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

+ CM(M) 1136/2016 & CM Nos.41945-46/2016

SATPAL YADAV

..... Petitioner

Through Mr.Anil Kumar Chunduru &
Mr.Neeraj Kumar, Advocates

versus

RAJESH SAINI

..... Respondent

Through Mr.Puran Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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10.03.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 20.07.2016 by which a preliminary issue framed on the request of the petitioner regarding the maintainability of the suit in view of Section 185 of the Delhi Land Reforms Act, 1954(*hereinafter referred to as the 'DLR Act'*).
2. The learned counsel appearing for the petitioner submits that the trial court has wrongly relied upon a notification dated 30.12.1993 of the Delhi Municipal Corporation to conclude that the area has a lot of houses. The impugned order also relied upon the report of Tehsildar, Alipur, Narela, Delhi dated 05.04.2013 wherein it is stated that the suit property cannot be demarcated as a lot of houses have been constructed therein. Based on these, the trial court had come to a conclusion that the land cannot be said to be agricultural land and the revenue authority would not have jurisdiction. The learned counsel submits that the report of the Tehsildar dated 05.04.2013 is

disputed. He further submits that there are disputed questions of fact and the trial court ought to have been granted opportunity to lead evidence.

3. The learned counsel appearing for the respondent submits that he has no objection if the said issue is adjudicated upon after the parties lead their evidence.

4. There are disputed questions of fact and the issue about the maintainability of the suit in question under Section 185 of the DLR Act could not be treated a pure question of law and should have been decided by the court upon the evidence led by the parties. The impugned order suffers from material irregularity. The order is quashed.

5. The issue regarding the maintainability of the suit in question under Section 185 of the DLR Act would be adjudicated upon by the trial court at the time of final adjudication of the suit after the parties have led their evidence. The adjudication shall be done uninfluenced by any observations made by this court in the present order.

6. The petition and all the pending applications, if any, disposed of.

JAYANT NATH, J.

MARCH 10, 2017/v