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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6411/2016 & C.M. No.26262/2016**
SIMMI KAUR

..... Petitioner
Through Mr.A.K.Singla, Sr.Adv. with Mr.
Vikas Negi, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI (NORTH) & ORS

..... Respondents
Through Mr.Ajjay Aroraa and Mr.Kapil Dutta,
Advocates for R-1.
Ms.Sakshi Vaid for Mr. Kunal
Sharma, Advocate for R-2/DDA.
Ms.Saroj Bidhawat, Advocate for
UOI.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **26.07.2016**

Petitioner is aggrieved by the fact that the respondent corporation (respondent no.1) has taken over the land of the petitioner and in spite of repeated requests the same has not been handed back to the petitioner. The writ petition land comprises of 400 sq. yards situated in Khasra No.326/2, Khata Khatoni No.88, situated within the abadi of Village Salempur Mazra, Madipur, Delhi known as Rani Bagh. It has also been depicted that the site plan marked red attached along with the petition.

Petitioner claims himself to be the owner of the said land; the

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land having been purchased by way of sale deed by predecessor-in-interest of one Ramkali.

Record shows that a suit for permanent injunction had been filed by the petitioner which was decided by the Civil Judge. The prayer in that plaint was that a decree of permanent injunction be passed in favour of the plaintiff/petitioner and against the respondent corporation/ Municipal Corporation and the respondent be restrained from interfering with the peaceful enjoyment of the aforementioned land.

Written statement was filed in that suit by respondent no.1. The version of the Corporation (earlier MCD and now North DMC) was that this was a park which has been allotted to the MCD and thus had also been depicted in the lay out plan of the Corporation approved as way back as on 26.8.1962 evidencing the fact that the said land was a park which was in existence since 1962. This park had in fact been handed over to the Corporation by the Land and Building Department on 01.7.1978. This has also been depicted in the lay out plan.

In view of the pleadings of the parties, issues were framed. There were largely two issues. The first issue related to the relief as claimed for by the plaintiff i.e. whether he was entitled to a decree of permanent injunction? The second issue related to the objection raised by the Department that the suit was barred under Sections 477 and 478 of the DMC Act. Evidence was led. 8 witnesses were examined on behalf of the plaintiff. On behalf of defendant 3 witnesses were examined. Issue wise findings were returned by the

competent Court. The collective testimony of the plaintiff's witnesses had evidenced that the possession of the suit land was with the MCD. This was in fact admitted by PW-3 and PW-4 as well. The Court was of the view that since the defendant is in possession of the suit property, the prayer of the plaintiff for a decree of injunction could not be passed in his favour. The second issue was, however, decided in favour of the plaintiff.

Learned senior counsel for the petitioner submits that it is an admitted case of the Department that the land belonged to the plaintiff and for this purpose attention has been sought to be drawn to the cross-examination of DW-1. Submission is that in spite of specific query having been put to the DW-1 on the point as to whether he had any record relating to his defence that this land had been handed over to them by the Land and Building Department, there was no record which was brought forth by the Department to substantiate this averment. The suit land had in fact not been acquired. Further submission of the learned senior counsel for the petitioner being that this by itself establishes that the land belongs to the petitioner.

This Court is not in agreement with this submission made by the learned counsel for the petitioner. No few lines of the cross-examination of a witness can be picked up to give it a meaning which otherwise may not emanate from the reading of the entire testimony. The law on this aspect is clear. The testimony of a witness has to be read as a whole.

This Court reiterates and notes that the competent Court i.e. the Court of Civil Judge had tried this suit and by a decree dated 15.12.2015 had dismissed it. Admittedly, no appeal has been filed against that decree. That decree has since become final. In fact the submission of the learned senior counsel for the petitioner is that he is not really aggrieved by that decree. His submission being that these aforementioned lines of the cross-examination of DW-1 substantiate the case of the petitioner that he is the owner of the suit land and the Department not having produced any documents to show that the Land and Building Department had handed over the suit land to the Corporation it is a clear case of admission by the Department that the suit land belongs to the petitioner.

Learned senior counsel for the petitioner has placed reliance upon a judgment of the Apex Court in Syed Maqbool Ali Vs. State of Uttar Pradesh and Anr. reported as MANU/SC/0441/2011 to make a submission that even if there is an alternate remedy available and even presuming the petitioner had a remedy of preferring another alternate legal recourse and writ petition may not be the only course available to him yet the writ petition cannot be dismissed on this ground alone.

This Court need not delve into this aspect as the judgment relied upon by the learned counsel for the petitioner is wholly distinct on its own facts. In that case the Court had held that a land holder whose land had been taken away without acquisition would be

entitled to file a civil suit or to approach the High Court by filing a writ petition and if the action can be shown to be arbitrary and irrational, the second course i.e. filing a writ petition would be available.

In the present case, this Court notes that there are disputed questions of fact as the stand of the respondent all along has been that this land belongs to the MCD. It being a park and the same had been handed over to the MCD by the Land and Building Department as way back as in 26.8.1962. This was the consistent stand of the Department in the suit proceedings. However the civil suit was a suit for injunction; it did not go into the question of title which title at the cost of repetition is disputed by the Corporation.

In this background, this Court is of the view that this petition cannot be entertained. It is accordingly dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

JULY 26, 2016

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