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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 04.09.2025

+ W.P.(C) 4906/2023 and CM APPL.18954/2023

YUSUF BAIG

.....Petitioner

Through: Mr. Javed Ahmad, Mr. Firasat Ali,
Mr. Wasim Ahmad and Ms. Nazreen
Ansari, Advs.

versus

GOVERNMENT OF N.C.T OF DELHI & ORS.

.....Respondents

Through: Mr. Jitesh Vikram Srivastava, SPC,
Mr. Prajesh Vikram Srivastava, Adv.
for R-1.Mr. Sameer Vashisht, SC and
Ms. Vaishali Gupta, Panel Counsel,
Civil, GNCTD.Mr. Tushar Sannu, SC and Ms. Aqsa,
Adv. for DWB.Ms. Saumya Tandon, CGSC for UOI.
Ms. Monika Arora, SC, Ms. Anamika
Thakur, Mr. Subhrodeep Saha and
Mr. Prabhat Kumar, Advs. for MCD.+ CONT.CAS(C) 878/2023

YUSUF BAIG

.....Petitioner

Through: Mr. Javed Ahmad, Mr. Firasat Ali,
Mr. Wasim Ahmad and Ms. Nazreen
Ansari, Advs.

versus

RAMESHWAR DAYAL MEENA & ORS.

.....Respondents

Through: Mr. Tushar Sannu, SC and Ms. Aqsa,
Adv. for DWB.

Ms. Monika Arora, SC, Ms. Anamika



Thakur, Mr. Subhrodeep Saha and
Mr. Prabhat Kumar, Advs. for MCD.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

W.P.(C) 4906/2023

1. The present petition has been filed by the petitioner, who claims to be the caretaker of Ancient Dargah Hazrat Bhoore Shah at Amir Khusro Park (opposite Masjid Chakker Wali, Neela Gumbad, Hazrat Nizzumuddin Mathura Road), New Delhi.
2. The present petition, as filed, is premised on the averment that the respondents have demolished the aforesaid structure on 01.04.2023 without giving any notice to the petitioner. The prayer, as framed in the petition, *inter-alia*, seeks compensation of Rs.10 Lakhs damages.
3. When the writ petition came up for consideration on 19.04.2023, this Court, ordered an inspection of the premises by the representatives of the following:
 - Public Works Department.
 - Municipal Corporation of Delhi.
 - District Magistrate South-East.
 - Land & Building Office (L&DO)
 - One representative on behalf of the Petitioner.
 - Delhi Waqf Board
4. Pursuant thereto, a 'compiled inspection report' came to be filed on 06.07.2023. The same records the stand of the concerned authorities as



under:

*“A. **Public Works Department** provided the inspection report vide No.23(5)/PWD/SER-1/2023-24/1294 dated 20.06.2023. Copy annexed as **Annexure-A**. The main contents of their report is as under:*

“From the measurements, it is found out that the Dargah Hazrat Bhoore Shah comes in Right of Way of Mathura Road and it is an encroachment over public land. It is also pertinent to mention here that, Land & Development Department is the actual custodian of the land and handed over to PWD for maintenance purpose only.

*B. **Sub-Divisional Magistrate / Tehsildar, South-East, Defence Colony** provided their inspection report dated 19.05.2023, which is annexed as **Annexure-B**. The main contents of their report is as under:*

“As per record, the land owning agency of the area is L&DO and the said Dargah is on the footpath of the road. The road was constructed and maintained by Public Works Department and the Footpath is also maintained by PWD. The Footpath is elevated from the road by about 1 Foot. Total 07 graves/mazars were found above the surface on the footpath covering a distance of about 15 meters, extending upto the edge of the footpath.”

*C. **Land & Development Office** provide their report vide letter/File No.Eng.15-7 (8680)/2023/31 dated 24.05.2023. Copy annexed as Annexure-C. the main contents of their report is as under:*

“The Grave/Dargah falls under the right of way (150 feet wide) which is under care and maintenance of Public Works Department, GNCT of Delhi. The land adjacent to the ROW having triangular area of 12.8 acres for the development as Green has already been transferred to DDA (Delhi Development Authority) vide letter dated 01.05.1972. Further, no land has been allotted in the name of Mazar/Dargah/Grave at the location by the Land and Development office.”

