

IN THE HIGH COURT OF DELHI AT NEW DELHI
CRIMINAL JURISDICTION

WRIT PETITION (CRL) NO. _____ OF 2021

IN THE MATTER OF:

Delhi Waqf Board

through its Chairman

...PETITIONER

VERSUS

Government of NCT of Delhi & Anr.

...RESPONDENTS

A PETITION UNDER ARTICLE 226 OF THE CONSTITUTION
READ WITH SECTION 482 CR.P.C. FOR PROTECTION OF
STATUTORY RIGHTS UNDER SECTION 32 OF THE WAQF
ACT, 1995

AND A PETITION FOR A WRIT OF MANDAMUS OR ANY
OTHER SUITABLE WRIT, ORDER OR DIRECTION
THEREBY DIRECTING THE RESPONDENTS TO REASSESS
THE NECESSITY OF KEEPING THE WAQF PREMISES, I.E.,
MUNICIPAL NOS. 168, 168A, 168B SITUATED AT BASTI
HAZRAT NIZAMUDDIN BETWEEN DARGAH HAZRAT
NIZAMUDDIN AND POLICE STATION HAZRAT
NIZAMUDDIN, UNDER THEIR LOCKS.

To,

The Hon'ble Chief Justice of Delhi High Court
And His Lordship's Companion Justices of
the same High Court.

the humble petition of
the petitioner abovenamed

MOST RESPECTFULLY SHOWETH:

- 1) That the petitioner prefers the present petition under Article 226 of the Constitution read with Section 482 Cr.P.C., interalia, for protection of its Statutory rights under Section 32 of the Waqf Act, 1995.
- 2) That the petitioner is a Statutory Body incorporated under Section 13 of the Waqf Act, 1995. The present petition is being filed through the Chairman of the petitioner who is authorized by Rule 84 of the Delhi Wakf Rules, 1997 in this regard.
- 3) That as per Section 32 of the Waqf Act, 1995, subject to any Rules that may be made under the said Act, the general superintendence of all auqaf¹ in a State shall vest in the Board established for the State. The said section invests the Boards of waqf with the power to maintain, control and administer the waqfs situated within its jurisdiction. The Waqf Board control the

¹ Plural of 'Waqf'.

waqf and waqf properties through duly appointed managing committees or Mutawallis.

- 4) That the Waqf Property comprising Masjid Bangley Wali and Madarsa Kashif-ul-Uloom, [waqf vide a deed dated 14.03.1939] in Municipal nos. 168 and 168A is situated on the road between Hazrat Nizamuddin Dargah and Police Station Hazrat Nizamuddin. The said property is entered into the list of Auqaf and published in the Delhi Administration's Gazette dated 16.04.1970 at page no. 406, Serial no. 41.

A true copy of the relevant entry of the Gazette Notification along with its typed copy is annexed herewith as **Annexure-P/1**.

The said property is also registered with the Delhi Waqf Board on 07.08.1970 vide entry no.437 in Register no.3 at page no. 41.

A true copy of the certificate of registration along with its fairly typed copy is annexed herewith as **Annexure-P/2**.

- 5) That for expansion of Madarsa Kashif-ul-Uloom, which was originally established in the aforesaid Mosque, a

separate chunk of land in municipal no. 168B was being used since 2nd February 1979 and multistoried construction was raised thereupon, which was also sanctioned and regularized by the Municipal Corporation of Delhi vide certificate dated 28.01.1984.

A true copy of the MCD's certificate dated 28.01.1984 along with its translation is annexed herewith as

Annexure-P/3.

6) That the Land comprised in aforesaid Municipal no. 168B was thereafter given by the DDA on perpetual lease to Madarsa Kashif Ul Uloom on 14.02.1985 vide a duly registered indenture of perpetual lease for running a hostel.

7) That the committee, which was administering the said Madarsa, got itself registered with the Delhi Waqf Board on 04.05.1992 in Book no. VI, Volume I page no. 28 under Registration no. 02/Misc/92.

A true copy of the registration certificate in respect of the managing committee is annexed herewith as

Annexure-P/4.

