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

+ W.P.(C) 638/2024 and CM APPL. 2793-2794/2024, CM APPL. 6077/2024, CM APPL. 10223/2024

JAMIA ARABIA NIZAMIA WELFARE EDUCATION SOCIETY

..... Petitioner

Through: Mr. Rakesh K. Lakra, Mr. Bhavya
Sharma and Mr. Rahul, Advs.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE
CHAIRMAN & ORS. Respondents

Through: Ms. Shobhana Takiar, SC, DDA with
Ms. Chand Chopra and Ms. Neha
Bhupathiraju, Advocates.

Mr. Ajjay Aroraa and Mr. Kapil
Dutta, Advocates for MCD with Mr.
Naresh Garg, EXN, Mr. Navin Kaul,
AE, MCD, Central Zone.

Mr. Pavan Narang, Mr. Himanshu
Sethi and Ms. Aishwarya Chhabra,
Advocates for R-3.

Mr. Mohit Bhardwaj, Advocate for R-
4.

Mr. M.S Khan, Mr. Daniyal Ayyubi
and Ms. Shaziya, Advs. for Babu Ali.

Mr. Sanjoy Ghose, Sr. Advocate with
Mrs. Farhat Jahan Rehmani, Mr.
Firoz Iqbal Khan, Advs. for
Intervenor/ Delhi Waqf Board.

Inspector Paramvir Dahiya, SHO, PS,
Hazrat Nizammudin, Inspector Vikas
Pannu, PS, Hazrat Nizammudin.

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Date of Decision: 20th February, 2024



CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The contour and complexion of this Public Interest Litigation (“PIL”) has been changing from date to date; unfortunately, not for the better. As more facts unfolded, it became apparent that none of the parties is a ‘*paragon of virtue*’.
2. When this Court first heard the matter on 16th January, 2024, it was alleged that it is a case of illegal and unauthorized construction taking place at Khasra No. 556, Ziyrat Guest House, West Nizamuddin near centrally protected monuments like “*Nizamuddin Ki Baoli*” and “*Barakhamba Tomb*”. This Court was further informed that despite the petitioner’s representation dated 03rd November, 2023 to the respondents highlighting the illegal construction being carried out at Ziyrat Guest House and the Archaeological Survey of India (“ASI”) issuing a work stop notice dated 11th December, 2023, the statutory authorities had failed to take any action. Since, learned counsel for ASI had further stated that it had written a letter dated 02nd January, 2024 to the SHO, Nizamuddin (West) to register a FIR, this Court had, on the first date of hearing itself observed that, *prima facie*, illegal and unauthorized construction was taking place with the tacit support if not active connivance of statutory authorities. Accordingly, the Deputy Commissioner, MCD, Central Zone was directed to remain personally present in Court on the next date of hearing, and the respondents were



directed to ensure that no further construction was carried out at Ziyrat Guest House. The order dated 16th January, 2024 is reproduced herein below:

“1. Present Public Interest Litigation has been filed seeking action against respondents’ official who allowed the encroachers to carry out unauthorized/illegal construction at Khasra no. 556 Ziyrat Guest House near Baoli Gate, Hazrat Nizamuddin Dargah, near Police booth. Petitioner also seeks a direction to demolish the said illegal and unauthorized construction.

2. Learned counsel for the petitioner states that respondent no.1 has failed to stop illegal construction at the aforementioned site, which is within 100 meters of centrally protected monument "Nizamuddin ki Baoli" and "Barakhamba Tomb." He states that a large number of illegal and unauthorised guest houses have been permitted to operate by the respondents/authorities in this area.

3. He points out that a status report was filed on behalf of Station House Officer, Police Thana Hazrat Nizamuddin on 07th March, 2018 as per direction of this Court in W.P. (C) No. 10255 of 2017, wherein it was stated that Ziyrat Guest House near Baoli Gate Hazrat Nizamuddin Dargah has no certificate of registration from licensing branch. He states that pursuant to the directions of this Court, the subject property was sealed. He, however, states that subsequently, there has been a brazen resurgence of unauthorized construction activities on the subject property.

4. He states that on 03rd November, 2023, the petitioner had made a representation to the respondents highlighting the illegal construction being carried out, but the respondents have failed to take any action.

5. Learned counsel for ASI states that on 11th December, 2023, ASI had issued notice to the owner of the subject property to stop the construction. He further states that on 02nd January, 2024, ASI had written to the SHO of the concerned area for registration of an FIR.

6. In view of the aforesaid facts, this Court is of the prima facie view that the illegal and unauthorised construction could not have been carried out without the tacit support of the MCD and the Police officials. Accordingly, the Deputy Commissioner, MCD, Central Zone is directed to be personally present in the Court on the next date of hearing.

7. The respondents are directed to ensure that no further construction is carried out at Ziyrat Guest House arrayed as respondent no.5. List on 07th February, 2024.”



