

Court No. - 1**AFR****Case :-** WRIT - C No. - 65211 of 2009**Petitioner :-** Narendra Giri Mahant Of Bade Hanuman Ji Temple**Respondent :-** Union Of India And Others**Counsel for Petitioner :-** Nisheeth Yadav,C.B. Yadav**Counsel for Respondent :-** A.S.G.I.,Pramod Kumar

Singh,Prashant Mathur,Satish Kumar Rai,Vinod Kumar Shukla

Hon'ble Ramesh Sinha,J.**Hon'ble Ajit Kumar,J.**

1. Heard Sri C.B.Yadav, learned Senior Advocate assisted by Sri Nisheeth Yadav, learned counsel for the petitioner, Sri Parashant Mathur, learned counsel appearing for respondent no. 4, Sri S.K.Rai, learned counsel for respondent no. 3 and Sri P.K.Singh, learned counsel for respondent 1,2,5 and 6. and Sri Ajay Singh, learned Advocate who has placed before us the report and the survey map prepared by Prayagraj Development Authority today in a sealed cover. We have opened the sealed cover in Court and have perused. Survey map and report of measurement are taken on record. Sri Vikas Budhwar learned Advocate Commissioner who has submitted joint report with Mr. Kunal Shah, learned Advocate as directed by us, is also present.

2. The petitioner Narendra Giri before this Court claims to be Mahant of Sri Bare Hanuman Jee Temple just below the bandh and in close proximity of OD Fort, Allahabad, has approached this Court by means of this writ petition under Article 226 of the Constitution against the order dated 19th November, 2009 issued by the Defence Estate Officer Allahabad Circle wherein direction has been issued to Mahant Narendra Giri to remove encroachment consisting of RCC foundation and Plinth Beam encroaching the Defence land measuring 2404.50 Sq. ft. within five days of the receipt of the notice/letter/order , failing which, necessary action is to be taken against the Mahant at his own risk and cost.

3. A detailed counter affidavit, supplementary counter affidavit have been filed by respondent no. 3, namely, Deference Estate Officer, Allahabad Circle and Chief Executive Officer, Allahabad respectively and rejoinder affidavit and supplementary rejoinder affidavit have also come to be filed by the petitioner and thus,

pleadings have been exchanged in the matter.

4. Since, encroachment was seriously disputed by the Mahant, the rival parties have come up with their own measurement report of the alleged encroachment and the area in which temple situates, this Court passed a detailed order on 12.10.2019 directing for survey and measurement exercise and submission of report thereof in the presence of the independent Advocates Commissioners, by the Prayagraj Development Authority with the consent of the parties. The order dated 10.12.2019 passed by us is reproduced hereunder:

"1. Supplementary rejoinder affidavit has been filed today by Sri Nisheeth Yadav, learned counsel for the petitioners, which is taken on record.

2. Heard Sri C. B. Yadav, learned Senior Advocate assisted by Sri Nisheeth Yadav, learned counsel for the petitioner, Sri Prashant Mathur, learned counsel for the respondent No.4 and Sri Pramod Kumar Singh, learned counsel appearing for respondent Nos.5 and 6.

3. In this petition, the petitioners are aggrieved against the action undertaken by the respondent Nos.3 and 4 by putting them to notice to remove certain encroachments/constructions around the main temple of Lord Mahabir (Hanuman) in the close vicinity of the fort, on the ground that these constructions are unauthorized one and have been carried out in an area which belongs to the defence force.

4. Assailing the notice, the argument advanced by learned counsel for the petitioner is that it is the respondents themselves who had sanctioned for construction vide letter dated 06.03.2004 addressed to the Divisional Commissioner in which the total area for which the construction was permitted stood as 6270 sq. feet as a land belonging to the temple and, therefore, the constructions that have been undertaken under the authority issued by the Defence Officer himself, the petitioner cannot be charged for raising any unauthorized constructions over the defence land.

5. A counter affidavit has been filed in the matter in which the respondents have admitted vide Annexure CA-1 issued by the Chief Executive Officer in which qua Survey No.94/71 the total area ad-measuring 4335 sq. feet have been shown to be belonging to the temple of Lord Mahabir (Hanuman) and termed as a private land vide G.L.R. No.94.

6. The counsel appearing for the respondents submits that the letter issued by the authority that is being relied upon by the petitioner was not issued by the competent authority to grant permission to carry out constructions and, it is contended, as per the Government's United Provinces Notifications dated 26.07.2016 it is the General Officer Commanding the Division, who can grant such sanctions. He has further taken us to the paragraph 15 in which it has been stated that unauthorized constructions have come up involving an area of 619.31 sq. feet on a land comprising Survey No.93 as well which, however, has been disputed by the petitioner in their rejoinder affidavit.

7. Both the rival parties have brought before this Court their own survey map on the basis of which they claim their respective stand to be correct. Since both the parties have annexed the map prepared by their own agency or authority and they stand contrary to each other, no definite conclusion can be drawn about the exact

area in which the temple is situate and the area which is claimed or alleged to be having unauthorized constructions at the end of those who are taking care of the temple or are managing the affairs of the temple. In such a situation, therefore, to arrive at a definite conclusion as to whether the constructions have really been carried out in violation of the Rules and are liable to go for want of due sanction and further to ensure as to whether disputed constructions/encroachment is over an area beyond 4335 sq. feet that includes main temple, it is necessary that in the presence of both the rival parties and two Advocates to be nominated by this Court, a survey with accurate measurement of the land in question is carried out by an independent Government agency or its instrumentality.

8. *At this stage, both the parties agreed for the survey and the measurement exercise of the land in question to be carried out by the Prayagraj Development Authority in presence of both the parties and also the two learned Advocates, namely, Sri Vikas Budhwar and Sri Kunal Shah.*

9. *In view of the above, we are issuing following directions:*

(a) The Prayagraj Development Authority shall undertake to carry out measurement work through their skilled officers, of the main temple premises where Lord Mahabir (Hanuman) rests and shall prepare a map accordingly.

(b) The measurement shall be separately conducted of the area towards the east and west of the main temple including the constructed area with separate details of constructed area and the walls surrounding the open space as well and will prepare a map with accurate measurement accordingly.

(c) The survey and measurement exercise will also be carried out in respect of any temporary or permanent structure around the temple and its premises and a separate map thereof shall be prepared.

(d) The measurement shall clearly demarcate the main temple area, open area around the temple and constructed area around the temple.

(e) The entire constructions whether permanent or temporary around the main temple and the vacant land will be taken as disputed land except the main temple, so as to facilitate the measurement exercise.

(f) The map will clearly outline the limits of 4335 sq. feet area including the main temple and its structure in the centre of it.

(g) The report so prepared shall be duly signed by the authority preparing, official who carry out measurement exercise on the spot, the two learned Advocates appointed by the High Court and Officer of the respondent duly authorized for the said purpose as well as an authorized person of the petitioner in that behalf as well.

(h) The measurement will be carried out by 16.12.2019 as directed herein above from 02:00 p.m. onwards and report prepared by the officials of the Development Authority shall be submitted to this Court on or before 19.12.2019 in a sealed cover. The expenses shall be borne by the petitioner of the agency who shall carry out the measurement and the survey of the area as per our directions contained herein above.

(i) The temple will remain closed during measurement and survey. The District Magistrate as well as Inspector General of Police, Prayagraj Zone are directed to provide adequate security on the spot so that the measurement and survey work is carried out peacefully without any interference by a third party and the general people except the contesting parties, namely, the petitioner and the respondents, shall be kept away from the premises where the measurement exercise will be carried out as directed herein above.

(j) Learned Advocates Sri Vikash Budhwar and Sri Kunal Shah shall

prepare a separate joint report under their signatures about the conduct of survey in their presence and the manner and method in which it has been carried out.

(k) The District Administration shall also ensure that learned Advocates Sri Vikas Budhwar and Sri Kunal Shah are escorted to the place in question for the exercise and are escorted back to their respective places and for that it will contact learned counsels through the Registrar (Protocol), High Court.

10. The Registrar General is directed to supply a complete set of entire pleadings of this case to both the learned Counsels within 48 hours and to communicate this order to the Secretary, Prayagraj Development Authority, District Magistrate, Prayagraj and Inspector General of Police, Prayagraj Zone within 48 hours to ensure the compliance. A copy of this order shall also be supplied to the learned Advocates Sri Vikas Budhwar and Sri Kunal Shah within 48 hours.

11. Put up this matter on 19th December, 2019."

5. In compliance of the aforesaid order, measurement exercise has been carried out by Prayagraj Development Authority with the help of their skilled men and in the presence of the Advocate Commissioners. The Advocate Commissioners have also submitted their report to this Court today and so also the Prayagraj Development Authority has submitted a detailed report and maps prepared by them on the scale given thereunder. We have shown map and records to the counsels of the respective parties and since map and report was prepared by the officials of the Prayagraj Development Authority in the presence of the authorized representatives of the parties, they have not disputed the same and admitted it to be correct report and agreed that Court may decide the matter taking judicial notice of the report and survey map.

