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

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Reserved on: 19.04.2023
Pronounced on: 11.07.2023

+ **W.P.(C) 2725/2018, CM APPL. 11087/2018 & 42638/2018**

MRS. ROSELINE WILSON AND ORS. Petitioners

Through: Mr. Virag Kumar Agarwal, Mrs.
 Shalini Agarwal and Ms. Naina
 Agarwal, Advocates.

versus

ARCHAEOLOGICAL SURVEY OF INDIA
 AND ORS. Respondents

Through: Mr. Rajesh Gogna, CGSC with
 Ms. Priya Singh, Advocate.

+ **W.P.(C) 8203/2018 & CM APPL. 31439/2018**

LUICE M. JACOB Petitioner

Through: Mr. R. K. Sharma, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Ajay Digpaul, Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. This Court, vide the present common judgment, intends to dispose of (i) W.P.(C) No. 2728/2018 titled as '*Mrs. Roseline Wilson & Ors v. ASI & Ors.*' and (ii) W.P.(C) No. 8203/2018 titled as '*Luice. M.*



Jacob v. UOI & Ors.’. In both these Writ Petitions, the Petitioners are challenging the eviction orders passed by the Archaeological Survey of India (‘ASI’). Vide the impugned eviction orders, ASI sought to evict the Petitioners from the Government land which forms part of D’Eremao Cemetery, Kishan Ganj, Delhi, a centrally protected monument, which is declared of national importance vide Notification No. 7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922.

2. In W.P.(C) No. 2728/2018 titled as ‘*Mrs. Roseline Wilson & Ors v. ASI & Ors*’, the Petitioners (63 in numbers) have assailed the order dated 05.03.2018 bearing F.No. 33/35/2015-M (Pt.) (‘Impugned Eviction Order-1’) issued by ASI. In W.P.(C) No. 8203/2018 titled as ‘*Lucie M. Jacob v. UOI & Ors*’ the Petitioner is praying for quashing of the eviction order dated 01.05.2018, bearing F.No.33/39/2014-M (‘Impugned Eviction Order-2’), issued by ASI. Vide the Impugned Eviction Orders, ASI directed the Petitioners to demolish the unauthorized construction raised by them on the Government land forming part of the D’Eremao Cemetery and to vacate the said occupied land within three weeks of receiving the Impugned Eviction Orders.

FACTS AS NARRATED IN W.P.(C) NO. 2725/2018

3. It is the claim of Petitioners (63 in numbers) that they have been in continuous possession of the property bearing Khasra No. 465 which has been claimed by Petitioners to be known as Christian Compound, Kishan Ganj, Delhi (hereinafter referred to as ‘said Property’). It is claimed that they are in possession of said Property



since days beyond recall. ASI declared the said property as centrally protected monument of national importance vide Notification No. 7331 dated 13.12.1922, which was published in the Gazette of India on 23.12.1922. It is the claim of Petitioners that ASI wants to grab the said Property from the Petitioners on the ground that the said Property is a part of a protected monument named as 'D'Eremao Cemetery'. The Petitioners claim themselves to be the owners on the basis of Jamabandi for the year 1921-1922 of the said Property. They further rely on their electricity bills, water bills, gas bills, etc. to claim their ownership over the said Property.

4. It is stated that a show cause notice dated 13.09.2005 was issued by the Respondent No. 2 i.e. Superintending Archaeologist of ASI to the Petitioners wherein it was stated that the Petitioners had raised structure(s) on part of protected monument - D'Eremao Cemetery and thus, Petitioners were directed to show cause as to why an eviction order should not be passed against them. The Petitioners sent a reply dated 20.09.2005 to the said show cause notice dated 13.09.2005, wherein it was stated that the said Property was Armenian Cemetery, popularly known as Christian compound and it was not D'Eremao Cemetery. It was further claimed that the Armenian Cemetery was never declared a monument of national importance by ASI.
5. Thereafter, an eviction order dated 17.10.2005 was issued by ASI to Petitioners whereby directing them to demolish the unauthorized constructions raised on said Property and vacate the said Property within 24 hours. The Petitioners moved this Court challenging the



said eviction order dated 17.10.2005 and for restraining ASI from taking any action to evict the Petitioners vide Writ Petitions bearing W.P.(C) No. 20917-76 of 2005. But, the said Writ Petitions were dismissed by a Coordinate Bench of this Court vide Order dated 12.01.2007.

