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

% **Judgment reserved on : 08 May 2024**
Judgment pronounced on: 29 May 2024

\+ W.P.(C) 12817/2023 and CM APPL. 50476/2023 (Stay)

PRACHEEN SHIV MANDIR AVAM AKHADA SAMITI
..... Petitioner

Through: Mr.Kamlesh Kr.Mishra, Ms.Renu, Ms.Shivani Verma and Mr.Dipak Raj Singh, Advocates.

versus

DELHI DEVELOPMENT AND ORS. ..... Respondents

Through: Mr.Arjun Pant, ASC for DDA with Ms.Latika Malhotra, Advocate with SI Satender Kumar Arya, PS Geeta Colony.
Ms.Mehal Nakra, ASC (Civil) with Mr.Devansh Solanki and Ms.Aditi Kapoor, Advocates for R-2 to 6.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CM APPL. 27485/2024 (For impleadment), CM APPL.27486/2024 (For amendment of petition), CM APPL. 27487/2024 (For calling of record of suit)

1. The petitioner society is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking writ of *mandamus* or any other appropriate writ seeking quashing and setting aside of the order of demolition given for the *Pracheen Shiv Mandir*, situated near Taj Enclave, Geeta Colony. Following are the

reliefs sought by the petitioner by way of this present writ petition: -

> "I. Pass an order for quashing and setting aside the Notice/ Order with regard to demolish of Pracheen Shiv Mandir.
> II. Pass an order directing the respondents to place on record all the orders/ decisions/ file/noting with regard to the demolition of Pracheen Shiv Mandir situated near Taj Enclave in Geeta Colony.
> III. Pass an order directing the respondents to ensure that the Pracheen Shiv Mandir situated near Taj Enclave in Geeta Colony Akshardham Temple near Metro Station is kept operational and open for the use of devotees.
> IV. Pass an order directing the respondents to ensure that no demolition drive shall take place until the speaking order being passed by the concerned authorities.
> V. Pass any such directions or order which this Hon'ble court deems fit and proper in the facts and circumstances of the above-mentioned case."

BRIEF FACTS:

2. The petitioner society in the present writ petition is *Prachin Shiv Mandir*, formally registered under the Society Registration Act, 1860, as "*Prachin Shiv Mandir Avam Akhada Samiti*"[1] bearing registration No. District East/Society/2053/2018, which is claimed to have been established by a distinguished priest, renowned for founding 101 Shiv Linga's, and the temple on the site stands as one of these revered Shiv Lingas. It is averred that the temple acts as a central hub for spiritual community activities, drawing approximately 300 to 400 devotees regularly, who convene to engage in prayer and worship.

3. It is stated that the petitioner society was duly registered in 2018 with the aim of upholding transparency, accountability, and responsible management of the temple's assets. On 25.09.2023, the

[1] Petitioner Society

SHO[2], Police Station Geeta Colony visited the temple and informed the petitioner society of the police's directive to demolish the temple. Despite the petitioner society's request for a formal notice, they were informed that none was available, and the actions were purportedly based on instructions from the Deputy Commissioner of Police.

4. On the aforementioned date, i.e., 25.09.2023, a formal representation was submitted to both the Commissioner of Police and the Lieutenant Governor of Delhi concerning the anticipated demolition of the Pracheen Shiv Mandir, located near Taj Enclave in Geeta Colony. Following were the reliefs sought by way of the representation: -

> "In light of these concerns, I kindly request the following:
> Halt the Demolition: I implore you to immediately intervene to halt the demolition of Pracheen Shiv Mandir until a thorough review of the situation can be conducted.
>
> Provide Notice to the Pracheen Shiv Mandir Avam Akhada Samiti I request that the Pracheen Shiv Mandir Avam Akhada Samiti be provided with an official written notice detailing the reasons and justifications for the demolition order. This notice will enable all concerned parties to fully understand the basis for this significant decision.
>
> The preservation of our cultural and religious heritage is a shared responsibility, and I trust that your esteemed office will take all necessary steps to safeguard the Pracheen Shiv Mandir for the benefit of the present and future generations."

