

Vinayak Bhardwaj vs Neeta Bhardwaj on 29 March, 2022

Author: Mukta Gupta

Bench: Mukta Gupta, Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA 172/2022

VINAYAK BHARDWAJ

Represented by:

..... Appellant

Mr. Rakesh Tikku, Senior Adv
with Mr. Lokesh Bhardwaj &
Mohit Kumar Auluck, Advocat

versus

NEETA BHARDWAJ

Represented by:

..... Responde

Mr. Santosh Kumar Tripathi,
Standing Counsel GNCTD with
Mr. Arun Panwar, Mr. Siddha
Kirshna Dwivedi & Mr. Adity
Jadhav, Advocates.

Mr. R.K. Bhardwaj, Advocate
to R-5.

Mr. Sidharth Panda, Advocat
Mr. Ritank Kumar, Advocate
SDMC.

Ms. Samapika Biswal, Advoca
Ms. Shambhavi Kala & Mr. Ka
Sharma, Advocate for Admini
Mr. Arun Birbal, Advocate w
Ms. Sonia S, Mr. Sanjay Sin
Mr. Vidhi Gupta, Advocates
DDA.

Insp. Balbir Singh, SHO PS
with SI Mannu Dev.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 29.03.2022 CM APPL. 14576/2022 (exemption)

1. Exemption allowed subject to just exceptions.

2. Application is disposed of.

CM APPL. 14575/2022 (stay of orders dated 15 March, 2022; and 22 nd March, 2022 to the extent of direction of eviction of dharamsala occupants, particularly, the appellant herein)

1. By this application, the appellant/ applicant seeks stay of the orders dated 15th March, 2022 and 22nd March, 2022 to the extent directions are issued to evict the occupants of the Dharamshala of the applicant.

2. LPA 172/2022 has been filed by the appellant Vinayak Bhardawaj, who is the 'Pujari' of Shri Kalkaji Mandir (hereinafter referred to as 'Mandir') New Delhi belonging to 'Thok Brahmins Thulla', and is residing in Vinayak Dharamshala. According to the appellant/ applicant he was not a party to the FAO 36/2021, CM (M) 323/2021, CM (M) 575/2021 and CONT.CAS (C) 614/2021 in which various orders were passed by the learned Single Judge for re-development of the Mandir and the complex abutting thereto in view of the manner in which encroachments had come up and the unhygienic conditions prevailing in the Mandir Complex. Vide the order dated 27th September, 2021, the learned Single Judge appointed an Administrator to manage the day to day affairs of the Mandir. It may be noted that the appellant was not a party in any of the petitions/ appeal before the learned Single Judge.

3. The appellant in the present appeal has challenged the orders dated 7 th December, 2021, 9th December, 2021, 21st December, 2021, 14th January, 2022, 1st February, 2022, 15th February, 2022 and 2nd March, 2022 passed by the learned Single Judge in FAO 36/2021, CM(M) 323/2021, CM (M) 575/2021 and CONT.CAS (C) 614/2021.

4. When this appeal came up before this Court notice was issued in the appeal to the respondents as also to the SDMC, Delhi Jal Board, DDA, Govt. of NCT of Delhi and Commissioner of Police as the five Authorities were represented before the learned Single Judge. The appellant was directed to file amended memo of parties and the matter is now listed on 22nd April, 2022 along with two similar connected appeals. Thereafter the appellant filed the present application seeking stay of the orders dated 15th March, 2022 and 22nd March, 2022 to the extent directions for eviction of the occupants of the Dharamshala were issued by the learned Single Judge.

5. Relevant portions of the order dated 15th March, 2022 are as under:-

"5. Considering that all the occupants may not have adequate financial means, a proposal was directed to be placed on record for further directions as to the manner in which the said persons could be rehabilitated. The proposal which has been placed before the Court is as under:

(i) The jhuggis of the Kalkaji Mandir premises, as per the revenue record, are located on a private land. Therefore, strictly speaking, the people living in said jhuggis are not entitled to rehabilitation under the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015.

(ii) That as directed in the previous order dated 7th March, 2022, since the purpose for which the land has been used is a public purpose i.e., for the deity of the Kalkaji Mandir and in the larger public interest, as an exceptional situation and under directions of the Court, certain proposals have been made set out, as below.

(a) EWS flats under the Jawaharlal Nehru National Urban Renewal Mission (hereinafter JNNURM) scheme may be provided to the urban poor on a rental basis, however, rehabilitation permanently would not be permissible under the said scheme as per the current policy of the Central Government.

