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

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Judgment delivered on: 20.11.2017

+ **LPA 713/2016**

PHOOL SINGH (DECEASED) THR NAIN
SINGH

..... Appellant

Through : Mr Naresh Thanai, Advocate.

versus

MUNICIPAL CORPORATION OF
DELHI & ORS.

.... Respondents

Through : Mr Ajay Verma, Advocate for
the DDA.
Ms Mini Pushkarna, Advocate
for MCD.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The Appellant had approached this Court in a Writ Peition claiming an order that the land use in respect of 13 biswa of land measuring 650 sq.yds., forming the part of Khasra No.50/1, Humayunpur, is residential and that the land use shown in the Zonal and lay-out Development Plan, was consequently illegal.

2. The Single Judge declined relief essentially on the ground that the Appellant's claim, having regard to the suit filed by one Khazan Singh against him, was suspect. It was submitted that during pendency of this appeal, the suit has for possession been decreed against the Appellant and

Appellants have filed an appeal against the Decree.

3. Mr Thanai, learned counsel for the appellant, relied upon the record to say that the suit lands were the subject-matter of acquisition; apparently the acquisition proceedings, to the extent of the land, were quashed on a finding by this Court, in a Writ Petition decided on 24.02.1999 {W.P.(C) No.1270/1989}, that the invocation of the urgency clause of Section 17 of the Land Acquisition Act was contrary to the law.

4. The Appellant then subsequently had sought an injunction against the Municipal Corporation of Delhi, which was declined. In the course of those proceedings, the Court had then recorded that the petitioner was unauthorized occupant. It is pointed out that the observations of the Single Judge with respect to the nature of the lands being part of the 'green area' notified as such in the Zonal and lay-out Development Plan would come in the way. Counsel highlights that these observations would be an impediment even if the Appeal filed against the decree for possession is allowed.

5. Counsel for the Delhi Development Authority and the Municipal Corporation of Delhi submit that as on date, there cannot be any denial that the Zonal and lay-out Development Plan reflects that the area is notified as 'green area' and that the question of granting any building sanction to the Appellant does not arise. It is submitted that having regard to the existing state on the record, i.e., the declaration and decree for possession by the Civil Court, no relief even for change in the Zonal and lay-out Development Plan can be sought.

6. The Court is of the opinion that the question, as to whether the

petitioner/Appellant could have sought for change in the Zonal and lay-out Development Plan or even a direction that its inclusion in the 'green area' is illegal, is purely academic. The Appellant conceded to a decree, adverse to him, which had the result of the third party, i.e. Khazan Singh being declared owner.

7. This Court is of the opinion that the Single Judge, having held that the petitioner/appellant's title were suspect, the Single Judge need not have proceeded further to record findings with respect to the nature of suit lands as that invariably had the effect of precluding any request in future with respect to reliefs such as de-notification, which could have been sought.

8. In the circumstances, it is open to the Appellant – having regard to the final outcome of the Appeal filed before the High Court (RFA No.525/2017) to approach the respondent – authorities for such reliefs, as may be permissible in accordance with law; in the event of success. Nothing stated by the Single Judge, especially the observations in paragraph 15 shall preclude the Appellant from making such request.

9. All rights and contentions of the parties in such event are kept open.

10. The Appeal is disposed of in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

NOVEMBER 20, 2017

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