GROUNDS FOR THE PETITION:

5. The petitioner society asserts that the Article 25 of the Constitution of India, ensures the freedom of religion to all its citizen, encompassing the liberty to administer religious matters. Temples and

[2] Station House Officer

places of worship bear profound religious importance for diverse communities, and safeguarding them constitutes a fundamental aspect of preserving the right to religious freedom. The petitioner society relies on a decision by this Hon'ble Court in **Ms Hnunpuii v. Municipal Corporation of Delhi**[3] and the relevant portion of the decision is reproduced below: -

> "21. To my mind, there can be no question of demolishing any property on the ground that it is unauthorized, until and unless the person owning the property and/or in possession of/residing in the property, are given an adequate opportunity of hearing and due principles of natural justice are complied with.
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> 22. It is also no answer to compliance with the principles of natural justice to contend that, if an opportunity was granted, the persons affecting would not have had any defense to offer. This is the position in law since the time of Olga Tellis v. Bombay Municipal Corporation. (1985) 3 SCC 545"

6. The petitioner society asserts that the temple functions as a sanctified site where members of the local community convene to conduct their prayers and engage in worship; and that routine congregations at the temple facilitate interpersonal connections among community members, fostering the exchange of experiences and the development of robust social ties; and that it serves as a platform for mutual assistance and solidarity during moments of both elation and adversity. It is stated that the festivals and religious observances hosted at the temple afford occasions for collective involvement, strengthening the cohesion and distinctiveness of the community.

7. The petitioner society asserts that in the precedent of **Ram Lakhan Singh v. State of Uttar Pradesh**, it was emphasized that

[3] CM(M) 862 of 2022

procedural fairness necessitates the provision of an official written notice for any substantial governmental action, such as demolition directives. In the current scenario, no such formal written notice or order has been provided to the petitioner or its devotees. Instead, the devotees were verbally apprised that their Pracheen Mandir would be demolished the following day, with the explanation that another temple was being demolished on that day.

SUBMISSIONS ON BEHALF OF DELHI DEVELOPMENT AUTHORITY

8. The learned Counsel for the DDA[4] has contended that the Pracheen Shiv Mandir is located within the Restoration & Rejuvenation of Yamuna River Floodplain Asita East UP Land (86 Ha.) from ITA Barrage to Old Iron Rlv. Bridge. Reference has been made to the directives outlined by the NGT[5], stipulating that no illegal activities (such as illegal cultivation, labour hut/chapper, nurseries diary, gaushala and unauthorized religious structures) are permissible within the Yamuna Floodplain. It is submitted that, in accordance with the NGT's mandates, the illegal cultivation, nurseries and labour hut/chhapper, Dairy, Gaushala were demolished by Horticulture Division-Ix/DA and HCD-X/DA respectively. However, upon inspection, certain unauthorized religious structures were found to be present.

9. It is further submitted by DDA that the LG of Delhi and other senior officials of DDA issued directives for the removal of unauthorized encroachments, including all religious structures, from

[4] Delhi Development Authority

the aforementioned floodplain area. Subsequently, on 10.05.2023, the area was inspected by the relevant DDA official, who identified the existence of 16 religious' structures (comprising 15 temples and 1 Mazar) within the aforementioned area. This finding was then reported to the Higher Authority of DDA, which determined that the matter is of a sensitive nature and warrants referral to the Religious Committee. Consequently, this issue was forwarded to the Religious Committee for consideration regarding the removal/demolition of the religious structures, pursuant to letter No. F10(39) DHSE/2023-24/DA/589 dated 01.08.2023.

10. A session of the Religious Committee convened on 17.08.2023, presided over by the Principal Secretary (Home)/Chairman, was held to deliberate on granting permission for the removal of unauthorized religious structures situated in the aforementioned Yamuna Floodplains area. The Religious Committee recommended the removal of all aforementioned unauthorized religious structures, as evidenced by the minutes of the meeting dated 17.08.2023. Subsequently, this recommendation was relayed to the concerned Executive Engineer/HCD-X/DA for the demolition of the 16 unauthorized religious structures. The demolition activities were carried out by the Executive Engineer/HCD X/DDA, with assistance from the Delhi Police, on 24.09.2023, 25.09.2023, and 29.09.2023, resulting in the demolition of 15 religious' structures. However, the demolition of the Pracheen Shiv Mandir was halted due to a stay order issued by this Hon'ble Court on 27.09.2023 in the ongoing matter.

