



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

% **Judgment reserved on : 27 May 2024**

Judgment pronounced on: 31 May 2024

+ W.P.(C) 2377/2023 & CM APPL. 9085/2023, CM APPL. 24877/2023, CM APPL. 26530/2023

MAHANT SHRI NAGA BABA BHOLA GIRI THROUGH HIS SUCCESSOR AVINASH GIRI Petitioner

Through: Mr.Kamlesh Kr. Mishra, Ms. Renu, Ms.Manya Mishra, Mr.Dipak Raj Singh, Advocates.

versus

DISTRICT MAGISTRATE DISTRICT CENTRAL AND ORS

..... Respondents

Through: Mr.Udit Malik, ASC for GNCTD with Mr.Vishal Chanda, Advocate.

SI K.L.Kuldeep, PS K.Gate.
Ms.Shobhana Takiar, standing counsel with Ms.Deeksha L.Kakar, Mr.Kuljeet Singh, Ms.Akansha Choudhary and Ms.Razia. Advocates with Mr.Kamleshwari Pandit, Naib Tehsildar, for DDA.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, placing reference to Section 28 of the Delhi Land Revenue Act, 1954 for issuance of direction to the Deputy Commissioner/ District Magistrate, District Central, Daryaganj, Delhi to demarcate the land of the petitioner



situated at Ghat No. 33, Triveni Ghat, Nigambodh Ghat Jamuna Bazar, Delhi -06. Following are the reliefs sought by the petitioner by way of the instant writ petition:

- “A. Pass an order directing the District Magistrate and Sub Divisional Magistrate, Central District, New Delhi to Demarcate the property Of the Petitioner Shrine of Naga Baba Bhola Giri situated at Ghat No. 33, Triveni Ghat, Nigambodh Ghat, Jamuna Bazar, Delhi-06, forthwith without any further delay and provide the copy of the demarcation report to the petitioner herein.
- B. Pass any such order directing the Tehsildar to immediately undertake the case and as soon as possible start the process of demarcation of the petitioner herein and ensure their safety and security of his property.
- C. Pass an order directing the respondents to demarcate and record the possession of the petitioner on the above said property.
- D. Pass an order directing respondents to immediately take action on the representations made by the petitioner herein and annexed to the present petition.
- E. Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

BRIEF FACTS:

2. The present writ petition pertains to the Shrine of Naga Baba Bhola Giri, situated at Ghat No. 33, Triveni Ghat, Nigambodh Ghat, Jamuna Bazar, Delhi -06¹. The petitioner asserts that the Government of National Capital Territory of Delhi² recorded an area of approximately 0.10 Bigha (300 Sq. yards) in the *Khasra Girdawari* document dated 01.10.1991 in the name of Mehant Shri Naga Baba Bhola Giri Chela Naga Baba Shankar, situated at the property in question.

3. The petitioner avers that the property in question has been in the possession of Mehant Shri Naga Baba Bhola Giri since 1996.

¹ Property in question.

² GNCTD



Presently, the *Khasra Girdawari* documents record that the property, which contains the Shrine of Naga Baba Bhola Giri, is now in the possession of his successor, Avinash Giri. It is further averred that the petitioner has been in possession of the property in question well before the deadline of the year 2006, as set by the Delhi Special Laws Act.

4. The grievance of the petitioner is that on 22.02.2023, the officials of the Flood Control and Irrigation Department of the GNCTD, demolished various *jhuggies* and other buildings in the vicinity of the property in question. As a result, the petitioner is under imminent threat of demolition of the Shrine of Naga Baba Bhola Giri. Consequently, the petitioner has approached the District Magistrate, Central District, Daryaganj, Delhi, for the demarcation of the property in question. The relevant portion of the letter to the District Magistrate is reproduced below: -

"Subject: - Application U/s 28 of The Delhi Land Revenue Act, 1954 for the Demarcation of Plots/lands of the Shrine of Mahant Shri Naga Baba Bhola Giri Chela Naga Baba Shankar Giri situated in an area of 300 Sq yards at Ghat No. 33, Triveni Ghat, Nigambodh Ghat, Jamuna Bazar, Delhi-06.

