

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

% **Decided on: 22nd February, 2018**

+ **W.P.(CRL) 1430/2017**

SURESH KUMAR LAHIRI

..... Petitioner

Represented by: Mr. Dalip Kumar Santoshi,
Advocate.

versus

THE STATE OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Ms. Srilina Roy, Advocate for
Ms. Nandita Rao, Additional
Standing Counsel for State with
SI Shikshit Kumar, PS Jyoti
Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 7886/2017 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.A. No. 7888/2017 (Delay in refiling)

For the reasons stated in the application delay of 54 days in refiling
the petition is condoned.

Application is disposed of.

W.P.(CRL) 1430/2017

1. By the present petition, the petitioner inter alia prays for restoration of possession of property bearing No. C-58, Gali No. 3, North Chhajjupur, Shahdara, Delhi and setting aside of the order dated 8th March, 2016 passed by the learned Additional Sessions Judge-III, North East Delhi.

2. Vide order dated 8th March, 2016, learned Additional Sessions Judge

decided the application filed by the petitioner pursuant to directions of this Court. According to the learned Additional Sessions Judge, the revision petition and the application were not maintainable, the reasons whereof are as under:

“One suit for declaration and permanent injunction bearing No. 85/04 was filed by the applicant Suresh Lahiri against Balmukund and in that case applicant herein claimed his possession over 36 sq. yards land and he is stated to be in possession of similar portion, but said suit has been dismissed on merit. However, deceased respondent approached the Ld. SDM who directed the boundary/hadbandi of 100 sq. yards property belonging to and in possession of Balmukund on the basis of Civil Suit No. 85/04, but nothing beyond was directed in that case. However, the applicant herein challenged the order by way of revision which was allowed by the Ld. Predecessor. Since the possession of the applicant in the premises along with respondent is in same proportionate as was earlier, accordingly, nothing was done by the Ld. SDM in compliance of his order. This Court is not supposed to pass any order in favour of applicant as the order of Ld. SDM was set aside by the Ld. Predecessor, whereas nothing had taken place till filing the revision in pursuance of order of Ld. SDM. Even the report of SHO P.S. Jyoti Colony is also on record as per which applicant is in part possession as on today. As such, this application is not maintainable and whatever relief has been sought by the applicant vide this application is to be sought before the Civil Court being beyond the purview of revision petition and this application is not maintainable, hence, dismissed.”

3. A perusal of the record reveals that an application was filed by the late father of the petitioner Bal Mukund before the S.D.M. Shahdara wherein he has categorically stated that he was the owner of property No.C-58, Gali No.3, North Chajjupur, Shahdara, Delhi. The said property was

measuring 150 sq.yds. out of which 36 sq.yds. was in possession of the petitioner herein and his wife and 100 sq.yds. had been sold by deceased Bal Mukund to Uma Shankar and Mukesh Kumar. Thus, by the said application Uma Shankar sought construction of a boundary wall upon the 100 sq.yds. area of the property sold by him. It was the grievance of Bal Mukund that the petitioner and his wife were obstructing and not permitting him to erect the boundary wall and thus police protection be also provided to him for construction of the boundary wall.

4. Vide order dated 28th May, 2012 the S.D.M. directed the SHO, PS Jyoti Nagar to take necessary action to give relief to the applicant Bal Mukund by way of a proper boundary/hadbandi of the 100 sq.yds. property which was in possession of Bal Mukund as per the order of the Court dated 21st July, 2008 in Suit No.85/04.

5. Petitioner challenged the order dated 28th May, 2012 before the learned Additional Sessions Judge by way of a revision petition which was allowed vide order dated 20th November, 2014 and the order of the SDM dated 28th May, 2012 was set aside. Despite the learned Additional Sessions Judge setting aside the order dated 28th May, 2012 vide order dated 20th November, 2014, the petitioner filed a writ petition before this Court being WP(Crl.)2575/2015 which was permitted to be withdrawn with the following observations:

“The father of the petitioner had earlier moved an application before the SDM, Shahdara for determining the boundary of the subject property. A report was submitted by the local Police to the SDM relating to the aforesaid property. The learned SDM Shahdara, it is stated, passed an order on 28.5.2012 in favour of the father of the petitioner. As a result thereof, the petitioner was dispossessed out of the subject property with the help of the

local Police, ostensibly, in compliance of the order passed by the learned Magistrate on 21.7.2008.

The petitioner was aggrieved by the aforesaid order and he preferred criminal revision before the Sessions Judge. The revisional court allowed the prayer of the petitioner and set aside the order dated 28.5.2012 passed by the SDM.

Learned counsel for the petitioner has preferred the present petition seeking restoration of the aforesaid property to the petitioner.

This Court is afraid that the aforesaid prayer cannot be allowed by this Court. The revisional court could have passed the sequel order once the order passed by the SDM was set aside.

In that view of the matter, the petitioner prays for withdrawal of this petition in order to agitate his claim before the revisional court. The petition is dismissed as withdrawn with the liberty aforesaid.”

6. This led to the petitioner filing an application before the Additional Sessions Judge which was dismissed vide order dated 8th March, 2016 as noted above. The earlier revision petition by the petitioner before the learned Additional Sessions Judge only challenged the order dated 28th May, 2012 passed by the S.D.M. permitting deceased Bal Mukund father of the petitioner to erect the boundary wall in 100 sq.yds. area in his possession, which order was set aside. In the second revision petition, which was dismissed vide order dated 8th March, 2016 and in the present petition, the prayer of the petitioner is restoration of possession of the property bearing No. C-58, Gali No.3, North Chajjupur, Shahdara, Delhi. Restoration of the property cannot be permitted to be granted in the manner sought by the

petitioner and the learned Additional Sessions Judge committed no error in noting that the remedy available to the petitioner, if any, was of civil suit.

7. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 22, 2018

‘vn’

