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

Date of decision: 6th March, 2023

+ **W.P.(C) 4063/2020**

ZAHIR AHMED

..... Petitioner

Through: Mr. Khan Zulfiquar Khan and Mr.
Deepak Kumar Mishra, Advocates.
(M: 9560376098)

versus

GOVERNMENT OF NCT OF DELHI THROUGH DISTRICT
MAGISTRATE & ORS.

..... Respondents

Through: Mr. Wajeeh Shafiq, Standing
Counsel for Delhi Waqf Board. (M:
9953756236).

Ms. Lubna Naaz, Advocate for R-3.

Mr. Raghuvendra Upadhyay,
Assistant Standing Counsel for R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition relates to a prime property located next to the *Masjid Zabta Ganj*, Man Singh Road, India Gate, New Delhi. The Petitioner, Zahir Ahmed, has filed the present petition seeking de-sealing of the said property, which admittedly consists of one room, kitchen, bathroom and some space adjacent to the mosque (hereinafter '*said property*'). Further, he seeks a restraint order against alleged harassment being caused to him. Petitioner further seeks permission to make reconstruction of the said property.

3. The prayers in this writ petition are as under:-

“a. Issue a writ in the nature of mandamus thereby direct the respondent no. 1 & 2 to de-seal the said premise of the petitioner and hand over peaceful possession to the petitioner;

b. Issue appropriate writ/direction to the respondent no. 2 to refrain from unnecessary harass the petitioner in respect of possession of the said property of the petitioner;

C. Issue appropriate direction to respondent no. 2 to 3 to reconstruct the wall demolished by them and also rebuilt the premise in the same state as it was prior to 05.03.2020;

d. Issue appropriate direction to the respondent no. 4 to take appropriate actions against the person who have illegally encroached its property in the area near India Gate;

e. Issue appropriate writ/direction to the respondent no. 1 & 5 to conduct an enquiry and take legal action against the erring officials;

f. Issue appropriate writ/direction to the respondent no. 5 to take legal action against officials of respondent no. 2, respondent no. 3 & his relatives and goons;

g. Pass any other/further writ/order which this Hon'ble court deem fit and proper in the facts and circumstances of the case.”

4. Admittedly, the said property is in the vicinity of India Gate in New Delhi. The case of the Petitioner in the writ petition is that he and his family have been living in the said property for several decades and the property was separated from the mosque by a wall constructed between the mosque and the said property.

5. The Petitioner relies on a civil suit was instituted by the Waqf Board being **Civil Suit No. 597/1995** titled **‘Delhi Wakf Board v. Sh. Zaheer**

Ahmed & Sh. Rashid Ahmed seeking possession of the said property. The said suit was dismissed vide order dated 14th October 1998, as the parties had not led evidence in the matter.

6. The grievance of the Petitioner is that in 2005, the Respondent No. 3- Mohd. Asad i.e. the current *Imam* of the *Masjid*, along with others accused, demolished the wall which separated the said property from the *Waqf* property/Mosque. A First Information Report ('FIR') was also registered in this regard by the occupants of the said property. However, it is stated that after the intervention of the police, the petitioner could reconstruct the wall that was demolished by the Respondent No. 3. Finally, various orders were passed by this Court in Writ Petitions filed by the occupants as also by the Petitioner leading to proceedings under the Waqf Act, 1995.

7. The Petitioner avers that since 2009 various notices for eviction have been issued by the Waqf Board and eviction orders have been passed by the Waqf Board and the SDM, the details of which have been given in the petition, against the workers/employees of the Petitioner, namely, Mr. Zainul, Mr. Sainul and Mr. Nafees. As per the Petitioner, no such eviction notices have ever been issued against the Petitioner in respect of the said property. Hence, the Petitioner seeks reinstatement in the said property.

8. It may be noted that as per the Eviction Order passed by the CEO of the Waqf Board dated 6th March 2009, against Mr. Zainul, the Petitioner - Mr. Zahir Ahmed had appeared on behalf of Mr. Zainul and was unable to show any authority under which both Mr. Zainul and Mr. Zahir Ahmed were occupying the said property. Accordingly, the CEO of the Waqf Board directed that Mr. Zahir Ahmed, Mr. Zainul and all other encroachers were liable to be evicted.

