid mode.
2. These are part heard matters.

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3. Pursuant to the previous order dated 2nd March, 2022, Mr. Manish Gupta, Vice Chairman, DDA, Ms. Garima Gupta, CEO, DUSIB, Ms. Esha Pandey, DCP, South East Delhi, and Mr. Gyanesh Bharti, Commissioner, South Delhi Municipal Corporation have all joined the proceedings.
4. The redevelopment of the *Kalkaji Mandir* premises is to take place, however this Court's interaction with the Id. Administrator as also the Architect and the other assisting counsels to the Id. Administrator, has revealed that certain *jhuggi* dwellers and some *Dharamshala* occupants have not yet vacated the premises.
5. Vide previous orders of this Court dated 27th September, 2021, 7 th December, 2021, 9th December, 2021 and 24 th December, 2021, it was made amply clear that none of the occupants who are in illegal occupation of the *Mandir* premises can remain in possession.
6. The relevant extract of the order dated 27th September, 2021 is as under:

“94. The Supreme Court has time and again held that no unauthorized constructions or encroachments shall take place in the name of religious places. In **Union of India v. State of Gujarat, (2011) 14 SCC 62**, has taken cognizance of this menace and directed State Governments and Union Territories to take appropriate action in an expeditious manner. The Supreme Court held: “As an interim measure, we direct that henceforth no unauthorized construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara etc. on public streets, public parks or other public places etc. In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible.”

95. Recently, in **Harbhajan Singh etc. v. State of Punjab and Ors. (Civil Appeal No. 3674/2009, decided on 4th December 2019)**, the Supreme Court was dealing with tenants who were in occupation of shops located in Gurudwara Singh Sabha, Fatehgarh Sahib, Punjab. There were no formal tenancy agreements in favour of the tenants. The Religious Premises Act, 1998, dealing with eviction of unauthorized occupants from premises belonging to religious institutions, provided for a summary procedure for evicting unauthorised occupants from premises belonging to religious institutions. The legality of the said provision was challenged on the ground that there was no intelligible differentia between ‘normal tenants’ who were protected tenants and tenants of religious institutions. In this context, the Supreme Court affirmed the position that unauthorised occupants of the premises of a religious institution would form a separate class. The finding of the Division Bench of the High Court, which held that the public at large has an inherent interest in the “religious institutions” which were prone to maladministration and mismanagement, was upheld. It also observed that any person who is in occupation of the premises belonging to a religious institution without a valid allotment, lease or grant is to be treated as an “unauthorised occupant”. The Supreme Court held that:

“As noticed above, valid grants, leases and allotments are not construed and treated as unauthorised occupation. It is only when the terms of the grant, lease or allotment are not adhered to or have been determined or the period of allotment, lease or grant as fixed has come to an end, that the person in occupation is treated to be in unauthorised occupation. This is a precondition which confers the right on the religious institution to seek eviction of a person in unauthorised occupation of the religious premises.”

96. In **Bal Bhagwan v. Delhi Development Authority (CM(M) 416/2019, decided on 18th December 2020)**, it has been observed that occupants, under the garb of a place of worship, turn the land into a completely unpanned encroachment by hundreds of people, which the authorities ought to curb.

97. In the same vein, it is essential for a Mandir, where thousands of devotees visit for conducting puja every day, irrespective of its public or private status, to be devoid of unauthorized encroachments, which results in extreme inconvenience and safety as also security concerns for the devotees.

98. Ld. counsel for the various parties appearing before this Court, the Local Commissioner, the Court Receivers, as also the SDMC/ Delhi Police, are all unanimous in their submissions to this Court that the shopkeepers, Tehbazari holders and other occupants are not paying proper Tehbazari/ licence fees either to the Committee, or to the baridaars, in a regulated manner. As per the report of the Delhi police, there are more than a hundred shops that are

operating from the Mandir and making profits.

99. The manner in which the shopkeepers have constructed their shops has created obstructions in the movement of devotees, as is evident from the photographs which have been placed on record. For the purpose of the safety of devotees and others in the Mandir, it is essential that unauthorised occupants/shopkeepers/Tehbazari holders/Chabutara holders who do not have any valid legal rights to occupy the same, are liable to be removed in coordination with the Delhi Police and the SDMC.

100. Accordingly, it is directed that all unauthorized occupants/encroachers, who do not enjoy valid Tehbazari licenses, and who are in unauthorized occupation of the said premises, would be liable to be removed, until and unless there is a Court order protecting the said occupant. All encroachments in the Mandir premises, and complex and peripheral areas are also directed to be removed.

