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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.845/2017
CHARAN SINGH & ORS Petitioners
Through: Mr. Sunil Chauhan, Adv.
versus
GAON SABHA NEELWAL & ORS Respondents
Through: Mr. Rajat Malhotra and Mr. Sunil
Malhotra, Advs. for R-1&3.
Ms. Kanika Srivastava proxy counsel
for Mr. Sumeet Pushkarna, Adv. for
R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **08.08.2017**

CM No.28097/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order (dated 9th May, 2017 in CS No.12823/16 of the Court of Additional District Judge-01 (West), Delhi) taking on record written statement of the respondents / defendants no.1&3 Gaon Sabha, Neelwal and Government of National Capital Territory of Delhi (GNCTD), subject to payment of costs of Rs.10,000/- to the petitioners / plaintiffs, notwithstanding the earlier order dated 10th March, 2014 in the suit closing the right of the respondents / defendants no.1&3 to file written statement.
4. The counsel for the petitioners / plaintiffs contends that once the right to file written statement stood closed, the said order could not have been re-

opened and reviewed by the Additional District Judge, after more than three years and the disposal of the petitioners / plaintiffs' suit would thereby be delayed by three years.

5. The petitioners / plaintiffs have instituted the suit from which this petition arises for declaration and permanent injunction to restrain the respondents / defendants No.1 & 3 i.e. Gaon Sabha and GNCTD and respondent / defendant no.2 Delhi Jal Board (DJB) from interfering with the petitioners / plaintiffs cultivatory possession of certain land.

6. A perusal of the order dated 2nd July, 2013 in FAO(OS) No.245/2003 preferred by the petitioners / plaintiffs against the refusal of *ad interim* order of injunction shows that the GNCTD has allotted the said land to respondent / defendant no.2 DJB and is disputing the rights of the petitioners / plaintiffs to the said land.

7. From the aforesaid it appears that what is at stake in the suit is land, claimed to be public and if the respondents / defendants no.1 & 3 are not permitted to contest the suit, the petitioners / plaintiffs will have a walkover in the suit and may be able to appropriate the land which the respondents / defendants no.1 to 3 claim to be public property and to the detriment of public interest. In the circumstances, the discretion exercised by the learned Additional District Judge does not require any interference in exercise of powers under Article 227 of the Constitution of India.

8. It cannot be lost sight of, that owing to the mistake and negligence of the government officials and their advocates, the public property cannot be permitted to be appropriated.

9. Another relevant factor is, that the respondent / defendant no.2 DJB has already filed a written statement contesting the suit and on enquiry it is informed that the defence of the respondent / defendant no.2 DJB to the suit is the same as the defence of Gaon Sabha and GNCTD, though the counsel for petitioners / plaintiffs contends that the respondent / defendant no.2 DJB is only an allottee of the land from GNCTD and cannot raise the defences as GNCTD and Gaon Sabha can raise.

10. The counsel for the petitioners / plaintiffs then states that the Gaon Sabha / GNCTD has not filed the written statement even till now.

11. The counsel for the Gaon Sabha / GNCTD appearing on advance notice states that written statement has been filed and has handed over a copy in the Court and which is taken on record.

12. From a perusal of the said written statement also it appears that the same issues as arising from the written statement of the respondent / defendant no.2 DJB, will arise from the written statement of Gaon Sabha / GNCTD.

13. The counsel for the petitioners / plaintiffs on enquiry states that after the right of the Gaon Sabha / GNCTD to file written statement was closed, no substantial proceedings had taken place in the suit.

14. Considering all the aforesaid and the fact that the petitioners / plaintiffs are enjoying *ad interim* order, no ground for interference is made out; rather it appears that owing to the *ad interim* order aforesaid, it is the public work of setting-up of a mini sewage plant and which is of utmost public importance in today's time, is held up.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 08, 2017

‘pp’..

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