6. Sri C.B.Yadav, learned Senior Advocate has agreed with report and submitted that area that have been shown in the map is in access to the area over which temple of Bade Hanuman Jee known as Mahavir Jee recorded in the General Land Register as Survey No. 71, as he has not disputed also CA-1 to the counter affidavit filed by respondent no. 3, wherein area of the temple recorded is 4335 Sq.ft. as a private land and the occupancy has been shown of the then Mahant Purushottam Giri.

7. The facts and controversy involved in the present case can be drawn in a narrow compass like this that temple of Mahavir Jee (Bade Hanuman Jee) is continued to be recorded as private land in the Defence area as Survey No. 71 in the General Land Register maintained by the Cantonment Board, Allahabad. The temple situates with Hanuman Jee resting under it (hereinafter

referred to as temple) and the structure to that effect is not disputed. It so happened that one Arun Khanna, Army Colonel, it appears acting on behalf of the then Commander of the area, issued some letter to the Commissioner Allahabad Division, Allahabad on 06th March, 2004 according permission for renovation / repair of the Temple with condition that no new structure should be constructed and no construction should be done outside the area measuring 6270 Sq.ft. of GLR No. 94, Survey No. 71 recorded as land belonging to temple. It is claimed by Mahant that it is on account of this permission accorded on behalf of Commander that constructions have come. However, it appears that when constructions were in progress as late as in the year 2009 that notice was issued to the Mahant on 12th November, 2009 by the Administrative Officers for the Command that an unauthorized construction was being carried out near the temple in question and the land where constructions were being raised, was claimed to be Defence Land as per U.P. State Gazette Notification dated 28th July, 1916.

8. The notice was replied through Advocate by the Mahant vide letter dated 15.11.2009 claiming legal rights for carrying out constructions in the form of repair and renovation as per permission granted under the letter dated 6th March, 2004 by the then Colonel Arun Khanna. The reply was responded by the Colonel Pradeep Arora of the Command that permission granted was restricted to area of circle shown as Red in the map appended and the constructions that were being carried out were in fact in the area of the Defence land. Moreover, it was stated in the reply that permission was one time sanction for such an activity in the year 2004 and not to operate in perpetuity or *ad-infinitum* and it is thereafter finally order has come to be passed on 19th November, 2009, which is impugned in the present writ petition.

9. Thus issue involved in the present case is three fold: **firstly**:- whether the permission granted under the letter dated 06h March, 2004 can be said to be permission to raise new construction around temple area and was to operate in perpetuity; **secondly**:- (i) What exactly is the area of temple premises to be called as such and the exact area of main temple and; (ii) whether the constructions in dispute fall within the area

of temple premises ? and **thirdly** any construction over a private land so registered/recorded in the GLR notified under the Cantonment Board, can be raised without prior sanction of the Cantonment Board or any competent authority in that behalf.

10. In so far as first and second issues are concerned, they are related to each other and so have to be dealt with together. From perusal of pleadings, we find that the permission that was accorded on behalf of Commander was specifically for renovation/repair of the temple with strict conditions that no new structure should be constructed and no constructions should be done outside the 6270 Sq.ft. area of the GLR No. 94, Survey No. 71 as a land belonging to the temple.

11. In order to find answer to the **first issue** whether the permission accorded under the letter dated 06th March, 2004, can be construed as only one time measurement and for a limited purpose or permission in perpetuity, it is necessary to appreciate the permission quoted under the letter dated 6th March, 2004 that runs as under:

"2. Permission is hereby accorded for renovation/repair of Hanuman Temple at Sangam with conditions that no new structure should be constructed and no construction should be done outside the 6270 Sq. ft area of GLR 94, Survey No. 71, the land belonging to the temple, and no portion of the renovation temple including the flag pole on top of the temple should be more than 52 ft from ground level. "

12. From the words and expressions as have come up in the aforesaid letter, it is clearly deducible that permission was limited to the extent of *renovation/repair* of Hanuman temple with no permission for new structure and also no permission beyond the area 6270 Sq.ft. This letter is admitted to the petitioner and it is claimed that the constructions whatever have come up in the year 2009 were saved being within four corners of conditions mentioned in the letter. A bare reading of the aforesaid letter clearly shows that :

a. the permission was for renovation or repair of Hanuman Temple only;

b. no new structure was permitted to be constructed; and.

c. no construction should be done outside the area 6270 Sq.ft.

13. The words and expression "no construction should be done

outside the 6270 Sq.ft and no new structure should be constructed" are to be reached in conjunction with permission for renovation and repair of Hanuman Temple. Thus, the permission accorded was to carry out renovation and repair work only *qua* Hanuman Temple structure and then any such renovation and repair work should not be done beyond the area of 6270 Sq.ft. provided their existed any such structure of the Hanuman Temple upto that area.

14. We have held in the preceding paragraph that it is difficult to find answer as to how new construction permanent in nature can be claimed to be permitted under the letter and in any view of the fact, no new construction was permitted, rather it was renovation and repair work only of Hanuman Temple was to be done and, for which, permission was accorded.

15. It appears that when petitioner started raising new constructions that the encroachment notice was issued on 12th November, 2009 and then in reply to that had been submitted by the petitioner on 15.11.2009, but we do not find any whisper in any of the paragraphs of the reply that construction was carried out in the form of repair or renovation work of Hanuman Temple. All that is claimed is that the activity was carried out *per* permission accorded under the letter dated 6th March, 2004 in the area surrounding the Hanuman Temple. Paragraph 1 to 7 of the reply of the petitioner dated 15.11.2009 (in the form of the notice) to letter dated 12th November, 2009 of administrative officer, is reproduced hereunder:

"1. That the Lord Bada Hanuman Temple a renounced Temple in religious field of the world. My client is seer of Lord Bada Hanuman Temple and is managing the entire affairs of the Temple. The Temple of Lord bada Hanuman is very much old, which history is not traceable. The Temple, aforesated, is situated in the bank of Triveni "SANGAM". Under the U.P. State Gazette Notification referred in the letter dated 12.11.2009 the construction is not permissible on the Defence land.

2. That in order to manage the affairs of the Temple and to allow the devotees to perform their rituals in around the Temple an area of 6270 Sq. ft. of GLR 94, Survey No. 71 has been carved out where temporary construction has already been made since long back.

3. That on account of huge rush of devotees, temporary structure was required to be repaired/renovated, and as such, permission of the same was accorded by the Head Quarter, Sub Area, Allahabad on 6.3.2004 by Sri Arun Khanna, Colonel by asking the Commissioner, Allahabad Division, Allahabad, Sri Dev Dutt. A copy of the letter dated 6.3.2004 is being enclosed with this notice as Annexure No. 1.

4. *That on account of money crisis the renovation/repair of the surrounding of the Temple could not be done. However, devotees of Lord Hanuman finally donated certain money, for which my client has not thinks over the issue of the renovation/repair of the structures standing thereon.*

5. *That unfortunately even in religious place Cantonment Board, Allahabad has reported about unauthorized construction, factually which is not correct. Without examining the factors of construction, without taking into account the letter/permission accorded by Head Quarter of Sub Area, Allahabad about beatification of area of SANGAM and Re-construction of HANUMAN Temple, you, Naveen Thapa, Lt. Colonel issued this restrained order dated 12.11.2009 .A copy of the letter/restrained order dated 12.11.2009 is being enclosed with this notice as Annexure No. 2.*

6. *That my client has not violated any terms and conditions, referred in U.P. State Gazette Notification dated 28th July, 2016 as referred in the letter dated 12.11.2009. My client is intended to renovate/repair of the Lord Hanuman Temple and surrounding thereto, which is within the area of 6270 Sq. ft. of GLR 94, Survey No. 71 and not beyond that. For this renovation/repair of the Lord Hanuman Temple and surrounding thereto, permission has already been accorded on 6.3.2004 by Head Quarter, Sub Area, Allahabad. No construction beyond the permission accorded therein is being done by my client, but in the garb of the false report submission by Cantonment, Allahabad about unauthorized construction at Lord Hanuman Temple, the letter/restrained order has been issued on 12.11.2009.*

7. *That since no construction beyond the sanction accorded on 6.3.1994 is being done by my client, therefore, in view of the facts and circumstances as well as taking into account the religious field of the devotees visiting the Lord Bada Hanuman Temple everyday regularly and for their performance of Pooja etc. , you are hereby requested to kindly withdraw the restrained order/letter dated 12.11.2009 bearing no. 111185/Gen/Adm. And allow my client to start the renovation/repairing work of the Lord Hanuman Temple and surrounding thereto as per sanction accorded on 6.3.2004 and further be pleased to accept the blessing of the Lord Hanuman for yourself and family and also for the Nation."*

16. We find above answer given to the effect that permission was only for the renovation and repair of the Hanuman Temple and not of any structure in any area surrounding the temple where it could have been claimed that there existed structure that also needed repair or renovation. It is also not the case of the petitioner in the pleadings raised in the writ petition either.

