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

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DECIDED ON: 11.05.2017

+ W.P. (C) 7073/2013, CM APPL.15268/2013, 4067, 4068, 4967 &
40280/2016

NAFE SINGH RAJPUT

..... Petitioner

Through: Mr. Ankit Jain with Mr. Sarvesh
Rai, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION AND OTHERS

..... Respondents

Through: Mr. Umesh Sharma and Mr.
Dinesh Kumar, Advocates.

Mr. Rahul Sharma with Mr. C.K. Bhatt,
Advocate for Resp-3&4.

Ms. Madhuri Dhingra, proxy for Mr. Ajay
Digpaul, CGSC for UOI.

Ms. Ishita Baruah, proxy for Mr. Gaurang
Kanth, Advocate for North DMC.

Mr. M.C. Tyagi, A.E., on behalf of Resp-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S.RAVINDRA BHAT, J.(ORAL)

1. Claiming that the respondent authorities have illegally sought to virtually annex khasra nos.22/16/2, 22/17, 22/18, 22/19/1, 22/22/1, 22/23, 22/24, Village Jhorda Majra, Burari, Delhi to another neighboring unauthorized colony, i.e., Hardev Nagar, the petitioner seeks several

directions to restrain them from proceeding to conduct development work and also for removal of illegal encroachments.

2. The writ petitioner is a resident of Village Jharoda Majra; he relies upon the previous proceedings of this Court, i.e., *Surya Prakash Tyagi v. Lt. Governor of Delhi and Ors.* (W.P.(C)7501/2007) where similar allegations were made with respect to illegal development and also with respect to unauthorized constructions on lands which are part of the present proceedings. In the course of that writ petition, the Division Bench of this Court had appointed *amicus curiae* to visit the site and furnish a report. The report of the *amicus curiae* has been relied upon. The *amicus curiae* stated, *inter alia*, that: -

“7. Besides above the following relevant information has been collected/gathered by the Amicus by discussing the matter with SMD Civil Lines, Tehsildar and other officials of the Revenue Department and from the documents provided by the Revenue department:

- i) The size of the entire land area consisting of Khasra Nos. mentioned in para 1 above is 25 Bigha and 19 Biswa which is equivalent to about 26142 Sq. Yds.*
- ii) Out of the above total area, the land on which the construction has been done or is under progress is about 8 Bigha and 9 Biswa, i.e., about 8420 Sq. Yds., whereas the land which is presently vacant is about 17 Bigha 10 Biswa, i.e., about 17,722 Sq. Yds. Details regarding the constructed/vacant portion of the land area covered by the above Khasra Nos. is provided by Tehsildar (Civil Lines) are annexed hereto as ANNEXURE C-4.*
- iii) The land covered by the Khasras in respect of which the present petition has been filed was originally private*

agricultural land properties entered in the name of Respondent No.9 M/s Supreme Commercial Enterprises Ltd. in the record of the Revenue Authorities, but later on due to raising of construction activities which are not permissible on the agricultural land, proceedings under Section-81 of the Delhi Land Reforms Act (DLR Act) were initiated against Respondent No.9 being the recorded owner of the land. The entire land covered by the aforesaid Khasras stood vested in Gaon Sabha as per different orders passed by SDM (Civil Lines) 2006. In the Revenue records names of those who have constructed or are occupying the structures raised on the said land have not been entered. AS on date the land stands vested in Gaon Sabha in terms of vesting orders passed by SDM (Civil Lines).

