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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 23rd February, 2023
+ **W.P.(C) 16609/2022 & CM APPLs. 52258/2022, 8990/2023**
DEVENDRA KUMAR & ORS. Petitioners
Through: Mr. Hemant Choudhary, Mr. Sumit
Gupta & Mr. Haider Ali, Advocates.

versus

STATE (NCT OF DELHI) & ORS. Respondents
Through: Mr. Gautam Narayan, ASC, GNCTD
with Ms. Asmita Singh, Mr. Unmukt
Gera & Mr. Harshit Goel, Advocates
for R-1&2.
Mr. Wajeeh Shafiq, Standing Counsel,
Delhi Waqf Board with Ms. Sabika
Ahmad Advocate, Advocate for DWB.
Mr. Pushkar Sood & Mr. Satya
Prakash Singh, Advocates for R-8.
Mr. Raj Kumar, Senior Panel Counsel
for UOI.
Mr. Raj Kumar, Sr. Panel Counsel for
L&DO. (M:9810007606)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the caretakers and bearers of the *Sanatan Dharam Mandir / Prachin Shiv Mandir* located at Jheel ka Piao, Opposite Link House, Mathura Road, ITO, New Delhi. The challenge in this petition is to the letter dated 31st October, 2022 issued by the Executive Engineer, Civil, GNCTD directing removal of encroachments and

unauthorized occupation of PWD land. The case of the Petitioner is that the Mandir has not done any unauthorized encroachment and the removal of the same would inconvenience the devotees who visit the *Mandir* regularly.

3. On 2nd December, 2022, when the present matter was listed, it was submitted on behalf of the GNCTD and PWD that the action is being taken pursuant to the order dated 1st November, 2022 passed by the L&DO. The said order reads as under:

*“To,
Executive Engineer,
Central & New Delhi - Roads,
Public Works Department, Govt. of NCT of Delhi,
Under Ring Road Bypass Flyover,
Opposite IGI Stadium Gate - 09,
New Delhi - 110002*

***Sub: Regarding encroachment in PWD right of way by
(1) Masjid Jheel Ka Piao
and (2) Santan Dhram Sabha at BSZ Marg, New Delhi -
reg.***

Sir,

I am directed to refer to your letter dated 19th September, 2022 on the subject mentioned above and to say that both the Sanatan Dharm Sabha Mandirs on BSZ Marg/ Mathura Road were allotted to Santan Dhram Sabha. Sanatan Dharm Sabha has represented in the recent past to return / handover these sites back to L&DO, which is under consideration. Further, the sites allotted to Sanatan Dharm Saba are presently under consideration of ESO Court for recovery of damage charges /eviction under PPE Act, 1971. Hence, the status of the matter is sub-judice.

2. Further, the land parcel of Masjid at Jheel Ka Piao is a Waqf Board property. This plot is not allotted to anyone, but being operated by Waqf Board. Presently, some area of this site is the part of road and some area is the

encroachment of the land allotted to CAG. Apart from this, as per the direction of Hon'ble High Court of Delhi, MoHUA constituted One Man Committee to hear all stakeholders/ affected parties of de-notified Waqf properties including Masjid at Jheel Ka Piao. As the One Man Committee's report was not satisfactory, Two Member Committee was subsequently formed with the approval of the Hon'ble HUAM. The Two Member Committee has now submitted its report which is under consideration of the Competent Authority.

3. This issues with the approval of Competent Authority.”

4. On the said date, after hearing submissions of Mr. Hemant Chaudhary, Id. Counsel appearing for the Petitioners and Mr. Gautam Narayan, Id. ASC appearing for the GNCTD, the following directions were issued:

“5. In the meantime, a meeting be conducted by the concerned Executive Engineer, PWD, which shall be attended by the representatives of the Petitioner, the L&DO, as also, the DMRC, so as to arrive at a consensus, as to the manner in which the encroachment, if any, can be removed without disturbing the idol in the temple premises, in order to ensure that there is proper right of way for the pedestrians. As part of this meeting, all the stakeholders shall also consider as to whether the temple can itself be relocated/moved.