17. Thus the answer to the first issue is that the contents of the letter only establish a case of permission for repair/renovation as one time measure. The general rule in matters of sanction of map for new construction is also time bound. Even otherwise if structure has reached to a stage to be called as dilapidated, its renovation will always be a time bound activity and once a building is renovated/repared, it may require only regular maintenance. This issue will be answered, partly with the third issue as well, later in this judgment.

18. In order to find answer to the **second issue**, we have to

first determine part **(i)** of it, as to what is the exact area of the temple recorded as Survey No. 71 in the General Land Register maintained by the Cantonment Board. Annexure-CA-1 to the counter affidavit filed by respondent no. 3 shows the area of temple as 4335 Sq.ft. described as a temple of Mahabir, classified as a private land in the occupancy of the then Mahant Purushottam Giri. So it is an occupancy right *qua* temple land and only to the extent of an area of 4335 Sq.ft.

19. This Annexure CA-1 has come to be referred to in paragraph 4 of the counter affidavit and in pleadings in support thereof have been further raised in paragraph 5 and 6. Paragraphs 4,5 and 6 are quoted as under:

"4(CA). That at the out set it is submitted that the present petition filed by the petitioner is not maintainable as a bare perusal of GLR No. 94, Survey No. 71 reveals that the Mahant Purshottam Giri is holder of occupancy right of temple of Mahavir of 4335 Sq. fr. Area. The objection regarding mutation of the petitioner are already on record. Photostate copy of the GLR No. 94, Survey No. 71 is annexed herewith and marked as Annexure CA-01

5. That a bare perusal of the notice dated 19.11.2009 as issued from the office of Defence Estate Office and the notice issued from the Cantt. Board dated 18.11.2009 would reveal that the said encroachment is made on the defence land is on G.L.R. Survey No. 93 Fort Cantt. Allahabad which is classified B-4 land measuring about 76.65 Acres which in fact is an offence U/s 247 of the Cantt Act, 2006 and as such a show cause notice was issued from the office of Cantt. Board for the said alleged encroachment. Photostat copy of the notice No. E/Fort/BH/2009-2010/570 dated 18.11.2009 is annexed herewith and marked as Annexure CA-2.

A perusal of document filed in support of the claim of the petitioner reveals that a reference of GLR No. 94, Survey No. 71 is made by the petitioner, in fact as per the GLR entry of Survey No. 93 maintained with the Defence Estates Officer the same is classified as B-4 land consisting of area 76.65 acres of vacant (agricultural land) owned by the Government of India and is under the management of Military Estates Officer now known as Defence Estate Officer. Photostat copy of the GLR No. 93 including the site plan map of the encroached site is annexed herewith and marked as Annexure CA-3.

From the submission made above, it is thus abundantly clear that the present encroachment by way of pucca construction which is sought to be carried out by the petitioner is on Survey No. 93 for which suitable action was initiated by the deponent being Chief Executive Officer, Cantt. Board, Allahabad and not on GLR No. 94 Survey No. 71 as mentioned by the petitioner in the petition and in the supporting document.

6. That from the submission made above it is clear that the petitioner has no legal enforceable right to make any construction in the name of erection or re-erection of survey No. 94/71 and 93 as prayed through the present petition. The alleged permission dated 6.3.2004 on the basis of which the claim of the petitioner has been made is also about GLR No. 94 Survey No. 71 and not the GLR No. 93 for which the action for encroachment as contemplated under the Rules have been initiated by the respondent. The claim of the petitioner is thus devoid of any merits."

20. In the rejoinder affidavit in paragraph 3, it has been claimed in reply to the paragraph 4, that petitioner succeeded the earlier Mahant but the reply relevant to the issue is given in paragraph 4 of rejoinder affidavit. In said paragraph, it has been pleaded that temple area of Bade Hanuman Jee is 6270 Sq. ft. as per the sanction accorded under the letter dated 06th March, 2004 and it is claimed that no construction has been raised beyond the area measuring 6270 Sq. ft. at any point of time by the management of the temple in question, so there is no encroachment as such. Paragraph 4 of the rejoinder affidavit is reproduced hereunder:

"4. That the contents of paragraph nos. 5 and 6 of the Counter Affidavit are total misconceived and the same stand denied. In reply thereto, it is submitted that the total area for part of GLR No. 94/71, recorded in the name of Bade Hanuman Ji Temple is 6270 Sq. Ft, and therefore, when the permission was sought by the Commissioner, Allahabad Division, Allahabad in order to beautify the area of Sangam and beautification of Hanuman Temple, permission was accorded on 06.03.2004 by Colonel Arun Khanna, indicating that no new construction could be constructed and no construction could be turned down outside 6270 Sq. ft. area of GLR Survey No. 71/94, the land belonging to the the temple. Thus, the entire allegation as referred in paragraphs of the Counter Affidavit that the land of Hanuman Temple is only 4335 Sq.ft., which is factually incorrect. As per permission no construction beyond 6270 Sq.ft has been acted upon at any point of time by the Management of Lord hanuman Temple. There is no encroachment at any point of time at present also. Therefore, the notice issued by the authorities without making proper inspection and measurement is factually illegal."

21. This paragraph 4 has been sworn on the basis of personal knowledge so naturally the personal knowledge is based only upon letter dated 06th March, 2004. It is a question to be enquired into on what ground this letter showed area of the temple as 6270 Sq.ft. against the area recorded in the GLR No. 94, Survey No. 71 as 4335 Sq.ft only. A short counter affidavit has come to be filed in the matter, this time on behalf of respondent no. 4, namely, Chief Executive Officer, Cantonment Board, Allahabad, in which *vide* paragraph 10, it has been stated that the permission dated 6th March, 2004 cannot constitute a legal permission as power to permit erection or re-erection lies with competent authority only, even in respect of property in occupancy of a civilian. It has been further reiterated that the area as recorded in the GLR No. 94, Survey No. 71 is not as claimed by the petitioner and so the permission granted under the letter dated 6th March, 2004 was not a permission either under the Cantonments Act nor, an exercise of power conferred upon the Defence Estate officer in that regard.

22. Reliance has been further placed in the counter affidavit (vide paragraph 11) upon the General Administration Department notification issued by the then Government of United Provinces on 26th July, 1916 that restrains any construction activity in the vicinity of the OD Fort in the Allahabad District within 1000 yards but for the permission to be accorded in writing with approval of the General Officer Commanding. The relevant clause 2 of the notification (*supra*) in its entirety is reproduced hereunder:

"In exercise of the power conveyed by section 3, sub section (1) of the Indian Works of Defence Act, 1903 (VII of 1903), His Honour the Lieutenant- Governor of the United Provinces of Agra and Oudh is hereby pleased to declare that it is necessary to impose restrictions upon the use and enjoyment of the lands in the vicinity of Allahabad Fort in the Allahabad district and which are more particularly set forth in the sketch plan of the land referred to, a copy of which has been deposited in the office of the Collector of the Allahabad district.

2. that, from and after the publication of the public notice mentioned in section 3, sub-section (2) of the said Act, the restrictions mentioned in section 7(a) and 7(b) of the said Act shall attach to the land within the said zone, lying within 1,000 yards from the crest of the glacis of the said fort, viz:-

(I) No verification shall be made in the ground level and no building, wall, bank, or other construction of permanent materials above the ground, shall be maintained, or erected, added to, or altered.

Provided that, with the written approval of the General Officer Commanding the Division, and on such conditions as he may prescribe, variation in ground level, huts, fences and other constructions of wood, or other materials, casily destroyed, or removal, may be maintained, erected, added to , or altered.

Provided that, with the general permission of the General Officer Commanding the Division, the railway authorities are exempted from this prohibition in respect of their being allowed to load, unload and stack over the whole area such ballast, bricks, sleepers, or other materials as may be required from time to time for the construction or maintenance of the railway.

Provided, also, that any person having control of lands as owner, lessee, or occupier shall be bound forthwith to destroy or remove such huts, fences, or other constructions without compensation upon the order in writing signed by the General Officer Commanding the Division.

(ii) No wood, earth, stone, brick, gravel, sand, or other material shall be stacked, stored or otherwise accumulated.

Provided that, with the written approval of the General officer Commanding the Division and on such conditions as he may prescribe, road ballast, manure, and agricultural produce, may be erected from the prohibition.

Provided, also, that any person having control of the land as owner, lessee, or occupier shall be bound forthwith to remove such road ballast, manure or agricultural produce without compensation on the requisition of the General Officer Commanding the Division.

(iii) Live hedges, rows or clumps of trees, or orchards shall not be maintained places added to, or altered otherwise than with the written approval of the General Officer Commanding

the Division and on such conditions as he may prescribe.

