

\$~2(SB), 4(SB), 5(SB), 6(SB), 1(SB) & 20 to 45

Date of Decision: 25th April, 2022

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

+ 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

NEETA BHARDWAJ & ORS.

..... Appellants

versus

KAMLESH SHARMA

..... Respondent

With

+ CM (M) 323/2021 & CM APPL. 14178/2021, 20945/2021, 20949/2021, 40269/2021
+ CM (M) 575/2021 & CM APPL.43796/2021
+ CONT.CAS(C) 614/2021
+ RSA 109/2018 & CM APPLs.30168/2018, 70/2019
+ CS (OS) 55/2022
+ CS (OS) 56/2022
+ CS (OS) 57/2022
+ CS (OS) 511/2021
+ CS (OS) 512/2021
+ CS (OS) 518/2021
+ CS (OS) 520/2021
+ CS (OS) 521/2021
+ CS (OS) 526/2021
+ CS (OS) 527/2021 & I.As.1717-18/2022
+ CS (OS) 533/2021 & I.As.1721-22/2022
+ CS (OS) 535/2021
+ CS (OS) 538/2021 & I.As.1725-26/2022
+ CS (OS) 539/2021
+ CS (OS) 540/2021
+ CS (OS) 541/2021 & I.As.1723-24/2022

- + **CS (OS) 542/2021**
- + **CS (OS) 544/2021 & I.As.1719-20/2022**
- + **CS (OS) 545/2021**
- + **CS (OS) 546/2021**
- + **CS (OS) 547/2021 & I.As.1715-16/2022**
- + **CS (OS) 552/2021 & I.As. 16148-49/2021**
- + **CS (OS) 554/2021**
- + **CS (OS) 579/2021**
- + **CS (OS) 648/2021**
- + **CS (OS) 2499/2010**

Appearances:-

Mr. R. K. Bhardwaj, Advocate for Appellant in FAO 36/2021.
(M:9312710547)

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

Mr. Vishal Bhardwaj, Advocate.

Mr. Neeraj Bhardwaj, Advocate for Mr. Vipul Gaur. (M:9350271061)

Mr. Sarvesh Bhardwaj, Advocate for Plaintiffs/LRs/Defendants
(M:9350301058).

Mr. Sanjeev Kumar Dubey, Sr. Advocate with Mr. Rajmangal Kumar, Mr.
Rahul Trivedi and Mr. Rishabh Kumar Thakur, Advocates for Applicants in
CM Nos.18207/2022 & 17247/2022. (M:9871211544)

Mr. S. Sasibhushan, Advocate for Applicant in I.A. 17039/2022.
(M:9818203373)

Mr. Kaoliangpoli Kamei, Advocate for Applicants in CM 5803/2022.
(M:9899754667)

Mr. Arun Birbal, Mr. Sanjay Singh, Mr. Sonia Singhani and Ms. Vidhi
Gupta Advocates for DDA. (M:9958118327)

Mr. Siddharth Panda, Standing Counsel along with Mr. Ritank Kumar
Advocate for SDMC. (M:9891488088)

Ms. Sangeeta Bharti, Standing Counsel for DJB with Mr. Malhi Balyan,
Advocate. (M:9811112863)

Ms. Shambhavi and Mr. Kartikeya Sharma, Advocates for Ld. Administrator
(M-9731424935)

Ms. Mini Pushkarna, Standing Counsel, DUSIB with Ms. Latika Malhotra,
Ms. Shikha Baisoya & Ms. Khushboo Nahar, Advocates (M-9810674872)

Mr. Nitin Jain, Ms. Kavita Singh & Mr. Vishal Chauhan Advocates for
Shopkeepers.