6. Let the said meeting be held on 7th December, 2022 at 11:30 a.m. Let a status report in respect of the said meeting be filed by Mr. Narayan, Id. ASC, on the next date of hearing.

7. List on 22nd December, 2022.

8. It is made clear that no precipitative action shall be taken till the next date of hearing.”

Thus, this Court directed that a meeting be called by the PWD of all the authorities including the L&DO, DMRC etc.,

5. On 22nd December, 2022, it was reported that the meeting was held between the L&DO, PWD, occupants of the Mandir as also the DMRC. The minutes of the meetings were placed on record on the said date. As per the said minutes, the L&DO had stated that there was no space adjacent to the Mandir which could be allotted to the Mandir for extending the premises.

6. After having perused the minutes, this Court was clearly of the opinion that the pedestrian pathway of 6 meters needs to be maintained uniformly to ensure that pedestrians have clear space to walk on. The said observation is set out below:

“3. Be that as it may, this Court is of the clear opinion that the pedestrian pathway of 6 meters needs to be maintained uniformly to ensure that pedestrians have clear space to walk on. A pedestrian pathway is an indispensable requirement on a busy road like the present one where the Mandir is located.”

7. During the hearing, it was brought to the notice of the Court that another place of worship i.e., a Masjid which was being run by the Delhi Wakf Board was also located adjacent to the Mandir. In view of this fact, notice was issued to the Delhi Wakf Board through the nominated counsel – Mr. Wajeeh Shafeeq, Advocate.

8. On 16th January, 2023, upon the appearance of the Wakf Board before the Court, the PWD was directed to carry out measurements in the area and file a status report. The directions on the said date are reproduced below:

“3. On the last date of hearing, i.e., 22nd December, 2022, Mr. Narayan, ld. ASC, GNCTD had informed the Court that adjacent to the Mandir, there is another place of worship, in respect of which, notice had been issued to the Waqf Board.

4. In compliance with the Court notice, today,

Mr. Wajeeh Shafiq, Id. Standing Counsel, for the Waqf Board has entered appearance. On a query from the Court as to the amount of land belonging to the Waqf Board, he submits that the measurement of the land needs to be taken and only then can the amount of land belonging to the Waqf Board be ascertained.

5. Accordingly, let the engineers from the Public Works Department (PWD) along with Id. Counsel for the Waqf Board be present on the site for taking of the measurements on 2nd February, 2023 at 4 pm.

6. Let the measurement be taken and the status report be placed on record by the next date of hearing, as to how much land belongs to the Wakf board and the manner in which the expansion of the pavement can be done, so that pedestrians are not inconvenienced.

9. In the meantime, an application for early hearing was moved by the PWD/GNCTD while expressing urgency that the expansion of the pedestrian pathway is to be done in an urgent manner inasmuch as both the places of worship are merely encroaching on public land and the said encroachment needs to be removed.

10. Today, Mr. Narayan, Id. ASC has placed on record a status report dated 21st February, 2023 which has been submitted on behalf of the PWD. He is instructed by Mr. Vijay Swarnkar, Executive Engineer. As per this status report, measurements were carried out and a line sketch has been prepared. In terms of the said line sketch, the present width of the footpath in front of the Masjid is only 2.26 metres on the southern side and 2.128 metres on the northern side. The same is stated to be insufficient for the pedestrian pathway.

