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

Date of decision: 10th October, 2019

+ LPA 590/2019 and CM No. 40791/2019

SURESH CHAND GOEL & SONS (HUF) & ANR..... Appellants
Through: Mr. B.K. Sood, Mr. V.P. Rana and
Mr. Karan Singh, Advs.

versus

GOVT OF NCT OF DELHI & ORS Respondents
Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for R-1 and 2
Mr. Parvinder Chauhan, Standing
Counsel-DUSIB with Mr. Nitin Jain, Advocate
for respondent no.5
Ms. Shefali Vohra, Adv. for R-3/SDM Model
Town
Ms. Mini Pushkarna, Standing Counsel-North
DMC/R-4 with Ms. Swagata Bhuyan,
Ms. Shiva Pandey and Ms. Khushboo Nahar,
Advs.

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

ORDER
10.10.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

LPA 590/2019

1. This Letters Patent Appeal has been preferred by the original petitioners against an order dated 30th August, 2019 passed by the learned Single Judge in CM No. 39033/2019 in W.P.(C) 9479/2019, whereby stay was denied to the appellants herein. The appellants are claiming to be owner in possession of the property in question. No land acquisition proceeding is pending as on today, even then the respondent Nos.4 and 5

are constructing compound wall upon the land of the appellants, hence stay application was preferred but no stay has been granted by the learned Single Judge and the respondents are going ahead with the construction of the compound wall, therefore, the present appeal has been preferred by the original petitioners.

2. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that the land in question is situated at khasra no. 79 Min (3-3), 80 Min (1-4) situated at Village Bhalswa, Tehsil Model Town, Jahangirpur, District North-West Delhi.

3. It further appears from the facts of the case that earlier land acquisition proceedings were initiated and an award was passed on 12th March, 2001 by the respondents. The said award dated 12th March, 2001 was challenged by the appellants by preferring WP(C) No. 7297/2004. The said writ petition was allowed by this Court vide judgment and order dated 9th March, 2015 by quashing the award dated 12th March, 2001.

4. A Special Leave Petition was preferred by the state authorities against the aforesaid judgment and order dated 9th March, 2015 passed in W.P.(C) 7297/2004. The said SLP was dismissed by the Hon'ble Supreme Court *vide* order dated 27th February, 2015.

5. It appears from the facts of the case that after the dismissal of the aforesaid SLP by the Hon'ble Supreme Court, these appellants (original petitioners) preferred an application before the Revenue Authority for restoration of the mutation entry in their name and as on today there is a restoration of the mutation entry in the name of these appellants in respect of land in question.

6. Thus, it appears that as on today, land bearing khasra no. 79 Min (3-3) land bearing khasra no. 80 Min (1-4) of Village Bhalswa, Tehsil

Model Town, Jahangirpur, District North-West Delhi is in the name of these appellants.

7. In spite of the fact that Award dated 12th March, 2001 has been set aside by this Court *vide* judgment and order dated 9th March, 2015 passed in W.P.(C) 7297/2004 and SLP against the aforesaid order dated 9th March, 2015 also stands dismissed by the Hon'ble Supreme Court *vide* order dated 27th February, 2015, it appears that the respondent Nos. 4 & 5 still want to construct the compound wall upon the aforesaid property which is *prima facie* owned and in possession of these appellants.

8. Aggrieved by the aforesaid act of the respondent Nos. 4 and 5, these appellants have preferred W.P.(C) 9479/2019 alongwith stay application being CM No. 39033/2019 in which learned Single Judge has issued notice. Now the next date of hearing in W.P.(C) 9479/2019 is 9th December, 2019. However, stay has not been granted by the learned Single Judge. Hence, this appeal has been preferred by the original petitioners.

9. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears as follows :

(a) As on today, the land in question is mutated in the name of the present appellants and the revenue entries are in favour of these appellants and thus no construction can be allowed.

(b) As on today, no land acquisition proceedings are pending qua the land in question.

(c) These appellants are claiming to be the owners of the property in question.

(d) These appellants are also claiming to be in possession of the property in question since 1998 onwards.

(e) Looking to the orders passed by this Court in W.P.(C) 4014/1998 dated 31st May, 2002, as well as the order passed in W.P.(C) 7297/2004 dated 9th March, 2015 and also looking to the fact that the SLP preferred by the Government authorities is being rejected *vide* order dated 27th February, 2015, there is a *prima facie* case in favour of these appellants.

(f) Thus, it appears that the respondent Nos.4 and 5 want to construct the compound wall upon the aforesaid property which is *prima facie* owned and in possession of these appellants. Hence, the learned Single Judge ought to have directed the parties to maintain status quo with regard to the ownership and possession of the property in question as well as with regard to construction activity.

10. Learned counsel for the respondents submits that this appeal is not tenable in law, because W.P.(C) 9479/2019 alongwith stay application being CM No. 39033/2019 is still pending before the learned Single Judge.

11. We are not in agreement with the contention raised by counsel for the respondents mainly for the reason that when the ownership and possession of the property is in dispute, no construction can be allowed. Moreover, W.P.(C) 4014/1998 and in W.P.(C) 7297/2014 have been decided in favour of these appellants. The SLP preferred by the state has been dismissed by Hon'ble the Supreme Court *vide* order dated 27th February, 2019. Furthermore, the revenue entries are in favour of these appellants. Hence, no construction of the compound wall should be carried out by the respondent Nos.4 & 5. The aforesaid facts make the present case different from the decision upon which reliance is placed by

counsel for the respondents which is reported in *(2005) SCCOnline Del 57 Sahil Singh Maniktala & Ors. v. Harpreet Singh & Ors.*

12. In view of the above facts, we direct the parties to maintain the status quo with regard to the ownership, possession and construction of the property in question. We also direct parties to this litigation not to do any construction activity, neither any superstructure nor even of a compound wall and if construction is grossly required by either of the parties, in such eventuality, an application shall be preferred in the pending writ petition before the learned Single Judge in W.P.(C) 9479/2019 and only with the permission of the learned Single Judge, the construction can be carried out.

13. As the writ petition is pending before the learned Single Judge, we are not much analyzing the facts of the case. Suffice would it be to state that WP(C) No.9479/2019 shall be decided by the learned Single Judge on its own merits without being influenced by the order passed today by this court in this LPA.

14. With these observations, this Letters Patent Appeal is allowed and disposed of.

C.M.No.40791/2019

1. In view of the disposal of the appeal, this application also stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

OCTOBER 10, 2019/kr