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

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Reserved on: 07.07.2023

Pronounced on: 12.10.2023

+ **W.P.(CRL) 923/2023**

RAKESH KUMAR & ORS.

..... Petitioners

Through: Mr. Varun Mudgil, Mr.
Rakesh Kumar and Mr. Vijay
Kumar, Advocates

versus

STATE & ORS.

..... Respondents

Through: Mr. Amol Sinha, ASC for the
State with Mr. Rahul Kochar
and Mr. Ashvini Kumar,
Advocates and along with SI
Prashant, P.S. South Rohini.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioners seeking following reliefs:

- i. Quashing of the impugned notices issued to the petitioner No. 1 & 2, under Sections 107/111 Cr.P.C by the Special



Executive Magistrate ('SEM'), Rohini District, Delhi i.e., respondent no.3.

- ii. Further, directions to respondent no. 1 and 2 for taking immediate action in the complaint dated 05.01.2023 and 06.01.2023 made by the petitioners *vide* DD No. 52A and 83 respectively.
- iii. Immediate police protection for ensuring safety of lives and livelihood of petitioners in accordance with law.

2. Briefly stated, the case of petitioners, is that they are the legal heirs of late Sh. Tara Chand and are resident of House No. 254, Mangolpur Kalan Village, Sector-2, Rohini, New Delhi. It is stated that a civil suit for declaration, mandatory injunction and partition i.e. CS (OS) No. 361/2004 had been filed before this Court and in the said suit, all the sons of late Sh. Tara Chand had been declared as joint owners having 1/5th share in the ancestral property. It is also stated that in the said suit, a Local Commissioner had been appointed by this Court *vide* order dated 02.02.2006 who had submitted his report in which he had informed that the petitioners were in possession of the property in dispute i.e. Khasra No. 70/1/1, Mangolpur Kalan, Delhi. It is stated that the report of Local Commissioner had also established that the rent out of the said property was divided amongst the legal heirs of late Sh. Tara Chand i.e. the petitioners. It is stated that on 05.01.2023, at about 10:00 AM, when the petitioners had reached their Shop No. 1 located at the said premises, they had found their shop to be unlocked and the lock lying on the ground, pursuant to which a police complaint *vide* DD No.



52A dated 05.01.2023 was lodged at Police Station South Rohini, and a complaint was also sent to DCP, Rohini *vide* DD No. 83 dated 06.01.2023 against one Smt. Kiran and her husband Sh. Bharat Singh who had allegedly entered the shop and had got the electricity meter installed in the name of Smt. Kiran. It is stated that instead of taking legal action against the alleged persons, respondent no. 3 had served the petitioners a *kalandra*/notice under Sections 107/111 of Cr.P.C. dated 09.02.2023. It is further submitted that on 17.03.2023, one Sh. Dinesh Mann had also entered into the said property/shop along with 12 goons and had threatened the petitioners to not enter into the said property, and information qua this incident was given by petitioner no. 1 to the police on 18.03.2023, but no action has been taken till date. It is stated that petitioner no. 1 and 2 had received a physical copy of notice issued under Section 107/111 of Cr.P.C. and in compliance of the same, they had appeared before the learned SEM/respondent no. 3.

3. Learned counsel for petitioners states that the present matter involves a civil dispute, and invoking Section 107 of Cr.P.C. is an abuse of process of law and the said dispute has nothing to do with public tranquillity or breach of peace. It is stated that respondent no. 3 had issued impugned notices by violating principles of natural justice and without applying mind or conducting any inquiry about the truth of the information upon which it had issued impugned notices against the petitioners. It is also stated respondents no. 1 and 2 have not taken any action in response to the complaints made by the petitioners with respect to incident dated 05.01.2023. It is also



argued that IO had acted on his whims and fancies and got the *kalandra* issued on the basis of complaint dated 09.01.2023 lodged by Sh. Bharat Singh. It is further stated that several people have been threatening petitioners and it poses a serious threat to their lives. Therefore, it is prayed that present petition be allowed.

4. Learned ASC for the State, on the other hand, submits that the present matter pertains to property dispute between the parties and several complaints were received between January-March, 2023 and preventive action under Sections 107/150 of Cr.P.C. was taken in February 2023 between Sh. Bharat Singh on one side and petitioner no. 1 and 2 on the other side, and in March, 2023 between Sh. Dinesh Kumar Mann on one side and petitioner no. 1 and 2 on the other side, to maintain law and order and peace in the area as there was apprehension of breach of peace on the issue of disputed property between the parties involved. Therefore, it is submitted that the impugned notices do not suffer from any infirmity.

