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

*Date of Decision: 15<sup>th</sup> November, 2021*

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+ **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, REVIEW PET. 177/2021 & 179/2021**

**NEETA BHARDWAJ & ORS.** ..... Appellants

Through:

versus

**KAMLESH SHARMA** ..... Respondent

Through:

With

+ **CM (M) 323/2021 & CM APPLs. 14178/2021, 20945/2021, 20949/2021, 40269/2021, REVIEW PET. 103/2021**

+ **CM (M) 575/2021 & CM APPLs. 29013/2021, 29014/2021**  
+ **CONT.CAS(C) 614/2021**

+ **TR.P.(C.) 62/2021**

+ **TR.P.(C.) 63/2021**

+ **TR.P.(C.) 64/2021**

+ **TR.P.(C.) 65/2021**

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

+ **CS (OS) 512/2021**

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+ CS (OS) 642/2005 & IAs 19847/2012, 16501/2014, 16502/2014,  
19512/2014, 2234/2015, 24297/2015, 4478/2019 & 8339/2020

**Appearances:-**

Mr. R.K. Bhardwaj with Mr. Dheeraj Bhardwaj, Advocates.  
(M:9312710547)

Mr. Neeraj Bhardwaj, Advocate.

Mr. Rohit Kishan Naagpal & Mr. Dipanshu Gaba, Advocates.

Ms. Garima Anand, Advocate.

Mr. Anuroop P.S, Advocate for R-46 to 49. (M:9582818838)  
Mr. Humayun Khan, Advocate (M:9811177317) for Mr. Pradeep Kumar Gulia, Advocate for R-59 & 57.  
Mr. Rajesh Kumar Gupta, Advocate for LRs of R-58.  
Mr. Kamal Kumar, Advocate for R-22 & 25. (M:9136452240)  
Mr. Krishan Gopal Chokkar, Advocate.  
Mr. Jitender Verma, Advocate for R-1 Mr. Anuroop P.S., Advocate for R-1.  
Mr. Mayank Yadav, Advocate for Applicant.  
Mr. Neeraj Bhardwaj, Advocate for R-3.  
Mr. Thakur Sumit, Advocate.  
Mr. Vishal Bhardwaj, Advocate in FAO 36/2021.  
Mr. Kamal Kant Bhardwaj, Advocate.  
Mr. Vishal Maan and Mr. R.S. Verma, Advocate  
Mr. Vipin Bharadwaj, in person  
Mr. Kush Bhardwaj, Advocate. (M:9891074686)  
Mr. Luv Bhardwaj, Advocate.  
Mr. Sanjay Bhardwaj.  
Mr. R.K. Gupta, Advocate.  
Mr. R.K. Bhardwaj, Advocate.  
Mr. K.G. Chhokar, Advocate. (M:9896030124)  
Mr. Avinash Chaurasia, Advocate.  
Mr. Avinash Chaurasia, Advocate. (M:9811841262)  
Mr. Yoginder Singh, Advocate.  
Mr. Sarvesh Bhardwaj, Advocate.  
Ms. Rashmi B. Singh, Advocate.  
Mr. Aly Mirza & Mr. Prabhash Chandra, Advocates.  
Ms. Sangeeta Bharti, Standing Counsel for DJB (M-9811112863).  
Mr. Amit Gupta, Advocate for Applicants. (M:8307429100)  
Mr. Amit Rawat, Advocate. (M:8307429100)  
Mr. D.K. Singhal, Advocate.  
Mr. Manish Choudhary, Advocate.  
Mr. K. K. Tyagi, Advocate.  
Mr. Sunil Fernandes, Standing counsel BSES with Mr. Shubham Sharma, Advocate.  
Mr. Harsh Khirwal, Advocate.  
Ms. Samapila Biswal and Ms. Shambhavi Kala, Advocates for Ld. Administrator.  
Ms. Smita Mann, Advocate.