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[5] National Green Tribunal

11. The recommendations of the Religious Committee Meeting are based on an inspection which was carried out by the Delhi Police with respect to the Temple which reads as follows:

> "Mandir Cluster measuring about 2200 Sq. Mtrs. Exists at Yamuna Khadar, PS. Geeta Colony, Shahdara District since long but no proof of existence has been provided by anyone. The total covered area is about 500 Sq. Mtrs. There is no caretaker for looking after the Mandir. About 02/04 people visit there for worship daily and the number of visitors increased upto 10/12 on festival seasons. It is a no populated area. There is no possibility of law and order point of view if the demolition/removal programme will be carried out."

12. Bringing a new twist to the narrative, it was additionally submitted by the learned counsel for the petitioner that the DDA is not the land owing agency and it was canvassed that the area on which the said temple is situated was held to be owned by the State of UP *vide* a final order and decree dated 03.10.1997 in Civil Suit No. 10/1969 titled as **State of UP v DDA**, and reliance was placed on the following observations in the judgment and decree, which read as under: -

> "This suit had been instituted by the state of Uttar Pradesh against the defendants for recovery of possession and other reliefs mentioned in the plaint. Eventually the plaint has been amended with the leave of the Court and in the amended plaint dated 26th September, 1972, the plaintiff has claimed delivery of vacant possession of the land prescribed in Schedule, attached to the amended plaint and for recovery of Rs. 98,565.81 against defendants Nos. 1,2 and 3 and in the alternative against defendants NosA to 221 or anyone or more of them at such rate as the Court thinks fit. The rate at which mesne profits have been claimed is Rs. 11,000/per annum from the date of suit till delivery of possession.
>
> Originally the suit was contested and written statements were filed which resulted in framing of a number of issues on 2nd March, 1971. **Now all the defendants through their counsel have admitted that the suit of the plaintiff be decreed against them in so far as recovery of possession of**

the land in dispute is concerned. In so far as mesne profits are concerned, defendants Nos. 1,2 and 3 have contested the claim while defendants (other than 1,2 and 3) have admitted the claim of the plaintiff for payment of mesne profits at the rate of Rs.5/- per annum per Bigha since 2nd January, 1966, also been appointed Local Commissioner and had submitted a report and a supplementary report. There is no evidence in rebuttal disputing the chart and I accept the same.

The counsel for the defendants have further stated today that they do not want to produce any evidence in rebuttal and they do not desire to press any of the issues and they have prayed that the suit may be decreed on the admissions of the defendants made through their counsel and the evidence on the record. In view of the same, I decree the plaintiff's suit for recovery of possession of the land in dispute against all the defendants. At the request of the defendants, the decree for recovery of possession will not be executed for a period of 18 months from today.

The suit of the plaintiffs for recovery of mesne profits is decreed at the rate of Rs.5/- per annum per Bigha from 2nd January, 1966 till the date of suit. I have accepted the chart marked 'C and on its basis and other evidence on record, Schedule has been prepared showing the liability of each of the defendants to pay the amount of mesne profits. The defendants shall pay the same to the plaintiff accordingly. The defendants will also pay mesne profits at the same rate of Rs.5/- per annum per Bigha from the date of the suit till delivery of possession or expiration of three years from the date of decree, whichever event occurs earlier, rent or the suit for recovery of rent or mesne profits against defendants1; 2 and 3 is dismissed.

The defendants (other **than 1,2 and 3) have in their statements emphasised the fact that they would apply to the Government of Uttar Pradesh for regularisation of their possession and the counsel for the plaintiff has agreed that the Government will sympathetically consider the request. This regularisation, if any, win be made on such terms and conditions as may mutually be agreed between the Government and the applicants and the future** to press upon the Government their claim for adjustment of the amount paid by them to defendants 1,2 or 3, and the defendants have undertaken not to raise the plea that the claim of the plaintiff for the period prior to 2nd January, 1966 would be barred by any principle of res judicata. The State of Uttar Pradesh is also given the liberty it has sought to recover possess ion or rent or mesne profits from those persons who are occupying parts of the land

in dispute but have not been impleaded in this suit as defendants." **{Bold portions emphasized}**

ANALYSIS AND DECISION:

13. I have given my anxious consideration to the submissions made by the learned counsels for the rival parties at the bar. I have meticulously gone through the entire record of the case. It is pertinent to mention that as recorded in the order sheet of 23.11.2023 of this Court, learned Counsel for the petitioner requested ten days' time to seek instructions to remove the idols to some other place or temple but instead the petitioner has chosen to press for the reliefs in the instant writ petition.

