

Govt. of India
National Commission for Minorities
Lok Nayak Bhawan, Khan Market, New Delhi-3

Petitioner: Shri Zahrul Hasan

Respondent: 1. Delhi Police
2. NDMC/DDA
3. Delhi Waqf Board
4. Land & Building Dep't. GNCT, Delhi

File No. M/DL/30/0074/11

The Bench of the NCM meeting on 02.11.2011 consisted of:

- i. Shri Wajahat Habibullah, Chairperson
 - ii. Smt. Syeda Imam, Member
 - iii. Shri K.N. Daruwalla, Member
2. Joint Secretary, Director, Legal Officer and Shri Mehmood Pracha, Advocate assisted the bench.

Brief record of hearing held in the Conference Room of the National Commission for Minorities held on 02.11.2011 at 11.00 A.M.

Present:

- I. (1) Shri Zahrul Hasan, Manager, Badi Karbala–Complainant, (2) Shri Bahadur Abbas Naqvi, Wakf Secretary, (3) Shri M.A. Mirza and (4) Shri Nayyer Ali, Anjuman-e-Haideri.
 - II. (i) Ms. Archana Arora, Chairperson/ Shri Santosh Vaidya, Secretary, NDMC.
(ii) Shri Surendra Kumar, Addl. DCP1-South Delhi/ Shri K.P. Malik, SHO, P.S. Lodi Colony.
(iii) Shri H. Rajesh Prasad, Commissioner, (LM), Shri Ajay Kumar Bisht, Director (LM) HQ, DDA.
(iv) Shri Azimul Haque, CEO, Shri Mohammed Arif, SO, Delhi Wakf Board.
(v) Shri R.R. Singh and Shri S.K. Srivastava, AS Commissioner, L&B Department, GNCT of Delhi.
3. Shri G.S. Patnaik, Vice Chairman, Delhi Development Authority vide letter dated 01.11.2011 requested for exemption from personal appearance in view of some pre-scheduled meetings. The request was acceded to by the Chairman. The Land and Building Department, GNCT of Delhi vide letter dated 31.10.2011 informed the NCM that the Land and Building Department is not involved in the

litigation reported by the Delhi Waqf Board, as it involved a dispute between residents of BK Dutt Colony and Anjuman-e-Haideri on land administered by DDA/NDMC.

4. Complainant Shri Zahrul Hasan submitted that on 24.02.2011 while he was monitoring and supervising the maintenance work of cleaning and periodic repair of graves at the graveyard at Badi Karbala, Shri K.P. Malik, SHO along with other police personnel came to the graveyard and forced him to stop the work. He also submitted that he was severely beaten by Shri K.P. Malik SHO and was subsequently picked up by the Police and taken to Police Station in the Police Van. That there also he was given a severe beating rendering him unconscious. Consequently, he had to undergo surgery and prolonged medical treatment. Shri Abbas Naqvi, Wakf Secretary, Anjuman-e-Haideri submitted that the MLC report submitted by the police to the High Court Delhi, was manipulated by the police. A copy of the report of the Jai Prakash Narain Apex Trauma Centre of the AIIMS was submitted to the Commission and has been taken on record. Shri Abbas Naqvi also submitted that on the traditional road leading to Karbala about 30' wide public road has been encroached by one Shri Nirmal Kant Ahuja, who is running an unauthorized wood furniture factory with about 100 employees, behind the Kanati Masjid with the tacit support of the police.

5. Shri Santosh Vaidya, Secretary, NDMC submitted that in compliance with an order passed by the Hon'ble Delhi High Court a joint inspection was carried out along with the DDA and some 'temporary' encroachment was found in the shape of furniture shop/workshop and the same had been identified on Site No 5 and partly on site No 7. The DDA has decided to remove the encroachment and the removal programme is fixed for 11.11.20011. It was further submitted that as per master plan of the DDA there is no approved road leading to the Karbala. Site No 6, alleged to be an encroachment by the petitioner is in fact not shown as road in the master plan. Sites nos. 5, 6, & 7 are the property of DDA. A copy of a map showing the location Plan of DDA at Aliganj, the neighbourhood in question, was submitted to the Commission, on which these sites are marked, and has been taken on record. As per the master plan the proposed road is of nine meters length and the entry to the Qabristan is through Jor Bagh. Shri Vaidya also submitted that under the NDMC Rules and Regulations heritage property

under the NDMC Area is divided into three categories. In category- I, no addition, alteration is allowed, in category -II prior permission is required from NDMC and Heritage Conservation Council of the Supreme Court for any repair/alteration and in category-III permission is not required from NDMC. The property in dispute falls in category –II and as such for any repair/addition/alteration prior permission is mandatory.