Mr. Dipanshu Gaba, Advocate for R-1to 4 &6. (M:9873730191)

Mr. Vivek Kumar Singh, Advocate for Defendants. (M:8860456420)
Mr. Prabhas Chandra, Advocate for D-2. (M:9871254033)
Mr. R.R. Singh and Ms. Preeti Chaudhary, Advocates for Defendant (M:9910003491)
Mr. Rahul, Advocate for Mr. Satyam Thareja, Advocate. (M:9711097019)
Ms. K. Kiran, Advocate. (M:9818893995)
Mr. Deepak Dewan, Advocate for 12 shopkeepers. (M:9810127778)
Mr. Karan Jeet Rai Sharma, Advocate for Mr. Sanjay Lao, Standing Counsel (Criminal) with Inspector Balbir Singh, SHO PS Kalkaji and SI Manu Dev PS Kalkaji. (M:8800131100)
Mr. Kamal Mehta, Advocate.
Mr. Prashant Manchanda, ASC, GNCTD. (M:9971879203)
Mr. U.M. Tripathi, Advocate. (M:7011071370)
Mr. Arun Panwar, Advocate for Mr. Santosh Kumar Tripathi, Standing Counsel (Civil)GNCTD. (M:78275458811)
Mr. Jameel Ahemad & Mr. Deepak Kr., Advocates. (M:9810961212)
Mr. Anuroop P.S., Advocate for R-1.
Mr. D.K. Singhal, Advocate.
Mr. Paul Kumar Kalai and Mr. Atul Kumar Srivastav, Advocates. (M:8376813694)
Mr. K.G. Chhokar, Advocate. (M:9896030124)
Mr. Rajesh Kumar Gupta, Advocate.
Mr. Avinash Chamaria and Mr. P. Roy Chaudhuri, Advocates.
Mr. Goonmeet Singh Chauhan, Architect.

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.
3. Today the Id. Administrator's Fifth Report dated 23rd April, 2022 (*hereinafter "Report No.5"*), has been received. Report No.5 raises various concerns and provides recommendations in respect of the same.

Erection of Boundary Wall to Prevent Encroachments

4. Before proceeding further, this Court notices that there are concerns expressed about continuous encroachment into the *Kalkaji Mandir* premises, as also into the land which is adjacent to the *Mandir* area, some of which may also be Government land.

5. The entire process of redevelopment of the *Kalkaji Mandir* would be severely jeopardized if encroachments happen on a daily basis either by vendors or any other unauthorized occupants. Accordingly, it is deemed appropriate to secure the entire land surrounding the *Kalkaji Mandir* premises, being used for the activities of the *Mandir*, by erection of a barricade or a boundary wall for safeguarding the entire land.

6. Mr. Chauhan, Ld. Architect is present virtually and submits that in some areas there was barbed wire fencing, however the same has been removed by encroachers. Mr. Chauhan recommends that metal sheet fencing can be done of the entire land so as to avoid continuous encroachments. Accordingly, in order to ensure that such occurrences of encroachments do not happen on a daily basis, it is directed as under:

- (i) Ld. Architect along with his team shall take immediate steps for erection of metal sheet barricade or any other type of barricades/boundary that he deems appropriate, which is not easily removable, for fencing the entire land around the *Kalkaji Mandir*, which is being used for activities of the *Mandir*.
- (ii) For the said purpose, the concerned Tehsildar and/or revenue authorities as also the PWD officials and DDA officials shall render all necessary cooperation.
- (iii) Once the entire land is barricaded, the revenue authorities and

other DDA/SDMC/concerned officials may commence the demarcation process to separate the Government land and other *Kalkaji Mandir* premises land / the land claimed to be belonging to the *Thok Jogians* and *Thok Brahamins*.

7. A sum of Rs.10 lakhs is directed to be released to the Id. Architect from the “**Registrar General, Delhi High Court, A/c Kalkaji Mandir Fund**” vide A/c No.15530110155950 IFSC Code UCBA0001553] (hereinafter “*Kalkaji Mandir Fund*”), for the purposes of erecting the boundary wall/barricades in terms of the above order.

8. The Delhi Police through SHO Kalkaji – Sh. Balbir Singh who is present in Court, has assured the Court that the boundary wall erected either through metal sheets or any other form of barricading shall be regularly monitored, so as to ensure that no unauthorized occupation or encroachment takes place into the *Kalkaji Mandir* premises.

9. During the process of erection of barricading and boundary wall, the SHO, Kalkaji shall also provide requisite police assistance to the Id. Architect and the Id. Administrator, to ensure smooth erection of the same.

Shops/Vendors on the periphery of the Kalkaji Mandir premises

10. The Id. Administrator has also mentioned in Report No.5 that several temporary stalls/vendors are operating on the periphery of the *Kalkaji Mandir* premises. The SDMC to clarify if any vendors have been licensed in this area and if so, what are the numbers and details of such vendors, by filing an affidavit by the next date of hearing.