14. Thus coming to the merits, first things first, the additional pleas canvassed by the learned counsel for petitioner that the State of UP is the land owning authority and the DDA has no *locus standi* does not hold any water. Firstly, because there is filed no documents to show that the land in question was part and parcel of the decision in the above referred suit between the State of UP and the DDA. Secondly, the learned standing for the DDA has relied on the Memorandum of Understanding dated 16.02.2022 executed between the State of UP and DDA, whereby the entire work/project relating to project estimate for rejuvenation of the Uttar Pradesh portion of river Yamuna flood plain (Eastern bank) between old iron railway bridge to ITO barrage in Delhi State has been entrusted to the DDA. A copy of the said agreement has been placed on the record and it would be apposite to refer to the relevant covenants, which go as under:

> 8. The quality of works shall thereof be the responsibility of the DELHI DEVELOPMENT AUTHHORITY. DELHI

DEVELOPMENT AUTHORITY shall carry out all the works in accordance with the relevant DSR or I.S. (Indian Standards) specifications. Tests for all types of work and construction materials shall be carried out by DELHI DEVELOPMENT AUTHORITY as per I.S. codes & the test reports shall be submitted to the CLIENT.

9. It is understood that the DELHI DEVELOPMENT AUTHORITY shall remain liable for all its acts and shall indemnify the CLIENT with respect to losses and damages incurred due to any fault or lapse or delay on behalf of DDA or for any compensation arising out of any accident or injury sustained by the CLIENT or by any work man in the employment of DELHI DEVELOPMENT AUTHORITY while in or upon the said works or the same arising out of any act, default or negligence/error in judgment on the part of the DELHI DEVELOPMENT AUTHORITY, its employees or agents subject to the determinations of the compensation or damage by the competent authority as defined in the relevant law.

10. It is understood that the CLIENT or any person authorized by the department may inspect the construction works at any time and from time to time to satisfy himself that the works are being carried out by the DELHI DEVELOPMENT AUTHORITY as per approved drawings. If any defects or variations made without written request to CLIENT are found during inspection, they will have to be rectified by the DELHI DEVELOPMENT AUTHORITY at their cost within 30 days from its receipt. CLIENT will have the right to inspect its existing structures and can execute repair/restoration works as and when required. DELHI DEVELOPMENT AUTHORITY shall not obstruct/create any hindrance whatsoever during site visit required for safety of marginal bundh on eastern bank of River Yamuna. In case of any damages caused to the flood protection works by DELHI DEVELOPMENT AUTHORITY, the cost of repair/restoration shall be debited from the amount to be paid to DELHI DEVELOPMENT AUTHORITY.

16. After completion of wetland development works on the land owned by the CLIENT this project completed as per submitted approved drawing, shall be handed over to CLIENT in encroachment free condition of the area from where the encroachment was removed by DDA for doing the development work. The ownership of the project shall remain with CLIENT during the execution of development works and after completion

> of work. Removal of any type of encroachment from the land required to execute the project shall be done by DDA for which no extra cost shall be borne by UPI&WRD. However, legal issues, if any, for removal of this encroachment shall be dealt by UPI&WRD. And also, if any compensation is required to be paid to the affected parties due to removal of the encroachment, the same shall be paid by UPI&WRD.

15. That certainly clinches the issue that the DDA has all the legal powers to deal with the site in question. Be that as it may, the structure in question is apparently located on the Yamuna flood plains which have been developed by DDA pursuant to directions of the NGT. It would be apposite to reproduce the relevant portion of the order dated 09.01.2023 passed by the NGT in the matter of **Ashwani Yadav v. Govt. of NCT of Delhi**[6]:-

> "8. We may now mention the background of the proceedings which led to passing of order dated 27.1.2021. Cognizance of Yamuna pollution was first taken by the Hon'ble Supreme Court in the year 1994 in WP No. 725/1994, News Item "*Hindustan Times" AQFM Yamuna v. Central Pollution Control Board & Anr*. From 1994 till 24.04.2017, when the matter was transferred to this Tribunal for further consideration, the Hon'ble Supreme Court passed several orders in 23 years, including orders dated 4.8.2004, 27.2.2012 and 10.10.2012, (2012) 13 SCC 7362. By order dated 4.8.2004, a Committee headed by Secretary Urban Development, GoI with other concerned departments being members was constituted to oversee steps for bridging the gap in waste generation and treatment which was necessary for rejuvenation of Yamuna. By order dated 10.10.2012, it was noted that even after monitoring by the Hon'ble Supreme Court for 18 years (till then), there remained high level of fecal coliform (FC) and BOD (which situation continues even now after 11 years of the said order). The Hon'ble Supreme Court directed that 'C' category quality of water be achieved by preventing industrial/domestic pollution and all encroachments atleast upto 300 meters on both sides of the river be removed. There should be action plan covering all relevant issues for rejuvenation of river Yamuna. Finally, the matter was

