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

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

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

..... Petitioners

Through: Mr. Gourab Banerji, Sr. Advocate with
Ms. Charu Ambawani, Ms. Manisha Singh and
Ms. Neha Sangwan, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Akshay Makhija, CGSC with Mr.
Vikas Bhadauria and Mr. Sumant Bhushan,
Advocates for Resp-3.

Mr. Hashmat Nabi with Mr. Syed Mehdi Zaidi,
Advocates for Resp-8/Delhi Wakf Board.

Ms. Arti Bansal, Advocate for SDMC.

Ms. Tasneem Ahmadi with Ms. Shubhi Khare,
Advocates for applicant in CM 9229-30/2015.

Mr. Arjun Pant, Advocate for DDA.

Mr. Febin M. Varghese, Advocate for R-6.

Mr. Sumeet Pushkarna, Standing Counsel for DJB
with Mr. Sahil Ghai, Advocate.

Mr. Anuj Aggarwal, ASC, GNCTD with Ms.
Deboshree Mukherjee and Ms. Niti Jain,
Advocates.

Mr. Satish Kr. Tripathi, Advocate for Applicants
in CM 9124/2015.

Ms. Puja Diwan, Advocate for Resp-3.

Inspector Madan Lal, P.S., Mehrauli.

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CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

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ORDER
05.07.2017

Further to the previous order of the Court, counsel for the Archaeological Survey of India (ASI) states that two meetings were held by the Committee constituted. It is brought to the notice of the Court that the representatives of the various departments of the Govt. of NCT of Delhi and SDM, Mehrauli had not nominated an officer for regular participation. The Deputy Conservator (Forests) is present; he shall ensure participation till the Nodal Officer from his department is appointed to be part of the Committee. Furthermore, the SDM shall in the absence of any order participate in the meeting. The previous order of this Court is clarified to the effect that the posting of the incumbent officers shall not in any manner prejudice their participation so long as they are not substituted by their parent department. In other words, if routine postings are carried out, the concerned officer shall continue to man the position (in the various departments such as Delhi Police, ASI, DDA etc.). The posting orders shall also specifically state that they are notified as representatives of the concerned departments in the Committee appointed by this Court.

As far as the issue of construction of the boundary wall is concerned, counsel for the DDA submits that tenders have been invited and would be finalized shortly. This would take care of the



western wing of the Archaeological Park. Once the said process is completed, the DDA shall ensure that CCTV cameras are appropriately positioned. It is also stated that security has been increased and that DDA has appointed watch and ward staff. In addition, DDA states that Beat Constables have regularly been visiting the area.

The Principal Conservator of Forests/Conservator as the case may be shall file an affidavit stating the extent of the notified forests in compliance with the previous order of the Court.

The Court had on the previous occasion noted a request on behalf of the Delhi Wakf Board to ascertain the correct position with respect to the alleged encroachment in the Khan Shahid Tomb. The record would disclose that the Khan Shahid Tomb was handed over for conservation to the ASI which collaborated with the petitioner organisation. Considerable amount appears to have been spent. The photographs which are part of the record would show that while the neglected monument was in ruins, the efforts of the ASI and INTACH have yielded significant results inasmuch as the over growth has been cleared and the main parts of the monuments restored. In these circumstances after restoration of the monument, outer walls and some other parts of the Khan Shahid Tomb appear to have been white washed; further construction appears to have been taken as is evident from the photographs on the record. The Wakf Board has sought time to ascertain the correct position and report back to the Court.



The Wakf Board's affidavit/status report contends that tomb was notified as wakf property on 16.4.1970. Furthermore another area of 2 bigha 17 biswas was notified as wakf property on 04.10.1984 comprising masjid and Muslim grave yard. The Board further states that it appointed an Imam one Mubarak Qasmi in 2014 as well as mutawali who is in-charge of the structure. According to the Board, there is a madrasa nearby and the tomb is an active place of worship. It is stated that in the circumstances, the Court should pass appropriate orders taking into account all these facts. A comparison of the photographs which were filed when the petition was initially entertained (pages 91-104) show that the monument i.e. Khan Shahid Tomb was in the state of utter neglect. There was overgrowth of natural vegetation. The Wakf Board was not initially impleaded as a party. It sought to be impleaded by its application, CM APPL.10004/2015, dated 23.05.2015. This Court by its order dated 27.05.2015 permitted the impleadment in the following terms:

“The Delhi Wakf Board is added as respondent no.8. The amended memo of parties shall be furnished by the learned counsel for the petitioners within two days. The Delhi Government through the SDM of the area shall carry out the demarcation of the Mehrauli archaeological park with the assistance and cooperation of the officials of the DDA as also of the Delhi Wakf Board. The said process would be conducted through the Total Station Method. The demarcation report shall be submitted to this court on or before the next date of hearing. Insofar as Khan Shahid's Tomb is concerned, that is claimed to be a wakf property by the Delhi Wakf Board. The learned counsel appearing on behalf of the Delhi Wakf Board submits that he has no objection to the ASI conducting renovation work on the said Khan Shahid Tomb. ASI's work would be limited to restoration and no person including any official of the Wakf Board would interfere with the restoration. The work that is done by the ASI is only for the purposes of renovation and restoration and this would not, in any way, alter the



status of possession as existing. We are making it clear that in respect of all the monuments which are subject matter of this petition no further construction shall be permitted without orders from this court except for renovation and restoration work being done under the authority of ASI and the Delhi Government.

Renotify on 05.08.2015. Other interim orders shall continue.

Dasti.”

A careful reading of the order as well as the affidavit filed and the status report is placed on the record today reveals that at no stage did the Wakf Board ever contend that the Khan Shahid Tomb – (concededly an ancient monument and protected as such in terms of the Ancient Monuments Act, 1958), was ever used for educational or religious purposes. Furthermore, white washing of the restored structure evidently took place after its restoration and conservation and when it was handed over to the Wakf Board; clearly after it took possession of it. Its claim to be in the dark, thus strains credulity and is misconceived.

In the circumstances, while, not in any manner detracting from the Wakf Board’s legal ownership of the property, i.e., Khan Shahid Tomb, a direction is hereby issued to the ASI to ensure that the premises and immediate precincts of the tomb and the protected area of radius 100 mtrs. are kept free from encroachment. If necessary, ASI is at liberty to secure this area by placing appropriate fencing and further securing CCTV cameras. It is clarified that this direction shall also empower the ASI to remove construction materials at site and take all steps necessary to bring back the monument to the

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position that had existed when the conservation work was completed. The Wakf Board shall cooperate with the ASI in maintaining the structure and also keeping it encroachment free. An action taken report in this regard shall be filed by the ASI within six weeks.

The Committee constituted by the Court shall ensure that periodical meetings are held - at intervals not exceeding two weeks from the date of each meeting. Copies of the Minutes of such meeting shall be furnished to the petitioner at least three days before the date of hearing of these proceedings.

The Committee's next meeting shall be held on 02.08.2017.

List before the Court on 9th August, 2017.

Dasti.

S. RAVINDRA BHAT, J

S.P.GARG, J

JULY 05, 2017

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