6. Consequently, the Petitioners preferred an appeal bearing LPA No. 123 of 2007 against the said Order dated 12.01.2007. The Hon'ble Division Bench of this Court was pleased to allow the appeal vide its Order dated 16.10.2008 and set aside the Order dated 12.01.2007. Vide the Order dated 16.10.2008, the Hon'ble Division Bench also directed ASI to pass a reasoned order within a period of 4 weeks after giving opportunity of hearing to the Petitioners.
7. Pursuant to the directions of Hon'ble Division Bench of this Court, the Petitioners appeared before Respondent No. 2, Superintendent Archaeologist for personal hearing and submitted their detailed reply. But, it is the claim of the Petitioners that no reasoned speaking order was passed by ASI as directed by Hon'ble Division Bench of this Court in its Order dated 16.10.2008.
8. A Public Interest Litigation bearing W.P.(C) No. 539/2016 was preferred by one of the residents of the said Property seeking a direction to the respondents to comply with the order dated 16.10.2008 passed by this Court in LPA No.123 of 2007. The said Writ Petition was disposed of by the Hon'ble Division Bench of this Court vide Order dated 02.05.2016 with a direction to ASI to comply with the earlier Order dated 16.10.2008 passed by Hon'ble Division Bench of this Court in LPA No. 123 of 2007. It is pertinent to note that none of the Petitioners in the present Writ



Petitions was a party in Writ Petition bearing W.P.(C) No. 539/2016.

9. It is the claim of the Petitioners that ASI did not comply with the direction of the Hon'ble Division Bench of this Court and with disregard to such direction, ASI issued show cause notices/ eviction orders dated 19.08.2016 and 26.08.2016 to some of the Petitioners without deciding the pleas of the Petitioners. Further, it is claimed that ASI again breached the orders of this Court when some officials of ASI entered into the said Property along with police force and demolished one of the houses. Consequently, the Petitioners filed a Contempt Petition bearing Cont. Case (C) No. 20/2017 against the concerned officers of ASI. A Coordinate Bench of this Court, vide its Order dated 11.01.2017, again directed the ASI to decide the issue whether the said Property was a part of D'Eremao Cemetery or not within a period of 4 weeks.
10. However, thereafter again an eviction order dated 10.01.2017 was issued by ASI to the Petitioners directing them to vacate the said Property within 7 days and demolish the structure(s) raised thereon. The Petitioners challenged the said eviction order dated 10.01.2017 before this Court in a Writ Petition bearing W.P.(C) No. 594/2017. A Coordinate Bench of this Court set aside the said eviction order dated 10.01.2017, vide its Order dated 20.11.2017, with a direction to ASI to decide the above stated issue afresh after giving personal hearing to the Petitioners. Subsequently, they appeared on 20.01.2018 before the concerned officer of ASI and submitted their written submissions as well as oral submissions to the concerned officer.



11. It is stated that then again, the Petitioners were served with Impugned Eviction Order-1 dated 05.03.2018 whereby they were directed to demolish the structures/ construction on the said Property and vacate the said Property within 3 weeks. Being aggrieved by the Impugned Eviction Order, the Petitioners have assailed the Impugned Eviction Order in the present Writ Petition, wherein, they have prayed for the following reliefs:

“(A) Appropriate writ, order or directions thereby setting aside/ quashing the impugned order dated 05-03-2018 passed by the respondent No. 1, annexed as Annexure -P;

(B) Appropriate writ, order or directions thereby restraining the respondents and its officials etc. from taking any action in pursuance of impugned order dated 05-03-2018 passed by the respondent No. 1, annexed as Annexure - P;

(C) Appropriate writ, order or directions thereby restraining the respondents and its officials etc. from interfering in the peaceful possession of the petitioners over the property bearing Khasra No.465 and popularly known as Christian Compound, Kishanganj, Delhi - 110007 and shown in red colour in the site plan annexed as Annexure - P - 2;

(D) Pass such further appropriate writ, order (s) or directions as this Hon'ble Court may deem fit in the facts and circumstances of the present case.”