101. The SDMC/ DDA and the Delhi Police shall render all necessary assistance in removal of unauthorized encroachments and occupation by unauthorized shopkeepers, vendors, hawkers, etc.

102. In view of the forthcoming Navratras festival, the above action shall be taken within a period of five days from today.”

7. Thereafter, vide order dated 9th December, 2021, this Court further observed as under:

“11. Insofar those persons who are residing within the Mandir premises, including within the Dharamshalas, i.e., the three clients of Mr. Bhushan, Id. Counsel- Ms. Saraswati, Mr. Vinod Kumar Sharma and Mr. Gyan Singh Sharma, and one client of Mr. Dewan, Id. Counsel- Ms. Suman Shahi/Mr. Ram Vilas Shahi and their respective families, are concerned, the following directions are issued:

a) They shall vacate their residences along with their families, positively, on or before 25th December, 2021. It is made clear that no extension shall be granted in respect of the same, i.e., in respect of vacating the residences.

b) The said families, whose residences are being vacated, are free to approach the DUSIB/DDA for any alternate accommodation. Ms. Malhotra, Id. Counsel appearing on behalf of Ms. Mini Pushkarna, Id. Standing Counsel, who appears for DUSIB, submits that रैन बसेरा (Night shelters) are available to persons who are using the Kalkaji Mandir premises as residences and they may approach DUSIB for the same. However, the use of the same would be on a temporary basis and no permanent rights shall be claimed by the said persons. Accordingly, the families who have been asked to move their residences, may contact the official of DUSIB namely Mr. Rajender Gosain, Deputy Director- Night Shelter, (M:9560596102), for the purpose of allotment of रैन बसेरा (Night shelters), if needed. It is however made clear that irrespective of the allotment of the said shelters/ alternate accommodation, the families in the residences at the Mandir shall vacate the space occupied by them, on or before 25th December, 2021.”

8. Subsequently, vide order dated 24th December, 2021 in **WP(C) 15100/2021** titled **Saraswati & Ors. v. Union of India & Ors.**, where certain petitioners who were living in the Dharamshalas in the Kalkaji Mandir premises had sought directions for rehabilitation, this Court held as under:

“18. After perusing the various reports filed by the Local Commissioner, Court Receivers, and various civic agencies, it was found that the condition in the Mandir in respect of civic amenities, day to day safety and security of the devotees and others in the Mandir, space for access to ingress and egress, etc., was found to be pathetic and requiring emergent remedial measures. Accordingly, this Court had passed various orders directing removal of unauthorized encroachers and the illegal occupants from the Mandir premises, both in the form of those running and unauthorizedly occupying shops, stores, kiosks as well as those residing with large families in the Dharamshalas within the Mandir premises.

19. Primarily, the Dharamshalas in the Mandir premises are expected to be catering to the devotees who come from outside Delhi, and who may need temporary spaces while they visit the Mandir for darshan purposes. However, on a query from the Court, the Id. Counsel for the Petitioners, on 9th December 2021, as also today, has submitted that these Petitioners have been residing in the Dharamshalas for several years, ranging upto 40 years. This is obviously without paying a single penny, in a Mandir, which is run by the baridaars and other stakeholders with whom litigation is currently pending before this Court. There are more than 60-70 suits which were transferred from various District Courts to this Court, so that the issues could be resolved comprehensively.

20. This position, in the opinion of this Court, is completely apposite to the interest and rights of the devotees who visit the Mandir premises. A careful balance needs to be struck between the rights of encroachers, residing within a Mandir premises, and using the spaces for commercial interests, like the Petitioners on the one hand and the rights of the lakhs of devotees who visit the Mandir. The Dharamshalas within the Mandir are not meant to be occupied permanently by shopkeepers, or their families running shops/kiosks in the Mandir premises. Further, such occupation is clearly illegal, as no license fee or teh bazari was even being paid by the Petitioners.

21. Further, as against what is attempted to be canvassed by Id. Counsel for the Petitioner today, as also as is visible from a perusal of the grounds in the present writ petition, this writ petition is not in the context of jhuggi jhopri dwellers requiring alternate premises, as they are occupying a public land. All the three Petitioners, in the present petition, were not only residing, but through their families, were also running shops/kiosks/stores. A perusal of the order dated 9th December 2021, which records the undertakings given by the shopkeepers clearly records undertakings by Mr. Sanjay Baral and Mr. Ajay Baral, who are children of Petitioner No. 1- Mrs. Saraswati. These persons were running their shops/kiosks and have been conducting their businesses within the said Mandir premises, apart from occupying the Dharamshalas. Thus, they cannot be compared with the jhuggi jhopri dwellers, who occupy public land, and in respect of whom, judgments of the Supreme Court in **Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545** and **Sudama Singh v. Deepak Mohan Spolia and ors. (2018) 14 SCC 756**, and of the Id. Division Bench of this Court in **Ajay Maken v. Union of India 260 (2019) DLT 58** have been passed. The Petitioners herein have been unauthorizedly occupying the premises in the Mandir and have also been, through their families, unauthorizedly running commercial shops/kiosks within the Mandir premises for many years now, and a comparison of their situation with the situation of poor jhuggi jhopri dwellers is not a fair comparison.