9. The Petitioner is aggrieved by Order dated 2nd March 2020 whereby the occupants were directed to vacate the said property by 5th March 2020 and the Order dated 5th March 2020 passed by the SDM, Chanakyapuri wherein it is recorded that an eviction drive was undertaken in respect of the said property and the possession of the said property was handed over to the Delhi Waqf Board.

10. Mr. K. Z Khan, Id. Counsel appearing for the Petitioner submits that the Petitioner has had continuous and uninterrupted possession of the said property, since the last several decades, and hence the Petitioner was not liable to be dispossessed.

11. On behalf of the Respondent-Waqf Board, Mr. Wajeeh Shafiq, Id. Counsel submits that the Petitioner's father was discharging the duties of an *Imam* in the Mosque and the Petitioner had come into possession of the said property due to his father's position of *Imam*. The Mosque was allotted by way of Gazette notification issued in terms of the agreement registered on 3rd July 1945 , by the Delhi Administration, in favour of the Delhi Waqf Board. Since then the Waqf Board is in occupation of the property which is described as under:-

'APPENDIX A' TO THE AGREEMENT REGISTERED ON

3RD JULY 1945

“The site is situated on the South half of the General Vista in the water channel near the junction of the Kingsway and man Singh Road, on the south side of the former and east of the latter. It measures about 0.095 of an acre and is bounded on the North by the water channel mentioned above, on the East & West by the same water

channel and the grass lawns of the General Vista, on the South by the grass lawn of the Central Vista.

12. In order to prove the fact that the Petitioner's father was the *Imam*, reliance is placed on the basis of electricity bills which are in the name of Mr. Abdul Majid who is the father of the Petitioner-Mr. Zahir Ahmed.

13. There are various writ petitions and proceedings in respect of the said property. The details of the same are –

- ***W.P (C) 1479/2018*** titled '***Zahir Ahmed v. Sub Divisional Magistrate Chanakyapuri and Ors***',
- ***W.P (C) 11441/2017*** titled '***Mohd. Nafis and Anr. V. Delhi Waqf Board and Ors.***',
- ***Suit No. 5/2018*** titled '***Mohd. Nafis & Anr. v. Delhi Waqf Board & Anr.***' before the Waqf Tribunal
- ***Civil Suit No. 597/1995*** titled '***Delhi Waqf Board v. Zaheed Ahmed & Rashid Ahmed***'

Some of the relevant records and orders passed in the above proceedings have been placed before the Court. The sum and substance of the case of the Waqf Board is that the Petitioner was nothing but an encroacher in the *Waqf* property and cannot claim any rights in the said property.

14. Insofar as the dismissal of the suit filed by the Waqf Board in 1998, is concerned, it is submitted by Mr. Shafeeq that there was no adjudication on merits and the suit was dismissed due to non-filing of evidence.

15. On behalf of Respondent No. 3, who is the present *Imam* of the said *Masjid* i.e Mohd Asad, son of late Jalaluddin, it is submitted by Id. Counsel Ms. Lubna Naaz that the father of Respondent No. 3, was the *Imam* of the

mosque since 1981. Shri Mohd. Asad is presently the *Imam* and is in occupation of the said property. Ld. counsel also relies upon proceedings in *Suit No. 5/2018* titled '*Mohd. Nafis v. Delhi Waqf Board*' before the Waqf Tribunal and the application for impleadment under Order I rule 10 CPC filed by the Petitioner to argue that the said fact has not been disclosed in the present petition. Further, it is argued that, vide the order dated 25th July, 2018, passed by the Waqf tribunal, the interim order passed in favour of the Plaintiffs, in the said suit, who are allegedly the workers of the Petitioner, was vacated. On the basis of the pleadings, it is argued that the Petitioner and his alleged workers were unauthorized occupants. Reliance is placed upon '*Chhedi Lal Misra v. Civil Judge, Lucknow & Ors.*' 2007 (4) SCC 632 to argue that unauthorised occupants cannot claim any rights on the *Waqf* property.

16. Heard. The present petition is yet another example of the manner in which public places of worship are converted into private tenements and rights are sought to be claimed by priests, Pandits, Imams, caretakers and their families, in an illegal and unauthorised manner. Such public places of worship are converted into residences and are occupied by the persons who take care of the said places including by their extended families, domestic help and other trespassers, which would be contrary to law. In some cases, this Court has also noticed that the said places of worship are extended beyond the allotted land and are converted into commercial property, and rents/lease amounts are also sought to be collected in an illegal and unauthorised manner. Even in the present case it is not clear as to the basis on which so many persons who are described as `workers' were inducted by the Petitioner into the property and they continued to occupy the property

for several years.