FACTS AS NARRATED IN W.P(C) NO. 8203/2018

12. It is the case of Petitioner in this Writ Petition that his grandfather Mr. John Jacob came into possession of a portion of land at Christian Compound, Kishan Ganj, Delhi (hereinafter referred to as ‘said Property’) in September, 1947. He was granted possession by Mr. Alool, Manager of Christian Compound under the aegis of Armenian Association, for settling his family members and relatives at the said Property. It is the claim of Petitioner that ever since September, 1947, first his forefathers and after their demise, Petitioner, have been in peaceful and uninterrupted possession of the said Property.



13. It is the case of Petitioner that in December, 1959, Mr. V. Stephen visited the said Property on behalf of Armenian Association to inspect the Chapel and burial ground at the said Property. It is stated that at that time, father of Petitioner, Mr. Mathews Jacob was occupying one room of Chapel along with his family for his residence. Mr. V. Stephen asked them to vacate the premises, but, father of Petitioner refused to vacate the same. It is stated that consequently, Armenian Association filed a Civil Suit bearing No.139/1967, titled as '*Armenian Association v. Mathews Jacob & Ors.*' against the father of Petitioner for recovery of possession. The said suit was dismissed by the Court of Sh. Har Kishan Malik, Sub-Judge, Delhi vide judgment dated 29.04.1968 and it is claimed that since then, the father of Petitioner was continuously using and enjoying the said Property. It is further stated that in the said suit, Union of India was also impleaded as a party.

14. It is the case of the Petitioner that in April, 2005, some officials of ASI threatened him that they would dispossess the Petitioner, his family and relatives from the said Property by using police force. Pursuant to this, the Petitioner filed a Suit bearing No. 87/2005 for declaration and permanent injunction against ASI from forceful dispossession. Armenian Association was also a party in the said Suit. The said Suit was filed on the basis of continuous physical possession since September, 1947, and it was pleaded that the Petitioner had perfected his title over the said Property by adverse possession. It is stated that ASI and Armenian Association in said Suit had not denied the actual physical possession of Petitioner but had stated him to be illegal occupant of the said Property.



15. The said Suit was dismissed by learned Civil Judge, Delhi vide Judgment dated 08.05.2014. Thereafter, an appeal bearing RCA No. 35/2015 was preferred by Petitioner, which was also dismissed by learned Additional District Judge, Delhi vide Judgment dated 14.12.2015. A second appeal bearing RSA No. 159/2016 was also preferred by Petitioner, but the same was also dismissed by this Court vide Judgment dated 19.07.2016. It is stated that the Suit and all the appeals were dismissed on the same ground that the declaration could not be claimed on the basis of adverse possession and it could only be used as a defence to protect possession. It is further stated that ASI was not able to prove its ownership in the said Property in said suit.

16. Parallely, some other occupants of the Christian Compound, Kishan Ganj, Delhi had preferred Civil Writ Petition bearing W.P.(C) No. 20917-76/2005, titled as '*Mrs. Roseline Wilson & Ors. v. Union of India & Ors.*' before the Hon'ble High Court of Delhi for quashing of eviction orders dated 17.10.2005 issued by ASI to these residents. The said Writ Petition was dismissed vide Order dated 12.01.2007. Thereafter, an appeal bearing LPA No. 123/2007 was preferred by those residents against the Order dated 12.01.2007. The said appeal was allowed by this Court vide Order dated 16.10.2008 and a direction was passed to ASI to pass reasoned orders after providing an opportunity of being heard to the occupants.

17. It is the claim of the Petitioner that despite the aforementioned direction of Hon'ble High Court of Delhi, ASI issued an eviction order dated 20/22.09.2016 to the Petitioner whereby directing him to vacate the said Property within a period of 15 days from the receipt of said eviction order. The Petitioner filed a Writ Petition bearing W.P.(C) No.

W.P.(C) 2725/2018 & 8203/2018

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11145/2016, titled as ‘*Luice M. Jacob v. Union of India & Anr.*’ for quashing of the said eviction order dated 20/22.09.2016. The said Writ Petition was allowed by this Court vide Order dated 22.11.2017 with a direction to ASI to pass an order after providing the Petitioner with an opportunity of being heard. Consequently, a Notice dated 22.12.2017 was issued by ASI to Petitioner directing him to appear before Director General, ASI for personal hearing on 29.12.2017. In response to notice dated 22.12.2017, the Petitioner submitted a written representation dated 26.12.2017 to the Superintendent Archaeologist, ASI.

