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

% *Decided on: 25th May, 2023*

+ **W.P.(C) 15095/2022 & CM APPL.46673/2022**

**BIR SINGH DECEASED THROUGH LRS A. ANUJ YADAV
B. SANJAY YADAV** Petitioner

Through: Mr. Sunil Chauhan and Ms.
Vatsala Chauhan, Advs.,
(M:9810213040,
Email:advocatesunil12@yahoo.
com)

versus

GAON SABHA VILLAGE KAPASHERA & ORS.

..... Respondents

Through: Ms. Arushi Gupta on behalf of
Mr. Jawahar Raja, ASC,
GNCTD For R-1 to R-4,
(M:9811462308,
Email:office.jawaharraja@gmail.
com)
Ms. Shobhana Takiar, Standing
Counsel with Ms. Chand
Chopr, Mr. Gupta Yadav and
Mr. Kuljeet Singh, Advs. For
R-5/DDA.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed with the following prayers:

“(i.) a Writ order or direction in the nature of mandamus or prohibition or any other appropriate writ thereby directing the respondents not to illegally and forcibly take



possession of the land comprised in pre-consolidation Khasra Nos. 535 and 536, which was assigned new Khasra No. 38/31 during the Consolidation Proceedings to the extent of 2 Bigha 15 biswas;

(ii.) a Writ order or direction in the nature of mandamus or any other appropriate writ may also be issued declaring the letter/legal notice dt. 28.07.2022 in requesting the Respondent No. 5 to take over possession and/or to take necessary action in view of the urbanisation against the Petitioner in respect of the land comprised in preconsolidation Khasra Nos. 535 and 536, which was assigned new Khasra No. 38/31 during the Consolidation Proceedings to the extent of 2 Bigha 15 biswas in violation of the Scheme of Consolidation and in violation of law.

(iii.) a Writ, order or direction in the nature of Mandamus thereby directing the Respondent No. 4/Consolidation Officer to dispose off the case bearing No. 2439/CO/Misc remanded to him by virtue of the Order dt. 21.11.1996 passed by the Ld. Financial Commissioner and which has been pending before him for nearly 26 years, in an expeditious, time bound manner."

2. Learned counsel appearing for the petitioner today submits that counter affidavit on behalf of the respondent No.3 and 4 has been filed. He submits that in the counter affidavit, it is clearly recorded that the Consolidation Officer has disposed of the matter vide his order dated 23.05.2023. By way of the said order dated 23.05.2023 passed by the Office of Consolidation Officer/Tehsildar (Kapashera), Government of NCT of Delhi, it has been recorded that the application that was filed by a private party with respect to possession of the entire Khasra No.38/31 (4-05), which was with the petitioner, cannot be entertained. Thus, by way of the said order it has been held that the area which has been reserved as *Kayami* cannot form as part of



repartition under Section 21 of the East Punjab Consolidation Act, 1948, especially when the same forms a part of the *Kayami* list as reserves.

3. Learned counsel appearing for the petitioner relies upon the following para from the counter affidavit of the respondent which is reproduced as below:-

“5. It is submitted that the Consolidation Officer disposed off the matter vide the order dated 23.05.2023. It was held that the application filed by Mr. Ravinder Singh cannot be entertained as the possession of the entire Kh. No.38/31 (4-05) was with the petitioner and it was reserved as Kayami which had not been challenged by either Mr. Ravinder Singh or Mr. Daya Ram. The area reserved as Kayami cannot form a part of re-partition under Section 21 of East Punjab Consolidation Act, 1948 especially when the same forms a part of the Kayami List as reserves. Name of M/s Gallent Estate Pvt. Ltd. was recorded as the owner of Kh. No.38/31 (2/15) being the successor-in-interest of Mr. Ravinder Singh as Mr. Ravinder Singh had transferred Kh. No.74 (3/0), which had been allotted in lieu of Kh. No.38/31 (2/15) to M/s Gallent Estate Pvt. Ltd. A true copy of the order dated 23.05.2023 passed by the Respondent No.4 is annexed herewith as ANNEXURE R-1.”

4. Thus, learned counsel appearing for the petitioner submits that in view of the aforesaid order dated 23.05.2023 passed by the Consolidation Officer/Tehsildar (Kapashera), Government of NCT of Delhi, the relief as sought by the petitioner in the present writ petition stands satisfied with respect to Prayer 3.

5. In view of the fact that the Consolidation Officer has already passed an order in favour of the petitioner herein and has recognised



the right of the petitioner as *Kayami*, the natural corollary of this would be that the possession of the petitioner cannot be illegally and forcibly taken away, without following any due process of law. In view thereof, it is directed that the possession of the petitioner, being recognised as a *Kayami* in terms of the order dated 23.05.2023 passed by the Consolidation Officer, the possession of the petitioner shall not be disturbed, without following the due process of law.

6. With the aforesaid directions the present writ petition is disposed of.

MINI PUSHKARNA, J

MAY 25, 2023
SC

नित्यमेव जयते