Ms. Vivek Kumar Singh & Mr. Yashvir Kumar, Advocates.  
Mr. Arun Birbal, Advocate for SDMC.  
Mr. S. Sasib Hussain, Advocate.  
Mr. Sanjay Lao, Id. Standing Counsel (Criminal), GNCTD.  
Mr. Pardeep kumar Gulia, Advocate.  
Mr. Thakur Sumit, Advocate.  
Mr. Parvindar Chauhan, Advocate for DUSIB

**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.
3. On the last date i.e., 27<sup>th</sup> October 2021, it was submitted by Mr. Vipin Bharadwaj, one of the *baridaars*, that the police are not providing complete cooperation for the removal of encroachments and the management of devotees for *darshan* in accordance with the order of this Court dated 27<sup>th</sup> September 2021. Accordingly, this Court had directed Mr. Sanjay Lao, Standing Counsel (Criminal) for GNCTD, to obtain instructions and file a status report in respect thereof.
4. Today, Mr. Sanjay Lao has appeared virtually, along with Sub-Inspector Mannu Dev from PS Kalkaji, and has presented a status report to the Court. The status report reads as under:

*“That in compliance of the Hon’ble Court order dated 08.09.2021 passed in the above noted FAO, joint inspection of the Kalkaji temple complex was conducted by the official of the SDMC and Delhi Police and a detailed report of the same was submitted before this hon’ble court.*

*Further, in compliance of hon’ble court orders dated*

27.9.21, sufficient police force was deployed to assist the SDMC official and Ld. Administrator appointed by hon'ble high court for removal of encroachment in mandir complex. Ld. Administrator conducted physical inspection of mandir premises with police and civic authorities and also held meeting with all baaridars and representatives of shop keepers on 29.9.21. after that sealing of unauthorized shops in the premises was started and total 107 shops were sealed during drive. Due to Adequate police arrangement no Law & Order situation was emerged and whole sealing process was completed peacefully.

During Navratras, this time the temple opened for general public after a gap of one and half year due to COVID pandemic so the devotees came in much large number and with more enthusiasm to pay their obeisance to the revered deity. Moreover, this time the added dimension to the challenging task was sealing of shops in temple complex, closure of one important route for devotees and issues related to unwillingness of pujaris and Baaridars to follow the directions of administrator appointed by hon'ble Delhi high court. Despite all above facts, proper law & order as well as implementation of COVID guidelines was conducted during Navratra arrangement successfully by the police under the supervisions of Ld. Administrator.

Staff of 10 Policemen from police station Kalkaji always remain present in the temple to ensure proper management of devotees and provide police assistance in case of any need. Besides it, Extra staff is deployed including paramilitary force during days of heave footfall like weekends. Regular meetings are held with the baaridars, Pujaris & Mandir committee to ensure proper co-ordination.

Police force is always available to provide assistance as & when required by the Civic authorities or Ld. Administrator for Kalkaji temple. Undersigned is duty bound and willing to abide by any directions passed by this

*hon'ble court or by Ld. Administrator appointed by hon'ble court into the matter."*

5. Mr. Lao, submits that as per the status report, all action required to maintain the law and order in the *Mandir* premises are being taken, and a sufficient number of personnel have already been posted at the *Mandir* premises.

6. However, Ms. Smita Mann, Id. Counsel appearing for Vipin Bharadwaj, has presented before the Court a video, which is available on the internet, to show that there has been some manhandling of devotees by certain police constables who were posted in the *Mandir*.

7. After perusing the video, a clarification was sought from Mr. Lao. In response, he submits that this video had, in fact, gone viral and was brought to the attention of the concerned DCP and the Joint Commissioner of Police. He submits that after the said video was brought to the notice of the higher authorities, the Delhi Police has taken sufficient steps to ensure that such actions are not repeated in the future.