*D. **Delhi Waqf Board** provided their report vide No.F15/R&P Section/DWB/2023/615 dated 07.06.2023. Copy annexed as Annexure-D. The main contents of their report is as under:*

“During the joint inspection, the PWD claimed 75 meters of land from the centre of the road that includes the alleged footpath and a substantial part of the Dargah in question.

Record of the Delhi Waqf Board:



The Dargah in question is a duly notified Waqf Property in Delhi Administration's Official Gazette notification dated 30.12.1976 at page no. 34 Serial No. 17. As per the Gazette Notification, the Dargah has a total 1000 Sq. Yards of land attached to it. The between the boundary wall and the Graves in question is found to be 684.18 Sq. Yards upon measurements.

The old record of Waqf Property in question clearly shows that there was no encroachment by the said Dargah and the impugned demolition has been carried out unlawfully, causing serious damage to the Waqf Property in question."

5. Learned counsel for the Government of National Capital Territory of Delhi (GNCTD) has emphasised that the status of the structure referred to in the petition has been examined at length by the Religious Committee constituted *vide* Circular dated 05.05.2014 of Home (Police-II) Department, Government of NCT of Delhi. In terms thereof, the committee has a wide mandate to "deal with demolition of religious structure on public land which has the nature of encroachments". It is pointed out that *vide* minutes of the meeting of the Religious Committee held on 17.07.2023, while taking into account the stand of the PWD, L&DO, Delhi Police, Delhi Waqf Board, it was observed as under:

"9. The Committee perused the Gazette dated 30.12.1976, as per which Dargah Syed Bhoorey Shah is above 100 years old. However, the qabars in question are more than one. And therefore it begs a question as to how there are several mazars in the name of one person namely, Syed Bhoorey Shah. Both L&DO and PWD have clearly stated that the structures are unauthorized. And all the agencies namely L&DO, PWD, Delhi Police reported that the structures/qabars are hindrance to the traffic. Any assembly there would create hindrance to traffic. In fact, even the Waqf Board representative acknowledged the hindrance to pedestrians/traffic. Of course, he claimed it to be the Dargah of Bhoorey Shah and a Waqf property. The Committee noted that the structures are qabars without boundary wall and that a person would not be freely able to walk on the footpath near the site/qabars and he may have to do skip jumping to negotiate the obstruction. After going through all the documents and photographs of the structure placed before the religious



committee by Land Owning Agency and after taking into the consideration the submission of L&DO, local area police, Special Branch and Delhi Waqf Board, the committee noted that structures are certainly a hindrance to the movement of pedestrians.

10. The Committee therefore, recommends that the qabars/mazars in question may be relocated to another suitable place as they are bang on the footpath. It is not at all advisable that pedestrian may have to jump over the qabars to walk on the footpath. Further, the committee is also of the opinion that for free flow of movement, the PWD structures near the flyover are also required to be removed. The Committee therefore, also recommends that PWD may also clear its structures near flyover so as to provide a proper onward connect for the pedestrian traffic. However, the action for the shifting of the structures i.e. qabars/mazars may be taken by PWD only in terms of the decision of Hon'ble Delhi High Court on the W.P.(C) 4906/2023, Yusuf Baig Vs. Government of NCT of Delhi as there is interim order dated 19.04.2023 of Hon'ble Delhi High Court. The PWD in coordination with L&DO and other govt. agencies may take further necessary action."

6. Reliance has been placed on the order of the Supreme Court dated 29.09.2009 passed in SLP (C) 8519/2006, wherein the Court states that, *"In respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible"*.

