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

+ CM(M) 753/2022 & CM APPL. 33595/2022, CM APPL. 33596/2022

KULBIR SAHI

..... Petitioner

Through: Mr.Nishant Oatta, Mr.Anop Sharma, Mr.Pradeep Bhardwaj and Mr.Chirag Rathi, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Gagan Kumar and Ms.Nishtha Kaura, Advs. for R-1/UOI Mr.Rikesh Singh, Adv. for R-2/MCD

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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01.08.2022

1. Heard learned Counsel for both sides. With consent of learned Counsel, this petition is being disposed of.

2. This petition, under Article 227 of the Constitution of India, assails an order dated 7th April, 2022, passed by the learned Additional District Judge (the learned ADJ) disposing of an application filed by the petitioner (as the appellant before the learned ADJ) under Section 157 of the Code of Civil Procedure, 1908 (CPC).

3. As learned Counsel for both sides are agreeable to this matter being remanded to the learned ADJ to return a proper finding on the prayer in the petitioner's application, no detailed allusion to facts is



necessary. A brief recital would suffice.

4. Against order dated 23rd December, 2019, passed by the learned Additional Senior Civil Judge (the learned ASCJ), on an application preferred by the petitioner under Order XXXIX Rules 1 and 2 of the CPC, the petitioner appealed to the learned ADJ *vide* MCA/DJ/3/20.

5. Suit 1492/19 (*Kulbir Sahi v. UOI & Ors.*), in which the order dated 23rd December, 2019 came to be passed by the learned ASCJ, was instituted by the petitioner against the respondents. The petitioner alleged that, by way of adverse possession, his title over the property bearing House No. 2087/B-2, Gali No. 19, Prem Nagar, New Delhi (hereinafter “the suit property”), stood perfected. The petitioner also asserted that the property stood mutated in his name. Expressing his grievance at the alleged threat, held out by the respondents, to demolish the suit property, the petitioner instituted the aforesaid Suit No. 1492/19 against the respondents, for a restraint against the respondents from dispossessing the petitioner from, or demolishing, the suit property.

6. An application under Order XXXIX Rules 1 and 2 of the CPC, seeking interlocutory injunction was also filed by the petitioner alongwith Suit 1492/19.

7. The said application under Order XXXIX Rules 1 and 2, filed by the petitioner, was dismissed by the learned ASCJ *vide* order dated 23rd February, 2019 *supra*. The learned ASCJ held, while dismissing



the application, that action for removal of the petitioner's construction, treating it as an encroachment, had already been undertaken and the construction had been removed. Accordingly, it was held that there was no occasion to restrain the respondents from demolishing the petitioner's property. The relief sought by the petitioner, accordingly, had become infructuous, in the opinion of the learned ASCJ.

8. Aggrieved, the petitioner, as already noted, appealed to the learned ADJ *vide* MCA/DJ/03/2020 (*Kulbir Sahi v. UOI & Anr.*).

9. Accompanying the appeal was an application, filed by the petitioner, for interlocutory relief, which has come to be disposed of by the impugned order dated 7th April, 2022. The application complained that Respondent 2 was illegally seeking to remove *malba* from the premises and to construct a boundary wall. Even while acknowledging the fact that demolition action already stood taken by the respondents, the application voiced the apprehension that any further disturbance of the *status quo*, in respect of the suit property, would dilute, and result in defeating, the case of the petitioner against the respondents. In order that the petitioner's case be not *further prejudiced*, the application sought a direction to the respondents to maintain *status quo* with respect to the suit property, pending disposal of MCA/DJ/03/2020.

10. The said application has been disposed of by the learned ADJ *vide* the impugned order dated 7th April, 2022 which, to the extent it is relevant, reads thus:



“Another application is filed by appellant today under Order 39 Rule 1 and 2 CPC r/w Section 94 & 151 CPC. Copy supplied. Submissions heard.

In the application under consideration, it is alleged that the respondent no. 2 is under process to take illegal and unwarranted action to remove the malba from the site and construction of boundary wall on the area which is the subject matter of the present suit/appeal.

It is accordingly prayed that the respondent may be directed to maintain the status quo of the property till the disposal of the appeal.

