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

+ **W.P.(C) 7287/2017 & CM No.30152/2017**

MAJ GEN GURDIP SINGH WIRK (RETD.)

AND ORS

..... Petitioner

Through: Mr N. S. Vasisht, Mr M. P. Bhargava
and Ms Jyoti Kataria Bajaj,
Advocates.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr Sanjoy Ghose, ASC with Ms Urvi
Mohan, Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.09.2017

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

"(i) issue a writ of certiorari and/or any other similar writ, order or direction, quashing and declaring as null and void the order No.187/SDM/Meh/Teh/2017/2122-29 dated 18.08.2017 issued by the SDM, Mehrauli, Tehsil Hauz Khas, New Delhi for demolition action on Andheria More Road to Fortis Hospital Crossing on 23.08.2017 and the notice no.F.6(1)/MISE/FKGO(S)/SDM(MEH)/2007/763-787 dated 04.07.2017 issued by Tehsildar (Mehrauli), Old Tehsil Building, Mehrauli, New Delhi with respect to the land of the Petitioners situated in the Village Mehrauli, Tehsil Hauz Khas, NCT of Delhi.

(ii) Issue a writ of mandamus and/or any other suitable writ, order or direction directing the Respondents not to

interfere with and/or obstruct and/or disturb the peaceful possession and enjoyment of the Petitioners of their land situated with respect to the land of the Petitioners situated in the Village Mehrauli, Tehsil Hauz Khas, NCT of Delhi and further not to take any coercive action of demolition without following and observing due process of law with respect to the in Khasra Nos. 773 (2-0), 776, 783 784 (16-16), 786 (11-19), 794 (0-14), 792, 805, 806 (0-18), 809 (0-7), 810 (1-2), 811 (0-14), 813 (0-14), situated in the revenue estate of Village Mehrauli, NCT of Delhi land comprised pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

2. The petitioners' properties abut the road from *Andheria More* to Fortis Hospital crossing, which is highly congested and presently works have been commenced for widening the road in order to ease the traffic congestion.
3. According to the respondents, the public land beside the road has been heavily encroached and, therefore, in order to remove the encroachment, the Tehsildar, Mehrauli had issued a notice dated 18.08.2017 (which according to the petitioners was pasted on the outside wall of their property on 19.08.2017), providing an opportunity to the concerned parties to produce documents with regard to the ownership of land, if any, at his office on 14.07.2017 by 05:00 p.m., failing which it would be assumed that they are encroaching on public road.
4. Thereafter, the Sub-divisional Magistrate, Mehrauli ('the SDM') passed an order scheduling a demolition programme for 23.08.2017 for removal of encroachment on public land.
5. It is the petitioner's case that the said widening also encompasses a

part of their land and the same is not permissible as no proceedings have been initiated for acquisition of their property.

6. In the petition, it is alleged that no physical demarcation has been conducted at the spot and, therefore, any inference that the petitioners had encroached a part of the public land, is completely without any basis.

7. The present petition was moved on 22.08.2017. Mr Vasisht, learned counsel appearing for the petitioner had earnestly contended that the action being undertaken by respondents was wholly without authority of law and amounted to depriving the petitioners of their property in violation of Article 300A of the Constitution of India.

8. Mr Sanjoy Ghose, learned counsel for the respondents contested the same and pointed out that the respondents were merely removing an encroachment on public land and were not seeking to appropriate the land belonging to the petitioners.

9. In view of the above, it was apparent that the controversy mainly related to demarcation of the Right of Way (ROW) and, accordingly, on 20.08.2017, this court passed an order directing the respondents to produce a clear map of ROW and the respondents were restrained from carrying on any demolition activity in respect of the property claimed by the petitioner. The matter was thereafter posted to 25.08.2017.

10. On 25.08.2017, the contentions advanced by the respondents were reiterated and it was also stated that an exercise for demarcating the land had been carried out with the participation of the representatives of the

petitioners, which was disputed by the petitioner. The petition was thereafter adjourned to 29.08.2017, to enable the respondents to place an affidavit on record indicating the demarcation of the road in question.

11. The SDM has filed a short affidavit wherein it is, *inter alia*, affirmed that an exercise to demarcate the road adjoining the petitioners' property was conducted but was objected to by the petitioners on the ground that they were not present. Therefore, another notice was issued by the SDM (deponent) on 25.08.2017, to demarcate the public road on 26.08.2017.

12. On 26.08.2017, a fresh demarcation was done. Petitioner nos.2 and 3 were also present (as is evidenced by the report placed on record), the map prepared on the said date indicates that certain portions of the public land have been encroached by the petitioners. In addition, the respondents have also enclosed certain photographs which indicates the portion allegedly encroached by the petitioners.

13. Mr Vasisht, learned counsel appearing for the petitioners stoutly contested the said report. He reiterated the contention that the proposed action was violative of Article 300A of the Constitution of India and therefore, this court must entertain the present petition. He contended that road in question is a very old road and is narrow at the point where the petitioners' property abuts the road; however, that did not mean that the petitioners had encroached upon public land. He also advanced two other contentions; first, he referred to section 28 of the Delhi Revenue Act, 1954 and contended that the SDM had no authority to decide any dispute regarding boundaries of land and the question of any boundary dispute could

only be decided by the Deputy Commissioner; and second, he contended that the demarcation exercise was without authority of law and further no reference point had been taken for conducting the said exercise.

14. The photographs placed on record by the respondents clearly indicate that there is a serious problem of road congestion on the road from *Andheria More* to Fortis Hospital and there is an urgent need for widening the road. It has also been pointed out that the road in question has to be widened to 75 meters (37.5 meters on both sides of the median) and a small part of the property, which is claimed by the petitioner falls within the distance of 37.5 meters from the central medium. This court was also informed that lands along the stretch of the road had already been cleared and the only bottleneck was the property claimed by the petitioner.

15. Given the serious issue of congestion on the road in question, this Court is of the firm view that the road widening project cannot be interdicted and must be completed expeditiously without any obstruction. The dispute, whether the petitioners have encroached the public land (as asserted by the respondents) involves the disputed questions of fact and it would not be apposite to entertain such controversy in this petition.

16. Mr Vasisht's contention that the SDM has no authority to conduct any demarcation exercise and the demarcation done on 26.08.2017 was illegal and without authority of law, is also unpersuasive. The report placed on record indicates that the survey was conducted by the concerned *patwari* in presence of the *Kanungo* and this in conformity with his duties under Rule 33 of the Delhi Land Revenue Rules. However, this does not preclude the

petitioner from disputing the same; but no interference would be called for in these proceedings.

17. In the circumstances, this Court is not inclined to entertain the petition, leaving it open for the petitioner to institute appropriate proceedings in accordance with law.

18. The petition and the application are, accordingly, dismissed.

19. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

SEPTEMBER 01, 2017

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