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

% *Judgment Pronounced on 20th January, 2017*

+ LPA 654/2016

SUMITRA SAINI & ANRAppellants

Through: Mr. N.S. Dalal, Advocate.

versus

GOVT OF NCT OF DELHI & ORS.Respondents

Through: Mr. Sanjoy Ghose, ASC with Mr. Rishabh
Jetley, Advocate for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The two appellants Smt. Sumitra Saini and Sh. Sandeep Saini filed the present Letters Patent Appeal against the order of the learned Single Judge dismissing the writ petition bearing No. 10369/2016 filed by the appellants titled ***“Sumitra Saini and Anr. Vs. Govt of NCT of Delhi and Ors.”*** for setting aside and quashing the impugned order dated 04.11.2016.

2. The relevant background is that on 29.06.2010, demarcation was carried out by way of manual method concerning Khasra No. 2351/20 and 2352/20 in Village Khikri, Delhi. The said demarcation was challenged by ***“Sh. Satish Kaushik and Others”*** in writ petition bearing No. 6380/2010, which was disposed of vide order dated 18.03.2013 asking the authorities to carry out a fresh demarcation by way of Total Station Method, a consent order to which effect was also issued, which was thereby completed on 02.11.2015.

3. The appellant, thereafter, filed a writ petition bearing No. 9372/2015 for revival of the water body on the ground that since the fresh demarcation dated 02.11.2015 was carried out as final, the water body situated on the land of Khasra No. 2351/20 and 2352/20 is to be revived. A status report was filed therein, stating that since the demarcation was complete, as conducted on 10.05.2016, the parties were at liberty to challenge the said demarcation report and the water body could not be revived out-rightly.

4. Thereafter, W.P.(C) No. 10369/2016 was filed challenging only the power and authority to carry out the demarcation pursuant to the order dated 18.03.2013 but the demarcation report was not challenged.

5. Mr. N.S. Dalal, learned counsel appearing for the appellants contended that the order dated 18.03.2013 has not been challenged as it was a consent order, nor the demarcation dated 02.11.2015 was ever challenged. He further contended that the learned Single Judge Furthermore, it was submitted that the authority to carry out the demarcation on 10.05.2016 by the requisite department was not permissible in view of the earlier demarcation report dated 02.11.2015.

6. Mr. Sanjoy Ghose, learned counsel appearing for respondent No. 1 contended that a matter relating to these demarcation reports is pending before the concerned Civil Judge in a civil suit bearing No. 302/2011 titled as ***“Hari Singh Saini vs. Deputy Commissioner (South) & Anr.”*** and if the appellants so wish, they can seek impleadment in the suit before the Civil Judge.

7. We have heard learned counsel for the parties and perused the material available on record.

8. Since admittedly, the matter is pending before the Civil Court in a civil suit, the appropriate court or forum, for such directions as prayed for, is that Civil Court in which the matter is already pending and therefore, it would not at all be advisable for us to take any action in the matter. In our opinion, such a course is not permissible both on account of limitations that exist in the substantive law regulating the exercise of the jurisdiction to issue a writ or order and the procedural provisions contained in the law of the land. In this connection, it may be observed that one of the conditions precedent for issuance of such writ or order is that no other legal remedy should be available to the party seeking such writ or order. Therefore, for a proper and harmonious functioning of the Courts in accordance with the law, it is necessary that the Courts refrain themselves from exercising jurisdiction in respect of matters already pending before another Court as it may result in disregard of the provisions of law.

9. We are, therefore, in consonance with the view taken by the learned Single Judge. Liberty is granted to the appellants to seek impleadment before the Civil Judge where the civil suit is pending and seek appropriate relief in accordance with law.

10. The appeal is disposed of accordingly.

SANGITA DHINGRA SEHGAL, J

CHIEF JUSTICE

JANUARY 20, 2017

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