(b) DDA is willing to make available EWS and LIG flats in Narela, the cost of which is between Rs.10.75 lakhs to 12.05 lakhs for EWS category and Rs.18 lakhs to Rs.22 lakhs for LIG category.

(iii) In case none of these options are acceptable to the occupants, DUSIB may provide the occupants temporary night shelters / rain basera until they make their own alternative arrangements.

6. This Court has perused the report that has been placed on record jointly by the DDA, SDMC, DUSIB and other officials including the counsels appearing for them. Keeping in mind the contents of the report, this Court is of the opinion that at best there may be 40 families occupying the Jhuggis and Dharamshalas who may not have adequate means and who need some compassionate consideration. However, these occupants have been in occupation of these unauthorized tenaments for the last several years in a prime area in South Delhi. Thus, no exception of free accommodation can be given to them, however, in view of the fact that the Court has taken a compassionate view considering the financial standing of the occupants, it is directed as under:

(i) The ld. Administrator would meet one representative from each of the families of the current occupants as mentioned above, of Jhuggis and Dharamshalas on 19th and 21st March, 2022.

(ii) An option would be given to the said occupants to move into a tenement under the JNNURM scheme where a flat shall be allotted to them by DUSIB. The said occupants may opt for such rental accommodation upon payment of a sum of Rs.5,000/- per month as the rental amount. The options of the flats available under JNNURM shall be given by Ms. Mini Pushkarna, ld. counsel for DUSIB, to the ld. Administrator to enable him to interact with the occupants.

(iii) Those families who wish to purchase a flat from the DDA, subject to the satisfaction of eligibility criteria, shall be allotted either an EWS or LIG flat, upon them exercising the option. The said flat shall be allotted by the DDA to the party opting for the same, as may be confirmed by the ld. Administrator. The said party shall then file all of the documents and deposit the consideration amount. After deposit of the consideration, the flat shall be allotted within four weeks.

(iv) For those occupants who do not wish to exercise the option of either (ii) or (iii) above, they shall remove all their belongings by Wednesday, i.e., 23rd March, 2022.

On 24th and 25th March, 2022, all the occupants of Jhuggis and Dharamshalas in the premises of the Kalkaji Mandir shall be evicted.

(v) The DCP, South-East District, Delhi and the SHO, Kalkaji shall provide the necessary force for eviction of the occupants of the Jhuggis and Dharamshalas and any other unauthorized occupants, vendors etc., in the Kalkaji Mandir premises. The same shall be supervised by the Id. Administrator and his team. The officials of DUSIB, DDA and the SDMC shall remain present during the eviction so that they can give cooperation to the police as also to the Id. Administrator.

7. It is made clear that the amount of Rs.5,000/- as rent payable to DUSIB, is being fixed as an ad-hoc amount in view of the fact that the CEO, DUSIB, Ms. Garima Gupta, as also the counsel for DUSIB have informed the Court that the rent for JNNURM flats has not been fixed yet. On a query from the Court, they inform the Court that the rental amounts have not been fixed inasmuch as a committee is to be constituted for fixing the rental amount depending on the area and the same has not been done. They have also stated that approximately 52,000 flats which are available under the JNNURM scheme have not yet been allotted due to the delay in execution of the agreement between the Central Government and the State Government, with respect to such flats.

8. In so far as the larger issue of non-allotment of JNNURM flats to eligible persons is concerned, this Court is of the opinion that such a large number of flats ought not to be kept vacant and ought to be utilized for the purpose of economically weaker sections of society/ urban poor for whom these flats are made. Mr. Anurag Ahluwalia, Id. Standing Counsel for the Central Government, has also been present in the proceedings today and he submits that he would bring this fact to the notice of the Secretary, Ministry of Housing and Urban Affairs, Government of India. In addition, this order would also be communicated to the Chief Secretary, GNCTD, through Mr. Gautam Narayan, Id. ASC for GNCTD, for necessary information and action.

9. The Secretary, Ministry of Housing and Urban Affairs, Government of India, along with Chief Secretary, GNCTD shall file a joint status report in respect of implementation of the JNNURM scheme in Delhi within four weeks, so that the same can be considered by the Court and the matter in respect of implementation of the scheme can be placed before the appropriate bench, if the need arises. It is expected that the governmental authorities would take expedited action in this regard so that these flats are not kept vacant.

