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

+ WP(CRL) 790/2020 & C.M. Nos.6068-70/2020, 6458-59/2020, , 6583-86/2020, & 6588/2020

DEEPAK KUMAR

..... Petitioner

Through: Mr. Abhijat and Prateek Kumar,
Advocates.

versus

STATE & ORS

....Respondents

Through: Mr. Rahul Mehra, Standing Counsel
with Mr. Chaitanya Goswami, Advocate for the
State.

Mr. Raman Kumar, SHO, PS-Burari.

Mr. M.R. Samshad, Advocates for R-3 to 5.

Mrs. Sudesh Tyagi, mother of the petitioner.

Mrs. Anju Tyagi in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.05.2020

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HEARD THROUGH VIDEO CONFERENCING.

1. This is the third hearing that has taken place in the present petition between 04.05.2020 and today. This petition was first listed on 4.5.2020, on which date the contours of the dispute between the petitioner's mother Smt. Sudesh Tyagi and her step children, respondents No.3 to 5 were noted. It was noted that Sh. Ram Kishor Tyagi, husband of Smt. Sudesh Tyagi, father of the respondents No.3 to 5 and stepfather of the petitioner and Neha Gupta (the intervenor) had expired on 25.2.2020. It is a stand of the petitioner that his

mother, Smt. Sudesh Tyagi had got married to Sh. Ram Kishor Tyagi in the year 1994 and under the garb of attending the last rites of their deceased father, respondents No.3 to 5 had forcibly entered premises No.46/22, Kaushik Enclave, where Sh. Ram Kishor Tyagi and Smt. Sudesh Tyagi were residing for the past several years. It is not in dispute that the aforesaid residential premises was owned exclusively by Sh. Ram Kishor Tyagi.

2. On 4.5.2020, notice was issued in the petition to the respondents No.3 to 5 and in the meantime, in view of the submissions made by the petitioner that he wanted uninterrupted access to his mother alongwith his sister, it was deemed appropriate to direct the SHO of the area to facilitate a meeting and the petitioner with his mother on 6.5.2020, for a couple of hours. We are informed by Mr. Rahul Mehra, learned Standing Counsel (Crl.) GNCTD that the aforesaid order has been complied with and a Status Report has been filed to the said effect.

3. Thereafter, the matter was taken up on 15.5.2020 on which date, on examining the Status Report filed by the SHO, PS-Burari, it was noted that it did not indicate as to whether the statement of Smt. Sudesh Tyagi had been recorded by the police or not. As a result, the presence of Smt. Sudesh Tyagi through Video Conferencing was directed for today.

4. Pursuant to the aforesaid order, Smt. Sudesh Tyagi is present. Appearance has also been entered by Mr. S.M. Samshad, Advocate on behalf of
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the respondents No.3 to 5. Further, an application has been moved by Ms. Neha Gupta, sister of the petitioner and daughter of Smt. Sudesh Tyagi seeking impleadment.

5 We have enquired from Mr. Rahul Mehra, Standing Counsel (Crl.) GNCTD as to whether the statement of Smt. Sudesh Tyagi has been recorded or not. He confirms the said position and states that her statement was recorded on 23.4.2020 but inadvertently, the said fact was not mentioned in the Status Report.

6. We have interacted with Smt. Sudesh Tyagi today. She states that for the past several years, she has been residing at premises No.46/22, Kaushik Enclave with her husband Sh. Ram Kishore Tyagi and that the respondents No.3 to 5 have forcibly shifted her to the *barsati* floor which is not even equipped with a kitchen, whereas she has all along been residing on the ground floor. She states that she is being supplied food through the local police station and that the toilet on the *barsati* floor is blocked and the respondents 3 and 4 are hindering her free egress and ingress in the rest of the house.

7. Taking into consideration the stand of the respondent No.5, as taken in the counter affidavit it appears that several moveable/immoveable properties have been left behind by late Sh. Ram Kishore Tyagi and there appears to be a dispute between the parties with regard to the said properties. Respondent No.5 claims that her deceased father had executed a Will dated 21.2.2020, wherein he

has not bequeathed any immoveable property in favour of Smt. Sudesh Tyagi, including the premises where she is presently residing which has become the bone of contention between the parties.

8. As Smt. Sudesh Tyagi has appeared in these proceedings through video conferencing, the writ of Habeas Corpus stands discharged. However, looking at her age and her condition and upon interacting with her, there is no reason why she should be confined to any particular part of the residential premises, notwithstanding the fact that she cannot claim exclusive title to it. The aspect of the ownership of the property or any dispute relating to the said property shall have to be raised by the aggrieved parties before the appropriate civil court. However, considering the COVID-19 pandemic situation and lockdown-4 imposed by the Government that shall continue till 31.5.2020, it is deemed appropriate to direct the respondent No.3, Ashok Tyagi to remove himself from the subject premises forthwith. We have issued this direction, since on repeated enquiries made from Mr. Shamshad, learned counsel for the respondents No.3 to 5 as to whether respondent No.3 has an Election Card, reflecting therein his residential address as premises No.46/22, Kaushik Enclave, evasive reply has been given without specifically responding to our query.

9 As far as respondent No.5 is concerned, she is a permanent resident of Noida, U.P. and she is not residing in the subject premises. Respondent No.4 is a resident of USA and is stated to have come down to Delhi to attend the last
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rites ceremonies of her deceased father. Since the lockdown is continuing, there is no reason for us to direct her to remove herself from the premises. She is free to continue staying in the premises. However, respondent No.4 is cautioned not to create any hindrance for Smt. Sudesh Tyagi or try and confine her to any particular portion of the residential property. In the event any difficulty is faced by Smt. Sudesh Tyagi within the house, relating to food, medicine, water, electricity, ingress and egress, the SHO of the area shall ensure that the same is adequately addressed. Further, a Beat Constable of the area shall visit the premises off and on to ask after the petitioner's mother.

10. The petition is disposed of along with the pending applications. It is however made clear that this order shall not be construed as an order vesting any lawful right in favour of Smt. Sudesh Tyagi or the legal heirs and late Sh. Ram Kishore Tyagi in respect of premises No.46/22, Kaushik Enclave. The aspect of lawful possession and title is left open from being decided in appropriate proceedings that may be initiated by the parties.

HIMA KOHLI, J.

SUBRAMONIUM PRASAD, J.

MAY 20, 2020

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