

AFR**Court No. - 4****Case :-** MISC. BENCH No. - 13474 of 2016**Petitioner :-** Lavkush & Ors.**Respondent :-** State Of U.P. Thru. Secy. Dept. Of Urban Devp. & Ors.**Counsel for Petitioner :-** Mohd. Kashif Rafi, M.A. Siddiqui**Counsel for Respondent :-** C.S.C., Shailendra Singh Chauhan**Hon'ble Sudhir Agarwal, J.****Hon'ble Rakesh Srivastava, J.**

1. Heard Sri M.A. Siddiqui, Advocate, for petitioners, learned Standing Counsel for State-respondents and Sri Savitra Vardhan Singh, Advocate for respondent 2-Nagar Nigam.

2. The grievance of petitioners, who are 19 in numbers and all are residents of Dauda Kheda, Police Station Para, Lucknow is that there is a public pathway connecting houses of petitioners to R.D.S.O.-Rajajipuram Road falling in Village/Mohalla Dauda Kheda. Respondents 6 and 7 are encroaching upon a public pathway by raising construction of a religious structure (Temple) and attempting to encroach upon the public land. They have already constructed a *Chabutara* creating obstruction in smooth passage on the said public pathway and despite several complaints to local and District authorities, none has paid any heed to said grievance of petitioners. Photographs showing partial construction raised on pathway and construction material kept on public pathway for raising further constructions have also been filed.

3. Sri Siddiqui, learned counsel for petitioners, in a very spirited manner advanced his arguments that people of this Country are basically simple and have faith in one or the other religion. They are normally soft whenever any religious activity is undertaken, even if it causes inconvenience of any kind to them. Taking advantage of such religious sentiments normally shown by majority of people, some scrupulous people do not hesitate in gross misuse by proceeding to

encroach upon public land causing obstruction in smooth movement of public. Many a times, we have seen that in the garb of constructing religious structures, like Temple, *Mazar*, *Samadhi*, Mosque, Gurudwara, Church etc., public roads (including highways), streets, pathways etc. are encroached upon, obstructing or creating hindrance in smooth movement of public including vehicular traffic and once such structure is raised, due to fear of adverse consequences, people normally avoid to complain, and used to adjust such misuse. It is submitted by learned counsel for petitioners that authorities in power, who under the statute, are responsible to prevent such encroachment and illegal constructions also play soft and do not take or hesitate in taking action for preventing such activities and this is causing mushroom growth of such structures by encroaching upon public roads (including highways), streets, pathways etc. He said that though these activities, one can find in other places belong to public where such constructions are not permissible like Public parks, play grounds etc., but for the purpose of present writ petition, he is confining his argument in respect to such encroachments, made or sought to be made or attempted to be made, on public roads (including highways), streets, pathways, lanes, bye-lanes etc.

4. When called upon, learned Standing Counsel stated that such encroachment and illegal constructions, neither in law nor otherwise can be allowed, but fairly stated that looking to religious sentiments of people, authorities find it difficult to take actual action and, therefore, this Court may issue appropriate directions which may help the authorities to remove such constructions making encroachment on public roads (including highways), streets and pathways etc. and also prevent the same in future.

5. Looking to the aforesaid submissions as also the nature of order we propose to pass, we do not find any necessity to issue notice to respondents 6 and 7.

6. There is no fundamental or legal right to encroach upon a public road (including highway), street etc. and raise construction of any kind thereon. These unauthorised and illegal activities cause hindrance and interruption in free flow and movement of traffic including foot walkers. Every citizen has a fundamental right of movement and this cannot be allowed to be infringed by a few violators in public and apathy of State authorities. In our view, those who create such obstructions as also those who perpetuate it by taking care/ managing such structures and also those who fail to take any action in law, all deserve to be taken to task and made responsible and accountable for their respective misdeeds.

7. Looking to the wider perspective of the issue and widespread tendency of such encroachment in the name of religion, faith, sect etc., we find that the State Government and Officials must be asked to act and show response in an effective manner.

8. We, therefore, dispose of this writ petition with the following directions:

(i) State of U.P. through Chief Secretary, U.P. is directed to issue a general direction to all Collectors and Senior Superintendent of Police/Superintendent of Police including the Officers responsible for maintenance of roads (including highways) in State of U.P. to ensure that no religious structure in any form, whatsoever, shall be allowed/ permitted to be raised on public road (including highways), street, pathway, lane etc. including sideways which is part and parcel of road (including highways) etc. and belong to State.

(ii) If any such structure is existing and has been raised in the last five years, to be more precise on and after 01.01.2011, the same shall be removed forthwith and a compliance report shall be submitted by Collectors etc. of concerned Districts to Principal Secretary/Secretary of concerned department, who

shall submit a comprehensive report to the Chief Secretary within next two months.

(iii) If any such religious structure has been raised encroaching upon public road (including highways), street, lane etc., as stated above, before 01.01.2011, a Scheme shall be worked out and executed to shift the same to a private land offered by beneficiaries of such religious structures or persons responsible for its management or to remove it, within six months and a compliance report shall be submitted in the manner as said above in Direction No. (ii).

(iv) On and after 10.06.2016, it shall be the responsibility of all Deputy Collectors/ Collectors in respective Sub-divisions and District as also Circle Officers and Superintendent of Police/Senior Superintendent of Police of concerned District including the Officers responsible for maintenance of roads (including highways) that no encroachment is made, by raising religious structures, by whatever name it is called, belong to any religion, creed, caste, sect, section etc., on public roads (including highways), streets, pathways, sideways, lanes etc. and if any deviation or disobedience is found, these Officers shall be personally responsible. This disobedience shall also be treated a deliberate and intentional disobedience to lower down authority of Court and would amount to criminal contempt.

(v) State Government is also directed to make out a plan so as to ensure that public roads (including highways), streets, pathways, sideways, lanes etc. are not obstructed creating hindrance in the smooth flow of traffic/movement of public on such roads (including highways) due to observance of religious activities and such activities are performed strictly at the places identified for the same or belong to concerned religious sections or at private place.

(vi) In the present case, District Magistrate is directed to take immediate steps and take appropriate action within two weeks.

9. A compliance report of the above directions shall be submitted through Chief Secretary, U.P. Government after seven months i.e. by 07.01.2017 for perusal of Court.

Dt. 03.06.2016

PS