17. As can be seen from the facts of the present case, the *Masjid* in question is located in the centre of Delhi, near India Gate. The land allotted to the said *Masjid* in 1945 was 0.095 acres. The Petitioner herein, on a query from the Court, specifically admits that there is no title document to the property in question in his favour, which obviously there cannot be. The Petitioner's father was an *Imam* in the mosque and in the Court's opinion, it could be due to this reason that the Petitioner unauthorisedly came into occupation of the said property. The initial case of the Petitioner in the writ petition and other contemporaneous documents is that Mr. Nafees, Mr. Zainul Khan, Mr. Sainul are all employees/occupants, who were permitted by the Petitioner to occupy the said property.

{A} The relevant extracts of the writ petition are -

“...Brief facts of the case are as under:

*...VII. That after a long period of the aforesaid order dated 14.10.1998, notice dated 05.01.2009 under sub section (1) of section 54 of the Wakf Act, 1995 was issued by the respondent no. 2 **against the workers/employees of the petitioner namely Mr. Zainul and Mr. Sainul,** for encroachment/unauthorised occupation Inside Masjid Zabta Ganj, Main Man Singh Road, India Gate, New Delhi. However, no such notice was issued to the petitioner. Copy of aforesaid notices are annexed herewith as Annexure P-5 (Colly).*

*VIII. Said notices dated 05.01.2009 were duly replied by the petitioner vide reply dated 22.01.2009 and **clarified that Mr. Zainul and Mr. Sainul are my (i.e. the petitioner's) workers/employees** and are living in the premises of the petitioner which is separate from the mosque but adjacent to the mosque and there is no question of any kind of encroachment inside the*

mosque. Thereby, claim of the respondent no. 2 i.e. aforesaid persons are unauthorised occupants of the property inside the mosque was denied by the petitioner. Copy of the aforesaid reply to notices are annexed herewith as Annexure P-6 (Colly).

IX. However, the respondent no. 2 issued reminder notice dated 09.02.2009 under sub-section (1) of Section 54 of the Wakf Act,1995 **against the workers/employees of the petitioner namely Mr. Zainul, Mr. Sainul and Mr. Nafees** for encroachment /unauthorised occupants of property Inside Masjid Zabta Ganj, Main Man Singh Road, India Gate, New Delhi. Same was duly replied by the petitioner vide reply dated 28.02.2009 on the same line of reply as made in dated 22.01.2009. Copy of the aforesaid reminder notices dated 09.02.2009 and replies dated 28.02.2009 to those notices are annexed herewith as Annexure P-7 (Colly).

X. That despite aforesaid replies to notices and representation by the petitioner before good officers of the respondent no. 2, the respondent no. 2 passed an eviction order dated 06.03.2009 under Section 54 of The Wakf Act,1995 against Mr. Zainul, Mr. Sainul and Mr. Nafees. Aggrieved by the aforesaid eviction order and anticipating evil intention of the respondents, the petitioner issued a legal notice dated 23.03.2009 through his counsel **and again clarified that Mr. Zainul, Mr. Sainul and Mr. Nafees are not residing inside the Masjid property, Zabta Ganj, Man Singh Road, India Gate, Delhi rather they are residing with the petition in his premise which is separate from the Masjid/ Waqf property** as confirmed by Ld. Civil Court vide order dated 14.10.1998. Consequently, the petitioner called upon the respondent no. 2 to withdraw the eviction order. Copy of eviction orders dated 06.03.2009 passed by the respondent no. 2 and a copy of legal notice dated 23.03.2009 are annexed herewith as Annexure P-8 (Colly).

...XII. That workers of the petitioner namely Mr. Zainul and Mr. Nafees in connivance with the respondent no. 3 had stolen electricity meter no. K. No. 70483/L Dom installed inside the premises of the petitioner. Therefore, the petitioner asked his workers to leave the job & premise in respect of the stolen meter, the petitioner filed a police complaint bearing DD No. 26B dated 27.06.2019 before the SHO, Tilak Marg. Copy of the police complaint dated 27.06.2019 is annexed herewith as Annexure P-10.

