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

% **Date of decision: 17th November, 2021**

+ **W.P.(C) 11989/2021, CM APPL. 37033/2021**

SMT. KAMLESH & ANR.

..... Petitioners

Through: **Mr.V.P. Rana, Adv.**

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: **Mr.Naushad Ahmed Khan,**
Additional Standing Counsel, Civil,
GNCTD for respondent Nos. 1, 2, 3
and 7 with **Mr.Zahid and**
Mr.Manisha Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. Heard learned counsel for parties.
2. This petition impugns the order dated 14th September, 2021 passed by the Financial Commissioner. By the aforesaid order while entertaining a revision petition, the Financial Commissioner issued notice to the respondents therein. The Authority, however, after having heard counsel for the revisionist refused to grant interim relief. The order passed and impugned herein reads thus:-

“Mentioned today by Shri V. P. Rana, Counsel for Petitioners, Revision Petition under Section 187 of the Delhi Land Reforms Act against the impugned order dated 26.07.2021 passed by Additional District Magistrate (North).

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1. Counsel for Petitioner requested for stay of the impugned order dated 26.07.2021 as the order is without following established procedure of law.
2. Heard Counsel for Petitioner. Interim relief prayed for is not granted. NO STAY.
3. Issue Dasti notice to Respondents on filing of PF through Counsel for Petitioner along with copy of petition.
4. List for 20.01.2022.”

3. When the matter was entertained initially, this Court on 25th October, 2021 had noticed that the Financial Commissioner had failed to record even rudimentary reasons for refusing the prayer for interim stay. The Court had also taken notice of the submission of learned counsel for the petitioner who contended that since proceedings on remand pursuant to the order dated 26th July, 2021 were likely to commence and proceed, it was incumbent upon the Financial Commissioner to consider the application for stay on merits.

4. Mr.Naushad Ahmed Khan as well as Mr.Zahid, learned counsels, who have appeared for the State respondents, however, submit that the Financial Commissioner has not refused or rejected the application for stay in toto. According to learned counsels, a careful reading of the impugned order would clearly establish that the Financial Commissioner has merely refused to grant stay ex-parte and in the absence of the respondents. The Court is informed by learned counsel for the petitioner that although the private respondents have been placed on advance notice, none has chosen to appear on their behalf to oppose this writ petition.

5. The Court notes that once the Financial Commissioner had deemed it appropriate to entertain the revision petition, it was incumbent upon the said Authority to consider the application moved for interim directions. Even if the Financial Commissioner came to conclude that reasons would not justify the grant of any interim relief to the petitioner revisionist ex parte, the law did require and oblige him to record reasons even if they be elementary in character.

6. The Court in the aforesaid backdrop also bears in mind the principles enunciated by the Supreme Court in **Mool Chand Yadav and Anr. vs Raza Buland Sugar Company**, (1982) 3 SCC 484 where their Lordships held thus: -

“4. We heard Mr S.N. Kacker, learned counsel for the appellants, and the respondents appeared by Caveat through Mr Manoj Swarup, Advocate. We are not inclined to examine any contention on merits at present, but we would like to take notice of the emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal. If the FAFO is allowed obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav would have to vacate the room and hand over the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr Manoj Swarup, learned Advocate for respondents, that the Court's order cannot be flouted and even a covert disrespect to Court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. Mr Manoj Swarup may be wholly right in submitting that there is intentional flouting of the Court's order. We are not interdicting that finding. But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the Order dated August 6, 1982 directing the appellants to hand over the possession of the

room to the respondents till the disposal of the first appeal against that order pending in the High Court of Allahabad.”

7. It was clearly incumbent upon the Financial Commissioner to accord due consideration to the submission of the revisionist that if the order of remand were permitted to operate, the proceedings itself may come to a conclusion during the pendency of the revision. The authority was obliged to consider whether the continued operation of the order impugned in the revision would result in prejudice and harm to the petitioner. In any case, the facts required the Financial Commissioner to consider at least prima facie whether the apprehension as expressed merited the impugned order being placed in abeyance during the pendency of the revision.

8. In view of the above, the Court is of the considered opinion that the impugned order cannot be sustained and the matter would consequently merit being remanded to the Financial Commissioner for considering the application for stay afresh.

9. Accordingly, the writ petition is allowed. The impugned order dated 26th July, 2021 insofar as it proceeds to refuse the grant of stay on the revision shall stand set aside. The Court leaves it open to the Financial Commissioner to consider the application for stay afresh, in accordance with law and with due notice to all concerned parties.

10. The Court further provides that the contesting parties as well as the petitioner herein shall maintain status quo as existing today till such time as the Financial Commissioner decides the application for stay in accordance with the directions issued hereinabove. Though needless to state, it is further observed that the Financial Commissioner shall proceed in the *W.P.(C) 11989/2021*

matter independently and without being influenced in any manner with the interim arrangement which has been made by the Court which is prompted solely to ensure that the interests of respective parties are not jeopardized till such time as the Financial Commissioner considers the prayer for stay on merits. The Court further provides that the contesting parties shall not take any unnecessary adjournments before the Financial Commissioner and shall co-operate in the expeditious disposal of the proceedings in question.

NOVEMBER 17, 2021
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YASHWANT VARMA, J.

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