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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5823/2013 & CM APPL. 12824/2013**

KHUSHI RAM

..... Petitioner

Through Mr. Pushpender Singh Dahiya, Adv.

versus

STATE

..... Respondent

Through Ms. Ferida Satarawala, Adv.

% Date of Decision: 13th September, 2013.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed primarily seeking stay of the ejectment order dated 16th April, 2013 passed by the Revenue Assistant with regard to the land in Khasra No. 37/16 situated in the Revenue Estate of Village Mubarakpur Dabas, Delhi. Since the impugned order is short one, the same is reproduced herein below:

“The proceedings in the case were initiated against the respondents for occupying Gram Sabha land and restrained orders were issued on 17/6/2011 to the respondents for not making unauthorized constructions on Gram Sabha land in khasra nos. 37/16 (1-01), Mubarakpur Dabas. It was also indicated in the restrained order that respondent will file fresh petition which will be disposed off within three months of the receipt of petition as per orders of Hon'ble High Court in the case of Nafe Singh & Ors. V/s GNCT of Delhi

&Ors.

In response to the above order respondents appeared before my predecessor and undersigned from time to time and submitted written submission in this regard. During proceedings Sh. S.K.Sangwan, counsel for Gram Sabha filed written submission claiming the land as reserved for kabristan by the Gram Sabha. Sh. S.Chaturvedi Advocate for respondent no.5 objected to the nature of land and stated that status land is Khatte for garbage pit belonging to the proprietors of the village and also stated that there is a notification issued by Secretary Revenue, Delhi in this regard. Asked to file the documentary evidence in support of his claim, Sh. Chaturvedi filed a copy of khatoni for the year 1964-65 to 1968-69 in Urdu translated copy in English claiming that land was owned by Sh. Nafe Singh & Ors. On perusal of khatoni it was seen that 37/16(1-01) was indicated as 'Gair Mumkin Gadde'. Copy of notification as claimed above was not filed. In the hearing on 8.4.2013 Sh. Chaturvedi has not filed any written statement or documentary evidence in support of his claim and stated that he has already confirmed no concern with the khasra no. 37/16(1-01) as such there is no requirement of filing of such statement/documentary evidence. The other respondent in the case has already confirmed the same facts that they have no concern with the land in khasra no.37/16 (1-01).

Further in the restrained order dated 17/6/2011, petitioners in the case of Nafe Singh and Ors. were directed to file fresh petition to dispose the same within three months of the filing of petition. From the record it reveals that the fresh petition is not filed yet.

In view of the above facts, I, Krishan Lal, Revenue Assistant (Rohini) therefore, order that the respondents stand ejected from the suit land and Gram Sabha Mubarakpur Dabas is directed to take over the possession of the said land."

2. Learned counsel for petitioner contends that the petitioner has been in adverse possession of the said suit land for the last two hundred fifty years. He states that the aforesaid land had been earmarked as garbage pit and was granted in the name of Mr. Sukhbir Singh who in turn executed an agreement to sell and general power of attorney in petitioner's favour.

3. However, no document has been placed on record to show that the petitioner has been declared to either be a Bhumidar or a person in adverse

possession. No document showing allocation of the land to Mr. Sukhbir Singh has been placed on record.

4. On the contrary, learned counsel for State of NCT of Delhi has today in Court handed over a Khatoni which clearly shows that land in Khasra No. 37/16 is Gram Sabha land. Learned counsel for NCT of Delhi states that petitioner is actually the owner of Khasra No. 37/14, who has encroached upon Khasra No. 37/16.

5. This court is of opinion that the petitioner has failed to place on record any document to show that he is the legal owner or authorised occupant of Khasra No. 37/16. The Supreme Court in ***Jagpal Singh and Ors. Vs. State of Punjab and Ors., (2011) 11 SCC 396*** has held as under:

“4. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandisement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

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13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village.

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23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

(emphasis supplied)

6. Keeping in view the aforesaid mandate of law and the facts of the present case, present writ petition and application being devoid of merits are dismissed.

Order dasti under signature of Court Master.

MANMOHAN, J

SEPTEMBER 13, 2013

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