The Petitioner prefers to file present writ petition on the inter alia following grounds-

GROUND

...K. Because in the year 2009 & 2013 and subsequently in 2019-20, the respondent no. 1 and 2 have issued a number of notices, reminder notices and eviction orders under section 54 & 55 of The Wakf Act, 1995 to the workers/employees of the petitioner for encroachment and eviction from Inside Zabta Ganj Masjid, Man Singh Road, India Gate, New Delhi....

...O. Because the workers/employees of the petitioner namely Mr. Zainul and Mr. Nafees in connivance with the respondent no. 3 had stolen electricity meter installed inside the premise of the petitioner. Therefore the petitioner asked his workers to leave the job & premise and in respect of the stolen meter, the petitioner filed a complaint bearing DD No. 26B dated 27.06.2019 before SHO Tilak Marg.”

(b) Petitioner's reply dated 22nd January 2009 to the eviction notice issued by the CEO, Waqf Board dated 5th January 2009 reads:

“22.01.2009

The Chief Executive Officer,
Delhi Wakf Board
5028, Darya Ganj,

New Delhi-110002

Subject: Notice under sub-section (1) of Section 54 of the Wakf Act 1995

Please refer to your notice No. 12/SO/1679/DWB/2008/28 dated 5.1.09 regarding the above.

This notice has been sent to Zainul who is my worker and is living in my premises which is separate from the mosque but adjoining the mosque. There is no question of any kind of encroachment upon the mosque.

In view of the above, the above said notice may be treated as withdrawn.

*Sd.
(ZAHIR AHMED)
Masjid Zabta Ganj
Man Singh Road
New Delhi”*

(C) The reply of the Petitioner dated 22nd January 2009 to the eviction notice issued by the CEO, Waqf Board dated 5th January 2009 in respect of Mr. Sainul is extracted below-

“22.01.2009

*The Chief Executive Officer,
Delhi Wakf Board
5028, Darya Ganj,
New Delhi-110002*

Subject: Notice under sub-section (1) of Section 54 of the Wakf Act 1995

Please refer to your notice No. 12/SO/1681/DWB/2008/30 dated 5.1.09 regarding the above.

This notice has been sent to Sainul who is my worker and is living in my premises which is separate from the mosque but adjoining the mosque. There is no question of any kind of encroachment upon the mosque.

In view of the above, the above said notice may be treated as withdrawn.

Sd.
(ZAHIR AHMED)
Masjid Zabta Ganj
Man Singh Road
New Delhi”

(D) The reply of the Petitioner dated 28th February 2009 to the Reminder eviction notice issued by the CEO, Waqf Board dated 9th February 2009 in respect of Mr. Nafees is extracted below-

“28.02.2009

The Chief Executive Officer
Delhi Wakf Board
5028, Daryaganj
New Delhi-110002

Sub: Notice under Sub- Section (1) of Section 54 of the Wakf Act 1995.

Pl. refer to your Notice No. 12/SO/1680/DWB/2008/127 dt. 9.2.09 regarding the above.

The notice has been sent to Nafees who is living with

***me in my premises** which is separate from the Mosque but adjoining the mosque. There is no question of any kind of encroachment upon the Mosque.*

In view of the above, the above said notice may be treated as withdrawn.

Sd.
(ZAHIR AHMED)
Masjid Zabta Ganj
Man Singh Road
New Delhi”

(E) The relevant extract of the Legal notice seeking withdrawal of the eviction orders passed by the CEO, Delhi Waqf Board dated 23rd March 2009 issued by an Advocate – Mr. Sheikh Imran Alam on behalf of the Petitioner reads-

“LEGAL NOTICE

Sir,

Under instructions from /and on behalf of my client Sh. Zaheer Ahmad, who is in lawful possession of the Premises adjoining to Masjid Zabta Ganj, India Gate ,New Delhi and also on behalf of Mr. Zainul, Mr. Sainul and Mr. Nafees all residing in the premises adjoining to Masjid Zabta Ganj, India Gate, New Delhi, serve upon you the following legal notice:

*1. That the above said my clients have been served with the notice u/s 54 of the Wakf Act,1995 which were duly replied through my client Zaheer Ahmad mentioning therein that the my client Zaheer Ahmed is in the lawful possession of the premises adjoining to the Masjid Zabta Ganj, India Gate, New Delhi and **Mr. Zainul,Mr. Sainul and Mr. Nafees are residing in the***

premises with his consent. And therefore ,they are not encroachers on the Masjid Zabta Ganj, India Gate, New Delhi.”

