

ITEM NO.1

Virtual Court 4

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.343/2020

(Arising out of impugned final judgment and order dated 14-11-2019 in WP(C) No. 4572/2007 passed by the High Court of Delhi at New Delhi)

GOVERNMENT OF DELHI

Petitioner(s)

VERSUS

MANUSHI SANGATHAN, DELHI & ORS.

Respondent(s)

(With appln.(s) for permission and appropriate orders/directions)

Date : 13-07-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s)

Mr. Sanjay Jain, ASG
Mr. Chirag M. Shroff, AOR
Ms. Abhilasha Bharti, Adv.
Ms. Sanjana Nangia, Adv.

For Respondent(s)

Mr. B. V. Balaram Das, AOR

Mr. Sanjiv Sen, Sr. Adv.
Mr. Praveen Swarup, AOR
Mr. Ameet Singh, Adv.
Soumo Palit, Adv.

Mr. Akshay Verma, AOR
Ms. Sushma Verma, Adv.

Mr. Alok Gupta, AOR

Mr. Sanjeev Ralli, Adv.
Mr. Sanjay Jain, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 These proceedings have arisen from an order of the Division Bench of the High Court of Delhi dated 14 November 2019. The scope of the controversy in the Special Leave Petition which has been filed by the Government of Delhi through the Additional Chief Secretary (Home) is limited. By the operative directions contained in the impugned order, the High Court has placed the responsibility for ensuring compliance with its earlier orders and an order of this Court, on the Government of National Capital Territory of Delhi (GNCTD) and particularly on the Additional Chief Secretary (Home). Paragraph 20 of the impugned order is in the following terms:

“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.”

- 2 The initial order of the High Court of 30 April 2015 contained a direction to the Municipal Corporation of Delhi as the land owning agency to remove the encroachment caused by certain religious structures on the carriageway at

Chandni Chowk. The relevant part of the order of 30 April 2015 reads as follows:

"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 land owning 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 By a subsequent order of the High Court dated 6 August 2015, the following directions were issued on an application for modification filed by the North Delhi Municipal Corporation (NDMC). The High Court in this order observed thus:

"The application seeks modification of the order of 30 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 NCTD. 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."(emphasis supplied)

- 4 Eventually, the proceedings were taken to this Court at the behest of the NDMC in Petition for Special Leave to Appeal (Civil) No 38333 of 2015 and on 16 May 2018, the following order was passed:

“Mr Sandeep Sethi, learned Additional Solicitor General states that the responsibility to remove the encroachment in question 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.”

- 5 Mr Sanjay Jain ASG has urged that the directions issued by the High Court placing responsibility on the Home Department of GNCTD must hence be modified to bring them in conformity with the above order of this Court. He however submitted that GNCTD would extend all cooperation to the Municipal Corporation.
- 6 Mr. Sanjeev Ralli, learned counsel appearing on behalf of the sixth respondent, Chandni Chowk Sarv Vyapar Mandal in these proceedings has urged that the Special Secretary (Home), GNCTD, had by a communication dated 8 August 2019 opined that in view of the provisions of Section 299 of the Delhi Municipal Corporation Act, it was the duty of the

Municipal Corporation to remove the encroachment. Learned counsel submits that it was in view of the above direction that the High Court by its order dated 31 October 2019, did not consider it appropriate to issue any directions on the application for modification that was filed by the GNCTD.

- 7 The earlier orders of the High Court placed the responsibility on the Municipal Corporation. At the same time, the GNCTD has been directed to extend support to the Corporation. This has been clarified by the order of this Court dated 16 May 2018, which is extracted above. To the above extent, therefore, the direction contained in paragraph 20 of the impugned judgment and order of the High Court will have to be modified so as to be consistent with what is set out in the order of this Court dated 16 May 2018 by which it was clarified that while the primary responsibility is cast upon the Municipal Corporation, the GNCTD shall extend necessary cooperation. We clarify accordingly. The personal responsibility that was placed on the Additional Chief Secretary (Home) shall accordingly stand modified to the extent indicated above.
- 8 At this stage, Mr. Sanjay Jain, learned Additional Solicitor General appearing on behalf of the petitioner has submitted that should the GNCTD be advised to do so, it would move a suitable application before the High Court for seeking further directions as may be warranted to meet the exigencies of the situation including on the ground of public peace and tranquility. Since this Court does not have before it any such application at the present stage, we express no opinion on the merits of any application as may be moved before the Delhi High Court.

- 9 Mr Sanjiv Sen appearing for the Municipal Corporation urged that an order of remand may be passed to enable his clients to place all their submissions before the High Court, including his submission that the responsibility of enforcement be entrusted to the Nodal Officer appointed by the High Court. In the SLP filed by the GNCTD, we are not inclined to accede to this submission of the Municipal Corporation since the limited clarification that was sought by the ASG has been addressed above.
- 10 Subject to the above clarification, the Special Leave Petition stands disposed of.
- 11 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR-cum-PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER