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

+ **CM(M) 1231/2016**

RAGHUBIR SINGH & ORS Petitioner

Through **Mr.I.S.Dahiya, Advocate**

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through **Mr.Arjun Pant, Advocate**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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09.12.2016

CM No.44347/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1231/2016 & CM No.44346/2016 (stay)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 20.8.2016 by which an application filed under section 151 CPC seeking directions to the respondent to produce the record regarding demarcation/re-demarcation carried out in respect of land Khasra Nos.169 and 170 village Nahar Pur and also the record by which the passage of 12 feet on the side of Khasra No.169 in the same village has been provided was dismissed.

2. The petitioner filed a suit for permanent injunction against the respondent. Issues were framed in the suit. Issues No.4 and 5 read as follows:-

“4. Whether the suit land falls in khasra no.170 of village Naharpur which stands acquired and placed at the disposal of DDA? OPD

5. Whether the suit land falls in khasra No.169 in the ownership/bhumidari of the plaintiff? OPD”

3. Hence, the controversy revolves around as to whether the land of the petitioner falls in Khasra No.169 which is owned by the petitioner or Khasra No.170 which has been acquired by DDA. The trial court rejected the submissions of the petitioner and held that the petitioner has failed to lead cogent evidence that the suit land falls in Khasra No.169.

4. Now, the present appeal has been filed. Earlier the petitioner before the appellate court moved an application for appointment of a Local Commissioner to visit the site and to ascertain the exact land and Khasra No. where the properties of the petitioner are situated and to demarcate the land comprising in Khasra No.169 as well as land comprising Khasra No.170. The Local Commissioner gave her report stating that she tried to search Khasra Nos.169 and 170, but in view of the fact that the area is thickly built up and crowded, despite assistance of the revenue official, the Local Commissioner could not measure the said Khasras which was mandate of the commission. Accordingly, the Local Commissioner was discharged. It is then that the petitioner has now moved the present application.

5. The trial court in its discretion has noted that the petitioners are indirectly trying to collect evidence through court and are seeking re-trial of the matter which cannot be done by an appellate court.

6. The trial court has exercised the jurisdiction and has declined to give any directions to the respondent. In my opinion, there are no reasons to differ with the views of the trial court. Present petition is accordingly dismissed.

JAYANT NATH, J

DECEMBER 09, 2016

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