8. The Id. Counsels appearing for various *baridaars* and parties in these matters, have submitted that during the *Navratra* period, a large number of devotees had visited the *Mandir*, and couple of such incidents, as depicted in the video, took place during that period. On a query from the Court as to whether there has been any recent incident of this nature at the *Mandir*, Id. Counsels submit that there have been no such incidents post the *Navratra* period.

9. Considering the overall sentiment expressed by the parties, and keeping in mind the interest of the devotees at the *Mandir*, which is paramount, the following directions are issued:

- (i) The DCP of the Delhi Police, stationed in the concerned area, shall ensure that adequate personnel are posted at the *Kalkaji Mandir* to ensure that there is proper and regulated entry and exit of the devotees, to and from the *Mandir*, as also to ensure that no untoward incident takes place.
- (ii) Considering that there are many female devotees who visit the *Mandir*, adequate number of female constables of the Delhi Police shall be posted at the *Kalkaji Mandir*.
- (iii) The DCP concerned, of the Delhi Police, shall pass appropriate directions to ensure that a single set of constables are not posted at the *Mandir* for a long period of time. The police personnel who are posted shall be changed at least twice a month.

With these directions, the status report submitted on by the SHO, PS:Kalkaji, is taken on record.

10. Insofar as the interim report of the Id. Administrator, that was submitted to the Court in a sealed cover on 26<sup>th</sup> October 2021, is concerned, the said report has been perused by this Court. It is first directed that a copy of the said report of the Id. Administrator shall be made available to all Id. Counsels for the parties, who upon request, may obtain a soft copy of the same from the Registry. Id. Counsel for parties to peruse the said report and make submissions in respect thereof on the next date. The said report is taken on record.

11. However, there are certain issues that have been raised in the report of the Id. Administrator. Accordingly, this Court is taking cognizance of the same today, as some urgent directions are required to be passed in respect thereof.

**Unauthorized encroachment by the shopkeepers and removal of encroachments and unauthorized construction**

12. As per the report of the Id. Administrator, none of the shopkeepers could show any proper *tehbazari* licenses issued by any of the civic authorities or the *baridaars*. The *tehbazari* rights claimed by the shopkeepers was found to be completely incorrect. The Id. Administrator has also reported that various shopkeepers have started residing in the premises of the *Mandir* and have made encroachments into the passageway. It has been clarified that 107 shops have already been sealed after the shopkeepers were allowed to remove their belongings. Insofar as the 33 shopkeepers whose names appear in the *Kalkaji Mandir Vikreta Sangathan's* SLP before the Supreme Court are concerned, these shopkeepers have been asked to identify their shops. The remaining shops have been sealed. Some extracts from the report of the Ld. Administrator are set out below:

*“53. The undersigned has seen the order dated 12.10.2013 in SLP(C) Nos. 32452-32453 of 2013 in which the Hon’ble Supreme Court has granted a stay order to 33 petitioners as per the Memo of Parties available on the website of the Hon’ble Supreme Court. However, the stay order has not been extended to the parties in the subsequent SLP(C) No. 32845 of 2013. The SLP(C) No. 32845 of 2013 has only been directed to be listed along with the previous SLP(C) Nos. 32452-32453 of 2013, but there is no order for the stay to be extended to this SLP. Memo of Parties in SLP(C) Nos. 32452-32453 of 2013 as per the website of the Hon’ble Supreme Court is annexed hereto as **Annexure CC**.”*



54. The undersigned is of the prima facie view that the interim order dated 12.10.2013 of the Hon'ble Supreme Court related only to the 33 petitioners in SLP(C) Nos. 32452-32530 of 2013. This Hon'ble Court has however observed in its Order dated 27.09.2021 that the said interim order is no longer in operation in light of subsequent order dated 11.09.2017 of the Hon'ble Supreme Court. The said petitioners may approach this Hon'ble Court or the Hon'ble Supreme Court, where the SLP is pending, for clarification in terms of the liberty granted by this Hon'ble High Court in paragraph 122 of its Order dated 27.09.2021. With respect to the remaining shopkeepers, Mr. Radhey Shyam, one of the shopkeepers had represented that he is protected by an order dated 03.10.2018 passed by the Hon'ble Supreme Court of India in Civil Appeal No(s) 10338/2018, which is pending further consideration. Thus, there is no impediment in the removal of the other shopkeepers.

