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

+ **W.P.(C) 4572/2007, CM APPL. 20073/2015 (direction), CM APPL. 45779/2018, CM APPL. 8224/2019, CM APPL. 8225/2019, CM APPL. 25934/2019, CM APPL. 25935/2019, CM APPL. 26012/2019, CM APPL. 32937/2019 and CM APPL. 39344/2019**
MANUSHI SANGATHAN, DELHI Petitioner

Through: Ms. Indira Unninar, Mr.Narayan
Krishan and Ms.Akanksha Singh,
Advocates.

versus

GOVT OF DELHI & ORS

..... Respondent

Through: Mr.Sanjeev Ralli and Mr. Atul
Verma, Mr. Rahul Ranjan, Advocates
for Chandni Chowk Sarv Vyapar
Mandal.

Ms. Madhu Tewatia and Mr. Adhirath
Singh, Advocates for MCD.

Mr.Anuj Aggarwal, ASC, Mr. Zahid
Hanif Khan for Mr. Naushad Ahmed
Khan, Advocate for GNCTD.

Mr.Sanjao Singh, Advocate for DDA.

Ms.Geetanjali Mohan, Advocate for
Railways.

Mr.Febin M Varghese, Advocate for
DUAC.

Mr.Arun Birbal and Mr.Ajay Birbal,
Advocates for DDA.

Mr.Anish Dayal and Ms.Rupam
Sharma, Advocates for Intervenors.

Mr.Pratyush Miglani and Mr.Varul
Goel, Advocates for UOI.

Mr.Siddant Kumar, Advocate.

Mr.Ritish Rai, Senior Advocate with
Mr. Sidhant Kumar, Advocate in
C.M.No.25934&35/2019.

Sh.Rajesh Khurana, Joint CP, Central
Range, Sh.Ashok Kumar, Joint

CP/Eastern Range, Sh. Chandra Kumar Singh, ACP/Kotwali, Insp. Rajeev Bhardwaj, SHO/Kotwali, Insp. Sunil Kumar TI/Kotwali, SI Praveen Kumar, PS Kotwali.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% 14.11.2019

Redevelopment of Chandni Chowk

1. By this order, the Court proposes to deal with the issue of the two temples i.e. the Hanuman temple and the Shiva temple which are on the main Chandni Chowk carriageway and a structure known as the Bhai Mati Das Smarak.

2. The Court would like to begin by referring to its order passed more than four years ago on 30th April, 2015 as regards five encroachments in the main Chandni Chowk carriageway, which were required to be removed. The relevant portion of the order reads as under:

“Encroachments by religious structures

The latest status report states that the clearance of the five unauthorised religious structures on the right of way in Chandni Chowk, i.e., the pedestrian space on the roads, is yet to be undertaken. The decision of the Committee constituted for the purpose is awaited. None of the authorities appearing before the Court dispute that these are encroachments. **In this view of the matter, the concerned landowning agency, i.e., the MCD - in the light of the Section 299 of the DMC Act is hereby directed to remove the said encroachments by the end of May 2015. Government of NCT of Delhi and the Delhi Police shall extend their full cooperation in this regard.”**
(emphasis supplied)

3. The Hanuman temple and the Bhai Mati Das Smarak were at that stage identified as two of the five encroachments. It must be noted at this stage that the reference to the Hanuman temple is in fact to two temples i.e. a Hanuman temple and a Shiva temple which are back to back over a stretch of around 8m. An application filed by the North Delhi Municipal Corporation ('North DMC') seeking modification of the above order was dealt with by the Court in its order dated 6th August, 2015 which reads as under:

“CM APPL.9308/2015 in W.P. (C) 4572/2007

The application seeks modification of the order of 30th April, 2015 by which certain encroachments in the main Chandni Chowk carriage way were directed to be removed in a time bound manner. North Delhi Municipal Corporation relies upon orders of the Principal Secretary (Urban Development) of the GNCTD dated 10.01.2012 and 24.02.2012 to say that the title in the roads now vests with the GNCTD. In terms of Section 298 of the Delhi Municipal Corporation Act, the title in all public streets and roads vests with the concerned Municipal Corporation. In the circumstances, the relief claimed cannot be granted. However, all authorities including the GNCTD are directed to cooperate in the execution of order dated 30th April, 2015. A compliance report shall be filed within two months.