[6] Original Application No. 21/2023

transferred to this Tribunal on 24.04.2017 for further consideration as in the meanwhile, the
Tribunal had taken up the issue in petitions filed before it, including OA No. 06/2012, *Manoj Mishra vs. Union of India & Ors*.

9. Before above order dated 24.4.2017, the Tribunal passed orders including orders dated 13.01.2015 (2015 SCC Online NGT 840), 08.05.2015 (2015 SCC Online NGT 841). Further orders include those dated 07.12.2017 in OA 65 of 20163 and OA 76 of 20164, final order dated 27.1.2021 in OA6/2012, Manoj Mishra, as already noted. By order dated 13.01.2015, two reports of Expert Committees constituted by the Tribunal dated 19.04.2014 and 13.10.2014 were accepted and on that basis, directions were issued for preventing discharge of pollutants into the river, maintaining environmental flow, protecting flood plain zones by river front development activities and removing encroachments. The work was to be completed by 31.3.2017, including provision for 32 additional STPs for 32 major and minor drains, upgradation and maintenance of existing sewer network. Committee was constituted to oversee compliance comprising MoEF&CC; Ministry of Water Resources; Chief Secretary, Delhi Administration; Vice Chairman, DDA; Commissioner of all the Municipal Corporations; Commissioner, DJB; Secretary, Department of Irrigation, NCT of Delhi and concerned Secretaries of the States of Haryana, Uttar Pradesh, Himachal Pradesh and Uttarakhand to oversee execution of orders of Tribunal. By order dated 24.07.2017, constitution of Committee was modified to the effect that it will be headed by Secretary, Ministry of Water Resources (now Jal Shakti). Proceedings for execution continued before the Tribunal. By order dated 26.07.2018, the Tribunal after noting that the progress remained inadequate, constituted Yamuna Monitoring Committee (YMC) to be headed by former Chief Secretary, Ms. Shailja Chandra and also comprising former Expert Member of this Tribunal, Mr. B.S. Sajwan. The Committee took stock of the situation and gave its first report dated 16.01.2019 flagging the issues to be focused and noting that FC count was upto 6,400 times above the prescribed standards. Only 14% of the 1797 colonies had sewage pipelines. DDA had failed to remove the debris and secure the area by erecting barbed wire fencing. It had not undertaken demarcation of flood plains. Next order of the Tribunal is order dated 11.09.2019 dealing with all the micro issues by laying down exhaustive guidelines and directions and timelines as well as action to be taken for violation of the timelines. Timelines extended till 31.12.2020. Steps to be taken included tapping 147 drains not covered by interceptor (ISP) project and diverting them to STPs,

connecting unsewered areas to STPs., recovery of sewage charges from all generators of sewage. Further, order dated 05.03.2020 was passed while considering YMC's 3rd report dated 05.02.2020 recommending single agency to deal with control of pollution in all the drains of Delhi and also single coordinating authority by DDA for:

- Protection of the flood plain,
- Creation of wetlands at identified locations,
- Demolition plans and action taken to retrieve flood plain land and free it of encroachments,
- Enforcement against vehicles dumping debris in and around the flood plain
- Progress on financial devolution by the State of Uttar Pradesh on DDA to undertake
- Floodplain rejuvenation on the Eastern bank of the river,
- Progress of 10 identified projects which DDA had undertaken to complete by specific dates.
- Tree plantation drives,
- Closure of bore wells and plans for larger use of treated waste water dealt with in Chapter – 10, Use of Treated Waste Water.

16. 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**[7], wherein the following directions were passed for restoration and rejuvenation of the Yamuna 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.
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> 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

[7] WP(C) No.7594/2018 and 9617/2022 decided on 08.04.2024

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."

