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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1160/2023**

MAZDOOR AWAAS SAMITI Petitioner

Through: Mr. Colin Gonsalves, Sr. Advocate,
Mr. Kawalpreet Kaur & Mr. Nayab
Ganhas, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Jitesh Vikram Srivastava & Mr.
Prajesh Vikram Srivastava, Advocates
for R-1 & 2
Ms. Manika Tripathy Standing
Counsel with Mr. Manish Vashist,
Advocate for DDA.
Mr. Tushar Sannu (standing counsel)
with Mr. Azad Bansala, Advocates for
R-7
Mr. Parvinder Chauhan, Mr. Sushil
Dixit & Mr. Aman Ghewana,
Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **01.02.2023**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by Mazdoor Awas Samiti, Tughlakabad village, Delhi which claims to represent the residents of the Tughlakabad village. Mr. Colin Gonsalves, Id. Sr. counsel appearing for the Petitioner submits that more than 1000 families are supporting the present petition. A list of 250 people residing at the affected site, who support the present petition, has also been filed along with the petition.
3. The prayer in this petition is for seeking alternate resettlement and rehabilitation for all the affected residents of the Tughlakabad village who are

affected by the demolition notice dated 11th January, 2023 issued by the ASI.

4. Mr. Colin Gonsalves, Id. Sr. counsel submits that the intention of the residents is not to create any obstruction, by way of the present petition, in the action being taken by the Respondents. He submits that considering the large number of families which are going to be affected, some immediate rehabilitation/resettlement measures ought to be taken by the GNCTD along with the other agencies including DDA and DUSIB *etc.*

5. This Court had the occasion to consider the petitions filed by other similarly placed residents of Tughlakabad Fort area in *W.P.(C) 947/2023* titled *Rupali Dolui v. Archeological Survey of India and Ors.* and *W.P.(C) 955/2023* titled *Ram Ray v. Archeological Survey of India and Ors.* In the said petitions, the order dated 11th January, 2023 passed by the ASI directing eviction of all the occupants was under challenge.

6. While hearing the said petitions on 25th January, 2023, it was noticed by the Court that the aerial survey of the area was conducted by ASI and other agencies as the physical survey could only be done in parts.

7. It is relevant to point out that the Supreme Court in *Civil Appeal 699/2005* titled *S.N. Bhardwaj v. Archeological Survey of India* vide its judgment dated 4th February, 2016 has recognised unequivocally the identity of Tughlakabad Fort and the requirement to ensure that the said Fort is preserved as a '*protected monument*'. The directions given by the Supreme Court are as under:-

“11. *On the basis of events narrated above, the position that emerges in the following:*

“(a) **Tughlakabad Fort is a protected monument and this Court has held in these proceedings that protection and preservation of the said monument**

is imperative.

(b) Though stay order was granted by the High Court in the writ petition, which is now registered as Transfer Case (Civil) No. 7 of 2003, the said stay order was vacated by this Court long ago.

(c) On October 14, 2011, order was passed directing the ASI to file an affidavit indicating that on the basis of the aerial survey conducted in the year 1993, how many people were living in the protected monument of Tughlakabad Fort. This direction is yet to be complied with.

(d) Repeated orders are passed to the effect that there would not be any further construction in the protected monument, i.e. Tughlakabad Fort. The effect of the said orders is that ASI is to take an action for removal of unauthorised construction as also the encroachers from the public land. There are even orders passed by this Court that for carrying out this direction, the ASI is to be provided with necessary police protection as well as any other cooperation that is needed from the National Capital Territory of Delhi or any other authority.

8. Thereafter, the Id. Division Bench of this Court in ***W.P.(C) 1475/2001*** titled ***S.N. Bhardwaj v. Archeological Survey of India*** had formed a Committee consisting of the Vice-Chairman DDA and other authorities including the ASI for carrying out a survey of the structures around the Fort area vide order dated 17th May, 2017. In respect thereof, this Court in order dated 25th January, 2023 in ***W.P.(C) 947/2023 & W.P.(C) 955/2023*** had observed as under:-

*“8. In ***W.P.(C) 1475/2001*** referred to above, the Id. Division Bench vide order dated 17th May, 2017 formed a Committee consisting of the Vice-Chairman, DDA and other authorities including the ASI for*

carrying out the survey of the structures around the Fort area. The said Committee had to meet on 5th June 2017 and thereafter. This Court has no option but to notice that repeated orders of the ld. Division Bench for demarcation have been passed but there appears to be no response forthcoming from the Committee formed by the Court. No status report also appears to have been filed by DDA.

9. *Be that as it may, insofar as the aerial survey, which has been handed over to Court today is concerned, it shows the location of the Petitioners' premises within the Tughlaqabad Fort. However, as per the Petitioners, who rely on Google maps, the premises is 750 metres from the Tughlaqabad Fort."*

9. In those circumstances, interim protection was not granted by the Court in those writ petitions and the matter was directed to be listed along with ***Writ Petition 1475/2001*** titled ***S.N. Bhardwaj Advocate v. Archeological Survey of India*** on 27th January, 2023.

10. Ld. counsel for the Respondents submit that the said writ petitions have been withdrawn by the said Petitioners, before the Division Bench, on 30th January, 2023.

11. Today, ld. Sr. counsel for the Petitioner submits that unlike in ***W.P.(C) 947/2023*** & ***W.P.(C) 955/2023***, where the challenge was to the demolition itself, the Petitioner in the present case is only praying for rehabilitation. He further submits that it is not in dispute that Tughlakabad Fort has to be treated as a protected monument. It is his submission that the GNCTD along with DUSIB and DDA may create a rehabilitation plan and place the same before this Court so that the phased movement of all the residents in the Tughlakabad Fort area can be commenced.

12. Ld. counsel appearing for the GNCTD submits that he has instructions

to submit that the GNCTD intends to rehabilitate and provide alternate accommodation to the residents of the Tughlakabad Fort area with the help of land owning agencies.

13. Accordingly, let a meeting be called by the Chief Secretary of GNCTD with the senior officials from the DDA, DUSIB, MCD, ASI, Delhi Police as also the concerned District Magistrate on 20th February, 2023.

14. In the said meeting, a proper comprehensive plan for the resettlement/rehabilitation of the residents of Tughlakabad Fort area be discussed and the same be placed on record within 4 weeks.

15. It is made clear that the authorities concerned shall ensure that the plan is put up before this Court without any delay, failing which, the Court would have no option but to implement the judgment passed by the Id. Supreme Court in *Civil Appeal No. 699/2005*.

16. Let MCD be made a party in this writ petition.

17. List on 10th March, 2023.

PRATHIBA M. SINGH, J.

FEBRUARY 1, 2023
MR/sk