4. A status report was filed in this Court by the North DMC on 7th December, 2015 in which, specific to the above encroachments it was stated as under:

“4. Bhai Mati Dass Chowk: There is temporary shed and one step. They have agreed that the temporary structure and step can be removed during the development of this space. At this stage there was no resistance in removal of temporary structure and step.

5. Hanuman Temple between Town Hall and Fountain: The Total area encroached by this temple in the carriage way is 25sqm. As informed by the ACP, Special Branch, Delhi Police that the said structure is in existence since 1974. The priest of the temple as contacted for removal of this temple, he has agreed for shifting of this temple if space is provided anywhere else. **This temple will be relocated.**” (emphasis supplied)

5. The North DMC in the meanwhile carried the order dated 6th August, 2015 of this Court in appeal to the Supreme Court by way of SLP (C) 30333/2015. The said SLP came to be ultimately disposed of by the Supreme Court on 16th May 2018 by the following order:

“Mr. Sandeep Sethi, learned Additional Solicitor General states that the encroachment in question has been removed and responsibility to remove the encroachment is of the Municipal Corporation.

In this connection, our attention has been drawn to Section 317 (2) of the Delhi Corporation Act, 1957 which casts an obligation on the Commissioner of the Municipal Corporation to remove the encroachment. Thus, responsibility to remove the encroachment is primarily of the Municipal Corporation. However, in such an endeavour, Government must extend a support to corporation.

With this clarification, the special leave petition is disposed of.

Pending applications, if any, are also stand disposed of.”

6. Subsequently on 30th August, 2018 this Court after considering the submissions of all parties decided that ‘Option 1’ for the redevelopment project would be implemented. Following the said order, a fresh plan was drawn up for the implementation of the redevelopment project by M/s. Pradeep Sachdeva Associates (PSDA), a copy of which has been shown to

the Court today. It was mentioned in the 'Note' appended to the said plan *inter alia* that the North DMC would be removing the Hanuman temple in terms of the order of the Court, so that the width of the non-motorised vehicle (NMV) lane in the area would be a uniform 5.5 metres.

7. On 8th August, 2019 a letter was written by the Special Secretary-III (Home) to the Commissioner North DMC on the subject of "removal of encroachment in shape of temple on main Chandni Chowk road, Delhi -6". That letter sets out the order dated 30th April, 2015 of this Court and ends by saying "hence, land owning agency should take appropriate action at his (sic) own as per Hon'ble High Court's direction". The letter also reminded the North DMC that this Court had in its order dated 14th July, 2015 in Contempt Petition No. 750/2012 observed that "Religious Committee cannot deliberate over judicial orders.'

8. It is in this background that when this Court was informed on 16th October, 2019 by the Chief Nodal Officer (CNO), that the above encroachments had not yet been removed, this Court requested the Lieutenant Governor (LG) to examine all the earlier orders of the Court and to issue appropriate directions for their implementation. The relevant portion of the order dated 16th October 2019 of this Court reads thus:

"Mr. Nitin Panigrahi, CNO has drawn attention to the fact that in a status report submitted by the North DMC way back on December, 2015 pursuant to the orders dated 30th April, 2015, 6th August, 2015 and 5th November, 2015 of this Court, five encroachments on account of religious structures were identified. This report is at pages 3169 to 3170. Of the said five encroachments, those at Sl. Nos. 1, 2 and 3 have been taken care of, while those at Sl.Nos.4 and 5 remain. The Court has

been shown the photographs of the encroachments at Sl.No.5 which is what is referred to in the minutes of the PWD.

