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

+ **W.P.(C) 17590/2022**

KANWAR BHAN HANS & ORS. Appellant

Through: Mr. Syed Hasan Isfahani with Mr.
Parvez Jaidi, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ORS. Respondent

Through: Ms. Shobhana Takiar, Standing
Counsel, DDA/R-1.

Mr. Sanjay Ghose, Senior Advocate
with Ms. Zeba Khair, Ms. Nimita
Kaul, Ms. Nikita Jain, Advocates and
Ms. Shaista Siddique, (for Defendant
No.3).

Mr. Mohd. Irsad (ASC, GNCTD)
with Mr. Rakesh Kumar Sinha, Ms.
Divita Dutta & Mr. Kumud Ranjan
Mishra, Advocates for R-2.

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Date of Decision: 23rd December, 2022

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 56243/2022 (for exemption)

Allowed, subject to just exceptions.

Accordingly, this application stands disposed of.

W.P.(C) 17590/2022 & CM APPL. 56242/2022 (stay)

1. The present writ petition has been filed by four individuals who are

residing and earning their livelihood from the addresses mentioned in the memo of parties, which form part of Khasra No.216, Ladha Sarai, Mehrauli ('Khasra No. 216'). It is stated that Petitioner Nos.1 and 2 are tenants of Respondent No.3 i.e., Delhi Waqf Board.

2. In the present petition, the Petitioner seeks quashing of the demolition order *qua* Khasra No. 216, wherein demolition is proposed to be carried out by Respondent No.1 i.e., Delhi Development Authority ('DDA') for removing all unauthorized encroachers from the Government/DDA land.

3. Learned counsel for the Petitioner states that Respondent No.1 does not possess any title or interest in Khasra No.216 by virtue of provisions of the Waqf Act, 1995 and therefore, it cannot carry out any demolition in the said Khasra. He states that Khasra No. 216 is a Waqf property and vests in Respondent No.3.

4. He states that land forming part of Khasra No. 216 consists of graveyards, mosque, monuments, residence and shops etc., which fall under the purview of Respondent No.3 as the entire Khasra is Waqf land.

5. He seeks to place reliance upon the proceedings pending before a Coordinate Bench of this Court in W.P.(C) 8033/2020 titled as *Mehrauli Minorities Resident and Shop Owners Welfare Association v. Government of NCT of Delhi & Anr.* and more specifically on interim reports dated 26.11.2021 and 12.08.2022 filed by the Survey Commissioner opining that the land in Khasra No. 216 is Waqf in nature. He states that a survey exercise has already been completed and demarcation proceedings were held through the Total Station Method ('TSM') on 13.08.2021 in the presence of the representatives of Respondent No.1.

6. He states that though the recorded owner of the land in Khasra No. 216 is Government of India, as the land had fallen within the jurisdiction of the Custodian of Evacuee Property, he states that in view of the reports of the Survey Commissioner in W.P.(C) 8033/2020, the Respondent No.1 can only be treated as the trustee of the said land, for and on behalf of Respondent No.3. He, therefore, states that the action proposed to be taken by Respondent No.1 in pursuance to the impugned order dated 12.12.2022 is without jurisdiction.

7. In reply, learned standing counsel for the Respondents states that land in Khasra No. 216, which is the subject matter of the present petition is owned by Government of India and its control vests with Respondent No.1. She states that this Khasra forms part of the Mehrauli Archaeological Park.

8. She states that the impugned order dated 12.12.2022 proposing action for removal of unauthorized encroachments has been issued to implement the directions issued by the Division Bench of this Court in: -

- (i) W.P.(C) 4302/2015 titled *The Indian National Trust for Art & Cultural Heritage (INTACH) vs. DDA & Ors.*;
- (ii) W.P.(C) 13905/2019 titled *The Managing Committee of Delhi Waqf Boards Masajids, Graveyards and Land/Properties at Ladha Sarai vs. GNCTD & Ors.*

9. She states that in the aforesaid writ petitions the Division Bench has directed Respondent No.1 and Archaeological Survey of India ('ASI') to ensure that the entire area covered by the Mehrauli Archaeological Park is secured and is freed from encroachments. She has placed reliance on the orders dated 29.04.2015, 17.05.2017, 05.07.2017, 14.09.2017, 17.07.2019

and 02.12.2022 passed in the said writ proceedings.