5. This Court has heard arguments advanced by learned counsel for petitioners and learned ASC for the State and has perused the material on record.

6. At the outset, it would be appropriate to refer to provisions of Section 107 and Section 111 of Cr.P.C, which read as under:

“107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person



to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

111. Order to be made.

When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.”

7. In the present case, learned Special Executive Magistrate, Rohini had issued impugned notices dated 09.02.2023, being K.No. 02 AB under Sections 107/111 of Cr.P.C. against petitioner no. 1 and 2, in respect of DD No. 123, Police Station South Rohini dated 09.01.2023. The relevant portions of these notices read as under:

“Whereas from the report of SHO/SOUTH ROHINI it appears that you (Rakesh) alongwith Sunil Kumar have abused & threatened Bharat Singh with dire consequences during dispute which arose by your acts of behaviour over the issue of property matters. There is apprehension of breach of peace in the locality despite of civil suit pending in Delhi High Court which may result in occurrence of cognizable offence and can disturb the police tranquility.

That you are likely to do a wrongful act which may result in the breach of peace within the local limits of my jurisdiction and I am satisfied from the police report that there are sufficient grounds for initiating proceedings against you.



Therefore, I INDIRA VATI, S.E.M, Rohini Distt, Delhi do hereby required you to appear in the court on 24.02.2023 at 2 P.M. and show cause why you should not be bound with a sum of Rs 10,000/- with one surety in the like amount for keeping peace for a period of the conclusion of the enquiry proceedings and reply if any will be submit on date fixed.”

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8. This Court has also gone through the contents of Status Report filed on record by the State along with annexures containing details of the complaints lodged between the parties with respect to the property in question i.e. Shop No. 1 at Khasra No. 70/1/1, Mangolpur Kalan, Delhi.

9. In the present case, the petitioners had lodged complaints with the Police *vide* DD No. 52A dated 05.01.2023 at P.S. South Rohini and DD No. 83 dated 06.01.2023 to DCP, Rohini in which they had stated that their father late Sh. Tara Chand had five sons namely,



Rakesh Kumar, Sunil Kumar, Anil Shokeen, Rajesh Shokeen and Pradeep Shokeen who all were involved in a property dispute. The petitioners had alleged that they had a lot of property out of which one shop had been given on rent to one Sh. Deepak Gulati who was paying rent as per directions of the Court. It was alleged that on 02.01.2023, their brother i.e. Anil Kumar along with 5-6 other persons had broken the lock of the shop and had thrown out all the material of Sh. Deepak Gulati and the electricity meter had got stolen. It was also alleged that petitioners had received threats from Sh. Anil Kumar and others who had tried to enter into their property several times. After receipt of the said complaint, the police had conducted an enquiry and had recorded the statement of the alleged persons i.e. Sh. Anil Kumar, S/o late Sh. Tara Chand who had stated that he was in possession of Shop No. 1 since the beginning of civil suit between the parties and the said fact also stood proved by the report of Local Commissioner. He had also stated that he had sold the shop in the year 2006 to one Sh. Dinesh Kumar since the said shop was in his possession at the time of sale and none of his brothers i.e. petitioners had anything to do with the said shop. The police had also examined the records of the civil cases pending between the parties and had discovered that the Local Commissioner in his report filed before this Court in CS (OS) No. 361/2004 had submitted that Shop No. 1 was in possession of one Sh. Kamal Gulati since 1989, who used to pay monthly rent to Sh. Anil Kumar. During inquiry, it was also discovered that petitioner no. 2 had filed an application under Order VII Rule 11 of CPC along with affidavit dated 19.08.2019



before the learned Additional District Judge, Rohini Court, Delhi in which he had submitted that Shop No. 1, 2 and 3 measuring approximately 150 sq. yards fell to the share of Anil Kumar which he had sold *vide* registered Sale Deed dated 28.08.2006 in favour of Sh. Dinesh Kumar Mann. As per inquiry report, it had been discovered that the property in question was a disputed property and multiple people had claimed ownership of the shop and it was also found that no electricity meter was installed at the shop on the date as mentioned by the complainants/petitioners.