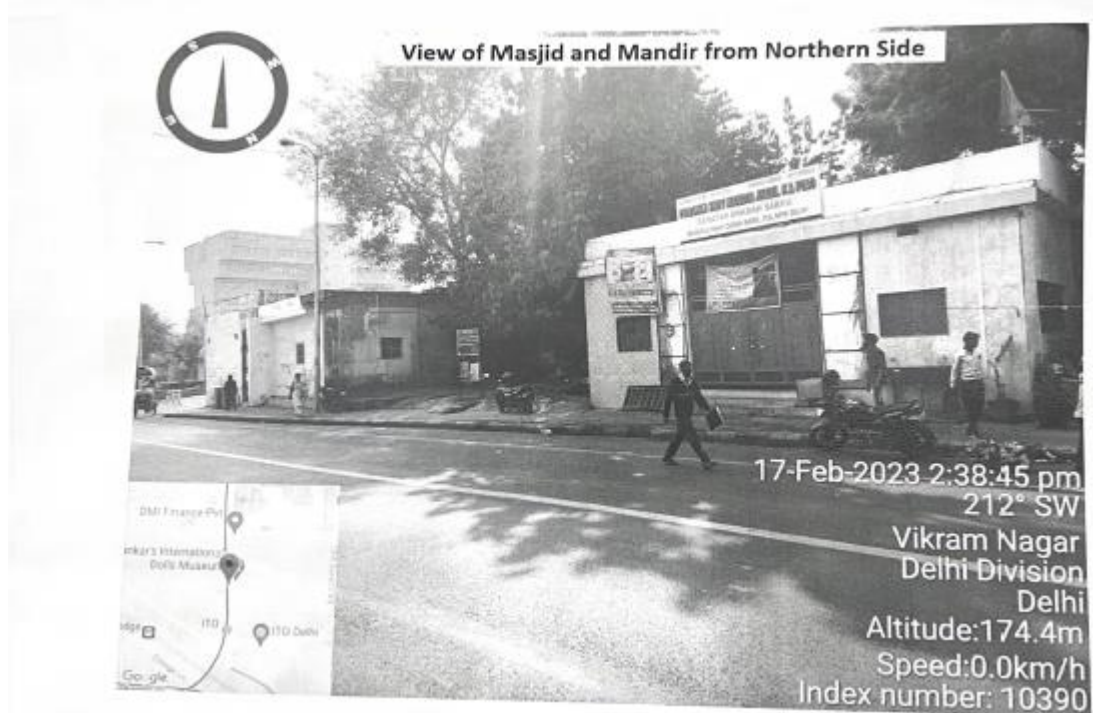
11. In addition, photographs have also been placed on record to show the manner in which the pedestrian pathway is being obstructed by both places of worship which are abutting into the pedestrian pathway.

12. On behalf of the Wakf Board, Mr. Shafiq, Id. Standing Counsel has handed over an affidavit dated 21st February, 2023 deposited by one Mr. Amanatullah Khan, Chairman of the Delhi Waqf Board. As per the said affidavit, the Masjid concerned is known as 'Ghosian Masjid' commonly known as 'Masjid Jheel ka Piao'. The same was a property which was gazetted as a waqf property and the same is included in the Delhi Administration's Official Gazette dated 16th April, 1970 at page no. 308 at serial no. 29.

