

\$~52,51, 53, 2(OS) to 19(OS)

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

Date of decision: 2nd May, 2023

+ **FAO 36/2021 & CM APPLs.2914/2021, 10442/2021, 10444/2021, 20904/2021, 23819/2021, 25868/2021, 25869/2021, 25870/2021, 25884/2021, 25885/2021, 26495/2021, 29121/2021, 38063/2021, 38289/2021, 39643/2021, 43944-46/2021, 3172/2022, 3455/2022, 5641/2022, 5642/2022, 5803/2022, 5865/2022, 7745/2022, 13472/2022, 16153/2022, 17039/2022, 18207/2022, 18247/2022, 18248/2022, 21768/2022, 21801/2022, 21802/2022, 21803/2022, 22125/2022, 23093/2022, 29624/2022, 32296/2022, 34552/2022, 34553/2022, 39754-55/2022, 40548/2022, 43723/2022, 53179/2022, 876/2023, 14509/2023, 15812/2023, 15813/2023 13658/2023, 22230/2023**

NEETA BHARDWAJ & ORS.

..... Appellants

versus

KAMLESH SHARMA

..... Respondent

With

+ **CM (M) 323/2021 & CM APPL. 14178/2021, 20945/2021, 20949/2021, 40269/2021**

+ **CONT.CAS(C) 614/2021**

+ **CS (OS) 240/2023**

+ **CS (OS) 2499/2010**

+ **CS (OS) 511/2021**

+ **CS (OS) 526/2021 & I.A. 7511/2022**

+ **CS (OS) 527/2021 & I.As.1717-18/2022**

+ **CS (OS) 533/2021 & I.As.1721-22/2022**

+ **CS (OS) 535/2021 & I.A. 7552/2022**

+ **CS (OS) 538/2021 & I.As.1725-26/2022**

+ **CS (OS) 539/2021 & I.As. 9063/2022, 9064/2022**

+ **CS (OS) 540/2021 & I.A. 7940/2022**

+ **CS (OS) 541/2021 & I.As.1723-24/2022**

+ **CS (OS) 542/2021 & I.As. 9031/2022, 9032/2022**

+ **CS (OS) 544/2021 & I.As.1719-20/2022**

+ **CS (OS) 545/2021**

+ **CS (OS) 547/2021 & I.As.1715-16/2022**

+ **CS (OS) 554/2021 & I.As. 9061/2022, 9062/2022**

+ **CS (OS) 579/2021 & I.As. 9981/2022, 9982/2022**

+ **CS (OS) 55/2022, I.As.12299/2022, 12300/2022, 12341-42/2022, 19288/2022**

Appearances:-

Mr. Arun Birbal, Mr. Sanjay Singh & Ms. Sonia Singhania, Advocates for DDA. (M:9958118327)

Mr. Neeraj Bhardwaj & Mr. Rahul Bhardwaj, Advocates.

Mr. Lokesh Bhardwaj, Advocate. (M:9971576388)

Mr. Kush Bhardwaj, Advocate. (M:9891074686)

Ms. Samapika Biswal and Mr. Aman Kumar Yadav, Advocates for Ld. Administrator. (M:9406951592)

Mr. Zoheb Hossain, Amicus

Mr. Luv Bhardwaj, Advocate (M-9990693140)

Mr. Siddharth Panda and Mr. Ritank, Advs. for SDMC. (M:9891488088)

Mr. Thakur Sumit, Advocate.

Mr. Vishal Bhardwaj, Advocate

Mr. Ishkaran Singh, Advocate for 19 shopkeepers. (M:9582021885)

Mr. Paul Kumar Kalai and Mr. Kaoliangpov Kamei, Advs for Petitioner. (M:8376813694).

Mr Prabhas Chandra, Advocate.

Mr. R.K. Bhardwaj, Advocate (M: 9312710457).

Mr. Rajmangal Kumar (M: 9871211544).

Mr. Goonmeet Singh, Architect.

Mr. Rakesh Kumar, SHO.

Mr. Rajeew Kumar Chauhan, Advocate for Unregistered Vendors.

Ms. Himanshi Kaushik, Architect.

Mr. S. Sasibhushan, Advocate.

Mr. Sarvesh Bhardwaj, Advocate.

Mr. Vipul Gaur, Advocate.

Mr. Anuj Chaturvedi, Advocate for DUSIB (M: 9810473166).

Mr. Ramesh Kumar Mishra, Advocate.

Mr Anuroop P S, Advocate (M: 9582818838).