7. Reliance has also been placed on the judgment of the this Court in ***Devendra Kumar and Others v. State (NCT of Delhi) and Others***, 2023 SCC OnLine Del 1012 wherein it is observed as under –

"20. In the present case too, this Court is of the view that the larger public interest would outweigh the concerns raised by both the places of worship i.e. Mandir as also the Masjid. There is no gainsaying that places of worship cannot be encroaching public land and hindering developmental activities meant for the larger segment of the public. In order to make the said pedestrian pathway uniform and so as to not inconvenience the pedestrians on the busy stretch of the road which also has access to the Delhi Metro Station, this Court is of the opinion that the PWD ought to be permitted to make the pedestrian pathway uniform....."



8. Reliance has also been placed on the judgment of the Supreme Court in *In Re: Directions in the matter of demolition of structures, 2024 INSC 866*, whereby while issuing detailed guidelines as regards demolition of unauthorized structures, it has been clarified as under:

“91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.”

9. Written submissions have also been filed on behalf of the respondent no.3 / Delhi Waqf Board (DWB) where the stand taken by the DWB is in stark contrast to its stand reflected in the earlier inspection report submitted pursuant to order dated 19.04.2023, passed by this Court.

10. Apart from questioning the locus and *bonafides* of the petitioner, it is now stated as under:

“9. That as regard the issue of demolition of some structures in the year 2023, it is respectfully submitted that there is no record available with the Delhi Waqf Board indicating the existence of any authorized rooms or permanent structures at the site in question.

10. That in view of the above it prima facie appears that the demolished structures were unauthorized constructions, carried out without any legal sanction or approval from the Delhi Waqf Board or any competent authority. The Delhi Waqf Board cannot take responsibility for any unauthorized encroachments undertaken without its consent or knowledge.

11. That the Religious Committee formed by Govt of Delhi has considered the relocation/ shifting of graves from the public space/ footpath after due deliberations. The committee vide its minutes dated 17.07.2023, has recommended the relocation of qabars/ mazars obstructing the footpath, emphasizing that road users/ pedestrians should not be required to jump over graves while walking on a public footpath. The Waqf Board does not dispute the sanctity of these recommendations, duly approved by Hon'ble Lt. Governor, which are fair, balanced, and reflect a sensitive yet practical approach.



12. That the Delhi Waqf Board states that in the absence of map of the mazaar in the notification showing its location vis-a-vis the Mathura Road and foot path, it is unable to dispel/reject the claim of PWD regarding encroachment of the Mathura Road and its foot path. It is worth mentioning that the area of mazaar, as mentioned in the notification, if it were accepted and accommodated in the Mathura Road for the sake of argument, would lead to an illogical situation in as much as it will go on to block the long existing bituminous part of Mathura Road. It is significant to note that in the meeting of Religious Committee held on 17.07.2023, the representative of L&DO assert that the road's "right of way" includes both the bituminous road and footpath, and that the qabars (tombs/ shrines) fall within this right of way. L&DO is of the firm view that the land belongs to L&DO (given to PWD) and that the qabars / mazaars are falling on the right of way. Therefore, it is certain that the land for road and its right of way was transferred to PWD much earlier than the notification for Waqf, which was issued later in the year 1976. The very nature of description in notification "Dargah Syed Bhoore Shah opposite ma-jid chakkar wali, Mathura Road, Delhi, area 1000 sq yard." also shows that mazaar cannot be on the right of way.

13.

C. The Board does not have foolproof record to contest the recommendations of Religious Committee which, vide its minutes dated 17.07.2023, recommended the relocation of qabars/ mazars obstructing the footpath after due deliberations. The Waqf board finds that the said recommendations of Religious Committee duly approved by the Hon'ble Lt. Governor with respect to the obstruction on footpath, being faced by pedestrians, is fair, balanced, and reflect a sensitive yet practical approach.

D. That in continuation to the demolition of unauthorized structures, including rooms and encroachments in the year 2023, there is sufficient and suitable land in immediate proximity to accommodate respectful relocation of qabars/mazars that are obstructing foot path of Mathma Road in accordance with the decision of religious committee."

