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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 813/2016 & CM APPLs. 3595-3596/2016

SALMAN JAVED AND ORS

..... Petitioners

Through

Mr. Bahar U. Barqi, Advocate

versus

UNION OF INDIA AND ANR

..... Respondents

Through

Mr. Kirtiman Singh, CGSC with
Ms. Perna Shahdeo and Mr. Waize
Ali Noor, Advocates and Mr. Sidharth
Khatana, Govt. Pleader for UOI.

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Date of Decision: 01st February, 2016**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed seeking a direction to respondents to protect the enemy properties bearing nos. 6507, 6508 (1st Floor), 6512, 6513, 6514, 6516, Bara Hindurao, Delhi -110 006. Petitioners further seek a direction to respondents to file an appeal against order dated 23rd March, 2013 passed in Civil Suit No. 364/2008 whereby a decree of permanent injunction was passed against the respondents restraining them from dealing with present petitioners-alleged tenants of the aforesaid properties.

2. Learned counsel for the petitioners states that petitioners are tenants of the aforesaid properties and have paid the rents to the respondent no. 2- Custodian of Enemy Properties till 31st January, 2015.
3. Learned counsel for the petitioners further states that due to negligence of the officials of respondents the land grabbers laid claim to the aforesaid properties and they were successful in getting a decree for declaration and consequential reliefs against the respondents in Civil Suit No. 364/2008.
4. Learned counsel for the petitioners states that the petitioners came to know about the aforesaid civil suit through the eviction proceedings initiated by the so called claimants.
5. Learned counsel for the petitioners submits that under Section 8(2)(iv) of the Enemy Property Act, 1968, the petitioners are entitled to protection and respondents have to discharge their statutory duties to protect public properties by filing an appeal against the decree dated 23rd March, 2013 passed in Civil Suit No. 364/2008.
6. In the opinion of this Court, it cannot be presumed that a decree passed by a civil court is without any application of mind. This Court is of the view that if allegations of petitioners that decree is vitiated by fraud are correct, then it is open to the petitioner to file appropriate proceedings or to take this plea in the proceedings initiated by the alleged owners, in accordance with law. However, this Court clarifies that it has not expressed any opinion on the controversy. The rights and contentions of all the parties are left open.
7. But, this Court is of the opinion that Section 8(2)(iv) of the Enemy Property Act, 1968 cannot be read to mean that Custodian must file an

appeal against each and every decree passed by a civil court. Consequently, present writ petition being bereft of merits is dismissed. The application also stand disposed of.

MANMOHAN, J

FEBRUARY 01, 2016

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