55. All the shopkeepers have claimed to be the lawful occupants of the shops. However, the shopkeepers are unable to show any legal right to occupy the shops. None of the existing shopkeepers have produced any existing and valid tehbazari licenses. The only documents produced by the shopkeepers are in the nature of littering challans issued by the Municipal Authority, electricity bills, telephone bills, old and isolated tehbazari receipts issued by Pujaris for a particular month and festival permission slips for limited period by the Municipal Authority. As also recorded in the Order dated 27.09.2021, 46 shopkeepers had filed a Civil Suit which was withdrawn in 2018. All the shopkeepers are encroachers upon the land in the Temple Complex.

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57. All the other shopkeepers, apart from the above, had made a mercy plea before the undersigned that the action to remove them from the Temple Complex be withheld till when the special leave petitions were likely to be listed before the Hon'ble Supreme Court.

58. The aforesaid 33 petitioners are relying upon the Hon'ble Supreme Court Order dated 12.10.2013 and the

*other shopkeepers have requested the undersigned to withhold further action until the Hon'ble Supreme Court hears the matter. The said matter is under consideration as some of the shopkeepers have represented that they are willing to remove their belongings on allocation of designated spaces or consideration of allocation in the re-developed complex. In the meanwhile, the undersigned has issued notice dated 15.10.2021 directing that all the shops in the Temple Complex shall remain closed until further notice. Copy of the notice dated 15.10.2021 issued by the undersigned is annexed hereto as Annexure DD."*

13. It is clear that none of the shopkeepers, who are in illegal occupation of *Mandir* premises, can remain in possession. The shopkeepers or their families also cannot reside in the *Mandir* complex. The same is impermissible and is nothing but unauthorized encroachment and trespass into the *Mandir*'s premises.

14. Accordingly, the Id. Administrator, with the cooperation of the Delhi Police and the SDMC, is permitted to take action for removal of all the unauthorized encroachments within the *Kalkaji Mandir* premises within two weeks. If any of the shopkeepers and illegal residents in the *Mandir* premises are entitled to seek alternate accommodation, the DUSIB may consider their request and provide alternate premises on humanitarian grounds. However, it is made clear that the pendency of any application for alternate accommodation before DUSIB shall not come in the way of the removal of encroachments and unauthorized construction of shopkeepers from the *Mandir* premises.

15. If the DUSIB wishes to conduct any physical survey or inspection on spot in respect thereof, they can request the Id. Administrator for the same, and such inspection shall be carried out by 20<sup>th</sup> November 2021. The said

inspection shall be facilitated by Mr. Parvinder Chauhan, Id. counsel for DUSIB (ML9716569056) who has appeared in these proceedings today.

**Impleadment of Delhi Development Authority (DDA)**

16. As per the Id. Administrator's report, the DDA has taken a stand that since it is not a party to these proceedings, none of the directions passed in these matters would be applicable to the DDA. The relevant extract reads:

*“61.4. The Naib Tehsildar, DDA has stated that the stand of the Director, Land Management-II, DDA is that since they are not a party to the proceedings, they are not required to comply with the directions of this Hon'ble Court and the Administrator. The concerned authority is Director, Land Management-II. **In this regard, necessary clarifications may be issued by this Hon'ble Court to Director, Land Management-II, DDA.**”*

17. Considering the rather surprising stand being taken by the DDA, Mr. Arun Birbal, Id. Counsel who is appearing for the SDMC in these matters, and who is also the Standing Counsel for the DDA, upon directions of the Court, accepts notice for the Director Land Management-2 DDA, under whose jurisdiction, the *Kalkaji Mandir* premises lies.