Respected Sir/ Madam,

The applicant is Mahant Shri Naga Baba Bhola Giri Chela Naga Baba Shankar Giri through his successor Avinash Giri and the present application is for the demarcation of the land on which the Shrine of Mahant Shri Naga Baba Bhola Giri Chela Naga Baba Shankar Giri situated in an area of 300 Sq. yards at Ghat No. 33, Triveni Ghat, Nigambodh Ghat, Jamuna Bazar, Delhi-06.

That it is expedient to make the present application because there is a threat and claim of the of officials of the Govt. of NCT of Delhi including that of officials of the Flood and irrigation Department of the GNCTD with regard to demolition of the property as mentioned in the documents of *Khasra Girdawari*. It is therefore expedient for me to request you to kindly demarcate the



aforementioned property in terms of Delhi Land Revenue Act and also record the respective possession on the aforementioned site.

Details of the land is as under:

Property at: Ghat No. 33, Triveni Ghat, Nigambodh Ghat, Jamuna Bazar, Delhi-06.

Property area: Shrine area of 300 sq. yards.

Property is bound by the following properties:

East: - Yamuna River

West: - Nigambodh Ghat

North: - Yamuna River

South: - Nigambodh Ghat"

5. To support the plea taken herein, the petitioner relies on the order dated 29.08.2018 passed by this Court in the matter of **Koshal Singh v. The District Magistrate/DC South West District**³, the GNCTD was directed to consider the representation of the petitioner with regard to the demarcation of the property in a time bound manner.

SUBMISSIONS MADE ON BEHALF OF THE DELHI DEVELOPMENT AUTHORITY⁴:

6. The DDA contends that the property in question falls within the Revenue Estate Bela, which is a government land placed at the disposal of Delhi Improvement Trust, the predecessor of DDA, pursuant to the Nazul Agreement dated 31.03.1937; and that the land is currently managed by the Horticulture Department of the DDA. It was pointed out that the *Khasra Girdawari* for Khasra No. 229/181, for the period 1987-1991 rather indicates that the property in question is Sarkar Daulatmadar and is shown as a Maidan/Park. Additionally, the Jamabandi, a title document for the year 1970-1971, and Mutation

³ W.P. (C) No. 9091/2018

⁴ DDA



document No. 168 dated 24.04.1972 also show the property in question as Sarkar Daulatmadar.

7. The DDA submits that the petitioner has encroached on the land which falls under Khasra No. 235/106-36 of the Revenue Estate Bela, which is also a government land as per the Jamabandi of the year 1970-71; and that Khasra No. 229/181 and Khasra No. 235/106-36 fall within the floodplain and/or riverbed of the Yamuna River and are not private lands. It is emphasized that the property in question is included in the Zonal Development Plan for Zone 'O', which has been approved by the Ministry of Urban Development⁵. The River Yamuna/Riverfront in Zone 'O' has special characteristics and ecological significance, for which various studies have been conducted from time to time. Consequently, the Zonal Development Plan for Zone 'O' is conceived to set the strategies for the rejuvenation of the Yamuna River and eco-friendly development.

8. It is further submitted that the authorities have undertaken various measures, through several court cases including Public Interest Litigations (PILs), to address pollution in the Yamuna River. High-Powered Committees have recommended the channelization of the river with multiple provisions, such as the development of the riverfront; and that these measures consider all ecological and scientific aspects, recognizing the project as one of special significance for the city. It is also pointed out that this active floodplain area is frequently flooded by medium floods, and

⁵The Zonal Development Plan for Zone 'O' has been approved by Ministry of Urban Development, vide letter No. K-12011/23/2009- DDIB dated the 8th March, 2010 under Section 9(2) of DD Act,



topographical changes can control these floods. According to the Expert Committee's report, effective beautification of the Yamuna River requires removing encroachments and stopping waste and debris dumping. Consequently, various orders have been passed by the Hon'ble National Green Tribunal⁶ to make the area free from encroachment.