18. It is the case of the Petitioner that thereafter, without issuing a show cause notice to the Petitioner, the Impugned Eviction Order dated 01.05.2018 was issued by ASI directing the Petitioner to demolish the construction raised on said Property and vacate the said Property. Hence, the present Writ Petition has been preferred against the Impugned Eviction Order with the following prayers:

“(i) Writ(s), order(s) or direction(s) in the nature of certiorari whereby quashing the impugned order F. No. 33/39/2014-M dated 1.5.2018 passed by Respondent No.3 against the Petitioner;

(ii) Writ(s), order(s) or direction(s) in the nature of declaration whereby declaring the Petitioner is not in illegal, unauthorized possession rather his long possession is legal in respect of property in Christian Compound, Kishan Ganj, Delhi-110007;

(iii) Writ(s), order(s) or direction(s) in the nature of prohibition whereby prohibit the Respondents to act upon impugned order dated F. No. 33/39/2014-M dated 1.5.2018 passed by Respondent No.3 against the Petitioner and/or to remove forcibly Petitioner from the subject land i.e. Christian compound, Kishan Ganj, Delhi-110007, without following due process of law;

(iv) Cost of the Petition may also be awarded in favour of the Petitioner;



(v) Any other relief which this Hon'ble Court deems fit and proper, in the facts and circumstances of the present case, may also be granted in favour of Petitioner."

ARGUMENTS ADVANCED ON BEHALF OF PETITIONERS

19. Mr. Virag Kumar Agarwal, learned counsel for the Petitioners in W.P (C) 2725/2018 vehemently argued that ASI failed to pass a reasoned order on the issue that whether the said Property falls under the D'Eremao Cemetery or not. Mr. Agarwal further submitted that there are two places named by Kishan Ganj in Old Delhi itself. It was his submission that the other Kishan Ganj, near Teliwada, also has a graveyard and the said land belongs to Government of India only. However, the said Property is private property belonging to Petitioners. It was his submission that other graveyard lying in another Kishan Ganj might be D'Eremao Cemetery, which was declared as centrally protected monument by ASI, but, the said Property in possession of Petitioners does not lie under D'Eremao Cemetery as the said Property was forming part of Armenian Cemetery. It was further submitted that the cemetery, near Teliwada, was Government land and Government of India has been collecting occupation charges from the persons who are residing in the Cemetery near Teliwada, however, no such occupation charges are being collected from Petitioners as the said Property is private land.
20. Mr. Agarwal further submitted that the Jamabandi for the years 1921-1922 shows that the said Property belonged to the forefather of the Petitioners. He stated that the Petitioners have placed several



documents on record to show that Petitioners are from same family i.e. of Mr. Mohd. Ibrahim and that they have inherited the said Property from him. Mr. Agarwal also placed reliance upon electricity bills, water bills, etc. to claim their ownership over the said Property and it was further stated that in these bills issued by Government Authorities, the address of the said Property was never recognized as D'Eremao Cemetery. Mr. Agarwal placed reliance upon the decision of Hon'ble Supreme Court in *Partap Singh (D) through Legal Representatives v. Shiv Ram (D) through Legal Representatives*, reported as (2020) 11 SCC 242. It was pointed out to this Court that in this decision, the Hon'ble Supreme Court had decided the ownership on basis of Jamabandi. It was further the contention of Mr. Agarwal that as per Section 110 of Indian Evidence Act, 1872 also, the onus was upon ASI to prove its ownership over the said Property, but ASI cannot be said to have discharged its onus just by producing the Notification dated 13.12.1922. It was further stated that ASI has not even placed any document on record showing the transfer of ownership of said Property in its favour.

21. Mr. Agarwal further submitted that a joint reading of the Jamabandi and site plan filed by ASI shows that the said Property falls under Khasra No. 465, which belonged to Mr. Mohd. Ibrahim, forefather of Petitioners and not to Government or ASI, but, there was no comment upon the Jamabandi and site plan in the Impugned Eviction Order-1. It was further submitted that the Impugned Eviction Order-1 is also silent about the fact that no such boundaries exist around the said Property as has been shown in the



site plan prepared by ASI. Mr. Agarwal prayed to this Court that the Impugned Eviction Order-1 should be set aside on these grounds. It was further argued on behalf of Petitioners that the Superintendent Archaeologist did not have the authority to issue any such show cause notice or eviction order as issued by him to the Petitioners. Therefore, Impugned Eviction Order-1 needs to be set aside on this ground alone.