3. On an impleadment application being filed by Mr. Babu Ali, who claimed to be the new owner of Ziyrat Guest House, the matter came to be listed on 01st February, 2024. On the said date of hearing, this Court was handed over an Agreement to Sell dated 17th March, 2023 which Mr. Babu Ali had entered into with the seller wherein Mr. Babu Ali had admitted that the Ziyrat Guest House comprises ground plus two floors and that it is lying sealed. At this stage, learned counsel for the Delhi Police had handed over letters dated 23rd October, 2023, 08th November, 2023 and 09th December, 2023 written by the Police to the MCD, bringing to the latter's notice the illegal and unauthorized construction being carried out at Ziyrat Guest House. On the said date of hearing, learned counsel for the MCD had stated that despite ground, first and second floor having been sealed, the erstwhile owner had sold the property to Mr. Babu Ali, who had not only entered a sealed property, but had also carried out construction of three additional floors. Therefore, the admitted position that emerged was that despite sealing orders being in force when Mr. Babu Ali had purchased the property, construction of three more floors had been carried out by the new owner without obtaining any sanction/ permission from MCD or any other agency.

4. Learned counsel for the MCD had stated that even the ground and the first and second floor of the said property were illegal as the land in question belonged to DDA and had been encroached upon. He emphasized that DDA was the primary agency that should have taken steps to protect its property.

5. Learned counsel for the DDA had stated that the subject property falls in Khasra No. 556 Min. of Aliganj Revenue Estate, which is government land placed at the disposal of the DDA pursuant to the Nazul Agreement dated 31st March, 1937. She further stated that it is the responsibility of the



MCD to regulate and enforce the building bye laws in the area and take necessary action against unauthorized construction / encroachment.

6. Consequently, the nature of violation changed from illegal and unauthorized construction to encroachment. This Court is of the view that encroachment is one of the worst forms of civil wrong as it is like committing a ‘*dacoity*’ in which the land owning agency itself loses its land and the public at large loses a valuable asset.

7. Learned counsel for ASI had stated that the subject property located at Khasra No. 556, Nizamuddin Basti, New Delhi-110013 is situated within the prohibited area of two centrally protected monuments i.e. “*Nizamuddin Ki Baoli*” and “*Barakhamba Tomb*” with the property’s distance being approximately 95 meters from the designated area of the monument. He further stated that a work stop notice dated 11th December, 2023 had been issued to Mr. Babu Ali, the owner of the property in question and, on 02nd January, 2024, a formal police complaint had been lodged at the Hazrat Nizamuddin Police Station in New Delhi by the Conservation Assistant of Humayun’s Tomb Sub-circle, ASI. He stated that on 15th January, 2024, the Conservation Assistant submitted a Google Maps image depicting the property at Khasra No.556, Nizamuddin Basti, New Delhi-110013. According to him, the image illustrated that the shortest distance between the boundary wall of the centrally protected monument (CPM) in Nizamuddin Basti and the subject property is approximately 95.262 meters. He also stated that on 17th January, 2024, a show cause notice was formally issued by the Superintending Archaeologist of the Archaeological Survey of India, Delhi Circle, addressed to Mr. Babu Ali. He lastly stated that on 17th January, 2024, the Superintending Archaeologist of the Archaeological



Survey of India, Delhi Circle had written letters to the Deputy Commissioner, MCD as well as to Deputy Commissioner of Police, South-East District, requesting issuance of necessary instructions to halt and remove the unauthorized construction within the restricted zone.

8. Learned counsel for Delhi Police stated that on 17th January, 2024, it had registered an FIR No. 0024 on the basis of a letter dated 02nd January, 2024 received by the SHO from the office of Conservation Assistant, ASI, Humayun's Tomb.

9. In the hearing, it also became apparent that despite so many statutory authorities having been created construction of something as glaring as a five-storied building was completed by Mr. Babu Ali. One can understand that where there are multiple authorities working at the ground level, more than one authority may assert its right with regard to one property, each claiming overlapping jurisdiction but how can it be that all the authorities fail to take action against an '*illegal monstrosity*'. The order dated 01st February, 2024 is reproduced hereinbelow:

"CM APPL. 6077/2024

1. The present application has been filed on behalf of the applicant Mr. Babu Ali seeking impleadment in the present writ petition on the ground that he is the current owner of the subject property.

2. Learned counsel for the applicant states that Respondent No. 5 i.e., Ziyrat Guest House ('subject property') has been impleaded in the writ petition through its owner Mr. Raisuddin Malik. He, however, states that Mr. Raisuddin was the erstwhile owner of the property as the applicant had purchased the property i.e., Ziyrat Guest House on 17th March, 2023.