18. In all the above pleadings and correspondence the Petitioner acknowledges that the said three individuals are occupying the said property with his consent. However, the stand of the Petitioner kept vacillating during the course of hearing. The said persons were first described as workers, domestic help, employees etc., and finally when the Court put a query that the Petitioner ought to pay damages for illegal occupation of *Waqf* property, the Id. Counsel for the Petitioner suddenly sought to resile from the earlier submissions and described the said individuals as trespassers.

19. The initial suit of 1995 filed by the Waqf Board was dismissed on 14th October, 1998 on the ground that the Waqf Board and the Defendant did not give any evidence. A perusal of the said order itself shows that the said order was contradictory in nature.

“JUDGMENT

1. By this judgment I have to decide a suit for possession filed by plaintiff against the defendants. The main facts of this case are that the plaintiff is a body corporate under Wakaf Act 1954, that the defendants have illegally tress passed over the property of the plaintiff, namely, Masjid Zatha Ganj, India Gate, Delhi, since about 1948-49, that the defendants have not given possession of this property to the plaintiff despite several requests made in this regard from time to time. And hence, this suit.

2. The averments of the plaint has strongly been opposed in the written statement filed on behalf of the defendant.

3. In replication there is almost repetition of the averments made in the plaint.

4. On 3.01.1995, the following issues were framed in this case:

1. Whether the suit property is Wakf Property and the Plaintiff is entitled for the relief of possession against the deft.? OPP

2. Whether the suit is within time? OPP

3. Whether the suit has been verified and instituted by a competent person? OPP

4. Relief.

5. As no pw has been produced as far on behalf of the plaintiff, the P/E was closed today in this case. D/E was also closed as defendants also did not want to lead any evidence. Heard and perused the file. My issue wise decision is as follows:

ISSUE Nos.1, 2 & 3:

The burden of proof of all these issues was upon the plaintiff but no pw has been produced so far to prove the averments of these issues in favour of the plaintiff. **Hence, all these issues are decided in favour of the plaintiff. Hence, all these issues are decided against the plaintiff and in favour of the defendants.**

ISSUE No.4 (RELIEF)

In view of my decision on issue nos.1, 2 & 3 above, I am of the opinion that the plaintiff is not entitled to any relief in this case. Hence, the suit of the plaintiff is dismissed. Parties are left to bear their own costs. Decree Sheet be prepared accordingly and file be consigned to Record Room.”

20. Admittedly, this is a two page judgment which was not decided by the Court on merits. The electricity bill with due date 24th February, 2010 shows that it was raised in the name of Abdul Majid, who is admittedly the father of the Petitioner. He was an *Imam* in the mosque. The FIR which has been filed by the occupants of the mosque and the eviction orders which

have been passed show that they were issued to various occupants including Mr. Zainul , Mr. Sainul , Mr. Nafees etc. Mr. Zahir Ahmed, the Petitioner appeared before the CEO of the Waqf Board and claimed that all these persons were engaged by him.

21. The eviction orders passed by the CEO, Waqf Board, dated 6th March, 2009 are placed on record. The said eviction orders which are almost identical language read:

**“OFFICE OF THE CHIEF EXECUTIVE OFFICER
DELHI WAKF BOARD
5028,Daryaganj
New Delhi -110002
Form -XIX
[Rule 61(2)]**

No.12/SO/1679/DWB/2008/213.

Date-06.03.2009

**EVICTION ORDER UNDER SECTION 54 OF THE
WAKF ACT 1995**

*Whereas, Mr. Zainul is an unauthorised occupant on the Wakf property inside Masjid Zabta Ganj, Main Man Singh Road, India Gate, New Delhi and whereas, notices were issued to him under sub-section (1) of Section 54 of the Wakf Act 1995 to appear before me to answer all the questions connected with the Wakf property. The case was fixed for 24-01-2009 and finally on 28.02.2009. None appeared on 24-01-2009. **Mr. Zahir Ahmed appeared on 28.02.2009 on behalf of Mr. Zainul and was heard in detail. Mr. Zahir Ahmed has filed reply on behalf of the encroachers stating that these persons are living with him. Mr. Zahir Ahmed, Mr. Zainul or any other person did not show any authority under which they are occupying the Wakf property in the Mosque. The Mosque and the adjoining are is a Wakf property duly***