22. Mr. R. K. Sharma, learned counsel appearing for Petitioner in W.P.(C) No. 8203/2018 submitted that the Impugned Eviction Order-2 issued by ASI to the Petitioner was illegal, arbitrary, unjust and against the principles of natural justice. It was argued that the ASI should have first issued a show cause notice whereby giving an opportunity of being heard to the Petitioner, and only thereafter, should have issued the Impugned Eviction Order-2 to the Petitioner. By not following the said procedure, the ASI has also violated the direction of a Coordinate Bench of this Court in Order dated 22.11.2017 whereby ASI was directed to provide the Petitioner with an opportunity of being heard and after hearing him, pass a reasoned order. Mr. Sharma stated that the Impugned Eviction Order-2 should be set aside for defying the principles of natural justice.
23. Mr. Sharma further averred that the Petitioner has been in possession of the said Property since the year 1947 and thus, has gained title over the said Property by adverse possession. It was claimed that the Petitioner had proved adverse possession against the Armenian Association and the Union of India for more than a considerable period of time in the suit filed by him. It was argued



that the suit and consequent appeals arising from that suit, filed by the Petitioner were dismissed on the ground that the ground of adverse possession cannot be raised for declaration of title and can only be used as a defence. It was submitted that now this proposition of law has changed and there are several judgments now which state that the plea of adverse possession can also be used by a plaintiff for claiming ownership of immovable property.

24. It was further averred by Mr. Sharma that ASI has not placed a single document substantiating the fact that Christian Compound, Kishan Ganj is a part of D'Eremao Cemetery. ASI has also not been able to prove that ASI or Government of India is owner of the land on which Christian Compound is situated. It was his contention that ASI just vaguely stated that Union of India had allotted land to Armenian Association for Christian Compound but was not able to prove the same. But, on the other hand, the Petitioner had proved adverse possession against the Armenian Association as well as Government. Thus, it was his argument that *prima facie* ASI did not have any power to issue Impugned Eviction Order-2 for a land when it was not able to prove itself an owner of the same.

25. With these submissions, it was prayed by Mr. Sharma that the Impugned Eviction Order-2 dated 01.05.2018 be set aside by this Court and Petitioner be declared in legal and valid possession of said Property.

ARGUMENTS ADVANCED ON BEHALF OF RESPONDENTS

26. Mr. Rajesh Gogna, learned Central Government Standing Counsel appearing on behalf of ASI in W.P.(C) 2715/2018 argued that the



Petitioners had taken contradictory stands in different petitions filed by them. He submitted that in the Writ Petition bearing W.P.(C) No. 20917-76/2005, the Petitioners had stated that they came into possession of said Property in September, 1947 through Mr. John Jacob, ancestor of Mr. Luice M Jacob who is Petitioner in W.P.(C) 8203/2018. Whereas, in the present Petition, the Petitioners completely changed their stance when they started claiming ownership of the said Property on the basis of Jamabandi of year 1921-1922. They started claiming that they inherited the said Property from their forefather Mr. Mohd. Ibrahim, whose name is reflected as owner of said Property in Jamabandi of year 1921-1922. It was further submitted by the learned Counsel that in the earlier petitions, there was no mention about Jamabandi of year 1921-1922, neither the said Property was claimed to be a private property of their forefather.

27. Mr. Gogna further pointed out the contradiction in the stance of the Petitioners by stating that the Petitioners in their earlier petition filed in 2005, had admitted that the said Property was a centrally protected monument. Mr. Gogna stated that in that petition, they had claimed that said Property was abandoned by ASI as no steps were taken by ASI to stop construction or take possession of said Property between September, 1947 and April, 2005. However, in the present Petition, the Petitioners have changed their stance and now, claiming their ownership on the basis of Jamabandi of year 1921-1922.
28. It was asserted by Mr. Gogna that the Jamabandi for the year 1921-1922 produced by Petitioners before this Court is forged and



fabricated document. He stated that one of the other occupants, Mr. Luice M. Jacob had filed a Civil Suit bearing No. 87/2005 for declaration of his title over the land occupied by him in Christian Compound. In that suit, Mr. Luice M. Jacob had produced Jamabandi for the years 1966-67 and 1989-90 wherein as per him, his forefather Mr. M. Jacob was reflected as owner of the said Property. Mr. Gogna argued that since the Petitioners did not produce said Jamabandi of 1921-22 in the first petition itself, however, on the contrary, Mr. Jacob brought the Jamabandis for years 1966-67 and 1989-90 in his first litigation itself, this fact proves that the Jamabandi for 1921-22 filed by the Petitioners are forged and fabricated.