Mr. Aly Mirza and Mr. Parbhash Kumar, Advocates (M: 9899720945).

Mr. Aditya, Mr. Kamlesh Kumar Mishra, Mr. Kailash Kumar Jha, Mr. Raghunath Pathak and Ms. Shivalika, Advocates (M: 8699723746).

Mr. Akarshan Bhardwaj and Ms. Garima Anand, Advocates (M: 9711549953).

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. These matters pertain to the *Kalkaji Mandir*, which this Court has been hearing from time to time. These are part-heard matters.

Construction activities on land adjoining to the Kalkaji Mandir & Lotus Temple

3. On the last date of hearing, it was brought to the attention of the Court that fresh construction and excavation was being done in the land adjoining the *Kalkaji Mandir* and the Lotus Temple. The Court was informed that the said activities were being carried out by a third party i.e M/s Eswara Kamdhenu Restaurant Pvt. Ltd. to whom the land in question was stated to have been leased by DDA. On the said date, certain photographs of the construction activities were also handed over to the Court. The Court had also directed DDA to place on record the nature of arrangement with the said third party carrying out construction on the land adjoining the *Kalkaji Mandir* and the Lotus Temple by 28th April, 2023.
4. Today, Mr. Birbal, ld. Counsel, at the outset, submits that he has filed an affidavit on behalf of DDA, however, the same is not yet on record. A copy of the same has been handed over to the Court. As per the said affidavit, around 60 sites whose inventory was available with the Engineering/ Horticulture Department of DDA were put on e-auction on 21st October, 2022 for the purposes of marriage, social, cultural and religious functions on a license fee basis.
5. Certain bids are stated to have been received and pursuant thereto, 23

open sites including the site called “DDA land adjoining green area at Kalkaji Mandir” admeasuring 9,000 sq. meters is stated to have been licensed out to M/s Eswara Kamdhenu Restaurant Pvt. Ltd. for a period of 36 months starting from 1st November, 2022 on a monthly license fee of Rs. 28,91,120/-. The said site is stated to have been handed over on 28th December, 2022. The submission of DDA is that the land belongs to DDA and there is no embargo on using the same. Temporary structures are being erected by the said Licencee on the said land.

6. In the present matter relating to the *Kalkaji Mandir*, the Court is undertaking the exercise of demarcation of land as also the redevelopment of the *Kalkaji Mandir*. The DDA has been a party in these proceedings right from inception. The construction which was recently commenced adjoining the Lotus Temple and the *Kalkaji Mandir* was brought to the notice of the Court on the last occasion. The Court had observed vide order dated 19th April 2023, that since demarcation was yet to be finalised, DDA could not have entered into an arrangement with a third party. The observations of the Court are extracted below:

*“11. SDM Kalkaji, Mr. J.B. Kapil who is present in Court today submits that the demarcation process is underway and is taking some time because the revenue records are very old, dating back to 1900s and in Urdu language. He further submits that the said records are being translated. **He further submits that the DDA has not extended any cooperation in demarcating the land, though they are in possession of records.**”*

*12. Ld. Counsel for the Petitioners have also placed on record today certain photographs to show that fresh construction, excavation is being done in the land adjoining the Mandir by a third party to whom the said land is stated to have been leased by DDA. **It is***

surprising that when the demarcation itself is not finalized, how the DDA has started developing the same.

13. The Court expresses enormous concern as DDA has been a party to these proceedings right from the inception and when the demarcation process is being undertaken for the redevelopment of the Mandir, suddenly, the DDA is stated to have entered into some arrangement with a third party and has started construction immediately adjoining the Mandir.”

7. Photographs/images of the construction being undertaken on the land adjoining the *Kalkaji Mandir* shown to the Court by the Petitioners are as under:





8. Today, black and white photographs of the construction have been also been handed over to the Court by Mr. Birbal, Id. Counsel for DDA which are as under:



9. A perusal of both sets of photographs shows that large scale construction is sought to be erected on the land. It is claimed by the DDA

that the said construction is temporary in nature. However, clearly, a perusal of the images leaves no doubt in the mind of the Court that any construction of the nature being undertaken would affect the view of the Lotus Temple. Moreover, this land is adjoining the *Kalkaji Mandir*, the redevelopment of which is being considered.

10. The demarcation report prepared in 2012 in respect of *Kalkaji Mandir* was objected to by DDA due to which demarcation could not be finalized. There seems to be some dispute as to the area of land belonging to DDA. Thus, steps are being taken to clearly demarcate the land of the *Mandir* and the DDA.