17. It would not be out of place to indicate that the land in question falls under the Zonal Development Plan for Zone- 'O' as approved by the Ministry of Urban Development[8]. Further, the Master Plan Delhi-2021, also envisages rejuvenation of Yamuna river through number of measures including ensuring adequate flow in river by release of water by riparian states, refurbishment of trunk sewers, treatment of drains, sewering of unsewered areas, treatment of industrial affluent, recycling of treated effluent and removal of coliforms at Sewage Treatment Plants besides creating ecological balance by planting trees. The land in dispute is meant for larger public interest and the petitioner society cannot claim any vested rights therein to continue to occupy and use the same.

[8] The Zonal Develop1nent 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, 1957 and notified under section 11 by DDA on 10.08.2010

18. That being the essential background in which the present petition comes up for disposal, it is pertinent to mention that the proposed action of the DDA is predicated on the strength of report dated 17.08.2023 rendered by the Religious Affairs Committee[9], wherein the following resolution was passed :

> "14. 'Mandir Cluster':- Mandir Cluster measuring about 2200 Sq. Mtrs. exists at Yamuna Khadar, PS. Geeta Colony, Shahdara District since long but no proof of existence has been provided by anyone. The total covered area is about 500 Sq.mtrs. There is no caretaker for looking after the mandir. About 02/04 people visit there for worship daily and the number of visitors increased upto 10/12 on festival seasons. It is a no populated area. There is no possibility of law and order point of view if the demolition/removal programme will be carried out."

19. The findings in the aforesaid report have not been assailed by the petitioner. Further, it is borne from the face of the record that the petitioner society, which was by its own admission registered in 2018, has miserably failed to place on record any documents with regard to its title, right, or interest in the subject land in question, and there is no proof on record of the temple in question having any historical significance.

20. There is no document worth its salt on the record that the temple in question is dedicated to the public and not a private temple managed by the petitioner society. There is no documentary proof on the record as to how contributions are received from the public and how the accounts are maintained and how and in what manner the

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

religious affairs of the present temple are managed. Mere fact that the prayers are offered at the temple every day and for that matter there are special events on certain festive occasions does not convert the temple in question to a place of public significance. Reference can be invited to decision by the Supreme Court in **Goswami Shri Mahalaxmi Vahuji v. Ranchhoddas Kalidas**[10]:

> 15. Though most of the present day Hindu public temples have been founded as public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired a great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted large number of devotees. Gradually in course of time they have become public temples. Public temples are generally built or raised by the public and the deity installed to enable the members of the public or a section thereof to offer worship. In such a case the temple would clearly be a public temple. If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as:
>
> > (1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple? (2) Are the members of the public entitled to worship in that temple as of right; (3) Are the temple expenses met from the contributions made by the public? (4) Whether the Sevas and Utsavas conducted in the temple are those usually conducted in public temples? (5) Have the management as well as the devotees been treating that temple as a public temple?"
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> 16. Though the appearance of a temple is a relevant circumstance, it is by no means a decisive one. The architecture of temples differs from place to place. The circumstance that the public or a

[10] (1969) 2 SCC 853

section thereof have been regularly worshipping in the temple as a matter of course and they can take part in the festivals and ceremonies conducted in that temple apparently as a matter of right is a strong piece of evidence to establish the public character of the temple. If votive offerings are being made by the public in the usual course and if the expenses of the temple are met by public contribution, it is safe to presume that the temple in question is a public temple. In brief, the origin of the temple, the manner in which its affairs are managed, the nature and extent of gifts received by it, rights exercised by the devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple are factors that go to establish whether a temple is a public temple or a private temple. In Lakshmana v. Subramania the Judicial Committee was dealing with a temple which was initially a private temple. The Mahant of this temple opened it on certain days in each week to the Hindu public free to worship in the greater part of the temple, and on payment of fees in one part only. The income thus received by the Mahant was utilised by him primarily to meet the expenses of the temple and the balance went to support the Mahant and his family. The Privy Council held that the conduct of the Mahant showed that he had held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship and the inference was, therefore, that he had dedicated it to the public. In Mundancheri Koman v. Achutan Nair19 the Judicial Committee again observed that the decision of the case would depend on the inferences to be derived from the evidence as to the way in which the temple endowments had been dealt with and from the evidence as to the public user of the temples. Their Lordships were satisfied that the documentary evidence in the case conclusively showed that the properties standing in the name of the temples belonged to the temples and that the position of the manager of the temples was that of a trustee. Their Lordships further added that if it had been shown that the temples had originally been private temples they would have been slow to hold that the admission of the public in later times possibly owing to altered conditions would affect the private character of the trusts. In Deoki Nandan v. Murlidar20, this Court observed that the issue whether a religious endowment is a public or a private one is a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and private endowment to the facts found. Therein it was further observed that the distinction between a public and private endowment is that whereas in the former the beneficiaries which

