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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ W.P.(C) 4193/2015, C.M. APPL.31866/2016 & 9506/2017  
MOOL GRAMIN HARIJAN VIKAS PANCHAYAT..... Petitioner  
Through : Sh. A.K.Mishra, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent  
Through : Sh. Hashmat Nabi, ASC, for  
Respondent No.3.  
Sh. Gigi. C. George, Advocate, for Respondent  
No.4.  
Sh. Bahar. U. Barqi, Advocate, for Respondent  
Nos. 7 to 16.  
Sh. Abhishek Sharma, Advocate, for SDMC.  
Sh. Prashant Katara, Advocate.  
Sh. Sanjeev Sabharwal, Standing Counsel, for  
DDA  
Sh. Varun Nischal, Advocate, for Respondent Nos.  
5 and 6.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE S.P.GARG**

**ORDER**  
% **26.07.2017**

1. The petitioner, claiming to be a public spirited citizen seeks a direction to the respondents to take action against Respondent Nos. 7 to 16 and remove what it characterizes as “unauthorized construction” in Khasra nos. 261, 262 and Plot Nos. 44, T-71, T-72 and T-73 at Pahari Basti, Urbanised Village, Hauz Khas Village, New Delhi.
2. The petitioner alleges that the properties, which are the subject

matter of these proceedings are public and that some of their parts are owned either by the Delhi Development Authority (DDA) or the Delhi Government. It is alleged that the Delhi Wakf Board is claiming to be the owner of the land whereas in reality it is not. The petitioner refers to various complaints made to certain authorities, such as the Lieutenant Governor; Vice-Chairman-DDA and the Deputy Commissioner-South Delhi Municipal Corporation and that despite its reminders, no action has been taken. He also relies upon an RTI query which received similar response.

3. After notice was issued to the respondents, which included the DDA and the MCD [hereafter “SDMC”], Govt. of NCT of Delhi and the Archaeological Survey of India (ASI), affidavits have been filed by some of them. DDA very clearly states that the entire portions which are subject matter of these proceedings are not owned by it but noted that some parts of those portions are maintained as grave areas.

4. So far as the ASI is concerned, it is stated that the property does not contain an ancient monument nor does any part of any centrally protected monument fall within the lands. It also states that the lands are not within prohibited area or other such area.

5. The SDMC likewise says that it does not own the lands. The GNCTD is unclear as to the ownership and whether in fact they are public lands.

6. Delhi Wakf Board has filed an affidavit contending that according to a notification of 16.04.1970, both khasra nos. 261 and 262 are notified graveyards and it has taken steps towards

demarcation of the Wakf land and later consequential action by way of approaching the Wakf Tribunal, if so required, will be taken.

7. The Court has considered the submissions. During the course of hearing, learned counsel submitted that the previous order had required the production of the *massavi*. Learned counsel for the GNCTD states that the *massavi* is untraceable.

8. It is asserted that the lands are essentially public lands and the petitioner has impleaded a large number of authorities and none of them alleges to own the lands - especially the SDMC/DDA, nor are the lands subject to the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*. The litigation appears to be an attempt at fishing out triable ways.

9. Unless the petitioner can establish that the character of encroached lands has public ownership, he cannot approach this Court claiming to be a public spirited citizen and seek direction to official respondents to secure such lands.

10. Accordingly, the petition has to fail. This however, does not preclude any authority or GNCTD having lawful authority, from taking any action in accordance with law against unauthorised constructions.

**S. RAVINDRA BHAT, J**

**S.P.GARG, J**

**JULY 26, 2017/ajk**