29. Mr. Gogna further argued that the Petitioners have also not placed any document on record so as to prove that Mr. Mohd. Ibrahim was their forefather. Thus, the contention of the Petitioners that they are owners of the said Property is totally misconceived.
30. Mr. Ajay Digpaul, learned counsel appearing on behalf of ASI in W.P.(C) 8203/2018 submitted that in the suit bearing No. 139/1967, titled as '*Armenian Association Vs Mathews Jacob & Ors.*', the Armenian Association in that suit had itself admitted that the land under Christian Compound belonged to Government and it was just managing the Christian Compound. He argued that this admission on the part of Armenian Association proves the ownership of Government and shatters the contentions of the Petitioner to the ground.
31. Mr. Digpaul further argued that the Petitioner had filed Jamabandi pertaining to years 1966-67 and 1989-90 w.r.t Khasra No. 465 i.e.



the land on which Christian Compound is situated in the suit bearing CS No. 87/2005. It was his contention that as per these Jamabandis, the owner of the land was stated as Government of India as in the column of superior owners, 'Sarkar Daulatmadar' i.e. Government of India was written. Mr. Digpaul submitted that these facts prove the ownership of the Government of India over the land on which Christian Compound is situated as per the Petitioners.

32. Lastly, Mr. Digpaul submitted that ASI had issued a notice dated 22.12.2017 to the Petitioner whereby an opportunity of being heard was provided to the Petitioner in compliance of the Order dated 22.11.2017. Thereafter, Petitioner submitted his written representation dated 26.12.2017 and after considering the same, ASI passed the Impugned Eviction Order. It was submitted that therefore, the contention of Petitioner that Impugned Eviction Order was against the principles of natural justice since no show cause notice was issued by ASI, was totally misconceived.
33. In view of these submissions, the learned Counsel appearing on behalf of ASI pray to dismiss the present Writ Petitions. According to the learned Counsel for ASI, if the same is allowed then it will promote false and frivolous litigation filed by the Petitioners in future also.

LEGAL ANALYSIS

34. This Court has heard the rival submissions advanced by the learned counsel for both the parties and also perused the documents placed on record.



35. In both these Writ Petitions, the Petitioners have stated to be the residents of Christian Compound situated at Kishan Ganj, Delhi. It is the contention of ASI that the Petitioners are unauthorized occupants of a land which forms part of D'Eremao Cemetery, Kishan Ganj, Delhi, a centrally protected monument declared of national importance vide Notification No. 7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922. A perusal of the record shows that the Petitioners were initially claiming ownership over the said land by virtue of adverse possession. However, later they shifted their stand and claiming ownership of the said land based on entries in the Jamabandi. According to the Petitioners, the land in question is a private land owned by Armenian Association and the Government never acquired the said land. It is their case that they were in possession of the said land from 1947 onwards. Further the Petitioners are disputing the location of the D'Eremao Cemetery, Kishan Ganj.
36. A perusal of the record further shows that ASI earlier in the year 2005 initiated eviction proceedings against the Petitioners. Challenging the said eviction proceedings, two parallel proceedings were initiated by the Petitioners.
37. The Petitioners in W.P.(C) 2725/2018 approached this Court in W.P.(C) 20917-76/2016. The learned Single Judge of this Court vide order dated 12.01.2007 dismissed the said Writ Petition. The Petitioners preferred an LPA bearing No. 123/2007 titled as '*Roseline Wilson & Ors v. UOI*'. The Hon'ble Division Bench vide order 16.10.2008 set aside the order passed by the learned Single Judge with a direction to the ASI to once again consider the reply



dated 20.09.2005 filed by the Petitioners and pass a speaking order after affording an opportunity of hearing to the Petitioners. In the meantime, the parties were directed to maintain status quo qua the possession and construction of the said property. In the meanwhile, the Petitioner in W.P.(C) 8203/2018, filed a Civil Suit bearing No. 87/2005 seeking a declaration and permanent injunction against ASI and other Defendants therein to the effect that the Petitioner is the owner of the property in question by virtue of adverse possession. Learned Civil Court, vide Judgment dated 08.05.2014 negated the said plea and dismissed the said suit. Thereafter, an appeal bearing RCA No. 35/2015 was preferred by the Petitioner, which was also dismissed by learned Additional District Judge, Delhi vide Judgment dated 14.12.2015. A second appeal bearing RSA No. 159/2016 was also preferred by the Petitioner, but the same was also dismissed by this Court vide Judgment dated 19.07.2016. Hence the finding of the learned Civil Court attained finality.

