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

+ **W.P.(C) 11145/2016 and CM APPL. 43571/2016**

LUICE M JACOB

..... Petitioner

Through: Mr S.S. Jain and Mr R.K. Sharma,
Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Ravi Prakash, CGSC with Mr
Nitish Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 20.09.2016 directing the petitioner to vacate a portion of the property described as D'Eremao Cemetery, within a period of 15 days from the receipt of the order, and hand over the vacant possession of the same to the Director General of Archaeological Survey of India (hereafter 'ASI'). The petitioner claims that the impugned order was passed by the Director General, ASI without due process of law. The petitioner also claims that ASI has no right or interest in the property known as 'Christian Compound, Kishan Ganj, Delhi', a part of which is occupied by the petitioner.
2. The petitioner claims that the British Government had allotted certain lands to the Armenian Society for the purpose of using it as a graveyard for Russian Christians. This property came to be known as Armenian Cemetery,

which was under the management and control of the Armenian Association of Calcutta. He states that at the time of partition of the country, certain Christian families who were residing in Karol Bagh, Pahar Ganj and Bara Hindu Rao area of Delhi, were displaced. These Christian families were permitted to reside in the vicinity of the Armenian Cemetery.

3. The petitioner also states that the Armenian Association had filed a Civil Suit for recovery of possession against the petitioner's father, his relatives and Union of India, captioned *Armenian Association v. Mathews Jacob & Ors.* (CS No. 139/1967). The said suit was dismissed by the Sub Judge, Delhi by a judgment dated 29.04.1968.

4. The petitioner thus claims that he is in settled possession of the property occupied by him and thus cannot be displaced.

5. The learned counsel appearing for the respondents submitted that a show cause notice was issued to the petitioner in the year 2005, as ASI was contemplating steps to recover possession of the property of the D'Eremao Cemetery (which, according to ASI, is another name of the Armenian Cemetery). In order to resist the handing over of the possession of the property in question, the petitioner filed a Civil Suit being No. 87/2005 (subsequently numbered as 273/2009) titled *Luice M Jacob v. Union of India and Ors* seeking declaration and perpetual injunction. The said suit was dismissed by a judgment dated 08.05.2014; however, the Court also observed that the petitioner could not be dispossessed without following the due process of law.

6. The petitioner preferred an appeal against the said decision (RCA No. 35/2015 captioned *Luice M Jacob v. Union of India and Ors.*) which was also dismissed on 14.12.2015. In paragraph 15 of the said judgment, the

Appellate Court noted: “Own admitted case of appellant/plaintiff is that the land was belonging to the Government and allotted to respondent no.5 by Government, wherein, ancestors of appellant/plaintiff were permitted to move and stay there i.e. as licensee.”

7. Dissatisfied with the aforesaid decision, the petitioner preferred a second appeal before this Court (RSA No. 159/2016 captioned *Luice M Jacob v. Union of India and Ors*) which was also dismissed by a judgment dated 19.07.2016. In the said judgment, this Court had observed as under:-

“(ii) In paras 13 and 14 of the judgment of the first appellate court there is clear cut reference and finding as per Ex. PW 1/9 and Ex. PW 1/10 that the owner of the property is mentioned as “sarkar daulatmadar” ie the Government of India. Once in the documents filed by the appellant/plaintiff the Union of India is shown to be the owner, such documents in fact cannot be taken as an assertion of plaintiff’s ownership/title of the suit property.

(iii) Admittedly, the suit property was allotted by the Union of India to the Armenian Association (respondent no.5) and the appellant/plaintiff was only permitted to stay there ie as a licensee. Appellant/plaintiff therefore had no case of ownership by adverse possession.”

8. In view of the above, there is little doubt that the property occupied by the petitioner belongs to the Government of India.

9. The learned counsel for the respondents had also referred to the decision of the Division Bench of this Court in ***Raj Kumar Tanti vs Union of India & Ors: W.P. (C) 539/2016*** where ASI was directed to “take expeditious steps for eviction of unauthorised occupants and demolition of the unauthorized construction from the site in question”, that is, D'Eremao Cemetery. The respondents further submit that pursuant to the orders passed

by this Court in the aforesaid matter, ASI had conducted a survey of the site in question on 11.11.2016 at 3.00 p.m. The said survey indicated that the properties occupied by the petitioner falls squarely within the protected site of the D'Eremao Cemetery. A copy of the said report has also been furnished.

10. In view of the aforesaid facts, the learned counsel for the respondents contended that the impugned order could not be faulted.

11. There appears to be some merit in the contentions advanced on behalf of the respondents; however, it is not disputed that the impugned order was passed without affording the petitioner an opportunity to be heard. It is also relevant to note that the survey, which is relied upon by the respondents was conducted after the impugned order was passed. In the aforesaid circumstances, this Court considers it apposite that the petitioners be afforded an opportunity to be heard.

12. Thus, without going into the merits of the disputes or whether the property belongs to ASI or not, the impugned order is set aside, and the matter is remanded for re-consideration in accordance with law.

13. The concerned officer – the officer who exercises the delegated power of the Central Government under Section 19(2) of the said Act – shall issue a notice, providing the petitioner an opportunity to be heard and pass an order after hearing the petitioner. It is clarified that no adjournments would be granted to the petitioner for the aforesaid purpose, and in the event the petitioner is not represented on the date fixed, his right to be heard would stand closed and the concerned officer shall proceed to pass an order as he deems fit.

14. It is further directed that the concerned officer shall fix a hearing

within a period of six weeks from today and the concerned officer shall pass the final order within a period of eight weeks thereafter.

15. The petition stands disposed of with the aforesaid observations.

16. It is clarified that in the meanwhile *status quo* to the property in question shall be maintained.

17. Order *dasti*.

VIBHU BAKHRU, J

NOVEMBER 22, 2017

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