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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22nd May, 2023.

+ W.P.(C) 6915/2023 & CM APPLs. 26929-30/2023

SHADAB ANJUM AND ORS

..... Petitioners

Through: Mr. Mohsin Khan and Mr. Mohammad Sumamah, Advocates (M: 8920006471).

versus

GOVT NCT OF DELHI AND ORS

..... Respondents

Through: Ms. Sweety Singh, Adv with Mr. Harish Kumar, Nain Tehsildar, Saket and SI Sandeep Kumar, PS Mehrauli for R-1 & 3 (M: 9810488115)

Mr. Wajeeh Shafiq, Standing Counsel for Respondent No.2 Delhi Waqf Board, with Ms. Ramsha Shan Advocate (M: 9953756236).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner No. 1- Shadab Anjum, Petitioner No.2-Ramesh Kumar Arora and Petitioner No. 3-Sanjay Arora (*hereinafter collectively "Petitioners"*) challenging the notice dated 23rd August, 2022 bearing no. F/TEH/MEH/2022/1082-84 in respect of the property being 1068, Ward No. 1, Khasra Number-1151/3, Mehrauli, New Delhi-110030 (*hereinafter "subject property"*) wherein the SDM, (Mehrauli) has issued notice to the Petitioners to vacate the premises within seven days. Admittedly, till date, the Petitioners are in possession of the subject property.

3. The case of the Petitioners is that they are the purchasers of the subject property and trace back their title to Ms. Afroz Nisha and Mehvish Adil. Various documents are relied upon to argue that the Petitioners have a good title to the property. Thus, the Petitioners cannot be dispossessed, except with due process.

4. Mr. Shafiq, Id. Counsel appearing for the Waqf Board submits that this very property was the subject matter of a batch of petitions being **C.R.P. 223/2019, C.R.P.224/2019 and C.R.P. 225/2019** wherein the Court is monitoring the compliance of the orders passed on 15th December, 2021 as also on 22nd February 2022. He submits that the Petitioners have no rights in the subject property and in any event, if they have any grievances in respect of the title, their remedies would lie against the sellers with whom they have entered into certain agreements.

5. The property involved in this case has a long history. The subject property is a Waqf Board property and has been the subject matter of proceedings before the Waqf Board and the Waqf Tribunal. The details of the property are as under:-

“Property no. 1068, Ward No. 1, Khasra No. 1151/3 min., Mehrauli, New Delhi- 110030”

6. In the said Revision petitions arising out of orders passed by the Wakf Tribunal, this Court had, after considering the facts and the background, vide a detailed judgment dated 15th December, 2021, directed as under:-

“35. Thus, it is the settled legal position that ‘due process’ need not mean only an active process initiated by the owner of the property. It can even mean rejection of relief in a proceeding initiated by the occupants/encroachers or persons in possession.

36. Moreover, in the present petitions, the Petitioners have admitted the ownership of the Waqf Board over the suit property by entering into rent agreements.

37. The recitals in the rent agreements dated 16th October, 2008 and 5th November, 2008 leave no scope for any ambiguity. These rent deeds and material facts have been deliberately and intentionally concealed from the Waqf Tribunal when the complaints were filed. The rent deeds are very clear that the tenancy was only for a period of 11 months. The Petitioners are encroachers/trespassers and in any case, unauthorized occupants of public land belonging to the Waqf and the said issue has been considered in detail by the Waqf Tribunal. The submission made on behalf of the Petitioners to the effect that 'due process' has not been followed is thus, liable to be rejected.

38. In any event, the Petitioners having entered into rent agreements are estopped from challenging the title of the Waqf Board as stipulated under Section 116 of the Evidence Act. Under such circumstances, this Court has no hesitation in holding that the dismissal of the applications for injunction vide orders of the Waqf Tribunal dated 4th October, 2019, is in accordance with law.

39. Accordingly, the applications for injunction having been rejected, the Waqf Board is free to take proceedings in accordance with law to take possession of the suit property.

40. Further, in view of the conduct of the Petitioners of concealing relevant facts before the Tribunal and initially before this Court, each of the Petitioners shall deposit a sum of Rs.50,000/- as costs with the Waqf Board within a period of six weeks from today."