11. The issue of removal of vendors from the periphery of the *Mandir*

shall be considered once the barricading is completed. In the meantime, it is directed that SDMC and the GNCTD shall not give any further permission to the street vendors for hawking in the periphery of the *Kalkaji Mandir*.

12. At this stage, Id. counsel for the GNCTD, submits that GNCTD does not give any hawking rights or any *tehbazari* for hawking to vendors.

Allotment of temporary shops

13. Insofar as allotment of temporary shops is concerned, as per the list submitted by the Id. Administrator, in terms of the status report submitted by the Id. Administrator on 13th April, 2022, the credentials of 105 shopkeepers were verified. However, out of this 105, a total of 98 shopkeepers are stated to have made the deposit of Rs.30,000/-. The said 98 shopkeepers would be entitled to allotment of temporary shops on the terms and conditions as would be fixed by this Court.

14. Insofar as the *pujaris* are concerned, the Id. Administrator has recommended that the *pujaris* who were operating shops/stalls at the *Mandir premises* at the time of passing of the order dated 27th September, 2021, may be treated similarly as the other shopkeepers whose request for allotment of temporary shops was accepted by the Court. The said *pujaris* who made applications for allotment of temporary shops were 24 in number. However, the Id. Administrator has verified and has confirmed that out of the 24 *pujaris*, only 13 *pujaris* were those who had shops at the time when the order was passed by this Court. Accordingly, all the said 13 *pujaris* may also be added to the list for allotment of temporary shops, subject to deposit of Rs.30,000/- and the *tehbazari* amounts and other terms and conditions as may be fixed by this Court. Insofar as the other *pujaris* whose applications for temporary shops are being rejected are concerned, they are permitted to

move an application before this Court, if they wish to avail of temporary allotment.

Construction of temporary shops for all the shopkeepers and pujaris

15. As directed above, pursuant to the previous orders dated 31st March, 2022 and 13th April, 2022, the Id. Architect has submitted that the construction activity for the temporary shops would commence on 1st May, 2022. The Id. Architect submits that a time period of 8 to 12 weeks would be required for completing the construction of the temporary shops. Accordingly, it is directed that the said erection of the temporary shops and facilities as per the Brief Project Report which was presented to the Court on 31st March, 2022, shall commence on 1st May, 2022.

16. In this regard, all authorities shall render their cooperation to the Id. Administrator and to the Architect. The Architect shall be in continuous consultation with the Id. Administrator and his team, so that the construction takes place and is completed in a timely manner. The Delhi Police shall also render assistance for the said erection of temporary shops.

17. Insofar as the larger shops are concerned, the Id. Administrator has informed the Court that there are only 16 larger shops in number. As recorded in the previous order dated 31st March, 2022, the cost of constructing the shops was estimated to be around Rs. 1 lakh. Today, the cost of construction of these shops is stated to be at the higher side and Rs.1 lakh may not be sufficient, as per Mr. Chauhan.

18. Accordingly, all the applicants who wish to bid for the larger shops are permitted to submit their best bids/offers for the cost of construction as also for the monthly *tehbazari* amounts. The Id. Administrator shall consider all the applications for the larger shops and shall place the list before this

Court as to the bids which are submitted and his recommendations in respect of which of the persons would be entitled for the allotment of the larger shops and on what terms, in his next report. Accordingly, all the applicants who intend to seek allotment of the 16 larger shops are permitted to submit their bids along with their credentials and documents to the Id. Administrator on or before 6th May, 2022.

19. For the allotment of the temporary large shops, the offers of *pujaris* as also any *dharamshala* occupants and all the shopkeepers who earlier had shops in the *Kalkaji Mandir* premises, as on the date of the order of this Court dated 27th September, 2021, would be permitted to submit their offers.

20. Let the recommendations of the Id. Administrator in respect of the above mentioned offers and the highest bid submitted be placed in the next report by the Id. Administrator. On the basis of the bids received for the large shops the Id. Administrator may also recommend the *Teh Bazari* and terms to be fixed for the small shops as well.

