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

+ LPA 483/2016 & C.M.No.31660/2016 (*stay*)

KAMAL KISHORE Appellant
Through: Mr.Mukesh Kr.Verma, Adv.

Versus

GOVT OF NCT OF DELHI & ORS Respondents
Through: Mr.R.A.Iyer, Adv. with Ms.Shruthi
P., Adv. for Mr.Gautam Narayan, ASC for
GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **30.08.2016**

C.M.No.31661/2016 (*exemptions*)

Allowed subject to all just exceptions.

C.M.No.31662/2016 (*delay of 58 days*)

Heard.

In view of the facts and circumstances of the case, the delay of 58 days in filing the appeal is condoned and the application is disposed of.

LPA No.483/2016

1. This appeal is preferred against the order of the learned Single Judge dated 02.06.2016 in W.P.(C) No.4781/2014. The unsuccessful petitioner is the appellant before us.

2. We have heard the learned counsel for both the parties. As could be seen from the material available on record, the W.P.(C) No.4781/2014 was filed with a prayer to restrain the respondents from demolishing and dispossessing the petitioner from property No.C-661 and C-662, Khasra No.920, JVTs Garden, Chhattarpur Extension, New Delhi. A further direction was also sought to regularize the said property. The respondent No.1/Govt. of NCT of Delhi filed a status report stating that the land comprising Khasra Nos.921 and 931 situated in the Revenue Estate of Village Chhattarpur is Gram Sabha land has been allotted to the Social Welfare Department for construction of an Old Age Home. It was also stated that the said land was duly demarcated and a decision was taken by the district authorities on 04.06.2014 to remove the encroachments existing on Khasra No.921 of the Gram Sabha land. Accordingly, the encroachments in Khasra No.921 were removed and the Social Welfare Department has taken up construction of a boundary wall as per the demarcation report. However, it was contended by the writ petitioner that his property measuring 180 sq. yards is situated in Khasra No.920 and not in Khasra No.921. For the said purpose, the writ petitioner sought to rely upon various plans.

3. The learned Single Judge declined to grant any relief observing as under:-

“Admittedly, the petitioner’s property is situated in an unauthorised colony in Chhattarpur. Respondents in their latest status report have stated that demarcation was carried out on 14th May, 2010 and after doing ground marking on 16th November, 2010, the demarcation was re-

confirmed on 03rd June, 2011 and thereafter, the land of the Gaon Sabha was identified.

Learned counsel for petitioner has relied upon various plans to contend that the petitioner's property is situated in Khasra No.920 and not in 921, but all the plans relied upon by the petitioner are private plans and not authenticated by any statutory authority. Consequently, in the opinion of this Court, the said plans cannot be taken into account.

In any event, the present writ petition is not maintainable as it raises disputed questions of fact which require a detailed inquiry and evidence.

Further, Writs can only be issued to persons who approach the Court with clean hands i.e. those who have carried out construction in accordance with law.

This Court is of the view that writ remedy cannot be invoked by persons who have encroached upon Government land and/or admittedly have carried out construction without any sanction plan in an unauthorised colony.

Consequently, present writ petition and application are dismissed.

However, it is clarified that petitioner is at liberty to file other remedies if available in accordance with law."

4. Having heard the learned counsel for the appellant, we entirely agree with the view of the learned Single Judge that the matter involves disputed questions of fact which cannot be inquired into and adjudicated by this Court under Article 226 of the Constitution. Therefore, the learned Single Judge has rightly dismissed the writ petition and granted liberty to the petitioner/appellant to avail the other remedies available in accordance with law.

5. We do not find any justifiable reason to hold that the order under appeal suffered from any legal infirmity warranting interference in an intra court appeal.
6. Accordingly, the appeal is dismissed.

CHIEF JUSTICE

AUGUST 30, 2016/‘*anb*’

SANGITA DHINGRA SEHGAL, J