

\$~37

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 13<sup>th</sup> January, 2023*

+ **W.P.(C) 12528/2022 & REVIEW PET. 16/2023**

ABHISHEK GROVER

..... Petitioner

Through: Mr. Rohit Krishna Naagpal and Mr.  
Dipanshu Gaba, Advocate along with  
Petitioner in person.

versus

DIVISIONAL COMMISSIONER & ORS. .... Respondents

Through: Mr. Arun Panwar, Advocate for R-1  
(M-7827545811)  
Mr Parikshit Mahipal, Advocate  
along with R 2 and 3 in person (M-  
9868873986).

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**REVIEW PET. 16/2023**

2. This is a review petition filed by Review Applicant/ Petitioner -  
Abhishek Grover seeking review of the order dated 14<sup>th</sup> December, 2022  
passed by this Court. The operative portion of the order reads:

*“6. Considering the nature of the dispute and the fact that the above is only an interim order, it is directed that the ld. Divisional Commissioner shall dispose of the appeal pending before him, within a period of one month without being affected by the findings in the earlier interim order dated 23<sup>rd</sup> August, 2022.*

*7. Till such final order is passed by the ld. Division Commissioner, the interim order granted by this Court in favour of the Petitioner vide order dated 30<sup>th</sup> August, 2022, shall continue, subject to*

*payment of Rs.15,000/- per month by the Petitioner, to the Respondents. The same shall be payable by the 10<sup>th</sup> of every month.*

*8. The present petition is disposed of in these terms, along with all pending applications.”*

3. The grounds urged by Mr. Nagpal, Id. Counsel for the Review Applicant/Petitioner are:

- i) That the original order of the Id. District Magistrate, Central District (*hereinafter, “District Magistrate”*) dated 7<sup>th</sup> July 2022 was rendered *ex parte* without notice to the Review Applicant/Petitioner;
- ii) That the Id. Divisional Commissioner, Department of Revenue, Govt. of NCT of Delhi (*hereinafter, “Divisional Commissioner”*) before whom the appeal arising out of the aforementioned order of the District Magistrate is pending, does not have the power and jurisdiction to remand the matter back to the District Magistrate.

4. Mr. Nagpal, Id. Counsel for the Review Applicant/Petitioner relies on the order sheets of the proceedings before the District Magistrate in support of his submission that for two dates of hearings, no notice was issued to the Review Applicant/ Petitioner. Further grievance of the Review Applicant/ Petitioner is that on 15<sup>th</sup> November, 2021, the next date of hearing before the District Magistrate was fixed for 17<sup>th</sup> January, 2022, however matter not taken up on that date. He also relies upon the judgment of the Hon’ble Punjab and Haryana High Court in ***Surinder Devi v. State of Punjab, CWP No. 19006 of 2016*** to submit that the Divisional Commissioner does not have the power and jurisdiction to remand the matter back to the District Magistrate.

5. The Court has perused the order sheets of the District Magistrate. The same show that the Review Applicant/Petitioner was aware of the proceedings before the District Magistrate and had appeared before the District Magistrate on several dates of hearings including on 11<sup>th</sup> December 2020, 13<sup>th</sup> August 2021, 15<sup>th</sup> February 2021, 15<sup>th</sup> November 2021, etc. It is further noticed from the order sheets of the District Magistrate that the next date of hearing in the matter is announced on each date. It is also noticed that there is no order sheet for the hearings on 17<sup>th</sup> January, 2023.

6. The Review Applicant/ Petitioner having appeared before the District Magistrate on several dates ought to have been diligent in finding out the next date of hearing in the matter. Moreover, even if on 17<sup>th</sup> January, 2022, the hearing was not held for whatever reasons, the matter was again taken up on 8<sup>th</sup> April, 2022, 2<sup>nd</sup> May, 2022 and was finally reserved on 6<sup>th</sup> June, 2022. Thus, this Court does not believe that the Petitioner/ Review Applicant did not get adequate opportunity for representation before the District Magistrate.

7. The second issue as to whether the Divisional Commissioner has the power and jurisdiction to remand the matter, does not arise at this stage inasmuch as the Divisional Commissioner who is entertaining the appeal can decide the appeal even on merits. The decision of the Hon'ble High Court of Punjab and Haryana relied upon by the Id. Counsel for the Petitioner/ Review Applicant would in fact mean that the Division Commissioner would have to hear the matter on merits and nothing more.

8. Insofar as the order dated 14<sup>th</sup> December 2022 of this Court, review of which is sought, on the said date, the order was passed after hearing and consideration of the matter. The Petitioner is the son of the Respondent and

is in occupation of the property. The payment of Rs. 15,000/- per month by the Petitioner, to the Respondents is concerned, there is an eviction order dated 7<sup>th</sup> July 2022 passed against the Petitioner/ Review Applicant and it is not in dispute that he is in occupation of the premises in question. Having suffered an order from the District Magistrate, in order to balance equities, during pendency of the Appeal, the said payment was directed. There is no apparent error in the said order, which calls for a Review of the same. Thus, the said payment for use and occupation of the premises in question shall be made by the Petitioner/ Review Applicant. Any payment made shall be subject to the outcome of the order of the Divisional Commissioner.

9. The Divisional Commissioner shall ensure the strict compliance of the order passed by this Court on 14<sup>th</sup> December, 2022 before taking up the Appeal for hearing. In view of the fact that the review application was filed and the time for deciding the appeal would lapse, the Divisional Commissioner is given one more month to decide the appeal subject to the payment decided by this Court vide order dated 14<sup>th</sup> December, 2022.

10. Review petition is disposed of in these terms.

**PRATHIBA M. SINGH**  
**JUDGE**

**JANUARY 13, 2023**

*Rahul/KJ*