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

+ W.P.(C) 3285/2015 & C.M.No.5885/2015

AKHTAR ALI & ORS.

..... Petitioners

Through Ms.Jyoti Kataria, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.Anuj Aggarwal, ASC with
Mr.Shubhanshu Gupta, Advocate for
R- 2, 3, 6 & 7.

Ms.Kanika Jain, Advocate for R-
4/SDMC.

Mr.Wajeeh Shafiq with Ms.Ekta
Verma, Advocates for Delhi Waqf
Board.

ASI Shri Ram, PS Hair Nagar.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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21.03.2016

Present writ petition has been filed seeking stay of demolition of petitioners' properties situated in khasra nos.1637 and 1576, Manak Vihar Extension, Village Tihar, New Delhi.

In the petition, it has been alleged that the petitioners apprehend demolition in pursuance to an order passed by the Public Grievances Commission (PGC) dated 17th September, 2014.

Today, learned counsel for SDMC has handed over a copy of the order dated 27th May, 2015 passed by the PGC wherein it has been held as under:-

“.....Sh. Bharat Bhushan, Senior Town Planner, SDMC has now claimed that Khasra No.1575 belongs to SDMC and on the other hand, the affected resident, Sh. Hassan Mohammed & Ors. have claimed that MCD has lost the case in the Court of Sh. J.D. Kapoor, Addl. District Judge, Delhi and accordingly, the land being disputed land, was put under police custody.

Sh.Bharat Bhushan, Senior Town Planner, SDMC informed that they have filed a Writ Petition (C) No.5038/2015 in the Hon'ble High Court of Delhi in the matter of “Hassan Mohammed & Ors Vs. South Delhi Municipal Corporation & Ors.” and the next date of hearing is scheduled for 4/8/2015. The Commission observed that the issue before the Commission was not of ownership, but for removal of encroachment from the land, which was under the custody of Delhi Police.

The Commission expressed its anguish at the failure of SDMC to protect the land over which it now claiming ownership. SDMC is directed to protect the land over which it claims ownership, till the issue of ownership is settled by the Hon'ble High Court of Delhi. In the interim, the Delhi Wakf Board is directed not to carryout any construction including construction of boundary wall.

4. Directions of the PGC

Since the case has now become sub-judice before the Hon'ble High Court of Delhi, the case is ordered to be closed before the Public Grievance Commission, as the Commission does not have mandate to hear the cases which are sub-judice before any Court of Law.”

In view of the order dated 27th May, 2015 passed by the PGC which virtually amounts to allowing the review filed by SDMC, this Court is of the view that the present writ petition has become infructuous.

In fact, the learned counsel for Delhi Waqf Board states that the Board shall pass a fresh order under Section 54 of the Waqf Act, 1995

independent of the order passed by the PGC.

Learned counsel for the SDMC states that the Waqf Board has no jurisdiction to pass such an order.

However, this Court is of the view that this issue can only be decided in appropriate proceedings and that too after an order has been passed by the Waqf Board.

This Court however clarifies that it has not expressed any opinion on the merits of the controversy. Rights and contentions of all the parties are left open and the parties are free to avail of appropriate remedies in accordance with law.

Consequently, the present writ petition and the application are disposed of as infructuous and all the interim orders passed by this Court stand vacated.

MANMOHAN, J

MARCH 21, 2016
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