- iv) Pursuant to the vesting of the land in Gaon Sabha, the possession of the same is yet to be taken over by BDO, Civil Lines.
- v) One colony named Hardev Nagar which is located very near to the land site in question is one of the unauthorized colonies pending for regularization. As per the lay out plan submitted in 2005 by the Residents Welfare Association of Hardev Nagar (ANNEXURE R-5) to Urban Development Department in connection with regularization of the colony, the land area in question is shown as vacant agricultural land without any construction thereon. The verification report submitted by SDM Civil Lines on 4.8.2005 (ANNEXURE C-6) to the Urban Development Department in connection with the regularization of Hardev Nagar unauthorized colony mentioned all Khasra Nos. which were covered by the then existing Hardev Nagar Colony as per the plans submitted to the Urban Development Department in 2005. In such verification report of Revenue Authorities, Khasra Nos. which are the subject matter of the present

petition are not mentioned. From the above, it appears that Hardev Nagar Colony in 2005 did not include the land area covered by the Khasra Nos. for which the writ petition has been filed.

- vi) However, recently in December 2008 Revenue Authorities have received copy of another site plan of Hardev Nagar Colony purportedly submitted to Urban Development Department. AS per this plan, the area which was shown as vacant agricultural land in the earlier plan of 2005 submitted to the Urban Development Department has been shown as part of the unauthorized Hardev Nagar having built up structures thereon.*
- vii) It further appears from comparative study of the site plan of Hardev Nagar colony submitted in 2005 and the one received recently by the Revenue Authorities from the Urban Development; Department that there was no construction before 2005 on any land forming part of the above seven Khasras.*
- viii) In the context of the status of the land covered by the aforesaid Khasras which otherwise stand vested in Gaon Sabha due to its unauthorized user, i.e., for non agricultural activities, it may be mentioned here that as per order dated 1.12.2007 issued by Government of NCT, Delhi Urban Development Department, Lt. Governor, Delhi has defined the Government land and private land. As per the said order (ANNEXURE C-7) all the lands which are vested in Gaon Sabha under Section-81 of Delhi Land Reforms Act where the physical possession is with the original land owners would be treated as private land whereas all such lands which were vested in Gaon Sabha under Section 81 of the Delhi Land Reforms Act where the physical possession has been taken over by the Government would be treated as Government land.*

In the present case in the record of the Revenue Authorities M/s Supreme Commercial Enterprises Limited before vesting of the land in gram sabha, M/s. Supreme Commercial Enterprises were shown as bhumidars who, as informed by the Revenue Authorities, are at present not in the possession of any part of the land covered by the aforesaid Khasras. In view of this, the persons who are in possession/occupation of the land covered by the aforesaid khasras are not the original land owners more so when the names of none of such persons who are in possession/occupation of the land or built up structures are recorded in the Revenue Record. However, above order dated 12.12.2007 passed by the Lt. Governor does not define the status of the land properties which have been vested in Gaon Sabha under DLR Act but are not in possession of the original land owners.”

3. It is argued by Mr. Ankit Jain, Advocate that the earlier writ petition was dismissed on the ground that relevant parties have not been impleaded. It is also submitted at the same time that the land in question in fact vested in the Gaon Sabha and consequently the respondents could not have taken the possession of it without authority of law. Learned counsel emphasized that the only method of ensuring that such public lands belonging to the Gaon Sabha were preserved were through appropriate directions of this Court since the BDO has not taken possession despite being notified.

4. Counsel for the respondents submits that there is no dispute that the land belonged to the Gaon Sabha. At the relevant time - in 2008, they were notified for development and were included as part of Hardev Nagar and

was subsequently regularized after completion of work. These arguments included roads, pipelines and other civic amenities. In these circumstances, the petition styled as PIL should not be entertained.

5. It is evident that the previous litigation - which also was the PIL concerns the same land that are subject matter of the present proceedings. The Court was satisfied that the proceedings ought not to go on since the parties likely to be affected were not impleaded, therefore, the Division Bench rejected the writ petition on 06.05.2009. At that stage too, the public nature and character of the land as Gaon Sabha land and need to protect it was apparent; the Bench is deemed to have taken note of the same. Nevertheless, no directions were made. In these circumstances, the effort of the petitioner to resuscitate the matter after a period of five years in our opinion does not call for interference, especially since the works complained of that have been planned long ago have now been completed. The writ petition is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

YOGESH KHANNA
(JUDGE)

MAY 11, 2017
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