4. Ms. Tewatia, learned counsel for North DMC draws attention to the same report in which in relation to the encroachment noted at Sl. No. 5, it is stated that the priest of the temple was contacted for its removal and he had agreed to its shifting, if space was provided elsewhere. Learned counsel for the GNCTD states that the work should in any way proceed as scheduled and that this issue can be dealt with at the appropriate stage.

5. Mr. Panigrahi supports the view expressed in the minutes of the meeting of the PWD held on 26th September, 2019 and points to the urgency of the issue. He is categorical that the encroachment at Sl. No. 5 will hinder the work. He requests for implementation of the orders passed by this Court referred to hereinbefore.

6. The Court has been informed that the Lt. Governor of the NCT of Delhi is the Chairperson of the Committee on removal of encroachments in the form of religious structures. The Court, therefore, considers it appropriate that a meeting be convened by the Lt. Governor in the next week, given the urgency of the matter, which will be attended not only by the representatives of the North DMC and the GNCTD, but Mr. Panigrahi as well as Mr. Bhargava, President of the Chandni Chowk Vyapar Mandal. All of the above orders of the Court, the reports of the North DMC and the minutes of the meeting of the PWD will be placed before the Lt. Governor. The Court requests the Lt. Governor, after examining all of the above documents to issue appropriate orders in this regard.

7. The Court makes it clear that these orders are not meant to stop the work in any way.”

9. On 22nd October 2019, the GNCTD filed CM Appl. No. 46710/2019, where it contended that the order dated 16th October, 2019 should be modified and North DMC should be directed “to take necessary action in

terms of the order dated 30th April, 2015 in the above captioned petition and also in terms of the subsequent letter dated 8th August, 2019 of the Special Secretary-III (Home) Government of NCT of Delhi”.

10. This application was taken up on 31st October, 2019. Mr. Naushad Ali Ahmed Khan, the Additional Standing Counsel for the GNCTD stated that directions had already been issued to the North DMC to comply with the Court’s earlier orders. After noting the earlier orders passed by the Court and the order passed by the Supreme Court on 16th May, 2018 this Court observed that it was not necessary to add anything further. The application was disposed of.

11. At the hearing on 8th November, 2019 the GNCTD produced the original files pertaining to the decision of the Religious Committee, through its Additional Chief Secretary (Home) Mr. Satya Gopal, which reflected a U-turn on its earlier decisions. This was noted in the order passed by this Court on 8th November, 2019 which reads as under:

“1. The original file containing the decision of the Religious Committee has been produced before the Court and has been perused. The decision that appears to have been taken as a result of the meetings held on 22nd October, 24th October, and 30th October, 2019 is that the two religious structures i.e. the Hanuman Mandir and the Shiv Mandir should be made an integral part of the re-development plan. It was decided that they may be allowed to exist at the present site after dismantling the platform (*Chabutra*) existing around the temple. Similarly, it has been decided that Bhai Matidas Smarak “may be made an integral part of the beautification and redevelopment plan to showcase the heritage of Indian history”.

2. The notes on file also reveals that the Consultant had

presented drawings for two options, but has been asked to submit a clear drawing showing the present status and proposed two plans separately through the PWD and the SRDC in the next meeting.

3. Before passing further orders in the matter, the Court would like Mr Pradeep Sachdeva, the Architect to be present in the Court with the relevant drawings in respect of both alternatives and to explain as to how the above proposals are expected to be given effect to.

4. The Court's attention has been drawn to its order dated 30th April, 2015, which was questioned by the North DMC by filing SLP (Civil) No.30333/2015, and the order dated 16th May 2018, passed in the said SLP by the Supreme Court. The Court proposes to deal with this aspect on the next date of hearing.

5. The Suptd. Engineer, CPWD informed the Court that the work of the PWD will proceed and not be halted in view of the above decision of the religious Committee. It is directed that the work of the PWD should proceed as scheduled.

