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

+ W.P.(C) 6168/2017

PANKAJ TANDON & ORS.

..... Petitioners

Through

Mr. Sunil Fernandez, Advocate with
Mr. Arnav Vidyarthi and Ms. Anju
Thomas, Advocates

versus

SUB DIVISIONAL MAGISTRATE (KALKAJI)
& ORS.

..... Respondents

Through

Mr. Naushad Ahmed Khan, ASC,
GNCTD for R-1 & R-3
Mr. Sanjeev Sabharwal, Standing
Counsel for DDA/R-2

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.07.2017

CM APPL. 25651/2017 (Exemption)

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

W.P.(C) 6168/2017 & CM APPL. 25650/2017 (Stay)

3. Petitioners have filed the present petition impugning the order dated 18.07.2017 passed by the Sub Divisional Magistrate (Kalkaji) (hereafter 'SDM') whereby he has recalled the earlier permission granted to the petitioners to fence their property comprised in Khasra No.576, Village Bahapur, Kalkaji, New Delhi (hereafter 'the property'). It is the case of the petitioners that the property belongs to them and there is no encroachment.

Learned counsel for the petitioners states that an exercise was undertaken by the Revenue Department whereby the property has been demarcated, and therefore, there could be no allegation of any encroachment.

4. It is seen that the impugned order dated 18.07.2017 was passed by the SDM on account of the complaint made by DDA that the petitioners were encroaching upon DDA Green Land near Kalkaji adjoining Kalkaji Road, Shambhu Dayal Bagh, Okhla-3, New Delhi-110020.

5. It is also seen that the impugned order was passed without affording any opportunity to the petitioners to be heard. This Court is of the view that before passing the impugned order, the SDM was required to consider the record of demarcation stated to have been done earlier. It was also necessary for the SDM to examine the claim of the DDA and take an informed decision.

6. In view of the above, the impugned order is set aside and the matter is remanded to the SDM to consider it afresh after hearing the petitioners as well as the complainant (DDA). It is directed that the petitioners shall submit all relevant documents to the SDM and a hearing will be afforded to the representative of the petitioners, in the first instance, on 04.08.2017 at 11.00 AM. The DDA is also required to depute a representative with all the relevant record to substantiate their allegations/claim. The SDM shall consider the claim of the petitioners as well as that of the DDA and pass an appropriate order within a period of four weeks thereafter.

7. In the meanwhile, the petitioners shall maintain the *status quo*.

8. The learned counsel for the petitioners states that a map has already been drawn by Total Station Method (TSM). In the circumstances, it would be apposite for DDA to specifically point/mark the area that they claim has been encroached.

9. The petition is disposed of in above terms.

10. CM Appl. 25650/2017 stands disposed of.

VIBHU BAKHRU, J

JULY 21, 2017

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