(iv) No surveying operations shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf by the General Officer Commanding the Division, and

(v) where any building, wall, bank, or other construction above the ground has been permitted under this notification to be maintained, erected, added to, or altered, repairs shall not. Without the written approval of the General Officer Commanding the Division, be made with materials different in kind from those employed in the original building, wall, bank or other construction.

Provide further that nothing in this notification shall apply to existing buildings, entered in schedule "B" attached to the plan mentioned in paragraph 1 hereof, or to variations of ground level, banks, hedges, etc, so long as these remain unaltered as they exist on the date of this notification. "

(emphasis added)

23. In reply to the said paragraph in the supplementary rejoinder affidavit what has been stated is that there is no encroachment beyond the area shown in the GLR. Paragraph 10 of the short counter affidavit and reply thereof in paragraph 11 of the short rejoinder affidavit are reproduced hereunder:

"10 (SCA):- That in reply to the contents of para no. 8 of the rejoinder affidavit, the content of Para no. 11, 12 and 13 of the counter affidavit are reiterated. The respondent most humbly submits that the contents of para under reply are with the sole intent to mislead to this Hon'ble Court in the light of the fact that the general officer commanding the division has not authority whatsoever vested in his offices to grant any permission whatsoever ."

*"11. (SRA) That the contents of paragraph no. 7,8,9 and 10 of the Supplementary counter affidavit filed by respondent no. 4 are not admitted, in the manner, as stated, hence denied. **It is submitted that the petitioner has not encroached the land either of Defence or Cantonment Board or any GLR beyond the private land allotted to the petitioner's temple rather the map, which has been filed alongwith the order dated 06.03.2004 clearly demonstrates the correct facts. Bhajan-Pravachan Hall already is in existence in 2004, in which much hue and cry has been made by the respondent no. 4 for fresh construction. It is factually incorrect, and therefore, the same is denied.**"*

(emphasis added)

24. From the above discussions with reference to the pleadings of the respective parties, the admitted position comes to be that the land recorded in the GLR No. 94, survey no. 71 is taken to be the land over which temple in question is recorded with total area of 4335 Sq.ft. The petitioners have not come up with any such evidence to disprove that entry, rather they have come to admit the area recorded as property of temple and are only banking upon permission accorded under the letter dated 06th March, 2004 *qua* their rights to the extent of 6270 square meter.

25. From the legal provisions relied upon by the respondent as quoted hereinabove, it goes without saying that there has to be sanction of the Commander but sanction has to be read in respect of an area recorded in the GLR because sanction is given to civilian occupant in a defence area *qua* the property so recorded. The Hanuman Temple is recorded as private property in the occupancy of the then Mahant possibly from whom the present Mahant is claiming to be a descent. So there could not be any permission but for an area recorded in the occupation of civilian. This Court does not find any document to corroborate the area described under the letter dated 06th March, 2004 and fail to find any justification for mentioning the area as 6270 Sq.ft to carry out repair/renovation of temple as per GLR No. 94, survey no. 71 as a land belonging to the temple, opposed to the one recorded in the GLR. In the absence of any such record to corroborate the area under the sanction letter, the sanction granted under the order dated 06th March, 2004 cannot be said to be legal one *qua* an area beyond 4335 Sq.ft. Merely because sanction has been granted *qua* a particular mentioned area and which does not find support from the land register on which basis right is claimed, one cannot establish his rights or title, even in terms of possessory / occupancy rights on the basis of such letter or sanction. So therefore, we conclude and hold that temple premises is the area mentioned in the GLR and the petitioner could not have raised any construction temporary or permanent beyond the area of 4335 Sq.ft recorded as survey no. 71 of GLR No. 94 as temple in occupation of Mahant.

26. Coming to the part **(ii)** of the second issue *qua* the disputed constructions we proceed to examine whether the disputed constructions can be said to have come up beyond the area of the temple recorded in the GLR and whether constructions in question are in fact in the surrounding area within 4335 Sq.ft. or beyond that surrounding area of the temple. It is, therefore, also necessary to get the exact area of the temple and its structure. Since, now we have received survey map and measurement report conducted and prepared by the Prayagraj Development Authority in the presence of the respective parties and the Advocates Commissioner and that has not been disputed, it is this report that will give answer to the above issue.

27. Before, we proceed to examine the report, we would like to refer the Advocate Commissioners report submitted by Sri Vikas Budhwaar and Sri Kunal Shah, learned Advocates, in which, it has been stated that the survey exercise and measurement was concluded as per our order dated 6.12.2019. A hand written report which bears signatures of Pawan Kumar Shukla representative of Narendra Giri, Sri Amit Kumar Singh, Chief Executive Officer Cantonment Board, Sri Prashant Mathur, Advocate for Cantonment Board, Sri Rajiv Kumar Shukla, Sub Divisional Officer-II, Defence Estate Officer Allahabad Circle, Sri Pramod Kumar Singh, Ministry of Defence, Sri S.Thapa and Punjab Singh, representatives of OD Fort has been appended to the report of Advocate Commissioners dated 16.12.2019 that runs as under:.

"Spot Inspection Report dated 16.12.2019

In compliance of the order dated 10.12.2019 passed by Hon'ble High Court in Civil Misc. Writ Petition NO. 65211 of 2019 (Narendra Giri Mahant of Bade Hanuman Ji Temple Vs. U.O.I. & Others)

We Vikas Budhwar, Advocate and Kunal Shah in the capacity of Court appointed Advocate Commissioner reached the site being the Temple at 1:50 P.M. On 16.12.2019.

At the site when the survey/measurement activity was to be carried out Sri Pawan Kumar Shukla who was identified by the (petitioner-Mahant namely Shri Narendra Giri) and nominated as his representative for survey, Sri Amit Kumar Mane Chief Executive Officer, Cantonment Board along with his counsel Sri Prashant Mathur, Advocate for Cantonment Board were also present. Also present were Sri Rajiv Kumar Shukla Sub Divisional Officer-II Defence Estate Officer, Allahabad Circle, Advocate Pramod Kumar Singh for Ministry of Defence, Sri S. Thapa along with Punjab Singh for OD Fort were also present.

To carry out the measurement/survey activity the following officers of the Prayagraj Development Authority were present.

- | | |
|------------------------|------------------------|
| i. Sri Dayanand Prasad | Secretary PDA |
| ii. Sri. S.D.Sharma | Executive Engineer PDA |
| iii. Sri T.P.Sng | Town Planner PDA |
| iv. Smt. Archana Ojha | Tehsildar PDA |
| v. Sri R.S. Verma | L.O. PDA |

The measurement activity was commenced at 2:30 P.M. In compliance of the order of the High Court.

Firstly, the measurement of Main Temple premise was undertaken. The measurement were arrived at and reported/recorded in presence of concerned party by P.D.A.

Thereafter, the measurment of the area towards the east of the temple was carried out and the details of the measurements were recorded/reported in the presence of the concerned party by PDA

The measurement of temporary/permanent structure towards the east of the temple were carried out separately in presence of parties.

Thereafter the measurement of the area towards the west of the main temple was carried and details of permanent and temporary existing towards the west of the temple was recorded by the official of P.D.A. in presence of concerned party.

Likewise, measurement towards the north & the south of the temple was also carried out in the presence of parties by P.D.A.

The survey exercise/measurement was concluded at 3:55 P.M. The entire exercise of measurement was carried out in a peaceful environment. No dispute of any nature arose from any of the fraction. The parties were satisfied with the measurement/survey.

The District Administration had provided adequate security at the site which ensured peaceful execution of measurement/survey.

In compliance of the order dated 10.12.2019 passed by the Hon'ble High Court the undersigned has prepared this joint spot inspection report detailing the manner in which the survey activity was carried out.

Further with the consent of the parties the measurement so recorded by the PDA on 16.12.2019 has been forwarded for computerized development i.e. Map etc. detailing the measurement, construction existing at the spot to PDA which will develop the same by tomorrow i.e. 17.12.2019 as due to paucity of time instant development cannot be done.

The joint inspection report will be followed by a typed and detail report by the Advocate Commissioner."

28. Now the detailed typed joint report of the Advocate Commissioners that runs in seven paragraphs is reproduced hereunder:

"1. That as per the order dated 16.12.2019 passed in w.p. no. 65211 of 2009 being Narendra Giri Vs. Union of India and other the spot inspection was conducted on 16.12.2019 in the presence of the following parties.