*notified and enclosed from all side with boundary wall. This property is a Wakf property and nobody has any authority to live inside. After considering all the relevant facts, I have come to the conclusion that Masjid Zabta Ganj and the adjoining space is a Wakf property duly notified and Mr. Zainul, Mr. Zahir Ahmed and all encroachers in it are liable to be evicted from the same. Now, therefore, in exercise of the powers conferred upon the undersigned under Section 54 of the Wakf Act, 1995, **I hereby order Mr. Zainul and all persons who are in unauthorised occupation of Wakf property as per particulars given below or any part thereof, to vacate the said Wakf property within 15 days of the service of this order.** In the event of refusal or failure to comply with this order within the period specified above the said Mr. Zainul and all other persons concerned are liable to be evicted as per the provisions of Section 54 of the Wakf Act, 1995 from the said Wakf property.*

SCHEDULED

Details of Wakf Property :

*Wakf property inside Masjid Zabta Ganj
Main Man Singh Road
India Gate, New Delhi*

To

Mr. Zainul,

*Wakf property inside Masjid Zabta Ganj,
Main Man Singh Road
India Gate, New Delhi “*

22. A legal notice was also issued by Zahir Ahmed to the CEO of the Waqf Board on 23rd March, 2009 calling upon the Waqf Board to withdraw the eviction orders. The SDM vide orders dated 21st January, 2013 directed removal of the encroachment and vacation of the Waqf premises within 15

days. The said orders were passed against Mr. Nafees, Mr. Sainul and Mr. Zainul. The Petitioner then wrote representations to various public functionaries including ministers in the GNCTD seeking their intervention to call upon the SDM and the CEO of the Waqf Board not to take any further action for eviction. The concerned SDM then raised a dispute finally leading to the SDM Chanakyapuri giving an eviction notice on 25th November, 2019 to all the unauthorised occupants. The said action was justified by the Waqf Board on the strength of order dated 27th August 2019 in **WP(C) 6275/2015** titled **'Delhi Waqf Board v. Principal Secretary Revenue & Ors'**.

23. The Waqf Board has placed on record the writs filed by the occupants i.e. **W.P.(C) 1479/2018** titled **'Zahir Ahmed v. SDM Chanakyapuri and Ors.'** as also **W.P.(C) 11441/2017** titled **'Mohd. Nafis and Anr. v. Delhi Waqf Board and Ors'**. Vide order dated 9th April, 2018, the occupant i.e. Zahir Ahmed sought permission to withdraw the petition **WP(C) 1479/2018** with permission to approach the Waqf Tribunal. The said order reads as under:-

"1. Learned counsel for the respondents' states that vide notification dated 12.03.2018, the Delhi Waqf Tribunal for NCT has been constituted. A copy of the said notification has been placed before me.

2. The notification also adverts to the name of the Chairperson and the two members appointed to the Delhi Waqf Tribunal.

3. In these circumstances, learned counsel for the petitioner submits that he would want to withdraw the petition and accordingly, approach the Delhi Waqf Tribunal for redressal of the petitioner's grievance.

4. Writ petition is, accordingly, dismissed as withdrawn, with liberty as prayed for. Pending

application is closed.”

24. Similarly, in **WP(C) 11441/2017** filed by Mohd. Nafees and another, the same was also withdrawn on 15th January, 2018 with permission to approach the Tribunal. The said order reads as under:-

“1. The learned counsel for the petitioner seeks to withdraw the present petition with liberty to institute appropriate proceedings before the Tribunal.

2. The learned counsel for the respondents submits that such proceedings would be barred by limitation.

3. Needless to mention that if any such proceedings are instituted, the respondents would be at liberty to contest the same as being time barred. The same would be considered in accordance with law.

