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

+ **W.P.(C) 4213/2017 & CM APPL. 18451/2017,**
20971/2017, 24341/2017, 26327/2017

TIHAR GAON SEWA SAMITI (REGD.)
& ORS

..... Petitioners

Through: Mr Umesh Sharma, Advocate.
versus

UNION OF INDIA & ORS

..... Respondents

Through Mr Vivek Goyal, CGSC and Mr Pawan Pathak, for UOI.

Mr Wajeesh Shafiq, Standing Counsel for Delhi Wakf Board with Ms Swati Tomer, Advocate for R2.

Mr Shadan Farasat, ASC, GNCTD with Ms Hafsa Khan, Ms Rudrakshi Deo, Advocates for R3, R5 and R6.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **23.05.2019**

1. The petitioners describe themselves to be "*Legal Entities working for the Welfare of Residents of the village Tihar*". They have filed the present petition impugning an order dated 06.08.2016 (hereafter 'the impugned order') passed by respondent no.5 -Sub Divisional Magistrate, Rajouri Garden, Government of NCT of Delhi (hereafter 'SDM'), concluding that in terms of the records, 21 Bigha 5 Biswas of land comprising in Khasra No. 1575 pertains to "the Muslim Kabristan".
2. The petitioners claim that the said order is perverse as the land in

question belongs to the Custodian.

3. The controversy involved in the present petition pertains to the land records in respect of land measuring 21 Bigha 5 Biswas located in Khasra No. 1575, Village Tihar, New Delhi (hereafter referred to as ‘the land in question’). The petitioners claim that the land in question was declared to be the property of the Wakf Board by a notification dated 31.01.1980 only for a period of five years. It was, thereafter, recorded in the name of the Custodian in the Khasra Girdawari from 1986 onwards, and therefore the impugned order recording the land in question as a *Kabristan* is erroneous and is liable to be set aside.

4. Mr Umesh Sharma, learned counsel appearing for the petitioners contended that the impugned order is perverse and untenable since it has been passed without giving any notice to the Custodian. He submitted that the land records could not be changed without affording the Custodian due opportunity of being heard. He also contends that the land in question was a part of the larger land and if the records are traced from the year 1904-05 it would be evident that the land in question was “*Gair Mumkin Abadi* (Permanent Residential)” and not a graveyard as held in the impugned order.

5. Mr Shadan Farasat, learned counsel appearing for respondent no.5 (Government of NCT of Delhi) drew the attention of this Court to a notification dated 31.12.1970 where the property in question has been described as Wakf property and as “*Kaccha Tihar Delhi Khasra No. 1575 village Kachcha Tihar* (Graveyard area 21 Bigha 5 Biswas)”. The name of the Wakf is described as “*Muslim Graveyard known is Takia Chamanwala, Village Kaccha Tihar, Delhi*”. The said notification also records the Creation of Wakf to be “*over 100 years*”.

6. It is also seen that by a notification dated 31.01.1980 published by the Delhi Administration, it was further notified that the Delhi Wakf Board had assumed direct management of certain Wakf properties which also included the land in question. The petitioners claim that the said notification was valid for only a period of five years and therefore the land in question would cease to be a *Muslim Kabristan* as so described. Plainly, this contention is unmerited as the notification dated 31.01.1980 was only with regard to the management of the properties by the Delhi Wakf Board and would not change the nature of the property in question.

7. It is seen that by an order passed under Section 33 of the Delhi Police Act, 1978, the Delhi Police, *inter alia*, took possession of the land located in Khasra No. 1575 of Village Tihar, P.S. Tilak Nagar. The said order was initially in force up to 05.10.1981, however, the said order was extended from time to time. The last such order under Section 33 of the Delhi Police Act, 1978, was passed on 09.03.2015 for a period of two months.

8. The SDM had examined the record and found that taking over of possession of the land in question by Delhi Police had been incorrectly recorded inasmuch as the name of Custodian had been entered in the land records.

9. There were certain disputes with regard to the encroachment on the land in question and a complaint was also filed before the Public Grievance Commission (PGC) in this regard on 03.09.2014 by the President of the Muslim Samaj Sudharak Prabhandak Committee. The PGC had issued certain directions and in compliance with the same, the Revenue Department had examined the revenue records pertaining to the land in question and had found that the name of the Custodian had been incorrectly entered in the

land records in respect of the land in question. The said land records were thereafter corrected based on the documents available with the Revenue Department. It is further stated that PGC had thereafter issued directions to the concerned authority to ensure that encroachment on the land in question is removed.

10. On 09.05.2015 the Deputy Commissioner of Police had passed an order vacating the earlier order dated 09.03.2015 passed under Section 33 of the Delhi Police Act, 1978 and handed over the possession of the land in question to Delhi Wakf Board, in compliance with the order passed by the PGC.

11. Certain orders passed by PGC were challenged by certain parties in writ petitions filed before this Court – W.P. (C) No. 5038/2015 captioned *Hassan Mohammad & Ors. v. South Delhi Municipal Corporation & Ors.* and W.P. (C) No. 4074/2015 captioned *Yaseen & Anr. v. Government of NCT of Delhi & Ors.* In view of the aforesaid petitions, PGC closed the proceedings before it. The said petitions were disposed of by an order dated 21.03.2016. The Court noted that the orders 17.09.2014 and 02.03.2015 passed by PGC stood reviewed. The Court accepted the statements made on behalf of the learned counsel appearing for the Delhi Wakf Board and the Government of NCT of Delhi that Delhi Wakf Board would independently apply for the correction of the revenue entries before the Revenue Authority and would dispose of the application within a period of 12 weeks after hearing all parties concerned including the Delhi Police.

12. The impugned order (dated 06.08.2016) has been passed by SDM in compliance with the orders passed by this Court.

13. The learned counsel appearing for the petitioners had submitted that

the land records in the year 1904 recorded the land in question as *Gair Mumkin Abadi* and, therefore, the assumption that a graveyard existed on the said land for the past hundred years is erroneous. He referred to the *Jamabadi* for the year 1904-05 in support of his contention. This was disputed by the learned counsel appearing for respondent no.5. He submitted that the land record produced by the petitioner also indicate that the land in question was a *Kabristan*.

14. It is not necessary to examine this controversy in the present petition since the notification dated 31.12.1970 is not under challenge. Undisputedly, the land in question was notified as Wakf Property, in terms of the said notification. The decision of the SDM to proceed on the said basis cannot be faulted.

15. The contention that the land in question belonged to the Custodian is also unmerited as there is no material whatsoever on record to establish that the land in question had vested with any Custodian. Thus, the decision that the name of the Custodian had been erroneously entered in the land records cannot be faulted.

16. This Court is also of the view that the petitioners have no locus to challenge the impugned order. Admittedly, none of the petitioners have any personal interest in the land in question.

17. In view of the above the present petition is unmerited and is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

MAY 23, 2019/pkv