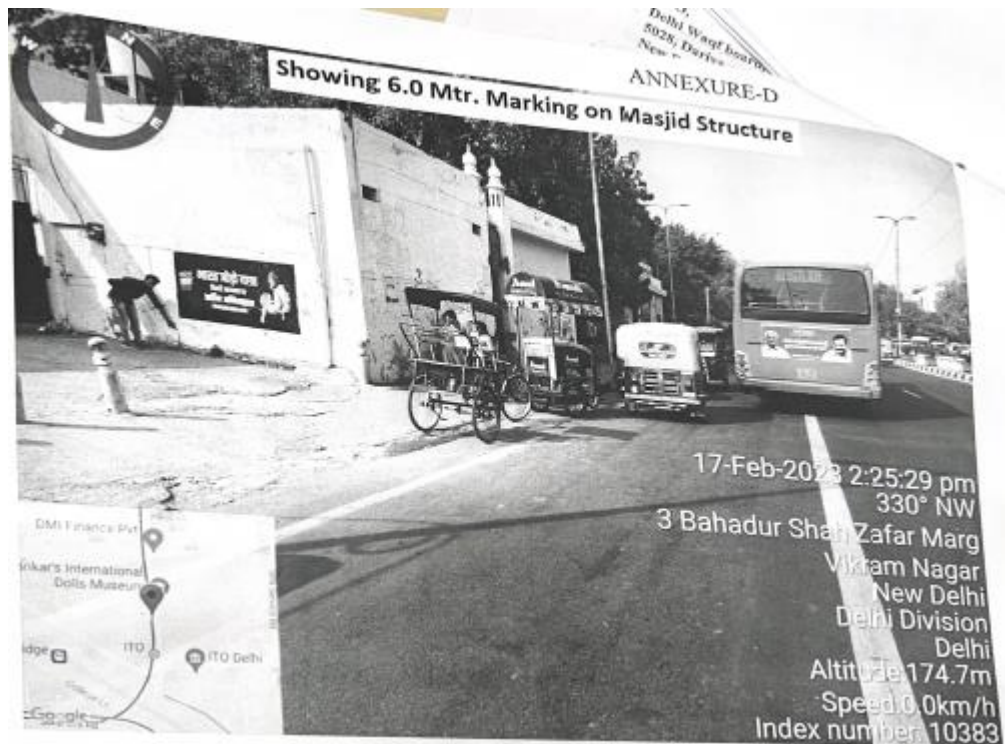
13. At the time when the DMRC was carrying out its development work for the metro station, the Masjid was affected and was rebuilt by the DMRC. According to the said affidavit, the Masjid caters to members of the Muslim community in the nearby offices and local dwellers. It is also stated in the said affidavit that the Masjid is a single-story structure admeasuring just over 100 sq. metres. There is a pedestrian pathway in front of the Masjid. Photographs are also annexed to show that while on the one side of the road, the pedestrian pathway of 6 metres is being insisted upon, on the opposite side where there are a large number of commercial buildings, there is no pedestrian pathway. It is thus submitted by Mr. Shafiq, Id. Counsel that the devotees who visit the Masjid also require place for ablution during prayer and thus there is no alleged encroachment which is liable to be removed.

14. On behalf of the Mandir, Mr. Chaudhary, Id. Counsel submits that the area in front of the Mandir is sufficient for the pedestrian pathway and in any case, the Mandir has been there for a long period and is not an illegal encroachment. If the Court recognizes the Mandir as an encroachment, the GNCTD/PWD is likely to impose damages/penalties for illegal occupation which the Mandir would not be able to pay.

15. Heard. The issue that has been raised in the present petition concerns the development of the pedestrian pathway in an extremely busy road near the ITO. The photographs which have been placed on record show clearly that the Mandir and Masjid are abutting the pedestrian pathway. Some of the images which have been handed across are extracted below for the sake of reference.