- I. Pawan Kumar Shukla (representaive of Narendra Giri),*
- ii. Sri Amit Kumar Mane (Chief Executive Officer Cantonment Board);*
- iii. Sri Prashant Mathur (Advocate for Cantonment Board);*
- iv. Sri Rajiv Kumar Shukla (Sub Divisional Officer-II Defence Estate Officer, Allahabad Circle);*
- v. Sri Pramod Kumar Singh (Ministry of Defence);*
- vi. Sri. S. Thapa; and*
- vii. Punjab Singh (representttive of OD Fort).*

The measurement was carried out by the following officials of Prayagraj Development Authority:

- 1. Sri Dayanand Prasad (Secretary PDA);*
- ii. Sri S.D. Sharma (Executive Engineer PDA);*
- iii. Sri T.P.Singh (Town Planner PDA);*
- iv. Smt. Archana Ojha (Tehsildar PDA); and*
- v. Sri R.S. Verma (Law Officer PDA)*

2. That the measurement activity commenced on 2:30 P.M. And concluded at 3:55 P.M. On 16.12.2019.

3. That the measurement activity commenced in the following

manner.

a. Firstly, the measurement of Main Temple premise was undertaken. The measurement were arrived at and reported/recorded in presence of concerned party by P.D.A.

b. Thereafter, the measurement of the area towards the east of the temple was carried out and the details of the measurement were recorded/reported in the presence of the concerned party by P.D.A.

c. The measurement of temporary/permanent structure towards the east of the temple were carried out separately in presence of parties.

d. Thereafter the measurement of the area towards the west of the main temple was carried and details of permanent and temporary existing towards the west of the temple was recorded by the official of P.D.A in presence of concerned party.

e. Thereafter measurement towards the north and the south of the temple was also carried out in the presence of parties by P.D.A.

4. That the entire exercise of measurement was carried out in a peaceful environment. No dispute of any nature arose from any of the fraction. The parties were satisfied with the measurement/survey.

5. That after the completion of the measurement/survey when the stage of preparation of the map giving the outline with regard to the area/measurement and the temporary/permanent construction so existing was to be reflected in the map which was to be prepared then the officials of P.D.A. Apprized the parties including the advocate commissioner's so appointed by the Hon'ble High Court of Judicature at Allahabad that it is not possible to make the map immediately on the site in question as it will require sufficient time to sketch the map and to identify the permanent and temporary constructions including the measurement so recorded therein.

6. That accordingly the officers of the P.D.A. Apprized the parties including the Advocate Commissioner's that the map will be provided by 17.12.2019.

7. That a specific query was raised by the advocate commissioner before the parties concerned as to whether they have any objection to the same that the map will be prepared subsequently and it cannot be prepared over the site in question, then the respective parties including their representatives and counsels apprized the advocate commissioner that they have no objection as the measurements were taken in their presence and they were satisfied with the measurement which had been recorded.

8. That the said fact which transpired during the entire exercise conducted on 16.12.2019 was recorded in the spot inspection report dated 16.12.2019 which was signed by the respective parties and their representatives.

9. That on 16.12.2019 the officials of the PDA assured that they will provide the map containing the measurements and the nature of the constructions existing on the site in question by 17.12.2019 but the same has not been provided . Thus the map is not being appended alongwith the compliance affidavit.

10. That for the kind perusal of this Hon'ble Court the following documents are being submitted before the Hon'ble Court in purported compliance of the order dated 10.12.2019 passed in W.P. No. 65211 of 2009 which are as under:

I. (Hand Writing) Spot Inspection Report dated 16.12.2019

(containing 3 pages);

ii. Typed copy of spot Inspection Report dated 16.12.2019 (containing 4 pages); and

11. That the present spot inspection report along with the annexures are being filed before this Hon'ble Court in compliance of the order dated 10.12.2019 passed in the aforesaid writ petition the same may be kept and be treated as part of the record."

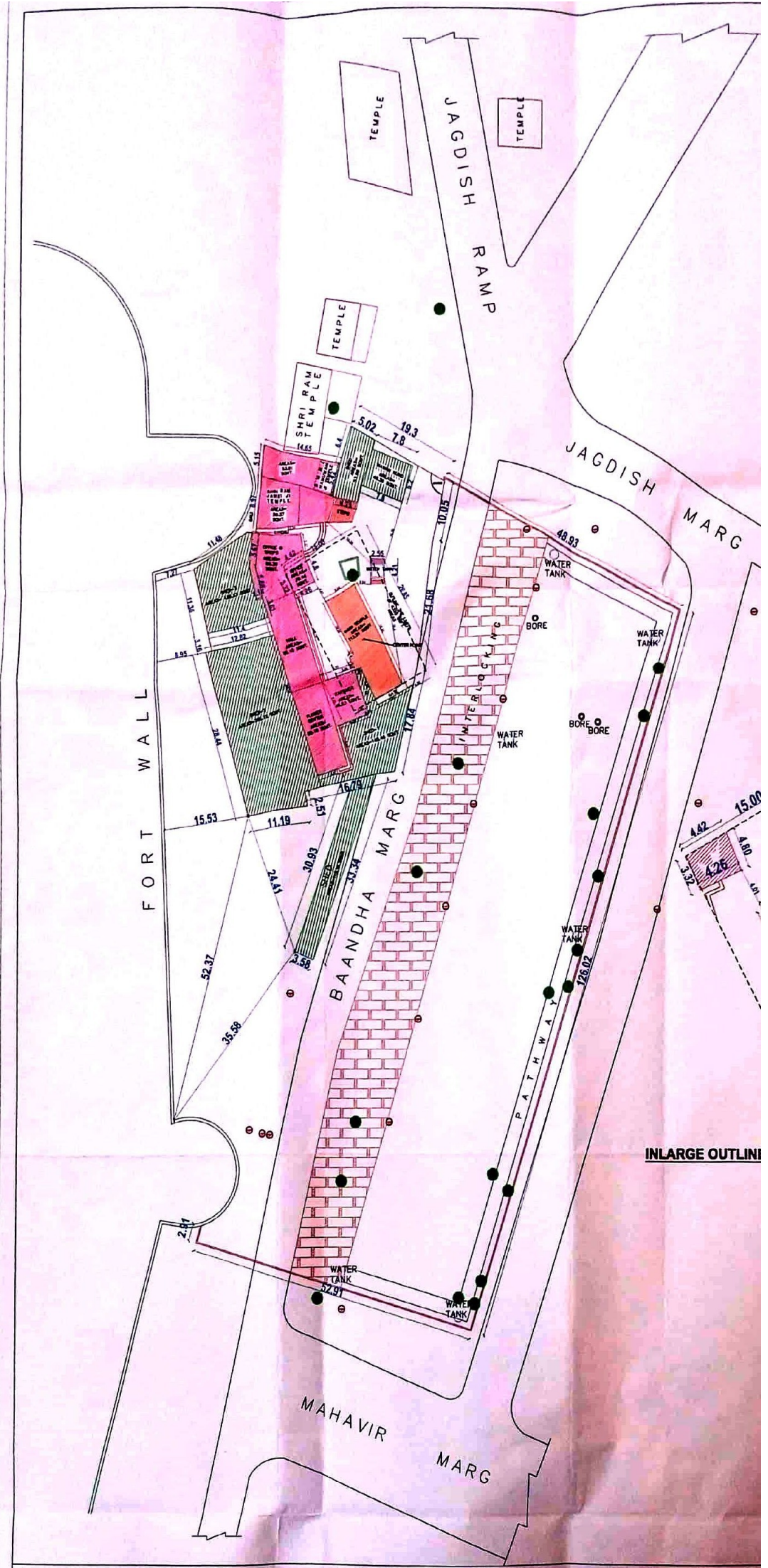
(emphasis added)

29. Now, we proceed to examine the survey report of Prayagraj Development Authority placed before us in sealed cover by learned counsel appearing for Prayagraj Development Authority. As we go through the survey report, we find that the area which has been outlined with dotted dash shown in the 'legend' as outline of the area of the main temple and surrounding in total as 4335 Sq.ft. with width shown to be 15 meters and the length as 26.85 mt, totaling to 402.75 Sq.mt. (approx 4335 Sq.ft.), wherein a part of the back of the varandah on western south is within the area of 4335 Sq.ft. and so also part of the office area on western north is also shown inside the temple premises. The permanent structure that have been shown with red shaded lines are disputed permanent constructions and mostly beyond the area of 4335 Sq.ft. This constructed area includes the flower center area 85.18 Sq.Mt. (approx 916.366 square ft.) and office and shops area 86.30 Sq.mt. (approx 928.95 Sq.ft.) with exception to certain area of varandah and office referred to above. Sri Ram Janki Temple area 59.57 Sq.mt. (approx 642,25 Sq.ft.) then further construction have been carried out of another Sri Hanuman Jee temple with an area to the tune 5.42 Sq.mt. (approx 578.88 Sq.ft.)