10. In this view of the matter, it is also directed that, an undertaking would be taken by the Id. Administrator that the persons who are opting to take the flats on rent under JNNURM would abide by the terms and conditions which are ultimately finalized by the relevant authorities.

11. At this stage, Mr. Vikas Singh, Id. Senior Counsel, appearing on behalf of certain pujaris stated to be occupying the Dharamshalas, seeks to submit that the pujaris have a vested right to reside in the Mandir premises. This fact is disputed by all the counsels who is appearing for the parties.

12. At this stage, this Court is not adjudicating this issue. Notably, pujaris at best are persons who are serving the deities at the Kalkaji Mandir. All the pujaris who have made the premises as a

permanent residence have done so at their own risk. The pujaris, at this stage, in any case, cannot claim a vested right in the premises to continue to live in the Dharamshalas which are in a dilapidated condition and block the redevelopment. Thus, insofar as the rights of pujaris to reside in the Kalkaji Mandir premises is concerned, it is made clear that this Court would be hearing the Id. Counsels in this regard and passing appropriate orders at a later stage. However, at this stage, in order to ensure that the comprehensive redevelopment of the Kalkaji Mandir premises takes place, the pujaris have the same option which is given to the other occupants of the Dharamshalas and the Jhuggis. If they do not wish to exercise the said options, they shall, however, vacate the premises and move to any premises of their own choice, subject to any further orders that may be passed by this Court in respect of their rights of residence in the Kalkaji Mandir premises, once the redevelopment is completed on such terms as this Court may fix. To this end, in case, any of the occupants of the Dharamshalas claim to be pujaris, they shall appear before the Id. Administrator on 21st March, 2022, and the said names shall be identified and placed before the Court by the Id. Administrator.

13. Thus, at this stage, this Court is of the clear opinion that the pujaris cannot continue to reside in the Kalkaji Mandir premises. Considering the overall requirement for redevelopment of the Kalkaji Mandir premises, the pujaris are directed to vacate the premises in their occupation by 23rd March, 2022. As directed above, on 24th and 25th March, 2022, the process for eviction of the pujaris and Dharamshala occupants shall take place along with the eviction of jhuggi dwellers. However, it is made clear that the pujaris, are free to avail of options as set out hereinabove, in order to move themselves and their families in a safe and secure manner along with their belongings. Additionally, if the pujaris, give an undertaking to vacate the premises to the Id.

Administrator, he may consider the same and extend the time for eviction for not more than two additional weeks. The undertakings in such case shall be furnished to the Id. Administrator by 22nd March 2022.

14. Copy of the report filed by DDA/DUSIB, considered today by the Court be supplied by Ms. Pushkarna or Mr. Birbal to the Id. Administrator."

6. Relevant portions of the order dated 22nd March, 2022 are as under:-

"5. In view of the said stand of the unauthorized occupants of jhuggis and occupants of dharamshalas, this Court is left with no option but to direct the Delhi Police to proceed with the eviction of the said unauthorized occupants of jhuggis and occupants of dharamshalas. The eviction of the said occupants also has a sense of urgency in view of the fact that the Navratras will be commencing from 2nd April, 2022 and proper arrangements have to be made for the entry and exit of the lakhs of devotees who visit the Kalkaji Mandir during the Navratra period. The Kalkaji Mandir premises sees a steady and high influx of devotees during the Navratra period and the continued occupation of the jhuggis and dharamshalas by the occupants would pose enormous threat to the safety and security of all the devotees, for whom elaborate arrangements would have to be made by the Id. Administrator.

6. The eviction shall now be on the terms as contained in the order dated 15th March 2022. The eviction process shall be undertaken under the direct supervision and control of Ms. Meenu Chaudhary, Joint Commissioner of Police, Southern Range, and Ms. Esha Pandey DCP, South East Delhi in terms of the order dated 15th March, 2022. All the other authorities viz., DUSIB, DDA, SDMC and their concerned officials namely, Ms. Garima Gupta, CEO, DUSIB, Mr. Manish Gupta, Vice Chairman, DDA, and Mr. Gyanesh Bharti, Commissioner, South Delhi Municipal Corporation, shall render complete assistance to the Delhi Police.

7. Thus, the unauthorized occupants of jhuggis and occupants of dharamshalas who are 142 and 46 in number respectively, are directed to cooperate with the eviction process, as they have chosen not to avail of any of the options which have been offered to them in terms of the order dated 15th March, 2022.

8. Ld. Administrator, along with the other agencies, is free to engage sufficient manpower or direct the deputation of the required manpower for the purpose of enabling the eviction of the unauthorized occupants of jhuggis and occupants of dharamshalas, from the Kalkaji Mandir premises.

