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

+ W.P.(C) 4302/2015 & CM Nos.7796/2015, 9124/2015, 9229-9230/2015, 10004/2015, 13078/2015, 19041/2016 & 6165/2017

THE INDIAN NATIONAL TRUST FOR ART & CULTURAL HERITAGE (INTACH) & ANR Petitioners

Through: Mr. Gourab Banerji, Sr. Adv. with Ms. Manisha Singh, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Arjun Pant with Mr. Anang Pal, Adv. for DDA.

Ms. Pooja Dewan Seth, Adv. for R-2.

Mr. Akshay Makhija, CGSC with Ms. Mahima Bahl and Mr. Shivi Sanyam, Adv. for R-3/ASI.

Mr. Anuj Aggarwal, ASC for GNCTD with Ms. Niti Jain, Adv. for R-4.

Ms. Arti Bansal, Adv. for R-5/SDMC.

Ms. Febin M. Varghese, Adv. for R-6.

Mr. Hashmat Nabi with Mr. Faraah Naaz, Adv. for Delhi Waqf Board.

Mr. Sumeet Pushkarna, Standing Counsel with Mr. Siddhartha Nagpal, Adv. and Mr. Sudhir Singhal (Z.E.) for R-9/DJB.

Ms. Tasneem Ahmadi with Ms. Shubhi Khare, Adv. for applicant in CM No.9229-30/2015.

Mr. Satish Kr. Tripathi with Mr. Amit Kumar Dubey, Adv. for applicants in CM No.9124/2015.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

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ORDER
17.05.2017

Today, during the course of submissions, counsel for the SDMC sought liberty to place on record an affidavit.

Liberty granted.

The affidavit has been taken on record.

Copies of the same have been furnished to the counsel for the other parties.

The affidavit discloses that the SDMC has notified 127 monuments as falling within the Mehrauli Archaeological Park as heritage monuments and therefore protected. The record would show that the Archaeological Survey of India (ASI) has declared 6 structures within the park as centrally protected and that the State Archaeological Department has declared 17 more to be protected as heritage monuments having State importance. Thus, at least 20 monuments, according to the ASI, the State Archaeological Department and the Municipal Corporation, need to be protected.

It was urged and the Court found the statement to be merited – that the results of demarcation and encroachment are unclear and that the task is incomplete as regards the Western and Southern directions.

Learned counsel for the Government of NCT of Delhi drew attention to the demarcation report and the map prepared upon which MH has been superimposed for greater security. The right side (noting Western area) of the park appears to be heavily encroached.

Having regard to this, the learned senior counsel for the petitioner suggested that the task of immediately securing the area that is not subjected

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to encroachment should be proceeded with, without any loss of time.

In the circumstances, the Court hereby directs the Delhi Development Authority (DDA) to forthwith take appropriate steps to fence the entire area, and ensure that the areas where encroachment exists are clearly excluded, for the time being till the matter is resolved, so as to ensure that there is no further encroachment into the areas that are not encroached. This rider would apply to the Western part of the park. In regard to the other areas, the DDA shall go by the demarcation report furnished to the Court which is part of the record and proceed with their task of fencing immediately. The Court is also of the opinion that a comprehensive management plan, for the improvement and management of the park should be prepared, in furtherance of the minutes of meeting chaired by the Member Secretary to the Lieutenant Governor on 04.02.2014 (the minutes of which are part of the record as Annexure 'P15' to the writ petition). The management plan would contain essential elements such as the identification of officials from all the concerned agencies such as ASI, DDA, the SDMC, Delhi Waqf Board, Government of NCT of Delhi, Delhi Police, Delhi Jal Board as well as the petitioner/INTACH. It shall be chaired by a nominee of the Archaeological Survey of India (ASI). The plan shall be prepared at the earliest and in any case within 8 weeks from today. For this purpose, the first meeting of the Committee to be formed shall be held on 29.05.2017 in the office of the Director General, ASI at 04:00 p.m. The plan shall include all necessary elements such as identification of monuments, steps to identify and protect various structures and the stage-wise conservation plan, steps to secure the monuments, the timelines for achieving various objectives, etc. in respect

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of the various areas/monuments. This would include but not be limited to the points mentioned in the minutes of the meeting of 04.02.2014 referred to in the earlier part of the order.

The petitioners point out that the *Khanshahi Tomb*, a centrally protected monument, owned by the Delhi Waqf Board has been encroached. The petitioners' affidavit is enclosed and also gives particulars as to the nature of the encroachment. ASI's status report dated 15.05.2017 has disclosed the details of such encroachment and backed up the claim with photographs.

The counsel for the Waqf Board requests for two days' time to ascertain the correct position.

It is quite evident that the monument appears to be encroached. This is quite evident from the photographs which show fresh constructions underway as well as heap of cement and other construction material at site. The Delhi Waqf Board shall ensure that appropriate action is taken in this regard for the removal of such encroachment, as well as the unauthorized structures, before the next date of hearing. The Action Taken Report shall be filed by the Delhi Waqf Board in this regard.

The ASI shall file an Action Taken Report with respect to the steps taken vis-a-vis the meetings held pursuant to these directions, within four weeks from today. The DDA, likewise, shall file an Action Taken Report with respect to the directions concerning fencing.

It was pointed out by the learned senior counsel for the petitioners that the Forest Department's stand with respect to the areas that are declared as notified forest, are unclear. The Government of NCT through its Forest



Department shall file an appropriate affidavit clarifying the aspect and stating clearly which areas are part of the declared forest. The Delhi Police shall ensure that no further encroachment is made. It shall also ensure that at the time of fencing, especially in the Western side, appropriate photographs are taken to mark the extent of encroachment so that if the need arises in future, necessary action can be taken.

List on 05th July, 2017.

Copy of the order be given dasti under the signatures of the Court Master.

S. RAVINDRA BHAT, J

PRATHIBA M. SINGH, J

MAY 17, 2017
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