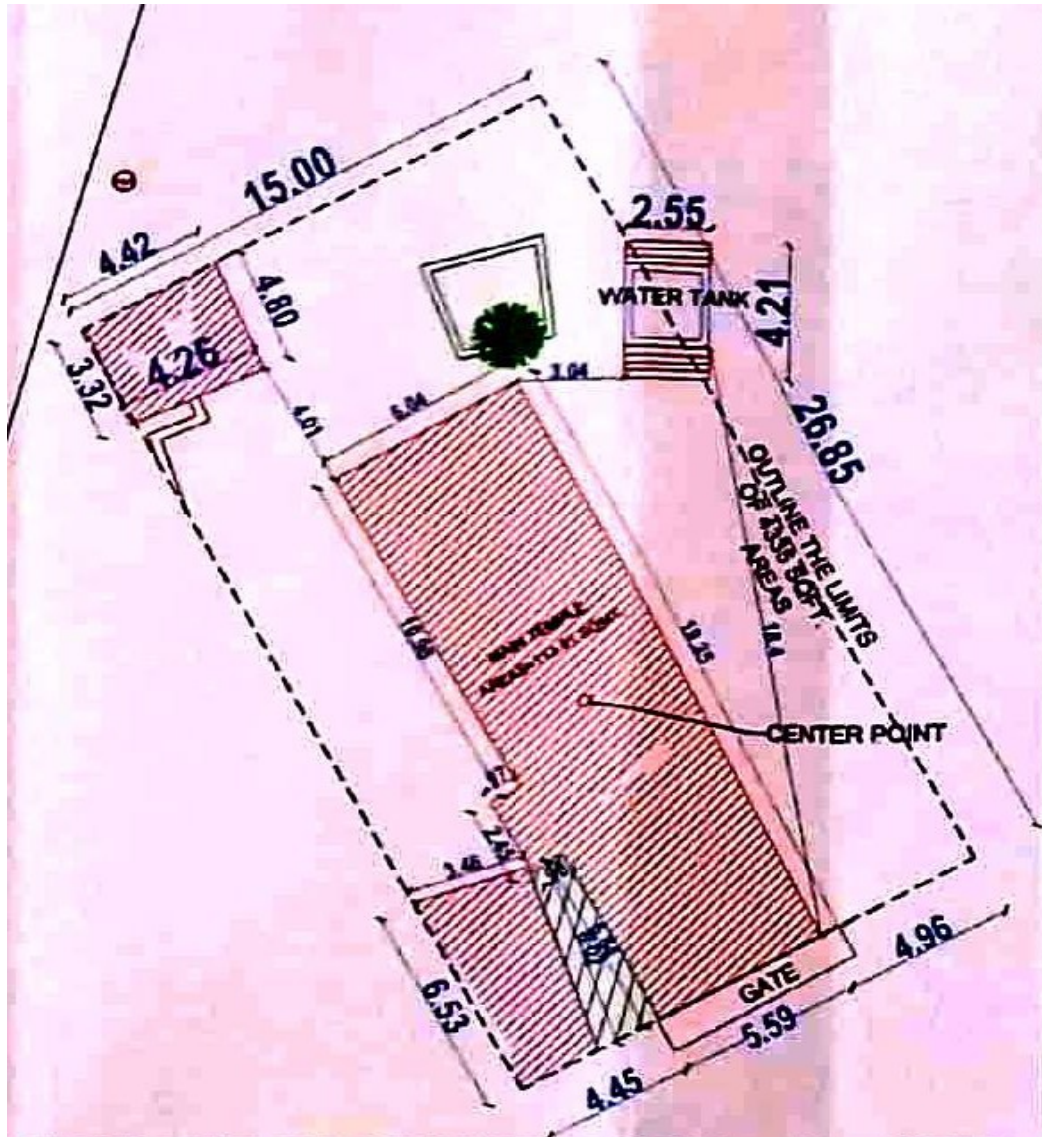
30. The temporary structure (shown with green shaded lines) as Hawan Kund Shed area to the extent of 48.36 square meter (approx 520.30 Sq.ft.) and 53.99. square meter (approx 580.82 Sq.ft.) towards north east of the temple premises. Yet another shed has come up in the south as 115.16 square meters (approx 10238.89 Sq.ft.) south. All these structures are shown as green shaded area and are referred to as temporary structure.

31. None of the respective parties have disputed this above measurement exercise nor, put any objection to the survey map and measurement report prepared by P.D.A.

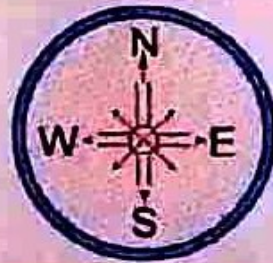
32. The scanned print of the map with measurement details submitted by PDA and referred to above is reproduced hereunder:



INLARGE OUTLINE



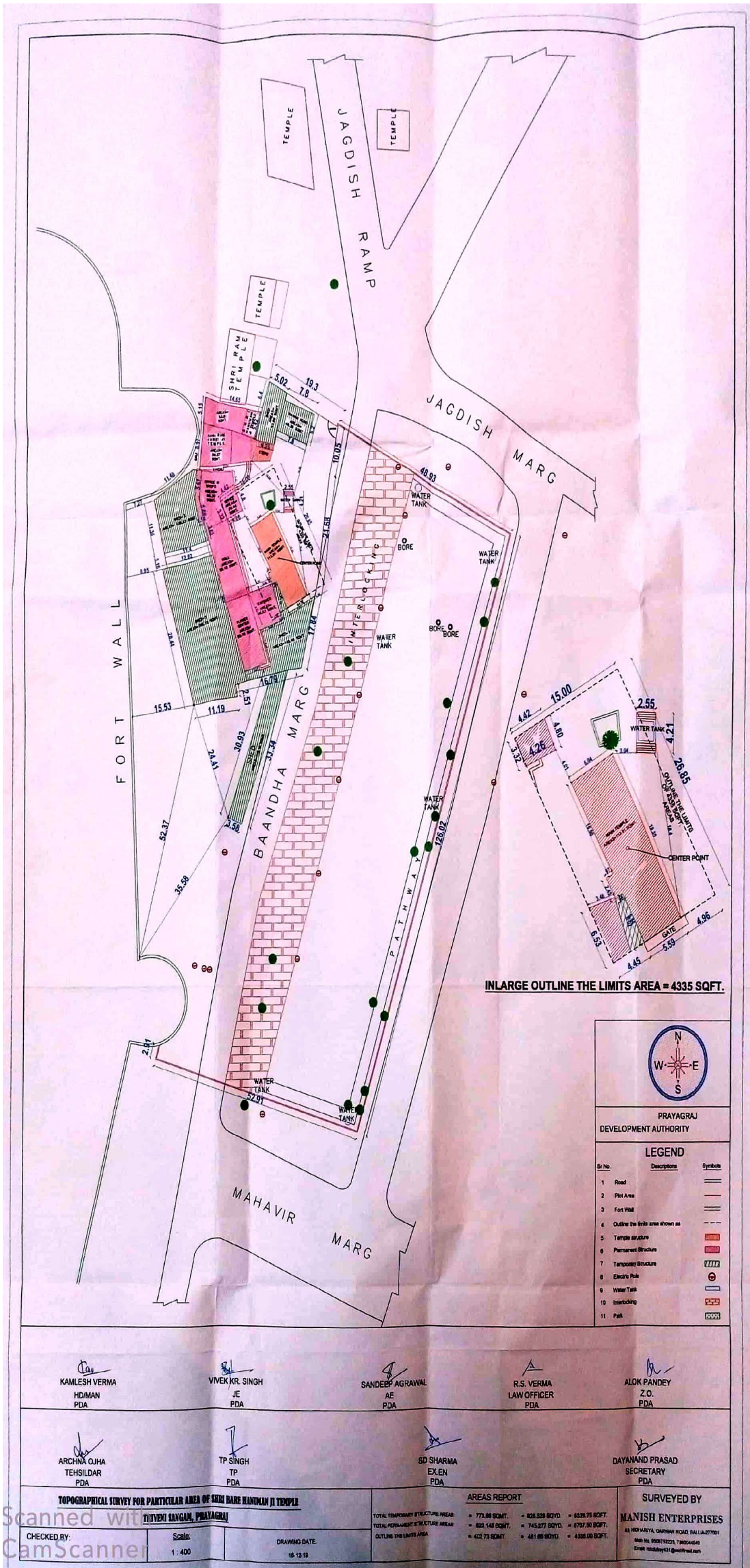
LARGE OUTLINE THE LIMITS AREA = 4335 SQFT.




**PRAYAGRAJ
DEVELOPMENT AUTHORITY**

LEGEND

Sr No.	Descriptions	Symbols
1	Road	====
2	Plot Area	----
3	Fort Wall	=====
4	Outline the limits area shown as	- - - - -
5	Temple structure	■
6	Permanent Structure	■
7	Temporary Structure	▨
8	Electric Pole	⊙
9	Water Tank	▭
10	Interlocking	■
11	Park	■












INLARGE OUTLINE THE LIMITS AREA = 4335 SQFT.



