

2022 LiveLaw (Del) 209

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE YASHWANT VARMA

W.P.(C) 12715/2021; 14.03.2022

KINGS FURNISHING AND SAFE CO. *versus* THE COMMISSIONER & ORS.

Petitioner Through: Mr.Manish Kaushik and Mr.Ajit Singh Johar, Advs.

Respondents Through: Ms.Mini Pushkarna, SC for NDMC with Ms.Khushboo Nahar and Ms.Latika Malhotra, Advs. Mr.Santosh Kr. Tripathi, SC (Civil) for GNCTD with Mr.Arun Panwar and Mr.Siddharth K. Dwivedi, Advs. for R-3(SHO).

ORDER

1. This writ petition had brought to the attention of the Court encroachments having been made on a public pathway stated to be situate behind the property bearing No. 53-B, Rani Jhansi Road, New Delhi – 110055.

2. When the matter was called on 22 November 2021, learned counsel appearing for the respondent No.1 had apprised the Court that the complaint had been taken cognisance of and forwarded to the Religious Committee as constituted in terms of the Circular of the GNCTD of 05 May 2014.

3. Today when the writ petition was called, learned counsel appearing for the GNCTD has apprised the Court that the said Committee had addressed a communication dated 07 December 2021 to the Corporation and awaits further information and inputs in order to assess the steps which are liable to be taken. Ms.Pushkarna, learned standing counsel appearing for the Corporation, apprises the Court that the requisite information has been duly transmitted by that authority and in any case if anything still remains, it shall, as in duty bound, provide all further information as may be sought by the Committee. Learned counsel for the petitioner submits that the stand taken by the respondents clearly evidences apathy and a failure to remove structures which are admittedly unauthorised.

4. It becomes pertinent to note that before the Court it is not disputed that the structure in question albeit of a religious character exists on a public pathway and thus evidently on public land. The Court notes that the provisions made in the Circular of 05 May 2014 were duly noticed by a learned Judge in W.P.(C) 10949/2021, and its ambit explained in the following terms:-

“10.A perusal of the aforesaid note in itself shows that the circular dated 18.02.1991 on which heavy reliance has been placed by the respondents was only to ensure that orders for demolition of religious structure on public land are not directly referred to the Lt. Governor and are instead referred to a four-member committee constituted under the directions of the Lt. Governor. The aforesaid order, however does not state that demolition should not take place even if the same is contrary to the orders passed by a

competent court of law. In my opinion, the order issued by the Lt. Governor cannot be read out of context as the same appears to have been issued so that the Lt. Governor does not pass orders for removal of unauthorized religious structures without taking into consideration all relevant factors for which purpose, a four member committee was constituted. As noted above, once the Apex Court had way back in the year 2009 directed that no such unauthorized construction would be permitted by any of the States or the UTs, in the name of any temples, church, mosque etc., it was incumbent upon the respondents to ensure that these directions of the Apex Court are meticulously complied with. In my view, in the light of these directions issued by the Apex Court way back in 2009 and lastly in 2018, the respondents could not have been permitted to carry out any unauthorized constructions on any public land. The encroachment in question which has taken place only on account of the utter negligence on the part of respondent no. 1, is clearly in blatant violation of the specific directions issued by the Supreme Court. In the light of these facts, the respondents cannot be permitted to take the plea that the matter still needs to be referred to the religious committee for its approval. From a perusal of the report of the concerned SHO noted hereinabove, it is crystal clear that the aforesaid unauthorized platform is not really being used as a religious structure as neither any prayers are being held there nor any offerings being made nor is any priest available at the site.”

5. As this Court reads the Circular of 05 May 2014 as well as the observations entered in W.P.(C) 10949/2021, it is manifest that the state respondents remain duty bound to remove all unauthorised constructions which may exist on public land. The mere fact that those encroachments represent religious structures, a place of worship or are given the colour of a religious structure cannot possibly detract or dilute from that obligation. This position also stands duly explained and enunciated by the Supreme Court in its two orders which were noticed by the learned Judge in W.P.(C) 10949/2021. On a conjoint reading of the Circular as well as the decision in W.P.(C) 10949/2021, it is evident that all that the Circular intends to achieve is to ensure that the removal of encroachments is conducted in a structured manner and untoward incidents or a law and order situation being created avoided. The contents of that Circular also cannot be read as tempering the primal obligation of the respondents, namely to remove all unauthorised constructions, religious or otherwise.

6. Learned counsel representing the GNCTD states that all action in this regard and in light of the grievance which is urged in this writ petition shall be taken within a period of three weeks from today and a status report submitted for the consideration of the Court.

7. List again on 08.04.2022.