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

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W.P.(C) 1861/2015 & C.M. No.8592/2015

**DURGA VIHAR EXTENSION RESIDENTS WELFARE  
ASSOCIATION**

..... Petitioner

Through Mr.Sandeep, Advocate.

versus

**FINANCIAL COMMISSIONER & ANR**

..... Respondents

Through Mr.Naushad Ahmed Khan, ASC for  
GNCTD along with Ms.Astha Nigam  
and Ms.Neelam Kholiya, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

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**01.09.2016**

Petitioner is seeking quashing of an order dated 11.12.2014 passed by the respondent in case title Durga Vihar Extension Residents Welfare Association Vs. Gaon Sabha, Dindarpur. This order was passed by the Financial Commissioner.

Record shows that proceedings under Section 81 of the Delhi Land Reforms Act had been initiated by the recorded bhumidhar of Khasra nos.405, 406, 407, Durga Vihar Extension. Petitioners were not made a party. This was the grievance of the petitioners. On 21.11.2005 a conditional order was passed by the Revenue Assistant. The Revenue Assistant passed a final order on 01.11.2006 by virtue

of which the land vested in the Gaon Sabha. In 2007, the Durga Vihar Extension Residents Welfare Association was formed. In March, 2014 the petitioner association found a notice affixed at the site by the Goan Sabha informing them of certain execution proceedings having been filed by the Gaon Sabha. The petitioner who was not a party, accordingly, moved an application under Order 1 Rule 10 of the CPC for impleadment in the aforementioned execution petition.

This application was filed in April, 2014; it was dismissed in default on 28.5.2014 but on the same date warrants of possession were issued by the Revenue Assistant. Petitioner (in June, 2014) moved an application for revival of his application under Order 1 Rule 10 of the CPC which had been dismissed in default. The Revenue Assistant vide his order dated 11.7.2014 dismissed the application of the petitioner seeking restoration of his application under Order 1 Rule 10 of the CPC.

This order was endorsed by the Financial Commissioner on 11.12.2014.

This order dated 11.12.2014 is the subject matter of challenge before this Court. Contention before this Court is that this was a non-speaking order which has been passed by the Financial Commissioner. The society was a necessary party in the proceedings below.

Admittedly, execution proceedings are yet pending before the Executing Court. This Court notes that although the application seeking impleadment (under Order 1 Rule 10 of the CPC) had been

dismissed in default on 28.5.2014 yet in June, 2014 itself an application seeking restoration of the said application under Section 1 Rule 10 of the CPC was filed. There appears to be hardly any delay in filing the application for restoration.

Learned counsel for the petitioner submits that he could not appear before the Executing Court on 24.5.2014 due to an inadvertent lapse, the party should not be penalized for the fault of the advocate. Noting the submission as also the fact that the petitioner had moved an application seeking restoration forthwith, this Court is of the view that the case of the petitioner seeking impleadment should be considered on merits. The application under Order 1 Rule 10 of the CPC is accordingly restored to its original number.

Needless to state that the any observations made by this Court in this order shall not influence the Executing Court while deciding the application of the petitioner under Order 1 Rule 10 of the CPC which shall strictly be dealt with in accordance with law and on its own merits.

Petition disposed of.

**INDERMEET KAUR, J**

**SEPTEMBER 01, 2016**

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