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

% Reserved on 20.11.2019

Pronounced on: 06.05.2020

+ W.P.(C) 1355/2019

SHRI SARMUKH SINGH AND ORS. Petitioner
Through Mr. N.S. Dalal, Ms.T. Banerjee,
Mr.Mannu Kharra and Mr. S.S. Rana, Advs.

versus

GOVT. OF N.C.T. OF DELHI AND ORS. Respondents
Through Mr.Sameer Vashisht, ASC, Civil
GNCTD. With Mr. Manashwy Jha, Adv. for R-1 to
3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. This Writ Petition is filed seeking appropriate order for setting aside the sealing order dated 5.1.2019 and a direction to desal the premises being Khasra No.257, Village Sirasapur, Delhi.

2. The case of the petitioner is that since 1988 the petitioners have been enjoying the property and spending huge amounts on the same. In 2011 a threat was extended to dispossess the petitioners without following due process of law. The petitioner thereafter filed three separate Writ Petitions which were disposed of by this court on 22.2.2011 directing the petitioners to file appropriate petition for declaration of their rights with respect to the land in their possession. The respondent/Gaon Sabha were permitted to file

ejectment proceedings against the petitioner and till disposal of the ejectment proceedings protection was given to the petitioner.

3. It is stated that pursuant to the above order the proceedings were initiated by the petitioner under section 85 of the Delhi Land Reforms Act (Hereinafter referred to as 'the DLR Act'). The Revenue Assistant dismissed the said petition of the petitioner vide order dated 12.3.2012. A revision petition has been filed against the said order of dismissal and is pending before the Financial Commissioner,

4. The proceedings for ejectment were also filed by Gaon Sabha. They are said to have been adjourned sine die. The petitioners are said to have received a notice dated 28.12.2018 from respondent No.2. pointing out that the petitioner has encroached upon Gram Sabha land bearing khasra No.257 of village Siraspur and that the encroachment be removed within 48 hours. However, on 5.1.2019, the Tehsildar concerned has issued a sealing memo in respect of the premises and sealed the said premises. It is the grievance of the petitioner that the sealing was done without an opportunity to the petitioners to remove the goods lying therein. The petitioners thereafter filed a Writ Petition in this court being W.P.(C)401/2019 for temporary desealing of the premises to enable the petitioners to remove their goods from the sealed premises. This petition was allowed on 16.1.2019. The petitioners have thereafter removed their goods from the premises. The respondent thereafter again sealed the premises on 22.1.2019.

5. The respondent No.1 and 3 have filed their counter affidavit. It is pleaded that the petitioner had earlier filed a writ petition being WP(C) 401/2019. The copy of the writ petition has deliberately not been filed. Nothing prevented the petitioner, it is stated, to request for the relief now

sought in the earlier petition. Instead the petitioner was satisfied with getting the relief of temporary de-sealing to enable him to remove his goods, which prayer was allowed.

It is further pleaded that khasra No.257 in village Siraspur is recorded in the name of Gaon Sabha.

6. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently argued that there are no powers of sealing of the premises with the respondent authorities. Under the DLR Act the respondent can evict the petitioner from the land only by filing an ejectment suit under Section 84 of the DLR Act or a suit under Section 86A of the DLR Act. The petitioner cannot simply seal the premises. It is reiterated that the petitioners have been in possession of the premises since 1988 and hence are bhumidars. He has also pointed out that after filing of the present writ petition the Revenue Assistant has on 8/7/2019 dismissed the proceedings initiated under section 86A of the DLR Act by the Gaon Sabha on account of the fact that they are barred by limitation. Hence, it is pleaded that the petitioner has rights in said land under Delhi Land Revenue Act. The impugned order is stated to be illegal.

7. Learned counsel for the respondent states that after sealing dated 5.1.2019 the petitioners filed a Writ Petition where only partial orders were sought, namely, temporary desealing of the premises to enable the petitioner to remove his goods. Having availed their remedy he submitted that the petitioner again cannot be allowed to file a second Writ Petition. Both writ petitions arise from the same cause of Action. He reiterates that the petitioners are illegal and unauthorized occupants of Gaon Sabha Land. The Khatoni shows that the land is Gaon Sabha Land. Further, the petition filed

by the petitioner under Sec. 85 of the DLR Act was dismissed by the Revenue Assistant negating the alleged rights of the petitioner.

8. I may first look at the order of this court dated 22.2.2011 passed in the first Writ Petitions filed by the petitioner. The court held as follows: -

“3. I have enquired from the senior counsel for the petitioners whether it is not incumbent upon the petitioners, even if claim of have acquired bhumidhari rights by having been allowed to remain in possession for over three years, to apply to the Revenue Authorities for declaration of the said rights. I am otherwise of the opinion that without the rights asserted by the petitioners being adjudicated by the appropriate authorities constituted under the Reforms Act, no blanket order as sought in these petitions can be granted to the petitioners.”