10. She states that in pursuance to the directions passed in the aforesaid writ petitions a Total Station Survey was conducted and the area of Mehrauli Archaeological Park has been demarcated for the seam line of the said park.

11. She states that Respondent No.1 has marked the encroachments on the demarcation plan and the action being taken in pursuance to the notice dated 12.12.2022, is in compliance with the orders passed in the writ proceedings for removal of all encroachments except religious structures. She has also filed her written submissions which are taken on record.

12. She states that the reliance placed upon the proceedings in W.P.(C) 8033/2020 is misplaced inasmuch as the Government of India's existing title in Khasra No.216 is admitted in the said proceedings as well and therefore, she disputes that the action for removing encroachers needs to be interdicted on account of the pendency of the said proceedings.

13. She lastly, states that if the Petitioners herein have any grievance, they should have filed their application in the writ proceedings pending before the Division Bench.

14. This Court has heard the parties and perused the pleadings in the writ petition. At the outset, it is noted that no documents have been filed by Petitioner Nos. 1 and 2, in support of their plea, that they are tenants. To a pointed query made to the learned counsel for the Petitioner with respect to the basis of the said averment, he states that even if it is assumed for the sake of argument that all the four Petitioners herein are encroachers on the land, the right to remove such encroachers vests in Respondent No.3 alone.

15. This Court is of the view that in the absence of any right, title or

interest in Khasra No.216, the Petitioners have no *locus* to maintain the present proceedings impugning the order dated 12.12.2022. Further, the Petitioners admit that Government of India is the recorded owner of Khasra No.216 and the Division Bench of this Court has directed Respondent No.1 and ASI to remove all encroachers from the Mehrauli Archeological Park. Respondent No.3 is also a party to the said proceedings before the Division Bench and to that extent the orders are binding on Respondent No.3 and Petitioner who claims through Respondent No.3.

16. The Division Bench in its order dated 17.07.2019 has issued a categorical direction to Respondent No.1 and ASI to take all necessary steps to ensure that Mehrauli Archaeological Park is free from any encroachment.

17. Further, the sum and substance of the Petitioners' arguments is that they have been compelled to file the petition since the Respondent No.3 has failed to safeguard its right, title and interest in Khasra No.216. In this regard, however, this Court takes notice that Respondent No.3 has filed a substantive writ petition being W.P.(C) 17591/2022 titled *Delhi Waqf Board v. Delhi Development Authority and Anr.* impugning the same demolition order on the plea that the said order is a threat to the Waqf properties. The said writ petition filed by Respondent No. 3 was earlier listed before this Court on 22.12.2022 and thereafter placed before the Division Bench.

18. This Court has been informed that on 23.12.2022, the Division Bench in the said proceedings has after recording the statement of Respondent No.1 that religious structures as well as graveyards will not be demolished and further, that the demolition will be done only as per the demarcation report has declined to grant any further interim relief. The Division Bench has thus, declined to restrain the implementation of the order dated 12.12.2022.

19. It is thus, evident that Respondent No.3 is actively pursuing its legal remedies to safeguard its rights in the Waqf properties falling in Mehrauli Archaeological Park and therefore, the present petition is merely a multiplication of the proceedings seeking similar reliefs.

20. Further, learned Senior Counsel appearing for Respondent No.3 has categorically stated that it is not the intention of Respondent No.3 itself to protect encroachers, who are sought to be removed by Respondent No.1 as per the impugned order dated 12.12.2022.

21. In the aforesaid facts and circumstances, this Court is of the opinion that the present petition at the behest of Petitioners is not maintainable and the same is therefore, dismissed. The pending application also stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 23, 2022

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