> meant the worshippers are specific individuals and in the later the general public or class thereof. In that case the plaintiff sought to establish the true scope of the dedication from the user of the temple by the public. In Narayan Bhagwant Rao Gosavi Balajiwale v. Gopal Vinayak Gosavi, this Court held that the vastness of the temple, the mode of its construction, the long user of the public as of right, grant of land and cash by the rulers taken along with other relevant factors in that case were consistent only with the public nature of the temple.
> 17. In examining the evidence adduced by the plaintiffs in proof of the fact that the temple in question is a public temple we have to bear in mind the tests laid down by the courts for determining whether a given temple is a public temple or not.

21. It is pertinent to mention that in a recent case decided by this Court in the case **Ankit Mishra v. Santosh Sharma,** Ex.F.A.42/2023 dated 06.05.2023, in a similar facts and circumstances akin to this case, the position of law was explained as under :

> 71. The principles that distinguish private temples from public endowments or public temples are apparent from the extracts from the decisions cited supra, and, for ease of reference, they have been italicised and underscored. It is needless to redirect them. Suffice it, however, to say that the fact that the public worship at a private temple, even with free access, does not ipso facto indicate that the temple is a public temple. Neither does the land on which a private temple is constructed vest in the deity, merely because the public are allowed to worship there. What is of essence is the purpose for which the temple was constructed and dedicated to the deity consecrated in it, and the purpose for which the temple has been thrown open to the public. The onus to establish that the temple, though initially privately constructed, acquires public character with the passage of time, is all the persons who asserting.
> 72. If such person is able to prove the existence of the various circumstances which, as per the decisions cited supra, would support the inference that the temples of public character, nothing more is required. In the present case, however, there is not even an averment of the existence of any of the circumstances. It is an admitted position that the land on which the temple was constructed is private land, presently belonging to Respondent 5 Suraj Malik. How the temple came to be constructed is not averred in the objection petition. Though there is an averment that

> the temple was constructed in 1997, even that is unsupported by evidence. When the temple was constructed is, therefore, a matter of pure conjecture. In this context, the submission of Mr. Jha that the plot that Mr. Katariа purchased on 8 December 1997 was vacant, also merits mention.

22. Insofar as reliance placed by the learned counsel for the petitioner on decision in ***Ms Hnunpuii (supra)*** is concerned, the same is distinguishable, since it was a case where the dispute was between two neighbours residing in the same building with regard to the unauthorised construction. Both had instituted suit against each other, alleging unauthorised construction and substantial deviations in the premises. The MCD, in one of the suits, acknowledged that unauthorised construction had been done by one of the parties. It was in the said context that it was held that no question of demolition based on acknowledgement by the MCD in the *lis* of the opposite party would invite demolition unless and until an adequate opportunity of hearing and due principles of natural justice are complied with in the case of the party affected.

23. In view of the forgoing discussion, this Court unhesitatingly finds that the petitioner society has miserably failed to demonstrate any legal rights existing with it so as to continue to use and occupy the civic property for running the temple services. The half-hearted plea by the learned counsel for the petitioner that Lord Shiva, being the deity of the temple, must be also impleaded in the present matter is a desperate attempt to give an altogether different colour to the entire dispute to sub-serve the vested interest of its members. It goes without saying that Lord Shiva does not need our protection; rather, we, the

people, seek his protection and blessings. There could be no iota of doubt that Lord Shiva would be happier if the Yamuna River bed and the flood plains areas are cleared of all encroachments and unauthorised construction.

24. In view of the foregoing discussion, the present writ petition is dismissed. However, the petitioner society is given 15 days time to remove the idols and other religious objects in the temple and to place the same in some other temple. If they fail to do so, the respondent DDA is directed to ensure that the idols are placed in some other temple, or as may be directed by the Religious Committee if they are approached for any suggestions.

25. Lastly, the DDA shall be at liberty to carry out demolition of the unauthorised construction, and the petitioner society and its members shall not cause any impediment or obstacles in such a demolition process. The local police and the administration shall render full assistance in the said process in order to maintain law and order.

26. The present Writ Petition along with pending application (s) is disposed of accordingly.

DHARMESH SHARMA, J.

MAY 29, 2024/*VLD*