Along with the application, one internal noting in respect of the suit property dated 10.08.2020 has been placed on record wherein there is noting of 02.09.2020 regarding the directions for removal of malba lying at the spot and construction of boundary wall.

During the course arguments when it was specifically questioned from the appellant that what is the issue he is having with the removal of malba from the spot, he stated that his personal belongings like plants and furniture are lying there, however, there is no such pleading in the application under consideration. Also perusal of impugned order dated 23.12.2019 clearly show that the Ld. Trial Court has recorded that suit property has already been demolished and plaintiff put out from the possession of the same. The appellant has not supported his claim of having possession of the suit property through his personal belongings byway of any documents, photographs or even pleadings. Accordingly, the only status regarding the suit property which is on record is that of malba lying there. However, appellant by way of arguments is seeking a status quo in respect of his personal belongings lying there. Unless, the status of the suit property is clearly on record, no order for status quo can be granted as prayed. The application under Order 39 Rule 1 & 2 CPC filed by the appellant is accordingly, dismissed being misconceived.”

(Emphasis supplied)

11. The petitioner has approached this Court, under Article 227 of



the Constitution of India, against the aforesaid order dated 7th April, 2022 of the learned ADJ.

12. A reading of the impugned order discloses that the learned ADJ has dealt with the aspect of removal of *malba*, but, apropos the petitioner's prayer for maintenance of *status quo* in respect of the suit property, no specific finding or even observation is forthcoming. All that the learned ADJ notes is that the learned ASCJ had already recorded, in the order dated 23rd December, 2019, that the petitioner's property already stood demolished. Apart from this, the only other issue that the impugned order dated 7th April, 2022 of the learned ADJ addresses is removal of *malba*.

13. Significantly, the impugned order notes, in so many words, the prayer of the petitioner that "the respondent may be directed to maintain *status quo* of the property till the disposal of the appeal". There is nothing, in the application filed by the petitioner, to indicate that *status quo* was being sought only *qua* removal of *malba* or removal of the petitioner's belongings. Rather, the case that the petitioner had sought to set up in the application was that, if *status quo* of the property was not directed to be maintained, it could dilute the petitioner's case.

14. Needless to say, this Court is not expressing any opinion on the merits of the petitioner's prayer, or as to whether the petitioner was entitled to a *status quo* regarding the suit property, pending disposal of the appeal. The court is inclined to interfere only because, despite



noticing the petitioner's prayer for maintenance of *status quo* regarding the suit property pending disposal of the appeal, there is no categorical finding, one way or the other, on the said prayer.

15. Learned Counsel for the respondent is also agreeable, in these circumstances, to remand of the petitioner's application to the learned ADJ for a *de novo* consideration, so that a specific finding on the petitioner's prayer for maintenance of *status quo* regarding the suit property pending disposal of the appeal could be returned.

16. Accordingly, this petition is allowed to the aforesaid extent. The learned ADJ is directed to consider the petitioner's stay application *de novo* and specifically deal with the petitioner's prayer for maintenance of *status quo* in respect to the suit property pending disposal of the appeal.

17. It is made absolutely clear that this Court has not expressed any view on the matter. The petitioner's prayer for maintenance of *status quo* regarding the suit property pending disposal may, or may not, have merit. That is the matter which the learned ADJ would consider dispassionately, completely uninfluenced by any observations contained in the present order.

18. For the aforesaid purpose, both parties are directed to appear before the learned ADJ on the next date fixed before her. On the next date of hearing, both parties would be heard *de novo* on the petitioner's application for maintenance of *status quo* regarding the



suit property pending disposal of the appeal.

19. The learned ADJ is also requested to take a decision on the said application either on the same day or as expeditiously as possible.

20. The learned ADJ would be at liberty, however, should it be possible to do so, to dispose of MCA/DJ/03/2020 preferred by the petitioner itself, instead of hearing and deciding the petitioner's stay application. Both sides evince their consent in this regard. Needless to say, in that event, no occasion would arise to consider the petitioner's stay application.

21. With the aforesaid directions, this petition stands disposed of with no orders as to costs.

C.HARI SHANKAR, J

AUGUST 1, 2022/kr