18. It is made clear that all the directions passed in these matters shall also be implemented and given effect to by the DDA.

**Misconduct on the part of baridaars**

19. As per the Id. Administrator's report, there are serious allegations of severe misconduct by two individuals namely- Mr. Nakul Bhardwaj and Mr. Lokesh Bhardwaj. As per the said report, these two individuals have also misled the Id. Administrator and made false statements. They are also stated to have impeded and obstructed the implementation of the directions passed by this Court, as also by the Id. Administrator.

20. Accordingly, issue notice to Mr. Nakul Bhardwaj and Mr. Lokesh Bhardwaj, to appear, in person, on the next date of hearing.

**Medical Centre at the *Kalkaji Mandir***

21. It is submitted on behalf of the Id. Counsel appearing for the Id. Administrator that a Medical Centre was set up during the *Navaratra* period. However, the same is not functioning at the moment.

22. This Court is of the opinion that a Medical Centre should be run continuously at the *Kalkaji Mandir* premises to cater to the devotees who visit the temple round the year.

23. Accordingly, Mr. Lao, Id. Standing Counsel for the GNCTD, may take instructions in this regard, and with the cooperation of the *baridaars*, at least two paramedics and one Doctor may be posted from any of the nearby hospitals/dispensaries of the GNCTD at the *Mandir* premises. The expenses of the Medical Centre shall be borne by the Id. Administrator from the account where funds for everyday expenses are being deposited by the *baridaars*.

**Sanitation facilities**

24. There are three toilet complexes that are currently stated to be functional in and around the *Kalkaji Mandir* premises. The cleaning of the said toilet complexes is stated to have been outsourced by the SDMC to various agencies.

25. It is directed that the concerned officials of the SDMC, i.e., Sanitary Inspector or any other responsible officer, shall inspect the toilet complexes at least twice a day for the next 15 days, to ensure the maintenance of the cleanliness and hygiene of the toilet complexes. Thereafter, the number of inspections that are held can be reduced, and surprise periodic inspections

shall be carried out by the SDMC.

26. Mr. Arun Birbal, Id. Standing Counsel, to communicate this order to the Deputy Commissioner, SDMC of the concerned area to ensure compliance.

27. In respect of garbage disposal, it is also directed that the SDMC shall conduct an inspection by 20<sup>th</sup> November 2021, after consulting with the Id. Administrator in regard to his convenience, to ensure that adequate steps are taken to ensure garbage disposal at the *Mandir* premises, and the same takes place at least three times a day. The SDMC shall also ensure that adequate garbage bins are provided in the premises for collection and disposal of garbage.

**Potable Drinking Water for devotees**

28. The Id. Administrator has informed the Court that there are three *Piyaos* in the *Mandir* premises. However, regular water is not being made available by the Delhi Jal Board, or any of the *baridaars*, or even the *Shri Kalkaji Mandir Prabandhak Sudhar Committee*.

29. Accordingly, it is directed that the Delhi Jal Board shall send a team to the *Kalkaji Mandir* day after tomorrow, to inspect and to take immediate steps for laying down a temporary pipeline for uninterrupted supply of drinking water to the devotees in the *Mandir*, as also for running water supply to the toilet complexes.

30. The official from the Delhi Jal Board- Mr. Ashok Kumar, Executive Engineer, M-41, is also directed to coordinate with the Id. Administrator for the installation of filtration equipment to the *Piyaos*, so that uninterrupted drinking water is available to the devotees.

31. In respect thereof, a status report shall be filed by the Delhi Jal Board

before this Court, confirming the uninterrupted availability of potable water, by the next date of hearing. The directions passed today shall be communicated to the concerned officials of the DJB by Ms. Sangeeta Bharti, Id. Counsel for the DJB.