10. Since the impugned notices in the present case relate to DD No. 123, Police Station South Rohini, dated 09.01.2023, this Court has also examined the contents of the said DD entry which reveals that on 09.01.2023, an information had been received by the officer on duty *vide* DD No. 81A where the caller Sh. Bharat Singh had informed that he was the owner of shop in question and that petitioners had broken the lock which he had placed at the shop and in place of same, the petitioners had placed their own lock at the premises. In the meanwhile, petitioner no. 1 and 2 had also reached the spot and had informed the police that the shop in question was their ancestral property and they had also given their complaint in writing to the police officer. Further perusal of the DD entry reveals that there was ongoing dispute between the parties regarding the said shop and both the parties had abused and threatened each other. In these facts and circumstances, the concerned SHO after discussing the present matter with concerned ACP had suggested that preventive action under Section 107/150 of Cr.P.C. be taken against the said



parties i.e. Sh. Bharat Singh on one side and petitioner no. 1 and 2 on the other side, which has been challenged before this Court.

11. A perusal of record also reveals that again on 17.03.2023, a PCR call was received whereby petitioner no. 1 and 2 had informed the police that they were the owners of the shop in question and Sh. Dinesh Kumar had dispossessed them by breaking the lock of the shop. However, during inquiry, Sh. Dinesh Kumar had produced a copy of the registered Sale Deed dated 28.08.2006 executed between him and Sh. Anil Kumar and again preventive action under Sections 107/150 of Cr.P.C. had been taken against Sh. Dinesh Kumar and petitioner no. 1 and 2.

12. At this juncture, having analysed the contents of the relevant DD entries placed before this Court, this Court notes that though the petitioners by way of present petition have submitted that DD No. 52A dated 05.01.2023 and DD No. 83 dated 06.01.2023 were lodged against Mrs. Kiran, W/o Sh. Bharat Singh with respect to an incident dated 05.01.2023, a perusal of the records and the said DD entries reveals that the same were rather lodged against Sh. Anil Kumar, i.e. brother of petitioners in respect of incident dated 02.01.2023, details of which along with the inquiry conducted by the police have already been discussed in the preceding paragraphs. As per inquiry conducted by the police and the Status Report placed on record in respect of several incidents that had been reported to the police, the attention of this Court has been drawn towards the fact that the property in question i.e. Shop No. 1 at Khasra No. 70/1/1, Mangolpur Kalan, Delhi belonged to the brother of petitioner no. 1 and 2 i.e. Sh. Anil



Kumar, who in the year 2006 had sold the property to one Sh. Dinesh Kumar by way of a registered Sale Deed and that the petitioners were well aware of the said fact.

13. Further, the contention of the learned counsel for the petitioners that the present matter is only a civil dispute and has nothing to do with breach of peace and/or public tranquility is itself belied by the fact that even as per the own case of petitioners, the other alleged persons along with their 10-12 associates had forcefully trespassed and grabbed the property by assault, threat, criminal force, criminal intimidation, etc., and as per complaint lodged by these alleged persons, it was the petitioners who had been illegally entering into their premises and abusing and threatening them with severe consequences.

14. Therefore, considering the contents of the DD entries/complaints lodged by the petitioners herein and the complaints lodged by other parties against the petitioners, especially DD No. 123, Police Station South Rohini, dated 09.01.2023, this Court does not find any merit in the argument raised on behalf of petitioners that there was no material before the learned SEM/respondent no. 3 to have issued impugned notices under Sections 107/111 of Cr.P.C. Thus, there are no reasons to quash the impugned notices dated 09.02.2023 issued by respondent no. 3.

15. As regards the prayer of the petitioners regarding issuance of directions to respondent no. 1 and 2 for providing immediate police protection to petitioners is concerned, this Court deems it appropriate to direct that the mobile number of concerned Beat Constable and



SHO be provided to the petitioners and in case of any threat received by the petitioners or any other untoward incident, adequate protection will be provided to the petitioners. Further, in case the petitioners file any complaint with the SHO of concerned Police Station and if commission of cognizable offence is revealed, the concerned SHO will register an FIR, under appropriate provisions, as per law.

16. Accordingly, the present petition stands disposed of in above terms.

17. It is, however, clarified that the observations made hereinabove are solely for the purpose of deciding the present petition and shall not tantamount to this Court's expression of opinion on the merits of the case.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 12, 2023/zp