6. The Court further reiterates its earlier orders dated 23rd February, 2016, 10th February, 2017 and 15th March, 2018 on the question of the shifting of officers of the various departments/agencies, who are Nodal Officers, associated in the work of redevelopment and implementation of the various orders of the Court. They should not be shifted out without prior permission of the Court. It is in this context that the Court directs that Mr Nitin Panigrahi, the Nodal Officer of the SRDC will continue to remain as such and be present in this Court on every date of hearing and will continue to ensure the implementation of the Court's orders in such capacity. The Court reiterates its earlier orders, requiring the presence of other Nodal Officers on every date of hearing.

7. The file shown to the Court today and returned, will be brought on the next date of hearing.

8. List on 14th November, 2019 at 2.15 pm.

9. *Dasti* under the signatures of the Court Master.”

12. Mr. Pradeep Sachdeva of PSDA, who has been associated with the project of redevelopment of Chandni Chowk, has placed before the Court a report pursuant to the above order dated on 8th November, 2019. The report discusses the two alternatives which were proposed at the meeting of the Religious Committee held on 24th October, 2019 when it was decided that the consultant should submit a clear drawing showing the present status and propose two plans separately to the PWD and SRDC in the next meeting. Mr. Sachdeva is also present in Court to explain his report. Para 3 of the report specifically discusses the two alternatives and reads thus:

“3. Alternatives: We as the project consultant have worked on numerous alternatives to try and accommodate the temple structure but none seem feasible without affecting the user as well as the infrastructure for service of Chandni Chowk. These included taking a curved loop of the NMV lane reducing the median as well as reducing the temple size while retaining the sanctum. None of these were found feasible. The two recent option explored in end October, 2019.

(a) Option 1: Proposed reducing the temple building size by 1.0 m. On subsequent checking of the dimensions it was found that the deities would have been damaged by this action. This option brings about no benefit to anyone (Refer drawing 2)

(b) Option 2: Shifting the entire temple towards the shops. This suggestion was resisted by the shopkeepers. It would have also reduced the pedestrian walking space (Drawing 3)

In both the above option the NMV lane would have increased 4.77 m from the current 3.5 m. However, the options are not recommended as they do not find a solution to the core issue caused by the temple’s location on a public right of way.”

13. The report also states that the matter has been discussed with the shopkeepers adjoining the temple and all of them were of the view that inconvenience is being caused by the presence of the temples. This is consistent with what is stated in a letter dated 30th October 2019 addressed by six shopkeepers adjoining the temples to the Chief Engineer, PWD. After referring to the fact that an ACP of the area had visited them and enquired whether they had any objection to shifting the temples towards the pedestrian footpath, the shopkeepers stated:

“We all the undersigned shopkeepers totally disagree with their suggestion and we all are totally opposed shifting of the temple on the footpath towards our shop which will block the access to our shop and block the public footpath causing severe congestion.

He also enquired that how old was this temple, we told him it was just 15-20 year old and very few people visit it daily and few more people visit on Tuesday and Saturday.

This encroachment of temple is a public nuisance, and several drug addicts, eve teasers and dunkers (*sic* drunkards) are always sitting near the temple and create public nuisance.

We request you to ensure this temple encroachment is removed and public footpath is restored.

We all the undersigned shopkeepers are totally against the shifting of the encroachment in front of our shops and request you to immediate remove the encroached temple in R.O.W.”

14. It is clear from the report of Mr. Sachdeva that the idea that sprung up at the aforementioned three meetings of the Religious Committee, that the Hanuman and Shiv temples “may be allowed to exist at the present site and the re-development plan may be made amalgamating the said religious

structure only after dismantling the platform/*chabuttra* existing around the temple” is not a feasible proposition. Clearly, the Religious Committee, without first examining the feasibility of such a proposal went ahead and took this decision unmindful of the previous orders passed by the Court as noticed hereinbefore, and in particular, the order of the Supreme Court, which issued a very specific mandamus both to the North DMC and the GNCTD.