7. After the said order was passed, review was also filed by one Shri. Mohd. Rizwan to whom also the Petitioner's trace back their title. It was claimed by the said review-applicant that he was not afforded a hearing and

that he was a permanent resident of the subject property relying upon the Aadhar Card and various other documents.

8. This review application was also dismissed by the Court vide order dated 22nd February 2022 in the following terms:-

“18. Accordingly, in view of the above facts and circumstances, this review application is completely devoid of any merit and is dismissed, with costs of Rs.50,000/- to be deposited by the Review Applicant with the Wakf Board, within four weeks. Despite the misrepresentation by the Review Applicant, this Court has refrained from taking action against the Review Applicant as costs have been imposed on him. If the costs are not deposited within four weeks, the Wakf Board is free to approach this Court for action to be taken against the Review Applicant, in accordance with law.

19. During the course of proceedings in this matter as also a large number of other similar matters, this Court has seen that repeatedly in respect of public land, the Sub-Registrars are blindly registering the sale deeds without any consideration as to whether the registration can be effected in respect of such properties at all or not. This results in prolonged litigation and properties while being occupied by unauthorised occupants continue to be entangled, leading to delay in the Wakf Board and public bodies, being unable to obtain the possession of the properties concerned. Even in the present case, despite the order dated 15th December, 2021, the SDM, Mehrauli does not appear to have taken any steps to evict the unauthorized occupants of the suit property.

20. Mr. Naushad Ahmed Khan, Id. ASC, shall obtain instructions from the SDM, Mehrauli, as to the steps taken by the concerned SDM, for evicting the unauthorized occupants and shall file a compliance report within a period of four weeks. The SDM,

Mehrauli shall also join the proceedings on the next date of hearing.

21. Additionally, from the submissions made before this Court today, it appears that the Wakf Board is facing various constraints in its functioning, which are as under:

i) There is no fully functioning CEO for the Wakf Board. Though, an officer was appointed as the CEO, he has now been transferred to another area, and the new CEO is yet to be notified;

ii) The grant-in-aid for the Wakf Board has not been released by the GNCTD, and there is acute shortage of funds.

22. Let a status report be filed in respect of the above two aspects by the next date of hearing by the ld. Counsel for the GNCTD. Mr. Naushad Ahmed Khan, ld. ASC, also submits that the functioning of the Wakf Board is not fully satisfactory. If so, let the same be stated in the status report and placed before the Court for consideration."

9. Status report has been continuously sought from the concerned authorities in respect of the possession of the property to be taken handed over to the Waqf Board. It is pursuant to the said orders that the impugned notice dated 23rd August, 2022 has been issued.

10. In the present case, the title to the subject property purchased by the Petitioners is stated by them to be traced back to Ms. Afroz Nisha, Mehvish Adil and Mohd. Rizwan. As already clarified in the order dated 15th December 2021 rent agreements had been executed between Ms. Afroz Nisha, wife of Mohd. Razi, and the Waqf Board as also between the Delhi Waqf Board and Mohd. Adil and one Mohd. Sufiyan stated to be another son of Mohd. Razi. By entering into these rent agreements the ownership of the Waqf Board over the subject property has already been admitted.

Clearly, therefore, the Petitioners are illegal occupants. The remedies of the Petitioners, if any, against the sellers is not the concern of this Court as the property is undoubtedly a waqf property.

11. Repeated individuals are seeking rights in the subject property and are filing multiple proceedings. It is clear to the Court that the occupants of this property are in somehow or the other not permitting the Waqf Board to take possession of the property. Under such circumstances, this Court is not inclined to entertain the present writ petition.

12. After some hearing, Id. Counsel for the Petitioners, under instructions, submits that Petitioners would vacate the subject property within one month. Undertaking given by the Petitioners is recorded and accepted.

13. It is directed that the Petitioners shall hand over vacant and peaceful possession of the subject property by 25th June, 2023, failing which the Waqf Board shall take all necessary steps to demolish and remove the illegal/unauthorised occupants from the property.

14. The Waqf Board is also free to commence proceedings for the recovery of damages against all the occupants of the subject property, if the vacant and peaceful possession of the same is not handed over by 25th June 2023.

15. The petition is accordingly dismissed.

16. List along with **C.R.P. 224/2019** for the purpose of monitoring compliance on 26th July, 2023.

PRATHIBA M. SINGH
JUDGE

MAY 22, 2023

mr/rp