PRAYAGRAJ
DEVELOPMENT AUTHORITY

LEGEND

Sr No.	Descriptions	Symbol
1	Road	—
2	Plot Area	—
3	Fort Wall	—
4	Outline the limits area shown as	—
5	Temple structures	■
6	Permanent Structures	■
7	Temporary Structures	▨
8	Electric Pole	⊙
9	Water Tank	⊕
10	Borewells	⊙
11	PaK	■

 KAMLESH VERMA HD/MAN PDA	 VIVEK MR. SINGH JE PDA	 SANDEEP AGRAWAL AE PDA	 R.S. VERMA LAW OFFICER PDA	 ALOK PANDEY Z.O. PDA
 ARCHANA OJHA TEHSILDAR PDA	 TP SINGH TP PDA	 SD SHARMA EXEN PDA	 DAYANAND PRASAD SECRETARY PDA	

<p>TOPOGRAPHICAL SURVEY FOR PARTICULAR AREA OF SHRI BAHU NANDEVI II TEMPLE TIVERTI SANGAM, PRAYAGRAJ</p> <p>CHECKED BY: _____</p> <p>Scale: 1 : 400</p> <p>DRAWING DATE: 16-12-19</p>	<p>AREAS REPORT</p> <table border="0"> <tr> <td>TOTAL TEMPORARY STRUCTURE AREA = 773.06 SQMT.</td> <td>= 824.539 SQYD.</td> <td>= 8326.75 SQFT.</td> </tr> <tr> <td>TOTAL PERMANENT STRUCTURE AREA = 825.148 SQMT.</td> <td>= 745.277 SQYD.</td> <td>= 6787.80 SQFT.</td> </tr> <tr> <td>OUTLINE THE LIMITS AREA = 432.73 SQMT.</td> <td>= 481.89 SQYD.</td> <td>= 4335.00 SQFT.</td> </tr> </table>	TOTAL TEMPORARY STRUCTURE AREA = 773.06 SQMT.	= 824.539 SQYD.	= 8326.75 SQFT.	TOTAL PERMANENT STRUCTURE AREA = 825.148 SQMT.	= 745.277 SQYD.	= 6787.80 SQFT.	OUTLINE THE LIMITS AREA = 432.73 SQMT.	= 481.89 SQYD.	= 4335.00 SQFT.	<p>SURVEYED BY MANISH ENTERPRISES</p> <p>AN INDIAVIA, GATEWAY ROAD, BALLIA 221001 Mob No. 9861972222, 718604688 Email: info@manish91@gmail.com</p>
TOTAL TEMPORARY STRUCTURE AREA = 773.06 SQMT.	= 824.539 SQYD.	= 8326.75 SQFT.									
TOTAL PERMANENT STRUCTURE AREA = 825.148 SQMT.	= 745.277 SQYD.	= 6787.80 SQFT.									
OUTLINE THE LIMITS AREA = 432.73 SQMT.	= 481.89 SQYD.	= 4335.00 SQFT.									

33. Since above measurement report and the map have not been disputed by any of the counsels of the respective parties, it is taken to be admitted. Thus the report is found prepared on the spot without any dispute and objection. Accordingly, the ultimate and inevitable conclusion drawn by us is as under:

a. *The main temple area where Hanuman Jee rests and structure above stands is 113,91 Sq.mt. (approx 1,225.44 Sq.ft.)*

b. *Temple premises is the area that includes temple structure (113,91 Sq.mt.) and the surroundings is 4335 Sq.ft (approx 402.75 Sq. mt.)*

c. *Except for a part of area of office (west north corner) and part of Verandah (west south corner) of temple premises, the entire constructions shown with red shaded lines are unauthorized constructions.*

(i) Part of office area inside premises is 14.143 square meter (approximately 152.152 Sq.ft).

(ii) Part of varandah with additional temporary structure inside the premises is 16.062 Sq.mt. (approximately 172.81 Sq.ft.)

d. *Since permission under the letter dated 6th March, 2004 was only for renovation and repair of temple, it would mean only the main temple and the surrounding, shown in the survey map/report prepared by the PDA, with dotted lines were open space is available and should continue to remain open space upto the extent of 4335 Sq.ft..*

e. *the words renovation and repair in the letter dated 06.03.2004 can only mean improvement upon and retaining the existing structure and not a permission for creating any new structure.*

f. *there is no pleading by the petitioner that there existed any structure permanent or temporary except main temple within an area of 4335 Sq.ft. described as Temple of Mahbir Jee in the GLR.*

34. Learned counsel for the petitioner has also not sought any time to raise any objection and rather has made a request that after measurement exercise was carried out on the spot in the presence of representatives of Mahant of temple on 16th

December, 2019 and since the permanent structure shown with red shaded lines has been found beyond the area shown in the GLR as 4335 Sq.ft. the Mahant has applied to the Ministry of Defence, Government of India on 18.12.2019 to regularize the constructions that have come up beyond the area 4335 Sq.ft. and so the structure that have already come up over the land which is a Defence land quite beyond the area of the private land of the temple, may not be demolished until decision is taken by the Government of India.

35 However, no such letter has been placed before this Court, so it can be safely concluded with the admission of respective parties that except for certain area of the office and verandah and office towards west-south and the west north respectively of the temple premises, the entire constructions that are permanent in nature, beyond the temple premises (4335 Sq.ft.) are upon the Defence land and as such constructions, therefore, are liable to go. Except for transfer of land by Ministry of Defence, Government of India to the temple management, the constructions cannot be taken/deemed to be regularized and since as on date there is no such permission accorded *qua* permanent constructions beyond the area of 4335 Sq. ft. of the Hanuman Temple and its premises, such constructions deserve to be demolished.

36. Now, we take up the **third issue** which is regarding rights of an individual private person to raise construction over the land or in respect of the building which is recorded in the GLR as a private land/ building in occupation of a private individual either under lease or grant or a mere occupancy prior to the coming into force of Cantonments Act, 2006. Till 14.09.2006, the Cantonments Act, 1924 was in promulgation with regard to the development activity in the area notified as an cantonment area. It is the authority created under the Cantonments Act and the Board constituted thereunder exercise same power as by a municipality in a civil municipal area.

37. Section 178-A provides for sanction of the construction in the name of erection or re-erection of a building in a civil area only. There is previous sanction of the Executive Officer and then any exercise of erection or re-erection without sanction has been

described as punishable offence in view of section 179 of the Act of 1924. Section 178 A and 179 of the Act of 1924 are reproduced hereunder:

“CHAPTER XI

Control Over Building, Streets, Boundaries, Trees, Etc. Buildings

178-A. Sanction for building:-

No person shall erect or re-erect a building on any land in a cantonment-

(a) in an area, other than the civil area, except with the previous sanction of the Board,

(b) in a civil area, except with the previous sanction of the Executive Officer,

nor otherwise than in accordance with the provisions of this Chapter and of the rules and bye-laws made under this Act relating to the erection and re-erection of buildings.

179. Notice of new buildings-

:-1. Whoever intends to erect or re-erect any building in a cantonment shall apply for sanction by giving notice] in writing of his intention,-

a). Where such erection or re-erection is in an area, other than the civil area, to the Board;

b). Where such erection or re-erection is in a civil area to the Executive Officer:)

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who-

(a) makes any material alteration or enlargement of any building, or

(b) converts into a place for human habitation any building not originally constructed for that purpose, or

(c) converts into more than one place for human habitation a building originally constructed as one such place, or

(d) converts two or more places of human habitation into a greater number of such places, or

(e) converts into a stable, cattle-shed or cowhides any building originally constructed for human habitation, or

(ee) convets into a dispensary, stall, shop, warehouse, godown, factory or garage any building originally constructed for human habitation, or

(f) makes any alteration which there is reason to believe is likely to affect prejudicial the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene, or

(g) makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act.

180A -SECTION 180A: POWER OF BOARD UNDER CERTAIN SECTIONS EXERCISABLE BY EXECUTIVE OFFICER:-

– The powers, duties and functions of the Board under section 181, sub-section (1) of section 182, section 183-A and section 185 (excluding the proviso to sub-section (1) and the proviso to sub-

section (2) of the said section 185) shall be exercised or discharged in a civil area by the Executive Officer."

(emphasis added)

38. In the present case the issue is of sanction quoted in the year 2004 as no erection or re-erection could have been carried out without sanction and so to the extent of renovation/repair permission so granted under the letter dated 6th March, 2004 could have been pressed into service as one time measure. Now with enforcement of the Cantonments Act, 2006 with its publication on 14.09.2006 any development activity in respect of civil occupancy building or land, the provisions of 2006 Act would be applicable and so also in the present case as notice is *qua* constructions carried in the year 2009.

39. We find that notice was issued in the year 2009 and, therefore, it has to be seen as to whether respondent had any authority to carry out any development activity in the form of raising permanent structure or construction over and above the land inclusive of the temple premises without prior sanction of the competent authority.