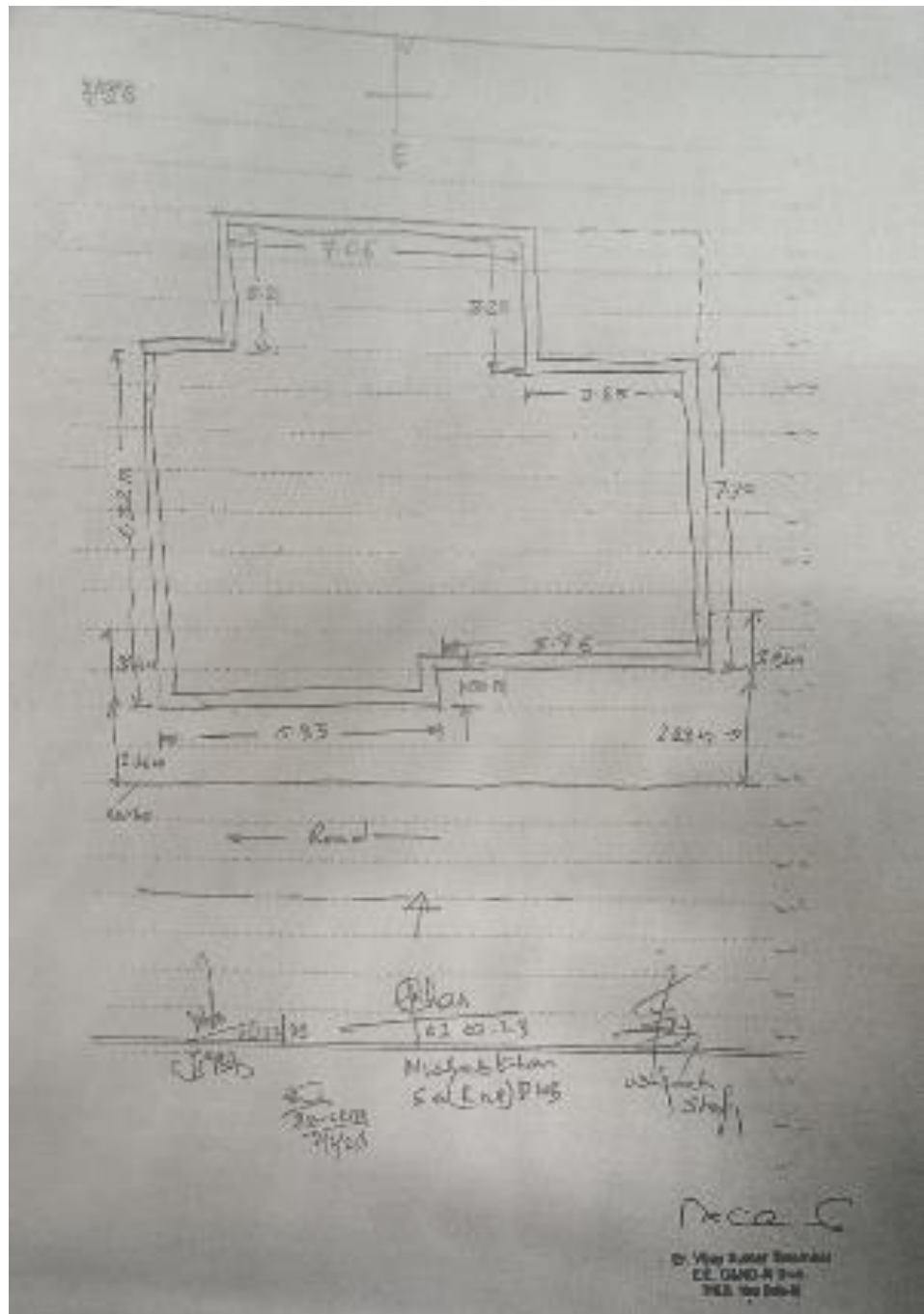


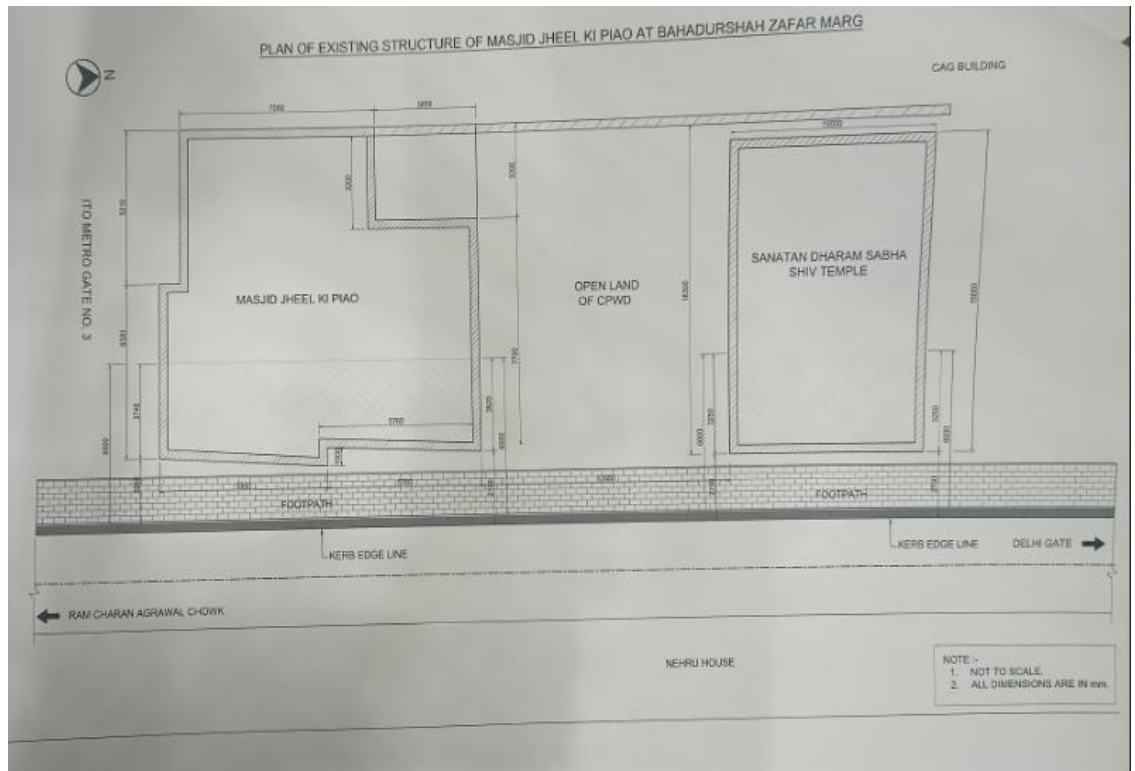
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16. The line sketch which has been filed by the PWD would also show that there is no uniformity in the pedestrian pathway and the same needs to be made uniform and matched along with the pedestrian pathway across the entire stretch of the road, failing which, pedestrians' safety would be seriously affected. The said line sketch showing the exact measurements is set out below:

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17. The usual conflict that the Court faces in such cases is the striking of balance between the larger public interest on the one hand and the interest of the devotees on the other. A decision of the Gujarat High Court in *Gulam Kadar Ahmadbhai Menon v. Surat Municipal Corporation AIR 1998 Guj 234* would be apt in this context where the Ld. Division Bench observed as under:

“28. We hold that while the Corporation does have the power to acquire a place of worship or a part thereof for the purpose of widening a road, it is expected to examine the need for such acquisition with reverence for a place of worship and consequently to examine the question whether the public need to acquire a particular place of worship or a part thereof overrides religious need to preserve that place of worship. Is the inconvenience to the general public so much that even a place of worship or a part thereof be demolished? In a

given case the extent of public hardship may justify acquisition of a worship; in another the public need may be pressing enough to justify acquisition of any other private property but not acquisition of the entire religious place or a part thereof, because the availability of a few square metres of additional road land may not give anything more than a mere symmetry. Of course, where the demands of vehicular and/or pedestrian traffic are so heavy, acquisition of a place of worship even in its entirety may be justified.

29. In short, in each case, it will be a question to be examined by the concerned local body assessing the public need for widening the road for catering to the increase in traffic, but always bearing in mind that in such mailers religious neutrality means not the negative concept of indifference to religion but the positive concept of reverence for all religions. Here again the concerned authority has to undertake the above exercise without being influenced by the fact whether the place of worship belongs to one religious community or another. The idea of (all religions are equal) will not be difficult to be achieved if one adopts it as (all religions are mine).

