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

+ W.P.(CRL) 1606/2014 and CrI.M.A. No.12212/2014

ANUPMA SHARMA

..... Petitioner

Through: Mr. Maninder Singh & Ms.Aekta
Vats, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Sachin Nahar, Advocate for the
respondent/ SDM (Saket).

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

09.11.2016

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The petitioner has preferred the present writ petition to assail the order dated 24.07.2014 passed in the proceedings under Section 133 Cr.P.C. in case No.59/SDM/SAKET/2014/3047. The petitioner also seeks restraint against respondents No.2 to 5 from unlawfully removing her belongings or to construct an illegal road on the land claimed by the petitioner to be in her ownership.

The submission of the petitioner is that on 23.09.2011, this Court in W.P. (C.) No.4070/2011 had directed the Tehsildar to decide the petitioner's application for demarcation after the petitioner had provided the relevant documents. The petitioner consequently provided the documents and demarcation was started on 25.01.2012. The same was, however, adjourned

to 15.02.2012. Despite repeated reminders, the demarcation was, however, not carried out. Eventually, the demarcation was done on 24.07.2014. The submission of the petitioner is that in this demarcation, it was found that the petitioner was in possession of Khasra Nos.194 and 195, whereon the petitioner is running Indian Modern School. The demarcation report, records, inter alia, as under:

*“However, in the column of possession, possession of (4-0) is recorded. On the spot there is Indian Modern School in the boundary of Khasra No.194 min. **There is a vacant portion in south of boundary wall, where bricks have been stocked. Remaining is being used as a “Rasta”. The vacant portion in south of boundary wall is the portion of Khasra No.194.** Today, demarcation is complete. During demarcation no difficulty is faced.”* (emphasis supplied)

Mr. Singh submits that from the said demarcation report, it is evident that there is a vacant portion outside the boundary wall of the said school, which falls in Khasra No.194. He submits that the petitioner has stocked her bricks on the vacant land which falls in Khasra No.194, which is in ownership of the petitioner and is not government/public land. The further submission is that the proceedings under Section 133 Cr.P.C. can be instituted only in respect of government/ public land and not private land.

On the other hand, the submission of learned counsel for the respondent is that it is for the SDM to determine whether, or not, the land where the petitioner had stocked the bricks is private land or government/public, land and this Court cannot go into the said issue in writ proceedings.

A perusal of the impugned order shows that the same does not specifically deal with the aspect whether the land, whereon the petitioner’s

bricks are lying is public land/ public road. Prima-facie, it appears that there may be some merit in the case of the petitioner. The impugned order, therefore, cannot be sustained as it does not return a finding as to whether the land where the bricks are lying is public land. The same is, accordingly, set aside and the proceedings are remitted back to the SDM concerned.

Till the SDM renders his decision after a thorough inquiry, the parties shall maintain status quo with regard to the title & possession of the property.

It is, however, made clear that the observations made in this order are only tentative and shall not come in the way of SDM in passing a reasoned order after conducting a thorough inquiry into the matter.

The petition stands disposed of in the aforesaid terms.

Dasti.

VIPIN SANGHI, J

NOVEMBER 09, 2016

B.S. Rohella