9. Learned Counsel for the DDA also invited reference to orders dated 13.01.2015 and 11.09.2019 in OA No. 6/2012, and order dated 07.12.2017 in OA No. 65/2016, OA No. 76/2016, and OA No. 81/2016 passed by the NGT, directing the removal of encroachments from the Yamuna floodplain; and that the NGT also imposed a fine of Rs. 5,00,000/- per month from 01.04.2020 for non-compliance, recoverable from erring officers of the respondent authority. Furthermore, the NGT vide order dated 09.01.2023 has constituted a High-Powered Committee headed by the Hon'ble LG to oversee riverfront development. In compliance with the NGT's orders, the respondent carried out a major demolition on 21.02.2023, clearing the majority of the encroachments.

10. The DDA submits that various judgments passed by this Court, including **Wazirpur Bartan Nirmata Sangh v. Union of India**⁷ and **Haq through its Member Abdul Shakeel v. DDA**⁸ directed all concerned authorities, including the DDA and PWD, to remove all unauthorized structures, *jhuggis* and other constructions from the

1957 and notified under section 11 by DDA on 10.08.2010

⁶ NGT

⁷ W.P.(C) 2112/2002 decided on 18.04.2012

⁸ W.P.(C) 2029/2012 decided on 03.04.2013



Yamuna bank and its embankment. Additionally, in **Tulsi Ram v. DDA**⁹, this Court relied on the decision in the case of *Haq (supra)* and dismissed the writ petition. Accordingly, the respondent has removed the structures from Kudasia Ghat, clearing the area of encroachments.

ANALYSIS AND DECISION:

11. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the case.

12. At the outset, the instant Writ Petition is bereft of any merits. Although, in terms of *Khasra Girdawari (P-3)* dated 01.10.1991, the petitioner was described as the cultivator viz., “*Makbuja malkan owner Mehant Shri Naga Baba Bhola Giri Chela Naga baba Shankar Giri*” in respect of the site i.e., the *ghat* and *mandir*, the owner is described as ‘*Sarkar Daulat Madaar*’, which originally meant “Crown” and now indicates the authority of the GNCTD which is at the disposal of the DDA.

13. Without further ado, the relief claimed by the petitioner in the instant Writ Petition has already been rendered infructuous as their representation dated 23.02.2023 addressed to the District Magistrate (Central) for demarcation of the land in question under Section 28¹⁰ of

⁹ W.P.(C) 1720/2018 decided on 16.07.2018

¹⁰ **28. Settlement of boundary disputes.**-(1) All disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If the course of any inquiry into a dispute under this section, the Deputy Commissioner is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry, the Deputy Commissioner-

(a) in the first case, shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession; and



the Delhi Land Revenue Act, 1954 has since been rejected *vide* letter dated 19.04.2023 by the SDM¹¹, Sub-Division Kotwali on the ground that “*all villages falling under Kotwali Sub Division have been urbanised/nazul land and the revenue records of the villages are not available with the office*”.

14. At the cost of repetition, the petitioner has no right, title, or interest to continue to use and occupy the subject property. It is but apparent that he is a rank tress-passer and merely for the fact that he has been a cultivator for 30 years or more does not bestow with him any legal right, title or interest to continue to occupy the subject property. It appears that the petitioner has constructed two rooms with tin shed and other amenities at the side, besides a Shrine of the revered Baba, who died in the year 1996. But then, there is nothing on the record to suggest that the place is of any historical significance or dedicated to the public for worship or for offering prayers to the revered deceased Baba.

15. The plea by the learned counsel for the petitioner that the District Magistrate has a duty to inform and explain as to what was the status in the revenue records with regard to the property in question, is absolutely mis-conceived and ill-conceived. It is pertinent to mention here that evidently the property in question is falling under the Zone ‘O’ in terms of Zonal Development Plan approved by the Ministry of Urban Development Further, the Master Plan Delhi-2021 also envisages rejuvenation of river Yamuna through number of measures

(b) in the second case, shall put the person so dispossessed in possession and shall then fix the boundary accordingly.



including ensuring adequate flow in river by release of water by riparian states, refurbishment of trunk sewers, treatment of drains, sewerage of unsewered areas, treatment of industrial effluent, recycling of treated effluent and removal of coliforms at Sewage Treatment Plants besides creating ecological balance by planting trees. The property in question is meant for larger public interest and the petitioner cannot claim any vested rights therein to continue to occupy and use the same.

