

IN THE HIGH COURT OF DELHI AT NEW DELHI

1. CCP No.168/2001

JAMIA MILLIA ISLAMIA

..... Petitioner

Through Mr. B.B. Sawhney,
Sr. Adv. with Mr. M.A.
Siddiqui, Adv.

versus

MOHD. HAROON CHAUDHARY

..... Respondents

Through Mr. Ravinder Sethi,
Sr. Adv. with Mr. R.K.
Ghawana & Mr. Puneet
Sharma, Advs.

W I T H

2. CCP No.1731/2006

KALLUDDIN

...Petitioner through
Mr.Bahar U Barqi, Adv.

versus

MUSHEER-UL-HASAN & ORS.

...Respondents through
Mr. B.B. Sawhney, Sr. Adv.
with Mr. M.A. Siddiqui, Adv.

Date of Decision : May 31, 2007

* CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE J.P. SINGH

1. Whether the Reporters of local papers
may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the
Digest? No

J U D G M E N T

: VIKRAMAJIT SEN, J

CCP No.168/2001

1. This Contempt Petition, filed by Jamia Millia Islamia (JMI), has been pending since 20.4.2001. The allegation is that Mohd. Haroon Chaudhary, resident of B-46, Ghaffar Manzil-1, Jamia Nagar, New Delhi-110 025 should be punished for committing contempt of the Orders passed by this Court on 5.9.2000 in CW 5046/2000. It is remarkable that the Contempt Petition states that the said Order has been annexed as Annexure-P1, whereas the Order that has been filed as Annexure P-1 is dated 12.12.2000 passed by Vijender Jain, J. Be that as it may, on 5.9.2000, Manmohan Sarin, J. had ordered - "In the meanwhile status quo as to possession be maintained".

2. On 8.1.2004 JMI had filed photographs of the area which when compared to the photographs filed by them on 17.5.2007, show that construction has indeed been carried out. Mr. Sawhney, learned Senior Counsel for the JMI, has inter alia relied on Sections 36 and 37 of the Wakf Act to contend that an unregistered Wakf Deed has no legal efficacy. He has also taken us through various other documents, in the nature of complaints

written by the alleged contemnors, on 30.4.2000, 4.5.2000, 26.5.2000, 20.6.2000 to the Police Authorities, and a letter dated 26.6.2000 to the Vice-Chancellor of the JMI. All these letters speak of a Masjid (Mosque), named as Madina Masjid, then existing in the area. Mr. Sawhney's contention is that these communications have been engineered in anticipation of the acquisition Notifications which eventually came to be published on 13.7.2000.

3. On behalf of the alleged contemnors, Mr. Sethi, learned Senior Counsel, has submitted that Khasra Nos.35 admeasures 7 Bigha, 12 Biswa corresponding to 7600 square yards approximately. It is his submission that a challenge has been laid to the acquisition of only 2250 square yards out of this Khasra No. in CW 5046/2000. It is his contention that the said Writ Petition 5046/2000 did not relate to or concern the land on which the Masjid has been existing; neither the Wakf established by Deed dated 28.1.1992 mentioned above nor the Mutawalli have challenged the acquisition of the land. In contempt proceedings we need not enter upon the controversy of whether the Wakf has been properly constituted under the Wakf Act. Mr. Sethi's contention is that since the Wakf or the Mutawalli or the

Managing Committee had not approached the Court in CW 5046/2000, the direction to maintain status quo did not enure to their benefits and, therefore, was not applicable to the alleged contemnors. It is explained that even the Order dated 12.12.2000, passed by Vijender Jain, J., therefore, has no bearing to the alleged contemnors. Mr. Sethi has also contended that an Award has not been announced till date and the acquisition proceedings remain inchoate. JMI is, therefore, only a prospective beneficiary and cannot espouse the grievance of the appropriate Government, which has till date not taken possession of the land sought to be acquired.

4. We are in agreement with the contention of Mr. Sethi that as on date JMI has no locus standi to complain of a violation of any orders passed by this Court. Secondly, it is not clear whether the Wakf or the Managing Committee of the Madina Masjid had approached this Court in CW 5046/2000. If only a portion of Khasra No.35 has been acquired, it would not be established whether the land on which the Mosque exists is covered by those acquisition proceedings. Thirdly, we are unable to disregard the communications and correspondence emanating

from the alleged contemnors prior to both the Notifications under Section 4 as well as the filing of CW 5046/2000.

5. In these circumstances the Notices issued to alleged contemnor, Mohd. Haroon Chaudhary are recalled. Contempt Petition No.168 of 2001 is dismissed.

6. Nothing said herein will tantamount to expression of opinion on the merits of the main case.

CCP No.1731/2006

7. This contempt petition must also, in our considered view, meet the same fate. The complainant appears to be one out of many others who is in possession of a parcel of land in Khasra Nos. 34, 35 and 46. An Award being No. 95/83-84 dated 28.2.1984 in respect of five Khasras which, in addition to the above also include Khasra Nos. 36 and 37. Possession of the portions of the land appears to have been taken over and handed over to the Jamia Millia Islamia (JMI) on 14.5.1999. The writ petition itself states that the acquisition proceedings have reached the stage of Sections 7 and 8 of the Land Acquisition Act. Eviction orders have been passed under the Public Premises

(Eviction of Unauthorised Occupants) Act in respect of four structures that were in Khasra Nos. 36 and 37 with which W.P. (C) 5046 of 2000 titled Mohd. Haroon Chaudhary -vs- Union of India is not concerned. Therefore, prima facie, there is no possibility that demolition of structures complained of in these proceedings were within the contemplation of the Court when the Orders dated 5.9.2000 and 12.12.2000 came to be passed. Mr. Bahar U Barqi, learned counsel appearing on behalf of Complainant has sought to save the Petitioner by contending that no demarcation had been carried out even in respect of the said Khasra Number. If this is so the entire situation becomes nebulous and uncertain that entertaining contempt proceedings would not be appropriate. For these reasons notice issued to the alleged contemnors are recalled. The contempt petition No. 1731 of 2006 is dismissed.

8. Nothing said herein will tantamount to expression of opinion on the merits of the main case.

(VIKRAMAJIT SEN)
JUDGE

May 31, 2007
n/tp

(J.P. SINGH)
JUDGE