21. Insofar as the small shops are concerned, some of the Id. counsels submit that a similar process ought to be undertaken as to the smaller shops as well. Mr. Jain, Id. counsel representing certain shopkeepers, submits that those allottees who may not be willing to comply with the terms and conditions, as may be fixed by the Court for allotment of the shops, should also be permitted to seek refund of their already paid amounts of Rs.30,000/-. These submissions shall be considered at the time when the final list of allottees is finalized by this Court.

Shops set up during Navratras

22. The Court has been informed that the temporary stalls which were erected during *Navaratri*, pursuant to previous orders dated 22nd March,

2022 and 31st March, 2022, have since been removed.

23. It is made clear that if any temporary stalls are being permitted by the Id. Administrator, the same shall be on the basis of payment of at least Rs.5,000/- per day from each of the said shopkeepers, and the entire account of the said temporary stalls shall be submitted to the Court and the deposits shall be made directly into the ***Kalkaji Mandir Fund***, on or before the 10th of every month, by the Id. Administrator.

Concerns relating to baridaars

24. Insofar as the aspect of the report relating to misconduct of *baridaars* is concerned, copy of this Report No.5 of the Id. Administrator be supplied to Mr. R.K. Bhardwaj, Id. Counsel, who shall share it with all the *baridaars*. Counsels for the *baridaars* shall make submissions on the next date of hearing.

Representations received from the Pujaris occupying Dharamshalas in the Kalkaji Mandir premises

25. Insofar as the representations received from *Pujaris* occupying the *Dharamshalas* in the *Kalkaji Mandir* premises is concerned, pursuant to the orders of the Supreme Court in ***SLP No.9073/2022*** titled ***Nathi Ram Bhardwaj & Ors. v. Neeta Bhardwaj & Ors.*** and the Division Bench in ***LPA No.172/2022*** titled ***Vinayak Bhardwaj v. Neeta Bhardwaj***, it is informed that the hearings are going on and upon the same being concluded, the Administrator would put up his report thereof. Let the final report in this respect be filed by the Id. Administrator before this Court, by the next date of hearing.

26. Insofar as any other illegal occupants and encroachments are concerned, Id. Administrator to take steps with cooperation of the authorities

including the Delhi Police through SHO, Kalkaji, SDMC, DDA, etc. for removal of all other illegal occupants and encroachments in the area.

Redevelopment of the Kalkaji Mandir

27. Id. Administrator has stated in Report No.5 that one M/s Foundtek Consultants (P) Ltd., was engaged by the Architect for demarcation of the *Mandir* land. It is requested by the Id. Administrator that the SDM, Kalkaji may verify the said Report.

28. Accordingly, the report prepared by M/s Foundtek Consultants may be supplied to Mr. Tripathi, Id. Standing Counsel (Civil), GNCTD, for giving the same to the SDM, Kalkaji, to verify the report and to submit their response in respect thereof. For the said purpose the SDM, Kalkaji may also visit the *Mandir* premises and also coordinate with the Id. Administrator, Architect and his team.

29. The Id. Administrator has also informed the Court that a Manager and a Part-time Assistant-cum-Stenographer has been appointed, for assisting the Secretary-cum-Treasurer in the administration and management of the *Mandir*. The said information is taken on record.

30. A total of Rs.25 lakhs is permitted to be released by the worthy Registrar General from the *Kalkaji Mandir Fund*, to the Architect, under directions from Id. Administrator. For the said purpose, the Id. Administrator may write an email communication to the worthy Registrar General of the Court, after obtaining the requirements for the same, from the Id. Architect. Upon receiving such email, the requisite amounts shall be released – upto a maximum of Rs.25 lakhs – to the Id. Architect.

Deposit of Amounts by Baridaars

31. Vide previous order dated 27th September, 2021, this Court had

directed the *baridaars* to make monthly deposits in the main account opened by the Id. Administrator titled '*Administrator of Sh. Kalkaji Mandir appointed by Court' maintained in State Bank of India [Current account no.:40774972794, IFSC:SBIN0001711]* (hereinafter "*Administrator's Account*"). The relevant portion of the said order reads as under:

“(x) Almost all Id. Counsel representing the baridaars have submitted that they are willing to contribute for the maintenance and cleanliness of the Mandir premises. However, the amounts that have been suggested vary from Rs.5 lakhs to Rs. 20 lakhs. The monthly collections at the Mandir, are, on an average, between Rs.1 crore to Rs.2.5 crores, depending on the month. During Navratras, the amounts collected are on the higher side.