22. Further, this Court while passing directions for vacation of premises, both on 27th September 2021 and on 9th December 2021, in FAO 36/2021 and connected matters, was clearly conscious of the fact that some kind of temporary alternate accommodation may be

required for them, and for this purpose clear directions were given for them to contact the Id. Administrator appointed by this Court, as well as the concerned officer from DUSIB. The said orders have already been extracted above. Even today, Id. Counsel for DUSIB has made it clear that the Petitioners and their family would be offered **रैन बसेरा** (Night shelters) on a temporary basis, till they make arrangements for their residences, for the whole day. However, yet it seems that no substantial attempt has been made to contact either the Id. Administrator nor DUSIB to attain the said accommodation in **रैन बसेरा** (Night shelters). Further, inspite of the order dated 27th September 2021, asking them to contact the Id. Administrator having been passed more than 2 months before the deadline of vacation, and the recent order dated 9th December 2021, giving them opportunities to contact DUSIB for alternate accommodation in **रैन बसेरा** (Night shelters) having been passed, it is today, i.e., one day before the date of vacation stipulated in the order, that the present writ petition has been filed.”

9. It is noted that even now some *jhuggi* dwellers and *Dharamshala* occupants have not vacated the premises. In terms of these previous orders of this Court, it is clear that the *Dharamshala* occupants are unauthorised occupants and do not have any legal right to reside in the said premises. Insofar as *jhuggi* dwellers are concerned, they too do not have any vested right to occupy the premises, which is a temple premises. However, taking a compassionate view of the matter, provision of alternative accommodation/rehabilitation of such *jhuggi* dwellers to such *jhuggi* dwellers who vacate the *Kalkaji Mandir* premises, can be explored. This is keeping in mind the principles laid down in ***Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545*** and in ***Sudama Singh v. Deepak Mohan Spolia and Ors., (2018) 14 SCC 756***.

10. Most recently, in ***Ajay Maken v. Union of India 260 (2019) DLT 58***, a Division Bench of this Court again upheld the application of rehabilitation policies, as per ***Sudama Singh*** (supra) to all slums and slum dwellers in the NCT of Delhi. A reading of the above judgements would show that in case of land being used for public purposes, if occupants of *jhuggis*/slums are evicted, it is the State's objective to provide them alternative accommodation, after conduct of requisite surveys and collection of data.

11. Keeping this position in mind, considering that the larger interest of the devotees is to be safeguarded and that redevelopment is in the larger interest of the public, the following directions are issued:

(i) The DDA, DUSIB and SDMC are directed to jointly undertake a survey of the *Kalkaji Mandir* premises and make a list of the number of occupants and the number of families who are still dwelling in the *jhuggis* as also in the *Dharamshalas*. The said survey shall commence tomorrow i.e., 8th March, 2022, and shall be completed by 10th March, 2022.

(ii). The Vice-Chairman, DDA, CEO DUSIB, and the Commissioner, SDMC, as also the DCP, South East Delhi, who are present in Court, shall hold a joint meeting and put up a report as to the manner in which the entire *Kalkaji Mandir* premises, can be got fully vacated. The report shall also specify as to whether rehabilitation/shelter can be provided to the *jhuggi* dwellers, so that redevelopment can commence in the *Kalkaji Mandir* premises.

(iii) Insofar as the unauthorised occupants of *Dharamshalas* are concerned, the orders for the vacation of the premises in their occupation have already been passed. In the meeting of the authorities as directed above, a proper schedule shall be discussed for evicting the said occupants.

(iv) It is pointed out by some of the counsels appearing in the matter that only some part of the land used for the *Mandir* belongs to the DDA and SDMC and the remaining land does not belong to any governmental authorities. This Court notes that irrespective of the ownership of separate portions of land in the *Kalkaji Mandir* premises, it is not disputed that the entire land is used for a public purpose, i.e., as a temple. Bearing this position in mind, the authorities shall hold the discussion and submit the report.

12. The meeting of these four officers shall be held on 11th March, 2022 by the Vice Chairman, DDA at 4:00 p.m., in the office of DDA in Vikas Sadan, Barapullah Rd, beside SBI Bank, Aviation Colony, INA Colony, New Delhi, Delhi-110023.