- 8) That the entire premises comprising Masjid, Madarsa and Hostel/residential portion is popularly known as 'Markaz' and is used for religious purposes. The dictionary meaning of 'Markaz' is 'center'. Here it is pertinent to point out that the Hostel has a separate portion, which is designated for the residences of principal clerics of the aforesaid Markaz and their immediate family members and is not open for general public.
- 9) That on 24.03.2020 the entire Nation went in lockdown as a measure to contain the spread of Novel Corona Virus Disease popularly known as 'CoViD19 disease'.
- 10) That in connection with FIR no. 63/2020 dated 31.03.2020 registered with Crime Branch under Section 3 of Epidemic Diseases Act, 1897 read with Sections 51/58 (1) of Disaster Management Act, 2005, Section 14(b) of Foreigners Act read with Section 188, 269, 270, 271, 304, 308/120B IPC the local police has put locks on the entire premises ostensibly for the purpose of its sanitization and the said premises is

lying locked since then, i.e., almost an year. Though, as per information of the petitioner, no formal seal is put on the aforesaid premises ever.

- 11) That the Central Government on 30.05.2020 issued guidelines for reopening known as 'Unlock 1 guidelines' and allowed the religious places outside the containment zones to open from 08.06.2020. At that time the area of Basti Hazrat Nizamuddin was falling in containment zone. However, as per the information of the petitioner, during September, 2020, the said area was taken out from the list of containment zones.
- 12) That, however, when things are gradually returning to normalcy, all the religious places are reopened, all Bazars and large markets, shopping complexes are reopened, gymnasiums, clubs, schools are being reopened, physical lectures in colleges have resumed and the courts are slowly returning to physical mode of hearings, the aforesaid Waqf premises is lying under the police lock and till date also in Masjid Bangley Wali general public is not allowed to enter and offer prayers, in Madarsa students are not allowed to continue with

the education and in the hostel nobody is allowed to stay. The Delhi Waqf Board has learnt that the local police has prepared a list of only 5-6 persons of the locality who alone can enter the mosque for the purpose of prayers. The local police opens locks at the main entrance allows them to enter at the time of prayers, after the prayers are over, those people come out and immediately thereafter the police locks the main entrance again.

- 13) That though the copy of the aforesaid FIR no. 63/2020 is not in the possession of the petitioner nor the petitioner has anything to do with the said FIR, however, from a letter dated 11.04.2020 addressed by the respondent no.2 to the CEO of the petitioner the aforesaid FIR appears to have been registered on the premise that Maulana Mohd. Saad and the management of the Markaz have deliberately, willfully, negligently and malignantly committed acts which are in direct contravention to the lawful directions of public servants.

A true copy of the letter dated 11.04.2020 sent by the respondent no.2 addressed to the CEO of the petitioner is annexed herewith as **Annexure-P/5**.

- 14) That without entering into the correctness of the decision of the Investigating Officer in putting lock on the entire premises, it can only be said that the matter, in which the said FIR is registered, does not warrant putting the entire property under lock that too for indefinite period since the property in question has three distinct portions, i.e., Mosque, Madarasa and a hostel where the families of the principal clerics of the establishment were residing and which portion was not open for general public to enter.
- 15) That assuming that the said premises has got anything to do with the aforesaid FIR no. 63/2020, then also looking at the sections involved, instead of keeping the said waqf property under lock for indefinite period it would be better that scaled map or digital sketch of its interiors are prepared in the presence of witnesses, videography and photography is done and the property be reopened as putting the property under lock for

indefinite period is not only interfering with the Statutory rights of petitioner, causing difficulty at various levels to the people who are directly interested in the aforesaid waqf property but the discontent is also growing amongst members of Muslim Community at large.

16) That in the month of January February, 2021 representatives of people from Basti Hazrat Nizamuddin and also from other places have met the Chairman of the Delhi Waqf Board multiple times with a request to take steps for reopening of the said waqf premises.

17) That considering the facts of the matter, the petitioner on 16.02.2021 gave a written representation to the respondents for reassessing the necessity of subjecting the entire premises as 'out of bound' area. It was also requested that instead of keeping the aforesaid premises under lock, some scientific method be adopted to collect the evidence, if that is required in the course of investigation in the aforesaid FIR no. 63/2020 or in any other FIR involving the aforesaid

waqf premises. It was also suggested that as an additional measure, sufficient security bonds can also be taken from the management of the aforesaid Waqf Premises to the effect that the condition of the waqf premises will not be altered and no hindrance shall be caused by anyone at the time of physical inspection thereof by the learned Judge or Magistrate if the property is inspected by them in the course of Trial, if any.

