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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1096/2010 & CM No.2306/2010 (for stay)

SMT. SUDESH RANI & OTHERS Petitioners
Through: Mr. Rajendra Dutt, Advocate

Versus

MUNICIPAL CORPORATION OF
DELHI & OTHERS

..... Respondents

Through: Ms. Manjira Dasgupta, proxy counsel
for Mr. Shyel Trehan, & Ms. Mansi
Gupta, Advocates for MCD.
Ms. Ruchi Sindhwani & Ms. Bandana
Shukla, Advocates for GNCTD.

AND

+ W.P.(C) 1200/2010 & CM No.2524/2010 (for stay)

SHRI SANDEEP KHATRI

..... Petitioner

Through: Ms. Meenakshi Dahiya, proxy
counsel for Mr. Rajiv Khosla,
Advocate

Versus

MUNICIPAL CORPORATION OF DELHI & ORS. Respondents

Through: Ms. Mansi Gupta, Advocate for MCD.
Ms. Ruchi Sindhwani & Ms. Bandana
Shukla, Advocates for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing.

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ORDER

28.10.2010

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1. These writ petitions have been filed by the occupants of properties abutting Lampur Road, Narela, Delhi, alleging that the respondent MCD while constructing the Lampur Narela Underpass has encroached upon the properties of the petitioners. On the contrary, the respondent MCD contends that it is the petitioners who have encroached over and extended their properties on public land. This Court, to resolve the controversy, vide order dated 26th February, 2010 ordered the demarcation to be carried out by the Sub Divisional Magistrate (SDM), Narela.
2. This Court, finding the Demarcation Report placed before this Court to be not understandable, vide order dated 21st July, 2010 issued certain directions to the Field Kanungo and to the Executive Engineer, MCD to place an understandable Report before this Court.
3. Pursuant to the aforesaid direction, Demarcation Report has been filed under cover of index dated 10th September, 2010 in WP(C) No.1096/2010. The petitioners in WP(C) No.1096/2010 have filed objections thereto.
4. The Demarcation Report now placed before this Court records that there are encroachments in Khasra No.180/3 where the road exists.
5. The counsel for the petitioners in WP(C) No.1096/2010 has argued on the basis of the documents purportedly of title filed by petitioner in that case that the land of the petitioners is in Khasra Nos.232 & 235. It is contended that the Demarcation Report is not with respect to the Khasra Nos.232 & 235 and thus it means that there is no encroachment in the said Khasra numbers. However, the said documents of title relied upon by the said

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petitioners, save for one registered Sale Deed are all unregistered documents and of dates post September, 2001. The documents of handing over of possession in part performance with effect from 24th September, 2001 are required to be compulsorily registered as per the Registration and Other Related Laws (Amendment) Act, 2001 and no cognizance of the said documents can be taken. The registered Sale Deed however mentions the property subject matter thereof to be in Khasra Nos. 232/2 & 235.

6. The counsel for the petitioner in WP(C) No.1200/2010 has drawn attention to the report of 1985 of a Local Commissioner purportedly appointed by the Tehsildar to carry out the demarcation. As per the said report, the road is on Khasra No.180 i.e. the same Khasra No. to which the Demarcation Report now filed pertains. The counsel for the petitioner in WP(C) No.1200/2010 has relied upon the said Report of the Local Commissioner to contend that encroachment is rather by the Primary Health Centre of the respondent MCD on other side of the road and not by the house of the petitioner.

7. The questions whether the road is on Khasra No.180 or on Khasra Nos. 232 & 235 are disputed questions of fact which cannot be adjudicated in writ jurisdiction. The counsel for the Government of NCT of Delhi has also invited attention to the prayer clause in WP(C) No.1096/2010 which only seeks to restrain demolition of the properties of the petitioners without demarcation. She contends that the demarcation having been carried out nothing further remains in the petition. The petitioners in WP(C) No.1096/2010 have in the alternative also pleaded that if their properties are found to be in encroachment over the municipal land then responsibility of the

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officials who permitted such encroachment over the public land should be fixed and the builder (impleaded as respondent No.6 in that petition) should be directed to pay compensation. The said prayer clause shows that the petitioners themselves are not sure as to whether their properties are in encroachment over the public land or not. This Court in the order dated 21st July, 2010 had also directed the petitioners to place before this Court documents showing dimensions of their properties. In response thereto an affidavit has been filed by the petitioners in WP(C) No.1096/2010 again on the basis of unregistered documents and of which as aforesaid no cognizance can be taken by this Court inasmuch as the same cannot be said to be conferring any title on the petitioners.

8. In the aforesaid circumstances, no further relief can be granted to the petitioners. The counsel for the petitioner in WP(C) No.1200/2010 has also contended that the action of MCD is also challenged on the ground that the petitioners being in settled possession notice required to be given has not been given. In cases of present nature where the petitioners before the Court are coming in the way of public projects and are unable to even *prima facie* satisfy this Court of their title, the public projects cannot be hampered by grant of stay on such grounds. In any case, the present writ petitions have remained pending before this Court for the last about eight months and the petitioners had sufficient opportunity of being heard.

The petitions are therefore dismissed with no order as to costs.

OCTOBER 28, 2010/ 'gsr'

RAJIV SAHAI ENDLAW, J