3. He states that pursuant to the order dated 16th January, 2024, MCD affixed a notice dated 17th January, 2024 at the subject property. He further states that despite furnishing an undertaking that the applicant shall not carry out any construction at the subject property, MCD has demolished the premises.

4. Issue notice. Mr. Rabesh Labra, Advocate for the Petitioner accepts notice. Ms. Shobhana Takiar, Standing Counsel for DDA, Mr. Ajjay



Aroraa, Advocate for MCD, Mr. Pavan Narang, Advocate for Respondent No. 3 and Mr. Mohit Bhardwaj, Advocate for Respondent No. 4 accept notice.

5. Learned counsel for the Petitioner has handed over a copy of the agreement to sell served on him by Mr. Babu Lal's counsel alongwith an application, which is not listed today. In the agreement to sell and purchase dated 17th March, 2023, it has been stated that the building in question comprises of 'ground to two floors constructed'. The said agreement to sell and purchase further records that the erstwhile owner undertakes to have the property de-sealed at its own cost and expense.

6. Learned counsel for Delhi Police has handed over documents, which show that intimation regarding ongoing unauthorised construction had been forwarded to the MCD on 23rd October, 2023, 8th November, 2023 and 9th December, 2023. Learned counsel for DDA states that she has no instructions.

7. Mr. Ajjay Aroraa states that despite the first and second floor having been sealed, the erstwhile owner Mr. Raisuddin sold the property to Mr. Babu Lal and Mr. Babu Lal not only entered the said sealed property but also carried out construction of third, fourth and fifth floor. He states that even the ground and the first floor of the said property are illegal and unauthorised as the land in question belongs to DDA. He further states that substantial demolition has been carried out by the MCD on the third, fourth and fifth floors of the subject property, even though the land belongs to DDA.

8. From the aforesaid, it is apparent that construction beyond second floor had been carried out by Mr. Babu Lal, despite the property having been sealed.

9. This Court finds it surprising that encroachment of public land, illegal and unauthorised construction at such a massive scale has taken place in the heart of Delhi virtually under the nose of officials of the MCD, DDA, ASI and Police. This Court is of the prima facie view that the matter requires to be investigated by the Central Bureau of Investigation.

10. Mr. Babu Lal is directed to be personally present in Court on the next date of hearing. List on 7th February, 2024, the date already fixed."

10. On 07th and 08th February, 2024, the Deputy Commissioner, MCD admitted before the Court that MCD had received written information from Delhi Police as far back as 23rd October, 2023 and 08th November, 2023 about the illegal and unauthorized construction being carried out at Ziyarat Guest House. She had stated that the said information had been marked to the Junior Engineer (JE) who did not take any action. She also stated that a



few days later, the JEs were shuffled and the old JE marked the file to the new JE.

11. It was further admitted that despite fresh intimation from the Delhi Police on 09th December, 2023 and from the ASI on 11th December, 2023 and on 02nd January, 2024, the new JE and the Assistant Engineer (AE) had not taken any action. At this stage, learned counsel for the petitioner had stated that the petitioner had made a representation dated 03rd November, 2023 to the Commissioner, MCD which had been marked to the Executive Engineer who had also not bothered to seek any feedback from the JE and the AE.

12. From the aforesaid, another dimension emerged namely, that there has been lack of supervision by senior officials of MCD over their junior officials. It also shows that the robust mechanism of checks and balances on paper is not working at the ground level.

13. Subsequently, an application being C.M. No. 8584/ 2024 was filed by Mr. Babu Ali in which it is stated that the owner of the land is Delhi Waqf Board, and not the DDA. Though during the hearing, learned counsel for Mr. Babu Ali admitted that construction of third, fourth and fifth floors were illegal, yet he had contended that at least the ground to second floor were old construction which were entitled to protection under the National Capital Territory or Delhi Laws (Special Provision) Act, 2007. To claim benefit under the Act, 2007, it was stated that Mr. Babu Ali had filed proceedings before the MCD Appellate Tribunal. In the application, it has also been averred that the petitioner is a habitual litigant who has filed as many as thirty four cases with intent to extort money. It is also averred that the petitioner is an encroacher too.



14. Learned counsel for MCD stated that the property would have been entitled to protection under the National Capital Territory of Delhi Laws (Special Provisions) Act had it not been hit by Section 4(a) read with Section 3(2) of the said Act. He further stated that the property in question, was on encroached Public Land (DDA/Waqf Board) and therefore no protection could have been claimed by Mr.Babu Ali. Moreover, according to him, even if it is presumed that the property was entitled to any kind of protection, the said protection would have lapsed the moment status-quo of the property had been violated by Mr.Babu Ali by construction of three additional floors. He, therefore, contended that it does not lie in the mouth of Mr.Babu Ali to claim that the property was protected in any manner.