9. Let the eviction process commence on 24th March, 2022, as directed previously.

10. All the authorities and officials of DDA, SDMC, DUSIB, Ms. Meenu Chaudhary, Joint Commissioner of Police, Southern Range, Ms. Esha Pandey, DCP, South- East District, Delhi, and SHO, Kalkaji, shall cooperate in this regard, including the baridars and pujaris who may be currently enjoying the bari in the Kalkaji Mandir. Creation of temporary shops and kiosks

11. Ld. Administrator has also informed the Court that for the allotment of temporary shops and kiosks, 20 shopkeepers have already deposited a sum of Rs.30,000/-. Let the process of deposit of Rs.30,000/- for allotment of temporary shops and kiosks be continued.

12. Insofar as the erection of the temporary shops and kiosks is concerned, the Ld. Administrator has suggested that the project should be implemented by the Chief Engineer, DDA.

13. This Court has, vide order dated 15th March, 2022, already directed as under:

"X X X X X X X X"

14. Thus, in view of the above directions already issued on 15th March, 2022, the Architect may place on record a plan giving the timelines for erection of the temporary shops and kiosks, as per the said order. The request of Ld. Administrator for directing the Chief Engineer, DDA to take up the project for erection of temporary shops and kiosks is not acceded to by this Court and the Architect

already appointed by this Court shall proceed further in the matter. The Architect is also permitted to apply to the concerned authorities for electricity connection, water connection and sewage connection, as and when required. Let the said plan be submitted by the Architect by 31st March, 2022 along with details of the expenses projected to be incurred for the same."

7. As noted above, as regards the occupants of the Dharamshala are concerned, one representative from each family was required to meet the learned Administrator on 19th /21st March, 2022. According to the appellant/ applicant, since the appellant was not a party before the learned Single Judge and no notice was issued in this regard, the appellant/ applicant was not aware of these directions. It is further stated that undisputedly the land in question is the joint land of the Thok Jogiyans and Thok Brahmins and thus the appellant/ applicant is one of the co-owners of the property belonging to Thok Brahmins.

8. It is contended that the land in question is neither the land of the Trust nor belonging to the Government and thus the proprietary rights of the owners and occupants of this property cannot be taken away. It is further contended that though the appellant/applicant would be very happy to participate in the re-development process so that the entire area of Kalkaji Mandir and the area abutting thereto is made more hygienic, accessible and beautiful for the devotees who approach the Kalkaji Mandir, however the appellant/ applicant is concerned about his occupation of the property.

9. Learned counsel for the appellant/ applicant contended that the DDA has already clarified that since area of the Kalkaji Mandir is Green Area no permission from DDA can be granted. Learned counsel for the DDA clarifies that this contention was in relation to the area in the site plan prepared by the Architect Mr. Gurmeet Singh Chauhan wherein DDA land and SDMC parking has been shown and was not in relation to the Kalkaji Mandir and the area which is abutting the same.

10. As noted above, the order dated 15th March, 2022 passed by the learned Single Judge permits one representative of the each family of the occupants to meet the learned Administrator. The said meeting cannot have any other purpose except hearing the representatives so that they can express their views which will be duly considered by the learned Administrator.

11. In view of the fact that two important facts are undisputed in this appeal, firstly, ownership rights in the property and secondly, that the re- development of the Kalkaji Mandir is essential which is not disputed by any of the parties, it would be appropriate to give fair chance to the appellant/ applicant to appear before the learned Administrator to raise his concern. The learned Administrator is thus requested to give personal hearing to the applicant on 31st March, 2022, when the appellant/ applicant will be at liberty to give written representation along with necessary documents, if so desires. The learned Administrator on hearing the appellant/ applicant will submit a report to the learned Single Judge so that suitable directions if necessary are issued by the learned Single Judge.

12. Needless to note, in case the applicant has any further grievance after hearing is afforded by the learned Administrator to the applicant on 31 st March, 2022, the applicant would be at liberty to approach the learned Single Judge.

13. It is further clarified that as regards the appellant/ applicant is concerned, he will not be evicted from this premises till 4th April, 2022.

14. Since the appellant/ applicant was not a party before the learned Single Judge, these directions are passed in the application without prejudice to the rights and contentions of either of the parties in the appeal pending before this Court.

15. Application is disposed of.

16. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

NEENA BANSAL KRISHNA, J.

MARCH 29, 2022 vk