11. Since inception, the stand of DDA was always that the *Kalkaji Mandir* area is a green area, however, suddenly the said land seems to have been demarcated by DDA on its own and large-scale construction is being undertaken. This stance of the DDA has been recorded in the order dated 15th March, 2023 passed by this Court:

15. Insofar as the creation of temporary shops and kiosks for catering to the devotees in the Kalkaji Mandir premises is concerned, Mr. Birbal, ld. Counsel appearing for DDA and SDMC, submits that this ought not to be permitted as the Master Plan for Delhi 2021 shows that the Kalkaji Mandir area as green area.

12. The said stance is also reflected in the Minutes of Meeting dated 13th March, 2022, which were filed after a joint survey of the *Kalkaji Mandir* premises was undertaken by the DDA, DUSIB, and SDMC from 8th March, 2022 to 12th March, 2022 as also in the status report of DDA dated 17th November, 2021. The relevant parts of the same are as under:

“Minutes of Meeting dated 13th March, 2022

It was also discussed that in the Master Plan of Delhi, 2021 the area where the Kalkaji Temple exists, is shown as Green Area. Thus, steps would have to be taken by the Kalkaji Temple authorities to file an application with the DDA under Section 11 A of The Delhi Development Act, 1957 for modification of the Master Plan to reflect the area in the Master Plan as per its usage. Once an application for modification in the Master Plan is received, the requisite steps as per the procedure laid down in the statute shall be undertaken by the DDA.”

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Status Report of DDA Land Existing at Kalkaji Mandir Area dated 17th November, 2021

In reference of Notice/DDA/7/ Dt. 12.11.2021 sent by Justice J.R. Midha (Retd.) Ld. Administrator of Kalkaji Mandir appointed by the Hon’ble Delhi High Court the status report belonging to the DDA land at the Kalkaji Mandir Complex is as under. The following Khasra Nos of Village Bahapur Kalkaji Mandir Complex which pertains to DDA.

Khasra No.	Area	Details
560/2	4Bigha-05Biswa <u>(Green Area)</u>	Acquired vide award no.2059 dt. 24.01.1968 and placed at the disposal of DDA vide notification u/s 22(i) F8(49)/63/L&H dt. 30.05.1972. Further transferred to Horticulture dept. since 06.05.1971

”

13. Considering the location of the land which is right next to the Kalkaji Temple and the Lotus Temple and the nature & extent of construction that is being sought to be erected, it is clear that the skyline in the area is likely to be affected. The images also show that the view of the Lotus temple is also being obstructed. Accordingly, subject to further examination, and to ensure that the redevelopment of the *Kalkaji Mandir* is not adversely affected, it is directed that the DDA or the contractor/ licensee on its behalf shall cease construction on this land.

14. At this stage, Mr. Birbal, Id. Counsel, submits that DDA should be permitted to use the land for social and religious functions, *etc.* Let an affidavit be placed on record giving the details as to when was the last time this particular area of land was used for any such functions or whether it was maintained as a green area by DDA. Photographs shall also be placed on record. The affidavit shall be placed on record within two weeks.

15. Upon the said affidavit being received by the Court, modification of the above directions shall be considered by the Court.

16. Copies of the DDA's affidavit be served upon the Petitioners and the Id. Administrator shall file the responses, if any, within four weeks.

Redevelopment of the Mandir

17. On the last date of hearing, the Court had directed the Court appointed architect – Mr. Goonmeet Singh Chauhan, to hold a meeting with the *Pujaris* for the purpose of getting inputs with regard to the redevelopment of the *Mandir*. Today, Minutes of Meeting dated 29th April, 2023 have been placed on record by Ms. Biswal, Id. Counsel for the Administrator. The Minutes have been perused by the Court. The general stand of the *Pujaris* and *Baridaars* is that no part of the *Mandir* Complex ought to be used for

commercialisation. However, the only exception to that would be some shops for the purposes of making available *puja samagri, flowers, prasad etc.* for the devotees. For the said purpose, the *pujaris* and *baridaars* are acceptable to the position that a specific area be carved out in the master redevelopment plan within the *Mandir* premises itself for the creation of some shops.

18. The modalities in which the said shops shall be allocated, used and the license fee which would be payable shall be discussed between the Court appointed architect, the Id. Administrator and the *pujaris/ baridaars*. Thereafter, a joint proposal shall be filed by the next date of hearing.