15. Though, in the application filed by Mr.Babu Ali, it is stated that Shri Onkar Nath Tiwari was the original tenant/ lessee under the Delhi Waqf Board who, in turn had executed an agreement to sell with power of attorney and will in favour of Rahisuddin who had subsequently executed similar documents in favour of Mr. Babu Ali, yet the documents annexed show that Shri. Onkar Nath Tiwari claimed to be the owner and in possession of the land in question of a godown comprising of a single room without any reference to the Waqf Board.

16. Today, the Delhi Waqf Board has filed an application for impleadment and, in the said application, it has been averred that the land in question is under the management and control of the Waqf Board. In support of his contention that Delhi Waqf Board is the owner of Khasra No.556, learned senior counsel for the Waqf Board has relied upon the decree dated 24th September, 2015 passed by a Civil Judge, West District, Tis Hazari in Suit No. 416/2014. He has also relied upon the Gazette



Notification dated 04th May, 1978 in which the land in question is referred to at serial No. 37 as a Muslim graveyard containing a *makbara* and graves.

17. Learned counsel for the petitioner states that in civil writ petition No. 1512/1984 status quo regarding the properties, including the property involved in the present matter was directed to be retained by the Government. According to the petitioner, the possession of the land in question remains with the Government of India. He further states that the petitioner has filed more than fifty legal proceedings and has as many as six false FIRs lodged against him.

18. Learned counsel for the DDA states that the impleadment application has been filed without proper authority as no permission of the Administrator of the Waqf Board has been obtained in accordance with the order dated 10th January, 2024. However, the aforesaid facts are disputed by learned senior counsel for the Waqf Board.

19. Today, learned counsel for the MCD and DDA state that the property in question has been fully demolished and a Board stating that the land in question belongs to DDA has been affixed as on 15th February, 2024.

20. From the documents on record, it is also not clear as to how the property got converted from a graveyard containing a *makbara* and graves to a single room godown to a two-storied building and finally to a five-storied building. No permissions/ sanctions from any statutory authority have been placed on record.

21. However, from the aforesaid facts, it is apparent that despite multiplicity of authorities and an elaborate system of checks and balances, illegal and unauthorized construction is going on at a scale previously unheard of and that too in the heart of Delhi. It seems there is no respect for



law amongst the builders courtesy the attitude of '*passing the buck*' adopted by the respondents.

22. Moreover, even if there is a dispute as to the ownership of the land between the Waqf Board and the DDA, this Court has not understood as to how the property has changed hands and further to how fresh construction has been carried out. It is pertinent to mention that the property in question is only a stone throw away from a local police booth.

23. The issue whether Waqf Board facilitated the sale, change of nature of the property and the illegal and unauthorized construction would also have to be examined.

24. The allegations against the petitioner, though vehemently denied, need to be examined also.

25. It is also apparent that administrative responsibility needs to be fixed and the role of the parties needs to be examined. Accordingly, the Commissioner, MCD and the Vice-Chairman, DDA are directed to ensure that inquiries are set up and responsibility is fixed for large scale illegal and unauthorised construction in Nizamuddin West.

26. Since an FIR has already been registered by the local police, this Court directs transfer of investigation of the said FIR to the Central Bureau of Investigation (CBI) who is directed to examine the facts threadbare and take the matter to its logical conclusion by filing supplementary/additional FIRs in the event any criminal offence is made out. The CBI is impleaded as a respondent party in the present proceedings and is directed to file a status report within eight weeks. The petitioner is directed to file an amended memo of parties within a week.



27. This Court is further of the view that structural reforms are required in the working of the respondents to deal with illegal and unauthorized constructions of such giant magnitude. The issue of overlapping of jurisdiction needs to be resolved by issuing clear and cogent practice directions.

28. It is also strange that in today's time MCD is continuing to use threads, tapes, strings and bandages to seal a property and is only normally puncturing the roofs partially in the name of demolition. No wonder, the sealing and demolition actions are having no deterrent effect. The Executive seems to be satisfied with the status quo and is unwilling to reform the system by using easily accessible technology like drones, satellite images, digital maps, etc. which would easily detect encroachment and unauthorized construction at such a massive scale.

29. Consequently, this Court directs the Vice-Chairman, DDA and Commissioner, MCD to put in place structural reforms and devise new strategies to deal with the menace of encroachment as well as illegal and unauthorized construction. Let the minutes of meeting be placed on record within eight weeks.

30. List on 07th May, 2024.

31. The Registry is directed to forward a copy of this order to Standing Counsel for the CBI.

CM APPL. 10222/2024

32. Issue notice to the non-applicants through counsel, returnable on 07th May, 2024.



CM APPL. 8584/2024

33. Keeping in view the averments made in the present application, Mr. Babu Ali is impleaded as a respondent. However, it is made clear that the impleadment is without prejudice to the rights and contentions of either of the parties.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 20, 2024

N.Khanna