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

+ **LPA 519/2023**

**SHADAB ANJUM & ORS. .... Appellants**

Through: **Mr. Niteen Kumar Sinha,**  
Advocate.

versus

**GOVT. OF NCT OF DELHI & ORS. .... Respondents**

Through: **Ms. Sweety Singh, Advocate**  
for respondent Nos.1 & 3.  
**Mr. Wajeeh Shafiq, Standing**  
Counsel for Delhi Wakf Board  
with **Ms. Ramsha Shan,**  
Advocate for respondent No.2.

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT (ORAL)**

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**28.06.2023**

**per C.HARI SHANKAR, J**

**CM APPL.32688/2023 & CM APPL.32689/2023 (exemptions)**

Exemptions allowed subject to all just exceptions.

**LPA 519/2023 & CM APPL.32686/2023 (stay), CM**  
**APPL.32687/2023 (for filing additional documents)**

1. This letters patent appeal is directed against the following judgment dated 22 May 2023, passed by a learned Single Judge of this



Court in WP (C) 6915/2023 (*Shadab Anjum & Ors. v. Govt. NCT of Delhi And Ors.*):

- “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-Ranesh Kumar Arora, and Petitioner No. 3-Sanjay Arora (hereinafter collectively "Petitioners") challenging the notice dated 23<sup>rd</sup> August, 2022 bearing no. F/TEH/MEH/2022/1082-84 in respect of the property being 1068, Ward No. I, 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 15<sup>th</sup> December, 2021 as also on 22<sup>nd</sup> 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 15<sup>th</sup> 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 16<sup>th</sup> 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 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 stopped 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 4<sup>th</sup> 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 unauthorized 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 15<sup>th</sup> 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 Id. Counsel for the GNCTD. Mr. Naushad Ahmed Khan, Id. 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 23<sup>rd</sup> 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 15<sup>th</sup> 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 25<sup>th</sup> June, 2023, failing which the Waqf Board shall take all necessary steps to demolish and remove the illegal/unauthorized 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 25<sup>th</sup> 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.”

2. Mr. Niteen Sinha, learned counsel for the appellants, submits that the property which is in possession of the petitioners is different from the property over which the Wakf Board can exercise dominion. He submits that, though a specific ground to this effect has been heard as ground J in the WP(C) 6915/2023, the learned Single Judge has erroneously directed the appellants to vacate the property in their possession.

3. To a query from the Court regarding the undertaking given by the appellants, as per the petitioners in WP(C) 6915/2023, as recorded in paras 12 and 13 of the impugned judgment, Mr. Sinha submits that the undertaking was inadvertently given.

4. Mr. Shafiq, learned counsel appearing for the Wakf Board submits that the ground being taken by Mr. Sinha today stands specifically rejected by the learned Single Judge in her earlier order



dated 22 February 2022, passed in CRP 224/2019 (*Afroznisha v. Delhi Wakf Board & Ors.*). He has drawn our attention to para 14 of the said judgment, which reads thus:-

“14. Insofar as the contention of the, Review Applicant that the subject property and suit property are located at different khasra nos. and the khasra no. of the subject property does not belong to the Wakf Board, this Court finds that the identity of the said property is clear from the MFS itself. In fact, in the said MFS, the property is described variously as property bearing, no.1068/1, Khasra No.667, Opp. Gandak ki Bawli, Mehrauli, New Delhi and as property bearing no. 1068/1, Khasra No.1151/3, Opp. Gandak ki Bawli, Mehrauli, New Delhi. The said paragraphs are extracted below:

"Whereas Late Mohd. Razi was having the property bearing no. 10681/1, Khasra No. 1151/3 Ad measuring about 500 sq. yds. Opposite Gandak ki Bawli, Mehrauli, New Delhi and another property ad measuring about 1000 sq. yds. Situated of Subzi Mandi, Mehrauli, New Delhi vide Municipal No. 937/7, Sarai Hafiz, Mehrauli, New Delhi.

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4. That the party No. 1 to 5 are entitled 1/2 hare of the property bearing No. 1068/1, Khasra No. 667, Opp.Gandak ki Bawli, Mehrauli, New Delhi i.e. 125 sq. Yards and the said property is divided equally from the front side between both the parties'. It is made clear that 250 Sq. Yards of the said property which is built up and is already divided between the parties equally and ½ possession of the parties i.e. 125 Sq. Yds. Is in the possession of the parties No. 6 to 11 from the front side and half of the property xxx is in the possession of parties No. 1 to 5 from the back side. It is pointed out that the total area of the property is 500 Sq. Yards.”

The Review applicant is a party to this MFS. This is the same property in respect of which the injunction was sought before the Waqf Tribunal by the Petitioners. The identity of the property being not in question before, no issue can be raised at this stage in respect of the khasra number of the said property.”