16. Interestingly, the petitioner has attempted to give a new twist to the story by mentioning the property as ‘Ghat No. 33’ which is contrary to the records of the Screening Committee constituted in terms of directions of the NGT¹² for restoration and redevelopment of the *Kudasia Ghat* area (Ladahak Budh Vihar to ISBT) measuring approximately 16 Hectares, in the series of projects sites from Wazirabad to Old Railway Bridge falling on the right (West) bank of river Yamuna for the project ‘Restoration and Rejuvenation of flood plains of river Yamuna, NCT of Delhi’. It was recorded therein that there were only 32 historic *ghats* on the embankments to river Yamuna in area of Yamuna Bazar, Kudasia Ghat, Nigam Bodh Ghat, religious places and settlements.

17. At this juncture, it would also be pertinent to refer to a very recent judgment by the Division Bench of this Court in the case of **Court on its own motion v. Union of India**¹³, wherein the following directions were passed for restoration and rejuvenation of the Yamuna

¹¹ Sub Divisional Magistrate

¹² National Green Tribunal



River Flood Plains :

20. DDA in coordination with all concerned agencies is hereby directed to ensure removal of encroachments from Yamuna River Flood Plains. Delhi Police shall provide necessary force to the DDA as and when requested, to maintain law and order during such encroachment removal drives to remove encroachment from Yamuna Flood Plains.

21. Further, DDA shall submit an action taken report on development of ten bio-diversity parks / wetland areas in Yamuna River Flood Plain including an action plan with timelines for completion of pending projects. Cities and Towns around India, which have been developed along rivers, are doing horticulture and green development of river fronts for their citizens as symbols of urban pride.

22. DDA shall explore green horticultural development of river fronts and recreational zones with public amenities to increase public participation and awareness about rejuvenation of River Yamuna in accordance with extant guidelines.

23. It is necessary to do green development of the banks of the Yamuna as wetlands and public spaces, parks for open green spaces, access to civic amenities, zones of entertainment or playgrounds for the children. This will lead to buy-in by the common citizen, a sense of ownership and consequent pressures on the authorities to ensure maintenance. All this will go hand in hand with ecological restoration, maintenance, and protection of the flood plains.

24. A large number of religious devotees pray at different locations, discharging solid waste in the river water, adding to an already serious problem. Recognising this need of the residents of the State, DDA should construct select number of ghats or platforms on stilts along the riverbank, for such purposes to ensure that the devotees get space and the authorities are able to deal with the challenge of waste scientifically.”

18. At the cost of repetition, since the petitioner has placed on the record no iota of evidence that the shrine is a place of historic significance and devoted to the public at large, the DDA is not enjoined upon to give any notice to the petitioner. Lastly, mere fact that the matter of demolition of the site in question has not been yet

¹³ WP(C) No.7594/2018 and 9617/2022 decided on 08.04.2024



considered and/or approved by the Religious Affairs Committee¹⁴ constituted by His Excellency the Lieutenant Governor, Delhi does not cut any ice either since it is not a shrine devoted to the public but a private shrine.

19. Making no attempt to write a thesis on the way of life of Naga sadhus, as we understand in the Hindu religion, Naga sadhus are devotees of 'Lord Shiva' and they are ordained to live a life of complete detachment from the worldly affairs, and therefore, seeking property rights in their names does not conform with their beliefs and practices. In our country, we might find thousands of Sadhus, Babas, fakirs or Gurus in different parts of the landscape and if each one is allowed to build a shrine or samadhi sthal on a public land and thereby, continue to use it for personal gains by the vested interest groups, that would lead to disastrous consequences jeopardizing larger public interest.

20. In view of the foregoing discussion, the present Writ Petition is dismissed.

21. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

MAY 31, 2024

Sadiq

¹⁴ Constituted in terms of notification No.F.11/50/91 –HP-II dated 04.03.1991 by the Deputy Secretary (Home) in terms of decision conveyed by his Excellency Lt. Governor, Delhi dated 18.02.1991.