Accordingly, for the purpose of maintaining cleanliness, hygiene, and for providing facilities in the Mandir, funds shall be contributed by the baridaars on a monthly basis, to enable the Id. Administrator to take steps. The baridaars shall, at this stage, contribute a sum of Rs. 15 lakhs every month, generally, and Rs.20 lakhs during the bi-annual Shashmahi bari (Navratra period). The said deposits shall be made prior to the distribution or division of offerings/donations amongst the various baridaars.”

32. Vide subsequent order dated 15th November, 2021, this was clarified as under:

“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 27th 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.”

33. Vide further order dated 1st February, 2022, the said order was

modified as under:

“32. The Id. Administrator has recommended that an additional sum of Rs.5 lakhs per month ought to be contributed by the baridars for the redevelopment of the Kalkaji Mandir. For the time being, however, considering the details of various amounts which have been received from the various proceedings in the District Courts and the accounts submitted today, it is directed that the baridars shall deposit a sum of Rs.2 lakhs per month in the Kalkaji Mandir Fund, subject to further orders of this Court.”

34. Today, the Id. Administrator has informed the Court that the *Baridaars* are not depositing the amounts fixed by the Court, within time and specifically, not prior to the distribution of the money among the *Baridaars*. Considering this position, it is made clear that insofar as the *Baridaars* are concerned, as per the order dated 15th November, 2021, the distribution among the *Baridaars* is to take place only after the amount of Rs.17 lakhs or 22 lakhs, as applicable, is deposited with the Id. Administrator. Since the same is not being adhered to scrupulously by the *Baridaars*, the following directions are issued:

- (i) On the commencement of each *Baari* from *Shud Ekadashi*, the *Baridaars* shall deposit a sum of Rs. 17 lakhs for normal months and Rs. 22 lakhs for *Navratras* period, in the respective bank accounts of the Id. Administrator and the Kalkaji Mandir Fund, by the 14th day of each month.
- (ii) If the said deposit is not made by the 14th day, from the 15th day, the *Baridaars* shall not be permitted to perform the *Puja Seva* and the Id. Administrator shall take over the conduct of *Puja Seva* for that *bari*.

(iii) If there are any previous dues, of any *Baridaars* for any month, as on the date of this order, the same shall be deposited with the Id. Administrator as directed earlier within a period of one week from now, failing which the *baaris* of those *Baridaars* shall for the future, be liable to be cancelled.

35. It is also noticed that the records of *CS(OS) 57/2022 (Old M. No. 54/09)* titled *Prithi Nath & Ors. v. Tula Ram*, are not complete. Vide previous order dated 1st February, 2022, the deposits were requisitioned by this Court from Account No. CCD843 PAO VI, SBI, Tis Hazari Courts. However, Mr. R.K. Bhardwaj, Id. Counsel, submits that in this case, where the deposits have been made since 1978, the same have still not been received. The worthy Registrar General is requested to direct the concerned Court to positively give a report in this case, along with the entire record by the next date of hearing, as to the amount deposited and the amount lying in the account in respect of this suit. The Branch Manager, SBI, Tis Hazari Courts Complex, where this amount is stated to have been deposited, shall remain present in the Court on the next date of hearing.

36. List all these matters on **13th May, 2022 at 2:30 P.M.**

37. On the next date, Id. Administrator and Architect be present in Court along with the SHO, Kalkaji.

38. By the next date of hearing, the Registry to provide an updated report as to the amounts received to date, into the account in the name *of "Registrar General, Delhi High Court, A/c Kalkaji Mandir Fund" vide A/c No.15530110155950 IFSC Code UCBA0001553*].

39. Copy of today's order be supplied to Mr. Santosh Kumar Tripathi, Id. Standing Counsel (Civil), GNCTD, Mr. Arun Birbal, Id. Counsel for DDA

& SDMC, with a direction to further communicate the same to the concerned officials of the Delhi Police, DDA, and SDMC, who are to comply with the directions given above.

40. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, 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.

APRIL 25, 2022

Aman/Rahul/Ms

(Corrected & released on 28th April, 2022)

**PRATHIBA M. SINGH
JUDGE**

सत्यमेव जयते