5. Mr. Shafiq also submits that the review applicant, who had filed the Rev. Pet. 35/2022, which stands decided by the aforementioned decision dated 22 February 2022, was the predecessor in interest of the present appellants.

6. The very first paragraph of the impugned judgment notes that the challenge, in WP (C) 695/2023, was to notice dated 23 August 2022 in respect of the property bearing No.1068, Ward No.1, Khasra No.1151/3, Mehrauli, New Delhi-110030.

7. Mr. Sinha candidly acknowledges that his clients are, in fact, in possession of the aforementioned property No.1068, Ward No.1, Khasra No.1151/3, Mehrauli, New Delhi-110030.

8. A reading of para 3 of the impugned judgment discloses that the stand being taken by Mr. Sinha in the present appeal was specifically canvassed before the learned Single Judge. The appellants have claimed title over the subject property.

9. Para 4 of the impugned judgment notes the contentions of the learned counsel appearing for the Wakf Board that the property forming subject matter of the present appeal was the subject matter of a batch of petitions being CRP. 223/2019, C.R.P.224/2019 and C.R.P. 225/2019. Review petition No.35/2022 was filed in C.R.P.224/2019. Mr. Sinha also acknowledges that, in fact, the observations the findings contained in para 14 of the said review petition would also apply to the



property forming subject matter of the present litigation of which his clients are in possession.

**10.** That being so, the ground being sought to be canvassed in the present LPA by Mr. Sinha cannot be said to be available to the appellants. The issue of identity of the property in which the appellants are in possession, vis-à-vis the property, which belongs to the Wakf Board, is no longer open for canvass. A Coordinate Bench of this Court has conclusively decided the issue and, having taken stock of the said decision, has gone on to pass the impugned judgment dated 22 May 2023.

**11.** A reading of the impugned judgment reveals that, in fact, the appellants are encroachers and squatters over Wakf property, who, on one ground or the other, are holding onto the property for several years. Several rounds of litigation have transpired in the meanwhile. It is only after taking note of these facts that the learned Single Judge has recorded the undertaking, of learned counsel for the appellant, that they would vacate the subject property within one month.

**12.** In the *prima facie* opinion of this Court, the present appeal is a clear cut example of abuse of process. The appellants have squatted over the subject property over the years and, having given an undertaking before the learned Single Judge to vacate the property by 25 June 2023, preferred the present LPA on 22 June 2023. There is not a whisper of an averment in the entire LPA to the effect that the undertaking given before the learned Single Judge was not voluntary.



**13.** It is clear that the attempt of the appellants is, on one ground or the other, to go on abusing the legal process so that they can continue in possession of valuable Wakf property.

**14.** Mr. Shafiq submits that the property is situated in Mehrauli. It is a matter of common knowledge that property in Mehrauli commands very high prices as on date. In these circumstances, this Court, at the very outset, queried to Mr. Sinha as to whether his client is willing to abide by the undertaking given before the learned Single Judge and to vacate the property forming subject matter of these proceedings. Mr. Sinha's clients are in Court and, after taking instructions from them, he submits that he has been told to argue the matter.

**15.** We have heard learned Counsel at length.

**16.** For the reasons aforesaid, the present appeal, being a clear-cut example of abuse of process, cannot be entertained.

**17.** The appeal is accordingly dismissed with costs of ₹ 1 lakh, to be paid within a period of one week from today by way of a crossed cheque favouring the Delhi High Court Legal Services Committee. Let the cost of ₹ 1 lakh be deposited with the learned Registrar General within a period of one week from today.



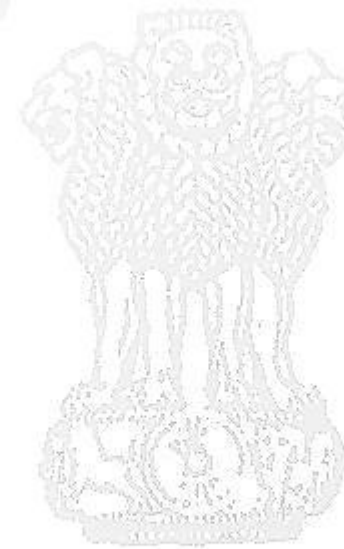
18. We direct that in the event the appellants do not vacate the aforementioned property on their own, the Wakf authorities would be at liberty to take coercive steps to recover the possession thereof.

19. The appeal stands dismissed in the above terms.

**C.HARI SHANKAR, J**  
**(VACATION JUDGE)**

**MANOJ JAIN, J**  
**(VACATION JUDGE)**

**JUNE 28, 2023**  
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