A true copy of the representation dated 16.02.2021 is annexed herewith as **Annexure-P/6**.

- 18) That, however, no action is taken by the respondents upon the aforesaid representation. Hence, the petitioner is filing the present petition.
- 19) That the petitioner does not have any alternative efficacious remedy.

NON-FILING PARA

- 20) That the petitioner has not filed any other petition for same and similar relief before this Hon'ble Court or before any other court.

21) That the petitioner prefers the present petition on the following amongst other:

-:GROUNDS:-

- a) Because, the petitioner, under Section 32 of the Waqf Act, 1995, has a Statutory Right to manage, administer and control the Waqf Properties situated within its territorial jurisdiction and the property in question is a waqf premises principally used for religious purposes.
- b) Because, putting a waqf property under lock for indefinite period is causing interference with the rights conferred upon the petitioner under Section 32 of the Waqf Act, 1995.
- c) Because, as per the information of the petitioner the waqf premises in question is not even sealed in relation to any crime.
- d) Because, as all the other religious places are opened, hence, keeping the waqf premises in question under lock by the police is inequitable.

- e) Because, assuming that the waqf premises in question or any part thereof has any relation with the FIR no. 63/2020 dated 31.03.2020, then also looking at the nature of sections involved in the said FIR the locking of the entire waqf premises is excessive, unreasonable and arbitrary, especially when the said premises consist of three portions and out of those three portions only one was used for the purpose of religious congregation and a particular portion was not even open for general public as it was being used for the residential purposes of the families of principal clerics of the said Mosque and Madarsa.
- f) Because, assuming that the waqf premises in question or any part thereof needs to be secured for the purpose of any enquiry or trial, then also the same can be secured adopting any scientific or modern manner, i.e., by way of preparing sketch/electronic sketch through any freeware or through photography/videography. Additionally, appropriate bonds can also be taken from the management committee members to ensure that no structural changes etc, will be made in the present

condition of the said premises and no resistance shall be made when a Magistrate, a Judge or any other official with lawful authority visits the said premises in the course of any enquiry/investigation or trial connected with the aforesaid FIR no. 63 of 2020 dated 31.03.2020 or any other FIR or Trial.

- g) Because, the Delhi police is considered to be an elite force and it is not expected of it that it will remain stuck to the age old and primitive methods of putting locks on immovable properties in the name of securing scene of crime. In fact, violation of lawful directions issued under Epidemic Diseases Act, 1897 or the Disaster Management Act, 2005 or the Foreigners Act are not even considered to be heinous crimes to warrant such a drastic measure.

PRAYER

IN THE PREMISE IT IS MOST RESPECTFULLY PRAYED THAT THIS HON'BLE COURT MAY GRACIOUSLY BE PLEASED TO:

- a) Issue a Writ of Mandamus or any other suitable Writ, Order or Direction thereby directing the respondents to

reassess the necessity of keeping the waqf premises, i.e., Municipal nos. 168, 168A, 168B situated at Basti Hazrat Nizamuddin between Dargah Hazrat Nizamuddin and police Station Hazrat Nizamuddin, under their locks;

- b) Issue a Writ of Mandamus or any other suitable Writ, Order or Direction thereby directing the respondents to consider adopting more advanced and scientific methods, including but not limited to, preparing sketch/digital sketch, photography/videography of the interiors of the said waqf premises, for securing the condition of the interiors of waqf premises, i.e., Municipal nos. 168, 168A, 168B situated at Basti Hazrat Nizamuddin between Dargah Hazrat Nizamuddin and police Station Hazrat Nizamuddin if securing the condition of interiors of the said waqf premises is necessary for the purpose of any investigation or criminal trial;
- c) Issue a Writ of Mandamus or any other suitable Writ, Order or Direction thereby directing the respondents to cause only necessary and minimum interference with

the operation of the aforesaid religious place, i.e.,
Municipal nos. 168, 168A, 168B situated at Basti
Hazrat Nizamuddin between Dargah Hazrat
Nizamuddin and police Station Hazrat Nizamuddin;

- d) Pass any such and further orders as deemed fit in the
facts and circumstances of the case at hand.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER,
AS IS DUTY BOUND, SHALL EVER PRAY.

FILED ON: 19.02.2020

PETITIONER

FILED BY:

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