13. The report shall be submitted to the Court Master on 14th March, 2022.

14. List on **15th March, 2022 at 2:30 p.m.** All officers of DDA, DUSIB, SDMC and the DCP, South East Delhi, present today, to join the hearing through video conferencing, on the next date.

15. It is made clear that the above order is being passed in the peculiar facts of this case which involve a *Mandir* premises where there are thousands of devotees who visit on a daily basis and the redevelopment of this *Mandir* is in the larger public interest. The same shall not be applicable in other fact situations.

16. In so far as the redevelopment plan is concerned, Mr. Chauhan, Id. Architect, has made a detailed PowerPoint presentation (*hereinafter*, "*PPT*"), and has also shown a video of the proposed plan for the redevelopment of the *Kalkaji Mandir* premises. The same has also been viewed by the officers of DDA, DUSIB, as also SDMC and the DCP, South East Delhi, along with their counsels, Id. counsels for the shopkeepers, and Id. counsels for various *Baridars* and *Pujaris*. Let a copy of the said PPT as also the video, be emailed to Mr. R. K. Bhardwaj, Mr. Arun Birbal, and Mr. Nitin Jain, Id. counsels. The same can be shared by the Id. counsels with other counsels appearing in these matters.

17. On the next date, the Court would hear all the parties in respect of the proposed redevelopment plan. The proposed redevelopment plan given by Mr. Chauhan is as under:

(i) The PPT has shown the manner in which the shops would be created on a temporary basis i.e., in the farther part of the premises, which is stated to be in the land belonging to the DDA and SDMC. The current photographs show that this land is being used as parking and other miscellaneous usage for the *Kalkaji Mandir*.

(ii) The cost budget qua each of the temporary shops has been fixed by Mr. Chauhan, at Rs. 30,000/- approximately. The said shops would be provided with one light and one charging point each.

(iii) The shopkeepers would be free to create some temporary storage for themselves.

(iv) The shopkeepers would have to bear the cost of Rs. 30,000/- for the erection of the temporary shops, and thereafter, pay the *Tehbazari* upon receiving possession of the temporary shops, which amount would be fixed by the Court.

(v) A list of shopkeepers who would be entitled to allotment of these temporary shops shall be finalised by the Id. Administrator and placed before this Court, on the next date. It is made clear that none of the shopkeepers shall have any rights in respect of the said temporary shops and they shall merely be using the space allotted to them on a temporary basis. Upon the redevelopment taking place, the land would be reverted to the DDA/SDMC.

18. The redevelopment of the *Kalkaji Mandir* premises would have to be undertaken in different phases. However, before proceeding further, this Court would like to hear submissions of all the Id. Counsels and parties concerned, on the proposed redevelopment plan.

19. For this purpose, let the matter be listed on **22nd March, 2022**, at 2:30 p.m., for orders on the commencement of the erection of the temporary shops and for the commencement of the redevelopment plan submitted by Mr. Chauhan. If any of the parties wish to make any suggestions or modifications with respect to the redevelopment plan, the same shall be placed before the Court on the next date.

20. Any of the pending reports of the Id. Administrator submitted to this Court, including Report No.4 dated 15 th February, 2022, which are yet to be circulated, are permitted to be circulated to the Id. Counsels for the parties, by the Registry.

21. Additionally, a report has been received from UCO Bank as to the total amounts received in the account in the name of the “Registrar General, Delhi High Court, A/c *Kalkaji Mandir* Fund” vide A/c No.15530110155950 IFSC Code UCBA0001553. As per the said report, the current balance in the said account is Rs.6,87,59,606/- as on 24th February, 2022. Further, a total of 87 FDRs in Folder-1 as also 2 FDRs and 135 DDs in Folder-2 were received for encashment, out of which 2 FDRs and 116 DDs are pending with Transferor Bank for encashment. Let the concerned bank official and the official from the Registry be present on the next date, to update the Court of the details of all the deposits received and the amounts yet to be received.

CS(OS) 518/2021 CS(OS) 520/2021 CS(OS) 521/2021 CS(OS) 546/2021 CS(OS) 552/2021 CM (M) 575/2021 & CM APPL. 43796/2021, 29013/2021, 29014/2021 & 43797/2021 CM (M) 323/2021 & CM APPLs. 14178/2021, 20945/2021, 20949/2021, 40269/2021

22. List these matters on 25th April, 2022. CM APPL. 7745/2022 in FAO 36/2021 23. Interim order dated 11th February, 2022, to continue.

CM APPL. 7746/2022 in FAO 36/2021

24. As recorded in the order dated 11th February, 2022, this application seeking exemption has already been disposed of.