4. The petition is dismissed as withdrawn with the aforesaid liberty.”

25. In the meantime, in the suit filed before the Delhi Waqf Tribunal by Mohd. Nafis and Mohd. Zainul Khan being suit No. 5/2018 seeking declaration, permanent and mandatory injunction etc. an application dated 6th April 2018 for impleadment under Order I rule 10 CPC was filed by the Petitioner - Mohd. Zahir Ahmed claiming in paragraph 8 as under:-

“That it is stated that the plaintiffs taking advantage of the applicant who is old and he has gone to his son's place illegally tress passed into the property. The applicant has already filed a police report to this effect. Now the petitioner has come to know that the defendants have issued notice to these persons and SDM Chanakyapuri has been directed by defendant No. 1 to take possession which is completely contrary to the law. It is submitted that they have no jurisdiction to act their own without an order of the Waqf Tribunal. The applicant made representation dated 12.01.2018 to this effect to the SDM Chanakyapuri.”

26. While the application of the Petitioner states that Mr. Nafees and Mr. Zainul, the Plaintiffs in the suit filed before the Waqf Tribunal, are illegal trespassers, on the other hand, all the pleadings and documents above clearly show that the Petitioner's case before the various authorities is that the occupants were occupying the said property on his behalf.

27. Finally, an eviction notice dated 2nd March 2020 was given by SDM, Chanakyapuri and all the occupants were evicted from the said property vide order dated 5th March 2020 passed by the SDM Chanakyapuri. The present position is that in March, 2020, the Waqf Board took possession of the property.

28. A perusal of all the above records and events which transpired in the various proceedings would show that in respect of one particular premises, two suits, three writ petitions and various proceedings before the CEO, Waqf Board and the Waqf Tribunal have continued over several years. The Petitioner and the three individuals whom he represented, were clearly unauthorised occupants and encroachers, who had no right in the said property. The family of an *Imam* in a mosque cannot claim any rights in the property of the Mosque, as the property vests in the *Waqf* and the *Imam* is merely appointed for the purposes of conducting prayers and taking care of the *Waqf* property. The *Imam* occupies the property in a capacity which is fiduciary in nature on behalf of the *Waqf* and any attempt to claim independent rights in the property would be impermissible.

29. The Petitioner who was the son of the *Imam*, being merely a family member, has himself occupied and has permitted other to occupy this property for several decades without any rights. An independent *Imam* was appointed in the said property/mosque in 1981. However, in an illegal

manner the Petitioner continued to encroach and occupy the property next to the mosque.

30. The property is a prime property. Photographs have been placed on record which show that unauthorised construction has been carried out. An electricity meter is also visible in the photographs. A number of persons were in occupation of the said property illegally.

31. The Petitioner currently lives with his son in South Delhi in Sukhdev Vihar. He admittedly could not have claimed any rights in the said property and has embroiled the Waqf Board in this long drawn litigation on a completely false and incorrect premise.

32. The Petitioner having been an unauthorised occupant and an encroacher in the subject property has no legs to stand in the present writ petition. The writ petition is devoid of any merit and is liable to be dismissed.

33. In view of the fact that, admittedly, the Petitioner has been unable to show any title to the property in question and keeping in mind the nature of the property which is a place of worship allotted to the *Waqf*, in order to uphold public policy and to curb illegalities of this nature, this Court holds that the Petitioner is liable to pay occupation charges to the Waqf Board for unauthorised occupation as also costs of the litigation.

34. Under these circumstances, the following directions are issued by this Court:-

- i) The Waqf Board shall secure the land allotted to it by way of the Gazette Notification issued in terms of the agreement registered on 3rd July, 1945 as described in Appendix A.
- ii) The Waqf Board shall ensure that no land beyond the 0.095

acres is occupied by any person including the current *Imam* or his family or occupants on his behalf. The allotted land shall be used only for the purposes of the allotment i.e. to run the mosque and no illegal use shall be permitted.

iii) Considering the duration of illegal occupation of the premises and the location of the property, the Petitioner shall pay a sum of Rs.15,00,000/- to the Delhi Waqf Board within a period of eight weeks failing which the Waqf Board is permitted to seek enforcement of this order in accordance with law.

iv) In addition, a sum of Rs.2,00,000/- shall be deposited as costs with the Delhi Waqf Board, within 8 weeks.

35. In the facts and circumstances of this case, it is deemed appropriate to direct the concerned SDM along with the Delhi Waqf Board officials to conduct a proper demarcation and ensure that the land occupied by the mosque is as per its allotment and no one is able to illegally occupy any portion beyond what is permissible. The demarcation to be carried out within 4 weeks.

36. The present petition with all pending applications, if any, is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

MARCH 6, 2023

(corrected and released on 10th March 2023) mr/rp