11. In view of the categorical stand taken by the respondents, including the DWB, there appears lack of merit in the contentions made on behalf of the petitioner. However, this Court notes that in an affidavit filed by the petitioner on 15.04.2025, it has been stated as under:



“5. That pedestrians may easily walk through pavement, starting from Neela Gumbad to the end of the pavement and there is no hindrance or block caused by Dargah of Hazrat Bhure Shah. It is worth mentioning that enough wide pavement is available for pedestrian's alongside Dargah and pedestrians may use the footpath easily to the last point without jumping or facing the block/hindrance in the form of Dargah Bhure Shah. Hence PWD has wrongly and falsely asserted that said Dargah is block/ hindrance towards the use of pavement. Photographs (Document -A) attached with the reply/additional affidavit will candidly reveal that enough wide and clear way for the use of pedestrian is available alongside Dargah and no question arises of jumping the graves/Dargah while walking on footpath.

6. That said Dargah has been in existence for 500 years approximately, hence no question arises of encroachment upon public land/footpath.

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8. That the existence of Dargah Bhure Shah cannot be termed as encroachment or unauthorised construction upon the public land as the same has been in existence for approximately 500 years and out of the purview of religious committee of Delhi government.

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xxx

14. That in the meeting of religious committee held on 17 July 2023 officials of PWD has wrongly informed that graves have been constructed upon the footpath along Mathura Road and are creating hindrance to smooth movement of pedestrian. It is submitted that there is a clear way for the pedestrian along with graves, and there is no hindrance towards the smooth movement of pedestrian on the footpath. It is worth mentioning that either PWD or police officials have not received any complaint regarding encroachment upon footpath or hindrance to the smooth movement of pedestrians upon footpath. No material regarding complaints received by PWD or police officials have been placed on record in the meeting of the religious commit.

15. That representatives of the L&DO also wrongly informed in the meeting of the religious committee that L&DO is the land owning agency and Graves are falling on in the right to way and creating hindrance towards the movement. L&DO has failed to produce any record relating to ownership of the land where shrine/Dargah exists. Whereas petitioner has placed on record copy of official gazette where in Dargah has been shown as notified wakf property of more than hundred years old, having an area approximately 1000 square yards.”



12. In the circumstances, this Court remands the matter back to the Religious Committee to consider the matter in the light of the intervening developments in the aftermath of its meeting held on 17.07.2023 and take a considered decision in the matter. The Religious Committee shall consider the stand/version of the authorities (including the Delhi Waqf Board) as also the stand of the petitioner as referred to hereinabove.

13. The petition is disposed of in the above terms. The pending application also stands disposed of.

CONT.CAS(C) 878/2023

14. The contempt petition alleges non-compliance of the order dated 19.04.2023, passed by this Court.

15. The petition has been filed on the premise that the alleged dargah in question has been demolished. In paragraph-6 of the petition it has been averred as under:

“6. Thereafter the petitioner filed the WP(C) 4906/2023 before Hon’ble High court on 17.04.2023 and the Hon’ble High court pleased to passed an order on 19.04.2023 to maintain status quo till the further order. On 27.05.2023. That the contemnor demolished the remains at Dargah despite the court’s order the Contemnor wilfully disobeyed the order.”

16. However, in the affidavit filed on behalf of the petitioner on 15.04.2025 in W.P.(C) 4906/2023, it has been stated as under:

“17. That apart from Main Dargah of Syed Bhure Shah, other graves exist relating to the family members of Syed Bhure Shah and all these graves are old and ancient and have not been erected or constructed upon footpath maintained or owned by PWD or L&DO.

xxx

xxx

xxx

20.



It is worth mentioning that land and development office has admitted that adjacent land which is. triangular graveyard is owned by land and development office and it has not been claimed that land where shrine exist is owned by land and development office. It is worth mentioning that triangular graveyard is separate property, which is segregated by the land in question through wide drain.”

17. In the circumstances, considering the stand of the petitioner, the dargah continues to exist, and also considering that the Court has remanded the matter back to the Religious Committee for fresh consideration, no order/s are required to be passed at this stage in these proceedings.

18. The present petition is, consequently, disposed of.

SACHIN DATTA, J

SEPTEMBER 04, 2025/cl, sv