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

+ W.P.(C) 3030/2013 & C.M. N.5725/2013

RAJ KUMARI & ORS

..... Petitioners

Through Mr.Ashok Kumar Juneja, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS

..... Respondents

Through Ms. Saroj Bidhawat, Adv for North DMC.

Mr.Dev P.Bhardwaj, CGSC for UOI/R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **20.10.2016**

There are twelve petitioners before this Court. They are residents of properties/houses bearing individual number i.e. C-91 to C-100, New Multan Nagar, Delhi. Contention in the writ petition is that the petitioners had been handed over possession of their respective 200 sq. Yards plots in the aforementioned colony in the year 1956. They are occupying their respective houses since then. Their entrance is surrounded by a green space beautifully developed and preserved by the collective funds of the parties. These entrances connect their respective houses to the main road as there is no main road in front of each of the aforementioned houses in parity with the rest of the houses in the colony each of which has at least a 40 feet wide road in front of their entrance.

Sometime in April, 2013 the MCD officials inspected the area and stated that they were planning to merge each of the respective small green space into a large single green spaces by erecting a single

common wall around them whereby permanently blocking the main entrance of the houses of petitioners from the main road. Aggrieved by the aforementioned proposed action of the respondent the present writ petition has been filed.

Status quo was directed to be maintained on the first date; this was on 10.5.2013. This status quo is now continuing.

Learned counsel for the petitioner submits that the proposed action of the respondent by building a boundary wall would seal the entrance of each of the houses of the petitioners that they would not be able to access the 40 feet wide road in front of their respective houses as the boundary wall would create an obstruction. Even otherwise this is a private area and not accessed by the public at large; there is no necessity for the MCD to carry out any construction around the lawn area. Attention has been drawn to the site plan (pages 61 and 63 of the paper book). It is pointed out that the plan clearly depicts that there are two lawns in front of the aforementioned houses (house nos.91 to 100). One lawn is in front of the block of the first six houses (house Nos.91 to 94) and another lawn is in front of house nos.95A to 100. The intervening space between the two lawns has now been blocked by a power house and the BSES is now functioning from there. At the backside of the aforementioned houses there is a service lane depicted to be 20 feet wide but it is actually 10 feet wide and this is clear from the plan shown on page 63 of the paper book. The photographs appended with the writ petition have been perused. These photographs show that the manner in which the petitioners have encroached upon the lawn area. The photograph at

page 66 of the paper book is very clear; it shows that in front of each house the green area has been cut down and a parking space has been created for a car and this as per the petitioners has been created in order that each of the aforementioned petitioners can directly access the 40 feet wide road in front of them. Submission being that because of the creation of the power house in between the two lawns and the service lane on the backside there being only a 10 feet wide lane and in an emergent situation even an ambulance cannot reach the houses of the petitioners.

The stand adopted by the petitioners has been controverted. Counter affidavit of the respondents has been perused. Learned counsel for respondent no.1 submits that this is admittedly a public land and the petitioners have no stake or claim over it. The manner in which they have created a road in the green belt area, which is admittedly a public land, does not permit the petitioners to continue with such an action. It is only when the Department's officials had visited the site they came to know about the encroachment and they immediately took removal action. They now propose to build a boundary wall in order that the petitioners do not again encroach upon the Government land and a work order has in fact been issued.

This Court is of the view that the prayer made by the petitioner cannot be acceded to. It is a public land upon which the petitioners have encroached and have created a parking space and a road in the lawn/green belt area which is not their land but the land of the public. The submission of the petitioner that in an emergent situation the 10 feet wide service lane would not be enable an ambulance to reach

their houses is negated by the aforementioned 10 feet wide road which has been depicted on page 67 of the paper book. This photograph on page 66 of the paper book clearly reflects that the service road (at the back of the houses of the petitioners) is not 10 feet wide but definitely more. The exact width may not be known but this picture clearly reflects that there are two vehicles standing opposite one another and they can easily move forward and backward; it is not as if only one vehicle can move at one time. This is clear from the picture at page 67 of the paper book.

This Court is thus of the view that it is not for the petitioners to lay claim on Government land; they have absolutely no right to a land which belongs to the public and which is for the benefit of the public. Their submission that they cannot access the 40 feet wide main road is also negated by the fact that they have to take a little longer route to access this main road. On the back of their houses there is a 20 feet wide road (even assuming that it is less), the picture at page 67 of the paper book clearly shows that two vehicles can run parallel to one another which has negated the submission of the petitioners that an ambulance in an emergent situation cannot reach their houses.

This petition is without any merit. It is dismissed.

INDERMEET KAUR, J

OCTOBER 20, 2016
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