30. Since we have already held that it is for the local body to consider the question in the aforesaid proper perspective, we would not have been required to examine the facts of the case on hand. In fact the preliminary contentions of Mr. Desai on the ground of delay, laches and acquiescence and absence of challenge to the decisions taken in 1988 and 1989 were urged as strong enough to justify refusal entertain, the petition itself but as we are told that it is for the first time that a Constitutional Court has been approached for directing the authority to strike a balance between the right of a religious community to its place of worship and the municipal needs of the society at large, we have therefore, thought it fit to overrule the preliminary objections urged by Mr. Desai to demonstrate how the

positive concept of secularism can be implemented in the facts of the present case, in order to discharge the duty to do complete justice as observed in the case of Union of India v. B.C. Chaturvedi (supra) as discussed in para 27 above. We would like to add that in future the balancing act undertaken herein must be left to the local authorities who would undoubtedly show due deference to the places of religious worship as earlier discussed in this judgment.

31. As far as the facts of the present case are concerned, there can be no gainsaying that in view of the increase in the population and traffic including explosion of vehicular traffic in all the growing cities in India, it has become necessary for the local authorities to take up the task of widening roads. The two mosques are situate on a junction of five roads. The width of the existing road is hardly about 40' and the sanctioned road line provides for the road line of 60'. It cannot, therefore, be said that the widening of the road by 20' would not be in public interest or in larger national interest.

Thus, in the above decision the Court holds that if such places of worship are taken away for the purposes of carrying out the expansion of the road, it would not mean in any manner that a religious structure is being disrespected.

18. In the present case too, this Court is of the view that the larger public interest would outweigh the concerns raised by both the places of worship i.e., the Mandir as also the Masjid. There is no gainsaying that places of worship cannot be encroaching public land and hindering developmental activities meant for the larger segment of the public. In order to make the said pedestrian pathway uniform and so as to not inconvenience the pedestrians on the said busy stretch of the road which also has access to the Delhi Metro station, this Court is of the opinion that the PWD ought to be permitted to make the pedestrian pathway uniform. For the said purpose, if some portion

of the Mandir/Masjid is to be broken/demolished, the same would have to be permitted by the Court. However, the same shall be done while complying with the following directions:

- i) The concerned Executive Engineer of the PWD would confer with the caretakers of both the Mandir and the Masjid and arrive at a consensus as to the time and the date on which the said demolition would take place. Since the wall of both the Mandir and the Masjid are abutting the pedestrian pathway, the walls would be required to be demolished. If upon conferring with the said caretakers, there is a need to make some fresh construction in order to secure area of the Mandir and the Masjid, the same shall be done at the cost of the PWD.
- ii) Both the Mandir and the Masjid or their occupants, shall not be treated as unauthorized occupants and no penalties and/or damages would be liable to be levied against them.
- iii) In addition, the Court directs that the PWD shall ensure that one toilet facility each for the Mandir and the Masjid shall be provided with proper hand washing area, if required. The area for offering of prayers by the devotees shall be tiled by the PWD at its own cost. The area for the said purpose shall be agreed upon between the caretakers/occupants of the Sanatan Dharam Mandir and the Masjid.

19. The pedestrian pathway shall now be made uniform subject to the above conditions.

20. The Delhi Police shall provide all cooperation and necessary assistance to ensure that the above directions are implemented without any disturbance

or law and order situation.

21. The petition is disposed of in these terms. All pending applications are also disposed of.

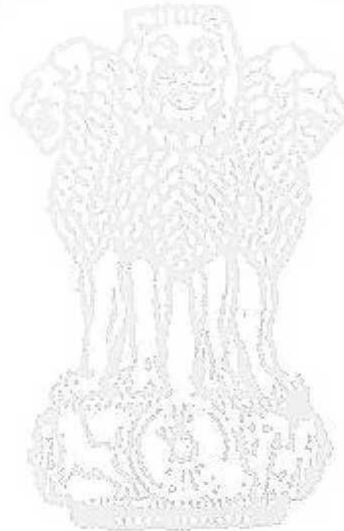
22. Next date of hearing also stands cancelled.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 23, 2023

Rahul/SK

HIGH COURT OF DELHI



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