Disputes relating to the Dharamshalas

19. Insofar as the *Dharamshalas* are concerned, there are two sets of *Pujaris* who have been heard by the Court. The Court appointed architect, Mr. Chauhan and Id. Counsel for the Administrator have also been heard.

20. Ms. Garima, Id. Counsel appearing for one faction of 45 *pujaris* submits that there is a distinction between *pujaris* who are land owners and those who are not. She submits that she represents the *pujaris* who are land owners. It is her submission that in *SLP(C)19064-19065/2022* titled *Ved Prakash Bhardwaj v. Neeta Bhardwaj*, interim protection has been granted to them with respect to dispossession from *dharamshalas*. It is her submission that their possession is not to be disturbed. The Id. Counsel further submits that the Supreme Court while granting stay has, clarified that there shall be no impediment in carrying out the re-development of the *Mandir*.

21. The stand of Ms. Garima, Id. Counsel that 45 *pujaris* are land owners is disputed by a large number of *Pujaris* and *Baridaars*. They rely upon a

judgment dated 28th December, 1955 passed by Sub-Judge, 1st Class, New Delhi, passed against the families claiming ownership rights in the Mandir premises, holding that there is no ownership right in favour of any individual or group of individuals. The said judgment is stated to have been upheld by the Delhi High Court vide order dated 10th April, 1964. This position is disputed by Ms. Garima, Id. Counsel.

22. Ld. Counsel representing the group of 45 *pujaris* further submits that they do not agree for a separate area to be demarcated for the *dharamshalas*.

23. There is a dispute between the Id. Counsels for *Baridaars/Pujaris* as to the issue that is pending before the Supreme Court. For the time being, however, since redevelopment has already been directed to be proceeded further, the following directions are passed:

- i) In the overall redevelopment plan, specific area for *dharamshalas* shall be demarcated. Mr. Chauhan submits that the areas of 2000 and 2500 sq. mtrs. have broadly been identified. In the said areas, which have been identified, *dharamshalas* shall be constructed by the *pujaris* and *baridaars* on their own. However, the said *dharamshalas* shall be the shared property amongst all the *pujaris* and *baridaars* and shall not belong to any one individual or group of individuals. This position is in consonance with the view taken by the Court in the order dated 1st June, 2022 which is as under:

“40. This Court is seized of the redevelopment of the Kalkaji Mandir for the last several months. In the opinion of this Court, the occupants of the dharamshalas and pujaris cannot claim a vested right to remain in the Mandir premises, especially when the same is being misused by them. The pujaris and the occupants of Dharamshalas have come into occupancy

of the said premises, with a view to render services to the deity. Thus, claiming of such private individual rights on the said land is not permissible.

41. It has been recorded even in the order dated 29th March, 2022 passed by the Division Bench in LPA 172/2022, and as is the position which is canvassed on behalf of all the Petitioners that the two groups i.e., Thok Jogians and Thok Brahmins claim ownership of the said land, collectively. The redevelopment of the Kalkaji Mandir premises is in the utmost interest of the lakhs of devotees who are visiting the Mandir. The same cannot be sacrificed for the private interest of the pujaris and the dharamshala occupants, some of whom are also using the same for commercial purposes as is recorded in the Id. Administrator's report. Be that as it may, the said occupants of the dharamshalas have already been permitted to appear before the Id. Administrator in order to give their suggestions and the manner in which their interests ought to be taken into consideration in the overall redevelopment of the Kalkaji Mandir.

42. Since the interests of the dharamshala occupants and the pujaris has already been safeguarded, as also, in view of the fact that their interests would be taken care of in the redevelopment on an equitable basis without giving any preference to any particular individual person, it is deemed appropriate to direct that the dharamshalas and all the other premises which are in the occupation of the pujaris and the various other unauthorized occupants shall be vacated within a reasonable period of time."

- ii) The Façade and the outer look of the *dharamshalas* shall be as per the design provided by the Court appointed architect in order to ensure that the same matches with the overall layout and look of the *Kalkaji Mandir* complex. However, the inner design,

construction, *etc.* is left to the *pujaris* and *baridaars* to be agreed upon and executed.

- iii) Insofar as the recommendations given by the Id. Administrator in paragraph 7 of the Minutes of Meeting dated 29th April, 2023 is concerned, it is up to the *Baridaars/Pujaris* to arrive at consensus as to the manner in which the *dharamshalas* ought to be constructed and how they are to be used.