6. Shri H. Rajesh Prasad, Commissioner (LM) DDA submitted that the land in question has been transferred to DDA from the Ministry of Rehabilitation on 2.9.1982 and the possession was taken on 5th April 1984 as site no. 5, 6 & 7. It was also submitted that a writ petition filed by the Anjuman-e-Haideri is pending before the Hon'ble High Court. In compliance with an order dated 28.9.2011, a joint inspection was carried out on 17.10.2011 under the supervision of Director (Enforcement), NDMC. The representatives of the DDA also participated in the inspection. He confirmed that during the inspection, some encroachment was found on the land identified at site no.5 and partly on site no.7. The DDA has decided to remove the encroachment and the encroachment removal programme is fixed on 11.11.2011.

7. Shri Surendra Kumar, Addl. DCP submitted that in compliance to the order passed by the Hon'ble High Court on the prayer of Anjuman-e-Haideri for an investigation by the Delhi Police Commissioner into the incident, a vigilance inquiry was conducted by the ACP Vigilance and the same has already been filed in the Court. He further submitted that in the enquiry report, the allegation regarding severe beating by the police of the complainant has not been substantiated. He was discharged by the Hospital on the same day. That he had been picked up by the police along with some laborers as they were raising a platform which, according to the SHO was prohibited by the NDMC rules. That the police was only complying with orders. Shri Abbas Naqvi in his rejoinder stated that the police have registered several FIRs against the complainant as well as against the Management only to harass them. He also submitted that the complainant Shri Zahrul Hasan has filed an affidavit inter alia stating that he is the aggrieved person and has nothing to do with the application filed by the Anjuman-e-Haideri before the High Court, and the same will be withdrawn by

them insofar as it applies to complainant. The police in their reply submitted that the FIR was registered on the complaints of NDMC and Shri Waris Khan who is running a Nursery.

8. Shri Azimul Haque, CEO, Delhi Wakf Board submitted that the Wakf Board is the owner of all the Wakf properties but the Anjuman to whom the management is delegated neither informed them about the repair/alteration/addition in the Wakf property nor were they informed the present incident.

9. Shri Abbas Naqvi submitted that the police are overtly partisan and conniving with some local residents who have encroached upon the roads leading to the Karbala. Shri Vaidya, Secretary, NDMC submitted that the Ministry of Urban Development has constituted task force to formulate policy with regard to rehabilitation of refugee colonies. However, the report has not yet been submitted by the committee. He also submitted that so far as encroachment on the L&DO land as alleged by Shri Abbas Naqvi is concerned, this was not part of the WP before the High Court and thus the subject of the spot inspection. However, the NDMC will carry out the measurement and the encroached portion, if any, will be removed.

Discussion:

10. The Commission after hearing the parties was of the view that so far as the rights of various parties in the existing properties are concerned the issue is pending in the Court and the NCM cannot interfere under such circumstances. With regard to the illegal encroachment this stands established, and a date for its removal fixed. As far as the submission with regard to traditional route of the religious ceremonies is concerned, the Commission was of the view that custom and usage have legal sanction and as such the police as well as NDMC should keep this in mind while taking any decision. However, the Commission is also of the view that on the complaint of torture and beating given by the police to the complainant, an application has been filed by the Anjuman-e-Haideri, and the police in compliance with the order passed by the Court with regard to the very application has filed the investigation report; the Commission's next step in this

regard can only follow when the Hon'ble Court will pass order if any, in view of the affidavit submitted by Shri Zahrul Hasan that he is not party to that petition.

Decision notice:

11 The Commission recommends as follows

- (i) that the NDMC file its report within 15 days of the receipt of the recommendations, with regard to encroachment on the public road of the L & DO.
- (ii) The Management of Anjuman-e-Haideri will keep the Delhi Wakf Board informed of any repair, addition or alteration proposed, and will apply for permission from NDMC as required under the bye laws of the NDMC to avoid any future interference.
- (iii) On its part, if the particular project to be undertaken by the Anjuman does not fall under any of the categories specified in the bye laws, NDMC will simply clear these accordingly. In other cases a considered decision will be taken, as it is agreed that it is in the interest of all parties that the heritage be conserved at its best.
- (iv) The local police administration take care to avoid the blemish of animus against a section of the community, which as has become apparent in the processing of this case, it unfortunately carries.

12. The Commission will revisit the question of injuries allegedly inflicted on complainant Shri Zahrul Hasan only after any decision, if any, of the Hon'ble Court on the issue

Sd/-
(Wajahat Habibullah)
Chairperson

Sd/-
(K.N. Daruwalla)
Member

Sd/-
(Syeda Imam)
Member