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

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Date of decision: 10.12.2019

+ W.P.(C) 2976/2018

RAM KISHAN & ANR

..... Petitioners

Through Mr.Praveen Kumar No.2(Adv.)

versus

DELHI CANTONMENT BOARD & ORS.

.... Respondents

Through Mr.Tarveen Singh Nanda, Standing Counsel with Mr.Ankur Mishra, Adv. for R-1/DCB.

Mr.Jasmeet Singh, CGSC for R-4 & R-7.

Ms.Puja Kalra, Adv. for R-6/North DMC.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This writ petition is filed by the petitioners to declare respondents No.5 and 6, namely, North DMC as the lawful municipality on the petitioners' private land and to quash the illegal, malicious, arbitrary, etc. sealing order dated 12.02.2018, and notice dated 07.03.2018 under section 320 of the Cantonment Act, 2006 for mandatory demolition. Other connected reliefs are also sought.

2. Petitioner No.2, who is an advocate, appears in person. Essentially, the case of the petitioners is that on his property, which is CB-97 forming part of khasra No.960, Village Naraina, Delhi, the Delhi Cantonment Board has no jurisdiction. Petitioner relies upon the document, namely, Shajra

Mauza of Village Naraina, Delhi to state that the property in question as indicated in Shajra is falling outside the jurisdiction of the Delhi Cantonment Board. Based on the above, it is pleaded that the Delhi Cantonment Board has no jurisdiction on the property in question.

3. Respondent No.4/Defence Estate Officer, which is the concerned department has filed their affidavit on 19.03.2019 stating that an award No.19/75-76 under section 11 of the Land Acquisition Act (*hereinafter referred to as the 'LA Act'*) was passed pertaining to land measuring 661 bighas 9 biswas at Village Naraina which was acquired by Delhi Administration. Affidavit also states that physical possession of the land measuring 587 bighas 6 biswas out of the land measuring 683 bighas 9 biswas was acquired and handed over to the Army in presence of Board Officers on 15.12.1977. The possession of the land bearing khasra No.960 measuring 1 bigha 9 biswas stated to be built up but the same has not been taken over/handed over.

4. Respondent No.6/North DMC has also filed a status report where it has been stated that the said property does not fall under the jurisdiction of North DMC and the said respondent has no role to play qua the said property.

5. The petitioner who appears in person has vehemently argued that the award in question has lapsed under section 24(2) of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. Learned counsel appearing for respondent No.1 has however pointed out that there is a civil dispute pending before the trial court which has been filed by Sh.Manish Kumar, a neighbour of the petitioner. One of the issues

pending in the suit is whether the land of the petitioner falls within the Cantonment Board. A petition being CM(M) 868/2018 decided on 09.05.2019, had been filed by the petitioner pertaining to the said suit. This court had directed framing of an issue regarding the jurisdiction of the Delhi Cantonment Board over the land in question. It is further pleaded that as this is a disputed question of fact, it is appropriate that the civil court may adjudicate the said dispute which is pending before the civil court. He has also pointed out that in view of the aforementioned order dated 09.05.2019 of this court, the trial court had to dispose of the suit within six months from the date of appearance before the trial court.

7. Learned counsel for respondent No.1 further states that the petitioners have challenged the award in question by filing a writ petition being W.P.(C) 1318/2018 but withdrew the writ petition meaning thereby the award has attained finality.

8. The petitioner however vehemently urges that the acts of the respondents are illegal. He relies upon the judgment of the Supreme Court in the case of *S.R.Bommai v. Union of India, (1994) 3 SCC 1* and *Tata Cellular v. Union of India, (1994) 6 SCC 651*.

9. In the course of hearing, the petitioner states that against the order of the Co-ordinate Bench of this court dated 09.05.2019 in CM(M) 868/2018, he had filed an SLP bearing No.19892/2019 before the Supreme Court. On being asked about the order passed by the Supreme Court, he is unable to give any copy of the order but states that expeditious disposal of the suit in question has been directed. Thereafter, a copy of the order of the Supreme Court passed in the said SLP was taken out from the internet. A perusal of the order dated 26.08.2019 passed in SLP 19892/2019 shows that direction

has been passed to dispose of the suit in question within three months.

10. It is quite obvious that entire issue is pending before the trial court in a suit filed by a neighbour of the petitioner against the petitioner. This is evident from the order dated 09.05.2019 passed in CM(M) 868/2018 filed by the petitioner herein. Relevant portion of the order reads as follows:

“4. Hence, the dispute is if the property of the petitioner falls within the Cantonment area or not, which needs to be tested on the anvil of evidence of both the parties. Hence, it is agreed to by the learned counsel for the petitioner the matter be sent to the learned Trial Court and a specific issue qua jurisdiction of the Delhi Cantonment Board over the land in question be also framed along with other issues, per pleadings of parties and suit be decided within three months as the property of the petitioner has since been sealed. The learned counsel for the respondents also conceded to above.”

11. Against the above order, an SLP bearing No.19892/2019 was filed by the petitioner herein. The same was disposed of vide order dated 26.08.2019 with the following directions:

“ We do not incline to interfere with the impugned order passed by the High Court. The special leave petition is, accordingly dismissed.

We are told that the High Court had directed the Trial Court to dispose of the suit within three months. If the suit is not decided within three months it be decided latest by 30.11.2019.

Pending application(s), if any, stands disposed of.”

12. It is clear from the above that the issue as to whether the land of the petitioners falls under the jurisdiction of the Delhi Cantonment Board or not is a question on which issue has been framed by the Co-ordinate Bench of this court for adjudication by the trial court. The Supreme Court has now

directed that the suit be decided latest by 30.11.2019. On a query, the petitioner is unable to inform the court about the present status of the suit before the trial court.

13. It is settled law that when there is a disputed question as to facts of a case, it is not for the writ court to get into this issue. Reference in this regard may be had to the judgment of the Supreme Court in the case of '***Real Estate Agencies v. State of Goa & Ors***, (2012) 12 SCC 170. The court held as follows:

“17. However, there is no universal rule or principle of law which debars the writ court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate the contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [(2004) 3 SCC 553], the precise position of the law in this regard has been explained in paras 16, 17 and 19 of the judgment in the course of which the earlier views of this Court in *Gunwant Kaur v. Municipal Committee, Bhatinda* [(1969) 3 SCC 769] and *Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council* [(1970) 1 SCC 582] has been referred to.”

14. In my opinion, it would be appropriate that the issue i.e. whether the land of the petitioner is located within the territorial jurisdiction of the Delhi Cantonment Board should be heard and adjudicated by the concerned trial court. Once the decision is taken by the trial court/appellate court, the petitioners will be free to take steps to challenge the alleged illegal order passed by the Delhi Cantonment Board, if any such issue survives.

15. With the above direction the present petition stands disposed of. All pending applications, if any, also stands disposed of.

JAYANT NATH, J.

DECEMBER 10, 2019/v