24. Needless to add, the above directions are subject to any orders that may be passed in the pending SLP.

25. The objection of the set of 45 *pujaris* is recorded to the effect that their possession ought not to be disturbed from the current *dharamshala*. It is clarified that, at the moment, only the redevelopment plan is being considered. There are various steps which may be required to be taken before the redevelopment on ground can actually be started.

26. Insofar as main *bhawan* and the smaller temples are concerned, the Id. Administrator in the Minutes of meeting records as under:

*“9. It was discussed that as deliberated in the previous meetings, **the main Bhawan as also the main Devtas/ temples attached to the Mandir would be retained, while all other Devtas/ temples may be relocated and housed in a separate temple complex.** Mr. Vipul Gaur, Pujari stated that they would provide a list of the Devtas/ temples which are to be retained, and a separate list of Devtas/ temples, which can be relocated and housed in a separate temple complex. The office of the Ld. Architect shall share the survey plan available with them with Mr. Vipul Gaur, Pujari and Ms. Himanshi Kaushik, Architect, who shall then mark out these Devtas/ temples on the survey plan for the reference of the Ld. Architect.*

27. In order to identify which are the *devtas* and temples which are to be relocated and which are to be retained, the *Baridaars/Pujaris* may consult among themselves and may even appoint a Structural Consultant for the said purpose.

28. Let a specific list of all the *devtas* be made along with the temple structures and against each of the *devdas*/temples, the agreed proposal be put up before the Court as to which are to be shifted and which are to be retained. This list shall be filed by the Petitioners by the next date of hearing.

29. As per the minutes of meeting, a *Pujari Niwas* has also been agreed to be incorporated into the overall redevelopment plan which is set out below:

10. It was discussed that as deliberated in the previous meetings, the Pujari Niwas I accommodation would comprise of 2 four bedroom sets, viz. one for the incoming baridaars and the other for the outgoing baridaars. The Ld. Architect clarified that each of these bedroom sets would admeasure 2500 sq. ft. each (approx.).

30. Insofar as the remaining suggestions are concerned, the minutes of meeting record as under:

11. In respect of the other aspects of the master plan, the following suggestions were given by the first faction of Pujaris represented by Mr. Vipul Gaur:

(i) The Pujari Niwas/ accommodation should be close to the main Bhawan for ease of access. It should comprise a storage area as well as a locker room for storing of offerings. A further suggestion was made that there should be a waiting room on the ground floor of the Pujari Niwas building, which could also serve as a VIP waiting area.

(ii) It was suggested that the master plan should also

mention the phases in which the redevelopment would be carried out.

(iii) It was suggested that there should be a proper queuing strategy in the master plan, showing the queuing system and the barricading arrangements, for entry and exit of the devotees.

(iv) It was suggested that there should be a separate VIP corridor or route for VIP darshan. It was clarified by the Ld. Architect that the same was already included in the master plan.

(v) With respect to the bhandara and bhojanalaya halls, it was clarified by the Ld. Architect that these halls would admeasure approx. 8000 sq. ft. each. It was discussed that the ground floor of these halls could be kept open, while the first floor could be enclosed. It was suggested by the Pujaris that a perimeter veranda could be added, providing separate entry and exit into these halls, such that the flow of devotees is not impeded.

(vi) With respect to whether the existing hall complex adjacent to the office of the Ld. Administrator should be retained, it was clarified by the Ld. Architect that retaining this would obstruct the fire corridor as well as block the present master plan. It was suggested by the Ld. Architect that this structure could be demolished in the last phase, whereas the Devtas on the ground floor could be relocated and housed in a separate complex. The Pujaris however requested the Ld. Architect to explore how best the said hall complex could be utilized and subsumed in the redeveloped Mandir complex.”

31. No objection has been raised in respect of the above extracted suggestions. In terms of the above agreed terms of redevelopment, let the final redevelopment plan be placed by the Court appointed architect before the Court by the next date of hearing.

Issue of the Registered Street Vendors

32. Ld. Administrator in his report dated 18th April, 2023 has stated that MCD has verified that 49 additional street vendors have certificate of vending/ registration slips.

33. Let the MCD file a specific affidavit confirming as to the number of vendors, who are registered with it for the purpose of street vending and who ought to be permitted to sell their wares outside the *Kalkaji Mandir*.

34. Issue notice in **CM APPL.22230/2023** under order I Rule 10 CPC in **FAO 36/2021**.

35. List on 25th May, 2023 at 4:00 pm.

MAY 02, 2023

Rahul/dj/mr/dk

**PRATHIBA M. SINGH
JUDGE**

सत्यमेव जयते