40. From the reading of the various provisions of Chapter IX,X and XI of the Cantonments Act, 2006, we find that the powers of the Cantonment Board and authority designated thereunder have been quite widened and are more akin to the municipal functions. Chapter (X) deals with town planning and control over the building etc. Section 233 provides for preparation of plan for the land use in the cantonment area and Section 233 provides for sanction of building. Section 235 provides for notice by the person who wants to erect or re-erect or repair the building. Section 233 requires a person to notify the purpose and then powers lies with the Board / Authority to sanction or refuse sanction and the Board reserves the right to order stoppage of building work in certain cases; then Section 242 provides for completion of erection or re-erection of the building and to give completion notice and then Section 243 provides for prescribed period of limitation for sanction to follow and if within the prescribed period of 2 years, no construction/ re-erection has taken place, a further application for extension of time shall be given to the competent authority, namely, Board or executive officer as the case may be. The Board also reserves power under

Section 245 to prescribe a reasonable period within which work has to be completed then completion certificate is issued under Section 246 and under Section 247 notice is given where illegal erection or re-erection of building is carried out and then Section 248 gives power to stop the work and even order for demolition. Section 249 also provides for to seal an unauthorized construction and then Section 250 bars the jurisdiction of Civil Court in such matters.

Section 235 of the Cantonments Act, 2006 defines erection or re-erection vide sub-section 2 as under:

"(2) For the purposes of this Act, a person shall be deemed to erect or re- erect a building who-

(a) makes any material alteration or enlargement of any building; or

(b) converts into a place for human habitation any building not originally constructed for human habitation; or

(c) converts into more than one place for human habitation a building originally constructed as one such place; or

(d) converts two or more places of human habitation into a greater number of such places; or

(e) converts into a stable, cattle- shed or cow- house any building originally constructed for human habitation; or

(f) converts into a dispensary, stall, shops, warehouse, godown, factory or garage any building originally constructed for human habitation; or

(g) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene; or

(h) makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye- law made under this Act."

(emphasis added)

41. From perusal of the above, therefore, it is clear that building erection or re-erection will include any material alteration or enlargement of any building and its existing structure. Then we find that Section 243 provides that sanction of erection or re-erection of building shall be only for 2 years from the date of sanction and if work is not carried out during this period, one can apply to the Board or executive officer as the case may be, and in case if construction of building has been started but could not be completed within specified reasonable period as may be provided by executive officer or the board then such construction work will not be continued unless prior sanction is obtained.

42. Section 247 provides for punishment against the person who continues or completes erection or re-erection of the building

without giving any valid notice as required by Section 235 and 236 or before any sanction has been issued or without complying with direction as contained under Section 238 and also in cases where sanction has been refused and yet construction work is being carried out. Section 247 and Section 248 and 249 relevant for the purpose, are reproduced hereunder:

"247. Illegal erection and re-erection- *Whoever begins, continues or completes the erection or re-erection of a building-*

(a) without having given a valid notice as required by sections 235 and 236, or before the building has been sanctioned or is deemed to have been sanctioned; or

(b) without complying with any direction made under sub-section (1) of section 238; or

(c) when sanction has been refused, or has ceased to be available or has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 58,

shall be punishable with fine which may extend to fifty thousand rupees and the cost of sealing the illegal construction and its demolition.

248. Power to stop erection or re-erection or to demolish:-

(1) A Board may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence under section 247 and may, in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence under section 247, within twelve months of the completion of such erection or re-erection in like manner, direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected:

Provided that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable:

Provided further that the Board shall not, without the previous concurrence of the General Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building OR land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the order under section 238 sanctioning the erection or re-erection has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 58, and shall in any such case in like manner direct the demolition or alteration, as the case may be, of the building or any part thereof so erected or re-erected where the General Officer Commanding-in-Chief, the Command, thereafter directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him:

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence

of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the General Officer Commanding-in-Chief, the Command, has been communicated to him.

249. Power to seal unauthorized constructions:-(1) It shall be lawful for the Chief Executive Officer, at any time, before or after making an order of demolition under section 248 or of the stoppage of erection of any building, or execution of any work, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed at the cost of the offender in such manner as may be prescribed by rules for the purpose of carrying out the provisions of this Act or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on, has or, has been sealed, the Chief Executive Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except--

(a) under an order made by the Chief Executive Officer under subsection (2); or

(b) under an order of an appellate authority in an appeal made under this Act.

(4) Any person who contravenes the provisions contained in subsection (3) shall be punishable with imprisonment which may extend to six months or with fine which may extend to twenty thousand rupees, or with both."

(emphasis added)

43. From reading of the above provisions, it is absolutely clear that even in respect of area in occupation of civilian if the land falls in the cantonment area then no development activity in the form of erection or re-erection of the building can be carried out except with prior sanction of the competent authority. So even in cases where there are temples in the defence area and are in occupancy of civilian or *math* or *mahant* for that matter, such *math* or *mahant* or civilian cannot carry out or undertake any exercise of erection or re-erection of the temple structure even within temple premises except with prior sanction of the competent authority under the Cantonments Act, 2006. The permission so granted in the present case in the year 2004 will automatically deemed to have seized with enforcement of

Cantonments Act, 2006 and any construction in the name of erection or re-erection of the temple structure even in the temple premises could not have been carried out except with prior sanction and permission of the competent authority under the Cantonments Act, 2006.

44. Besides above the Cantonments Act, 2006 does not abolish or repeal the notification of the Government of United Provinces dated 26th July, 1916 that is a special notification restraining construction activity in the vicinity of the ordinance depot fort, Allahabad to *wit*, within 1000 yards except with prior sanction of the General Officer Commanding of the Division.

45 In the present case, we do not find that any such sanction has been accorded to the petitioner to raise new construction or raise any permanent structure removing old one within the area of the 1000 yards from the wall of the OD Fort except direction/ letter dated 6th March, 2004 for repair or renovation. So answer to the 3rd question is that no construction and no development activity in the name of raising construction or re-erection of a building as defined under Section 235 (2) (a)(g)(h) can be carried out except with prior sanction of the competent authority under Cantonments Act, 2006 and that too in the close vicinity of the fort i.e. 1000 yards from the fort wall as per notification of 1916 (*supra*). The survey map and report (*supra*) submitted in this case clearly shows that permanent structures/constructions have come up in various forms within 1000 yards of the Fort.

46. The survey report and the discussions held above give ample answer to the second query because there is no permission accorded by the competent authority of the Cantonment Board to raise constructions over and above the Defence land at all. The permission under the letter dated 6th March, 2004 cannot be read as permission to raise construction over and above the Defence land.

47. In the present case, we find that area where temple situate is a Defence land, the Mahant of Hanuman temple is a mere occupant of the temple which is recorded as private land. Any development activity, therefore, in and around the temple within the temple premises will be in the nature of altering the structure and if to be carried out, it necessarily requires prior permission

from the competent authority of the Cantonment Board. As far as notification of the Government of United Provinces referred to in the counter affidavit dated 26th July, 1916 appended with counter affidavit is concerned, it clearly goes to demonstrate that no such activity can be carried out within 1000 yards from the *orest* of the *glaois* of the OD Fort.

48. The measurement that has been carried out and the map prepared clearly show that the constructions have been carried out only within the limit of 1000 yards of the Fort wall and therefore, constructions are held to be illegal for want of sanction of the competent authority.

49. The Apex Court in the case of **Chief Executive Officer v. Surendra Kumar Vakil and Others (1993) SCC 555** has clearly held that even in respect of private land of which civilian could be a grantee or a lessee any construction can be carried out only with prior sanction of the competent authority and if no such sanction has been obtained, such authority is well within its right not only to question the same but order for removal /demolition and if occupier does not demolish such constructions voluntarily, the authority can get that demolished at the cost of the occupant.

50. At this stage, learned Senior Advocate appearing for the petitioner Sri C.B.Yadav submits that since constructions have been found to be beyond area of 4335 Sq.ft. recorded in the GLR No. 94 and Survey No. 71 as per the measurement exercise carried out by the Prayagraj Development Authority in the presence of the representatives of the petitioner and the officers concerned, and the report has been prepared to that count, Mahant has applied on 18.12.2019 for grant of sanction/regularization of the existing structure and the Magh Mela is shortly to be organized in the area, some reasonable time may be allowed to remove the standing constructions in questions shown as red shaded, beyond the area of 4335 Sq.ft recorded as private land of Hanuman Temple premises in question.

51. To the above request, learned counsel for the respondents has no objection and we also find that since Magh Mela is shortly to begin, it would be in the public interest to grant sufficient time to the petitioner to remove unauthorized constructions.

52. In view of above, therefore, we hereby direct that petitioner

shall remove all the constructions permanent and temporary beyond the area 4335 Sq.ft.. shown in the map prepared by the Prayagraj Development Authority (*supra*) within a period of three months from today and positively by 19th of March, 2020, failing which it would be open for the respondent to carry out necessary exercise for removal of the unauthorized constructions.

53. Writ petition thus stands disposed of with the aforesaid observations and directions.

54. The registry is directed to supply certified copy of the survey map and the report to the respective parties, if they apply for the same.

55. However, before we part with the case, we may record our appreciation for the tremendous task undertaken by the Advocate Commissioners in rendering their assistance in the matter by preparing spot inspection report quite meticulously in respect of the inspection carried out by the Prayagraj Development Authority.

Order Date :- 19.12.2019

Sanjeev

(Ajit Kumar,J.)

(Ramesh Sinha,J.)