

\$~8

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

+ W.P.(C) 9440/2015 & CM No.22061/2015

% Date of decision : 28th February, 2018

**BURARI KALYAN MANDAL
(WELFARE SOCIETY)**

..... Petitioner

**Through : Mr. Anil Nag, Mr. Iftekhhar
Ahmad, Mr. Anoop Kumar and
Mr. Arun Kumar, Advs.**

versus

**THE GOVERNMENT OF NCT OF
DELHI & ORS.**

..... Respondents

**Through : Mr. Gautam Narayan, ASC,
GNCTD.**

**CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR**

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition raises a challenge to the communication dated 20th of July 2015 issued by the Principal Secretary to the Chief Minister of Delhi and the communication dated 21st of July 2015 issued by the Secretary to the Deputy Chief Minister whereby a Barat Ghar constructed on Khasra No.549 in Village Burari has been included in the list of locations for using as the office of the Assembly Constituency. The writ petitioner also challenges the office order dated 21st August, 2015 of the Director (Panchayat) whereby the Barat

Ghar has been permitted for use of the office of Assembly Constituency.

2. We have heard Mr. Anil Nag, learned counsel for the petitioner and Mr. Gautam Narayan, learned Additional Standing Counsel for the GNCTD. It is to be noted that so far as the material facts are concerned, there is no dispute. For expediency, we extract the admissions contained in the counter affidavit dated 9th March, 2016 filed by the respondents :

*“4. It is stated that the **Khasra No.549 of village Burari wherein the Barat Ghar is situated, in the Gaon Sabha Land.** It is further stated that during the consolidation proceeding in 1980-81, the land situated at Khasra No.549 were earmarked as land for “Chopal”. It is also stated that due to unavailability of ‘Barat Ghar’ in village Burari, a policy decision was taken by the Respondent Government to use the land at Khasra No.549 for the construction of a Barat Ghar.*

*5. It is stated that vide letter dated 28.03.2005, **Rs.42.14 lakhs was sanctioned to the Irrigation and Flood Control Department by the Respondent Government, for the purpose of construction of the aforesaid Barat Ghar.** It is further stated that Respondents were informed that the construction of the said Barat Ghar was complete and was ready for being handed over vide letter dated 06.11.2009.”*

(Emphasis by us)

3. Though the respondents have urged that the said Barat Ghar has not hosted any celebration in the past three years and that it was lying vacant and unused, the petitioner disputes the same. In fact it is contended that the Barat Ghar is in the nature of a community centre

intended for the use and benefit of the villagers.

4. To manifest the objections of the villagers to the conversion of the said community centre into the office of the Assembly Constituency, the writ petitioner has placed on record the representation dated 7th September, 2015 addressed to the Lt. Governor of Delhi which has been signed by over 313 villagers.

5. So far as the objection and counter affidavit to the effect that record of the Revenue refers to the land situated in Khasra No.549 were earmarked as land for "*chopal*" is concerned, it is to be noted that "*chopal*" would also refer to a place where the residents of a village would gather for community purposes. Therefore, there is no real difference between the use of the land for the purposes of a community centre and it being earmarked as a village "*chopal*".

6. The original record relating to the decision dated 21st August, 2015 of the Director (Panchayat) allotting the Barat Ghar in the Village Burari for the office of the Assembly Constituency has been produced before us and has been perused. There is substance in the contention of the petitioner that the proposal for this allotment has emanated at the highest level and the Director (Panchayat) has merely endorsed the same by making the formal order permitting such allotment. The order has merely noted that the Barat Ghar was lying vacant and constructed on "*Gaon Sabha*" land without addressing the relevant issue as to whether the same was being utilized for the purpose for which it had been constructed. There is no discussion of availability or adequacy of community facilities in the village Burari which was also a relevant consideration.

7. In view of the above, the impugned order has failed to take into consideration the relevant material. We find substance in the grievance of the petitioner.

It is therefore, directed that the order dated 21st of August 2015 allotting the Community Centre, Village Burari for use of office of the Assembly Constituency is hereby set aside and quashed.

8. The writ petitioner has also challenged the decision dated 21st August, 2015 also on the ground that the Director (Panchayat) of the GNCTD had no authority to make such allotment for the reason that the land on which the community centre was constructed is Gaon Sabha land. Given the view we are taking, it is not necessary for us to express any opinion on the merits of this submission. This issue is therefore, left open for consideration.

9. This writ petition and the pending application are allowed in the above terms.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 28, 2018

aj