The Writ Petition was disposed of with the following directions:

“... A. The petitioners, if desirous of protecting their possession, to within four weeks hereof file before the concerned Revenue Court the proceedings for declaration of their rights with respect to the land in their possession.

B. If the said proceedings are filed, the possession of the petitioners shall be protected till the decision thereof. However, if no such proceedings are filed, the petitioners shall not have such protection.

C. The respondents shall also be entitled to simultaneously file proceedings for ejectment of the petitioners.

D. The petitioners till the decision of the said proceedings shall not alienate, encumber or transfer or part with the possession of the land/ properties in their possession. The senior counsel for the petitioners points out that in W.P.(C) No. 1140/2011, the

possession is with the tenant of the petitioner therein. It is clarified that this order shall not come in the way of the said petitioner talking back the possession from the said tenant. The petitioners shall also not raise any construction or make addition, alteration in the property.

E. The Revenue Assistant concerned is directed to decide the aforesaid claims of the petitioners and the ejectment proceedings, if any, filed by the respondents within one year of today.”

9. Hence, as per the said order, if the petitioners were desirous of protecting their possession, they were to commence appropriate proceedings before the Revenue Court. If the said proceedings were commenced, the possession of the petitioners was protected till the decision of the concerned Revenue Court.

10. It is an admitted fact that the revenue court has dismissed the proceedings initiated by the petitioner for declaration of his rights in the land under section 85 of the DLR Act. Vide order dated 12.3.2012, the petitioner has filed a Revision against the said order before the Financial Commissioner which is pending. I cannot however help but note that the order dated 12.3.2012 of the concerned Revenue Authority dismissing the petition of the petitioner has not been placed on record presumably as it negates the rights claimed by the petitioner. The petitioner has filed a Revision against the said order of the Revenue Assistant dated 12.3.2012 before the financial commissioner. It was open to the petitioner to have sought appropriate interim orders from the Financial Commissioner when the Revision was filed. No such interim orders appear to have been sought from the Financial Commissioner. No details are provided.

11. The petitioner cannot be permitted to ignore the alternate remedy and pending proceedings to file the present petition. This is especially so as in the earlier order of this court dated 22.02.2011 in the writ petition filed by the petitioner, this court had clearly stated that without the rights being asserted by the petitioner being adjudicated by the appropriate authority, no blanket order as sought by the petitioner can be granted. The alleged rights are still pending adjudication before the financial commissioner. This court cannot grant relief to the petitioner that was declined in the earlier writ petition.

12. There is another reason why, in my opinion, there is no reason for this court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India to grant any relief to the petitioner. Admittedly, the sealing order was passed on 5.1.2019. Thereafter the petitioner filed a Writ Petition being W.P.(C) 401/2019 where a limited relief was sought from the respondents i.e. to de-seal the premises for a period of one week to enable the petitioner to remove the goods lying therein. The same averments were made in the said Writ Petition, namely, that the respondents have no power to seal the premises. However, despite having made the said averments the petitioner confined their relief to the limited issue of desecaling the premises to enable the petitioners to remove the perishable and consumable items lying in the premises. The petitioners have now filed a second Writ Petition based on the same cause of action raising the same allegations but now seeking a larger relief. It is true that Order 2 Rule 2 of the Civil Procedure Code, 1908 does not apply to writ proceedings (Reference to ***Devendra Pratap Narain Rai Sharma vs. State of Uttar Pradesh & Ors***, AIR 1962 SC 1334). However in my opinion, in these peculiar facts and circumstances the

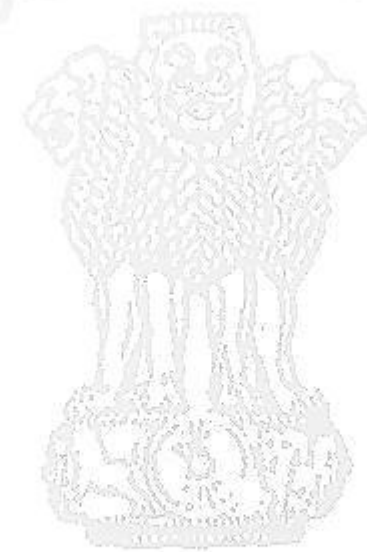
petitioner cannot repeatedly file writ petitions stating the same facts and making the same averments.

13. There is no merit in the present petition and the same is dismissed.

14. As the court is presently hearing matters vide video conferencing, the court master may also inform Ld. Counsels for the parties on phone about the present pronouncement.

May 6, 2020
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JAYANT NATH, J



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