15. The Court did not have today the benefit of the presence of Mr. Naushad Ali Khan, the Additional Standing Counsel of the GNCTD, but the Counsel who appeared on his behalf did draw the attention of the Court to the relevant paragraphs of the minutes of the three meetings of the Religious Committee, which explain the apparent reasons for the change in the stand of the GNCTD.

16. The decision purportedly taken by the Religious Committee as recorded in the minutes of its meeting of 30th October, 2019 is not only inconsistent with the binding order dated 16th May 2018 of the Supreme Court but also contrary to the orders of this Court referred to hereinbefore. It is surprising that after filing an application CM 46710/2019 just as recently as 22nd October 2019, praying for directions to the North DMC to comply with this Court’s orders, the GNCTD through the Religious Committee could reverse its stand in such a dramatic fashion. The minutes of the meeting of 24th October, 2019 glibly notes that the *Pujari* of the Hanuman Temple has now submitted a written statement, resiling from his earlier statement about being ready to shift the temple to any other place. It is not understood why the Religious Committee accepted the said statement of the *Pujari* without

reminding him of the binding orders of the Court, based as they were on the reports of the North DMC.

17. As the report of Mr. Sachdeva demonstrates, the changed stand and the proposal put forth by the Religious Committee that the Hanuman and Shiv temples “may be allowed to exist at the present site and the re-development plan may be made amalgamating the said religious structure only after dismantling the platform/*chabutra* existing around the temple”, is simply not feasible and will come in the way of the orderly implementation of the redevelopment plan. The Court, therefore, rejects the said proposal.

18. As regards the Bhai Mati Das Smarak, the Court is informed by Mr. Sachdeva that the structure at the current location is not causing hindrance as far as the main carriageway is concerned. No further directions are, therefore, called for in regard to the said structure at this stage.

19. The notes on file express the apprehension of the worsening ‘law and order situation’, if the Hanuman and Shiv temples were to be removed. Law and order is essentially the responsibility of the State. The Home Department of the GNCTD hardly needs to be reminded that it has to take appropriate measures to ensure that orders of this Court and the Supreme Court are implemented and that any attempts at obstruction of such implementation have to be dealt with in an appropriate manner. The Courts look to the law enforcement agencies for the implementation of their orders. The stand of the law enforcement agency that it is powerless to ensure law and order, and therefore, cannot implement the orders of this Court and the Supreme Court, if accepted would seriously threaten the legitimacy of the

rule of law and the respect for orders of the Courts. Among the foremost duties of the law enforcement agency, it is needless to state, is assisting in the implementation of binding orders of this Court and the Supreme Court of India.

20. The Court, therefore, directs the GNCTD, and in particular the Additional Chief Secretary (Home) Mr. Satya Gopal, to discharge their constitutional and statutory duties, as expected of them, in accordance with law, and ensure the implementation of the orders of this Court and the Supreme Court. What is the best possible manner in which this should be done is for the law enforcement agencies to decide. Mr. Satya Gopal is directed to take personal responsibility for ensuring the implementation of the orders of this Court and the Supreme Court within a definite time frame. He will himself file a compliance report in this Court within eight weeks.

21. On the previous hearing this Court was informed by the Superintending Engineer of the PWD that notwithstanding the decision on the temples, the work of redevelopment can proceed as scheduled. The Court reiterates accordingly.

C.M.No.25934/2019

22. The status report filed by the North DMC is taken on record. On 16th October, 2019 this Court had asked Counsel for the GNCTD to inform the Court about the decision taken on the application filed by the Developer of the Gandhi Maidan parking facility on 29th August 2019 for relocating/transplanting 10 trees for which consent has been given by the Horticulture Department of the North DMC.

23. Learned counsel for the GNCTD assures the Court on instructions that a decision will be taken on the application within next four weeks and communicated to the applicant. A copy of the decision be placed before the Court on the next date of hearing.

24. List on 13th January, 2020 at 2:15 pm. A copy of the order be given *dasti*, under the signatures of the Court Master.

CM APPL. 39345/2019 (Exemption)

25. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 14, 2019

mr