**Opening of the second bank account**

32. The Id. Administrator, in his report, has also sought permission to open a second bank account by the name - *Shri Kalkaji Mandir* Re-Development Fund.

33. Vide the detailed order passed by this Court on 27<sup>th</sup> September 2021, the Id. Administrator was permitted to open a bank account for everyday management and administration of the *Mandir*, in which the *baridaars* were directed to make monthly deposits in terms of the said order. The said account has been opened and is being run by the Id. Administrator.

34. Since the Re-Development of the *Kalkaji Mandir* would be a major project, and an architect has already been appointed by this Court for submitting a Re-Development plan, the Id. Administrator is permitted to open a separate account called the *Kalkaji Mandir* Re-Development Fund in the Delhi High Court, which shall be in the control of the Registrar General.

35. In the said account, only donations made by the members of the public or any devotees for the purposes of the Re-Development of the *Kalkaji Mandir* shall be accepted. All other amounts being deposited by the *baridaars* or even the *tehbazari* holders, if any, shall be accepted only in the main account, which was the first account that has been opened by the Id. Administrator.

36. It is also made clear that the monthly payments to be deposited to the Id. Administrator by the *baridaars*, as per the order dated 27<sup>th</sup> September

2021, of Rs. 15 lakhs or Rs. 20 lakhs as may be applicable, shall be deposited in the Id. Administrator's account, before the distribution of monies amongst the various *baridaars*.

### **Delhi Fire Service**

37. It has been brought to this Court's notice that the *Mandir* premises also needs to be audited by the Delhi Fire Department in order to take care of any emergency. Accordingly, let notice be issued to the Delhi Fire Service Department, who shall conduct an inspection of the *Mandir* premises and submit a report of steps that would be required for ensuring access for fire tenders, and for the maintenance of fire safety in and around the *Mandir* premises.

38. Let a copy of today's order be served upon Mr. Tripathi, Id. Standing Counsel (Civil) of GNCTD, to ensure compliance.

39. Invoices for all expenses that are incurred by the SDMC, Delhi Jal Board and DDA, in compliance of the directions above, shall be submitted to the Id. Administrator.

40. Insofar as the review applications that have been filed are concerned, the Id. Counsels for the review applicants submit that they shall make their submissions in respect of the same on the next date.

41. It is submitted by Id. counsel that another suit concerning the *Kalkaji Mandir*, being *SCJ No. 96/2016* titled *Rajwati v. Rajesh Kumar @ Raju* is still pending before the Court of the Id. Civil Judge, Saket Courts, South-East District. Pursuant to the previous orders that have been passed, let the said suit be transferred to this Court, to be heard and decided along with all the matters listed today.

42. Specifically in respect of Petitions- TRP. (C) 62-65 of 2021, it is

directed that the Registry shall register these cases in their respective category before the next date.

43. Let copy of this order be sent to the Id. Administrator and Id. Registrar General of this Court.

44. List all these matters on 7<sup>th</sup> December 2021 at 2.30 P.M. in physical Court. These are part-heard matters.

**CM (M) 575/2021 & CM APPLs. 29013/2021, 29014/2021**

45. This petition arises out of the suit before the Trial Court bearing *RCA No. 60746/2016*, titled *Satish Kumar and Ors. v. Mahesh Kumar and Ors.*

46. The Trial Court is directed to send a report as to the amount lying deposited with it, pursuant to the directions of the Trial Court in the said matter. The report shall also provide the details of the said amount as also the details of the bank where the same is lying deposited. Let the said report be filed before the next date of hearing.

47. Let copy of this order be sent to the Id. ADJ(West) Tis Hazari Courts, Delhi dealing with *RCA No. 60746/2016*, to ensure compliance.

48. List along with all connected matters on 7<sup>th</sup> December 2021. This is a part-heard matter.

49. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRATHIBA M. SINGH  
JUDGE**

**NOVEMBER 15, 2021**

*Mw/Mr/Ak*