38. ASI failed to pass a speaking order in compliance of the directions of this Court dated 16.10.2008 in LPA No. 123/2017 and hence, the Petitioners in W.P.(C) 2725/2018 filed a Contempt Petition against ASI alleging non-compliance of the order dated 16.10.2008. This Court disposed of the said Contempt Petition with a direction to ASI to comply with the Order dated 16.10.2008 passed by Hon'ble Division Bench of this Court. ASI passed a speaking order dated 10.01.2017 holding that the Petitioners are illegal encroachers of the said property in question. In view of the speaking order dated 10.01.2017, ASI again initiated eviction proceedings against the



Petitioners. The Petitioners assailed the said eviction proceedings before this Court in W.P.(C) 594/2017. This Court vide Order dated 20.11.2017, disposed of the said Writ Petition with a direction to pass a fresh speaking order. ASI again passed a detailed speaking order dated 05.03.2018 directing the Petitioners to vacate the said premises within 7 days.

39. In view of the various litigations, it is evident that the Petitioners miserably failed to establish their title over the said land before various Judicial foras. In fact, the Petitioners are unauthorizedly occupying the land which forms part of D'Eremao Cemetery, Kishan Ganj, Delhi.
40. The Petitioners in W.P.(C) 2725/2018 raised an argument before this Court that the Petitioners are the owners of the said Property and the same is proved by Jamabandi for the year 1921-22. It is their claim that the Jamabandi shows the name of their forefather, Mr. Mohd. Ibrahim, as the owner of the said Property. It was further stated during the course of arguments by learned counsel appearing for the Petitioners that they have placed several documents on record showing as to how they are the successors of Mohd. Ibrahim. Further, it was also their contention that ASI did not even mention about the Jamabandi relied upon by Petitioners in the Impugned Eviction Orders.
41. This Court has perused the Jamabandis for the years 1966-67 and 1989-90 filed by ASI along with its additional affidavit. The name of Mr. Mohd. Ibrahim is nowhere mentioned in the said Jamabandis. Further, these Jamabandis also show that the Government is the owner of the said Property. This Court has also



perused the Jamabandi for year 1921-22 which also shows that the Government is the owner of the said Property. Thus, the contention of Petitioners that they are the owners of the said Property on the basis of Jamabandi is misconceived. Further, this Court failed to find any document on record which shows that the Petitioners are successors of Mr. Mohd. Ibrahim, neither the learned counsel for Petitioners was able to show to this Court any such document. Nonetheless, it is well settled law that the ownership of an immovable property cannot be decided on the basis of Jamabandi. This Court does not appreciate the reliance of Mr. Virag Agarwal upon the decision in **Partap Singh** (*supra*) in order to support his contention that Petitioners can be declared as owners of the suit property on the basis of Jamabandi itself. This authority of Hon'ble Supreme Court instead states about the presumption of truth when attached to jamabandi can be rebutted. It nowhere states that ownership can be decided on the basis of Jamabandi. Nonetheless, it is a well settled position of law that entry in a Jamabandi does not confer title on a person whose name appears in that Jamabandi.

42. The ownership dispute of the Petitioner in W.P.(C) 8203/2018 was agitated before the learned Civil Court. There is no dispute that the Petitioners in W.P.(C) 2713/2018 are similarly situated as Petitioner in W.P.(C) 8203/2018. The finding of the learned Civil Court in the said proceedings has already attained finality. As discussed herein above, the Petitioners failed to produce any document, whatsoever, to establish their title. Jamabandis placed on record show that the land belongs to the Government. Even otherwise, no ownership can be conferred on the Petitioners by



virtue of the alleged entries in the Jamabandi. The issues raised by the Petitioners are already settled by various Judicial foras in different litigations initiated by the Petitioners themselves.

43. In view of the detailed discussion hereinabove, it is evident that the Petitioners miserably failed to establish their ownership over the said land. Petitioners failed to place on record any documents to show that the said land does not form part of D'Eremao Cemetery, Kishan Ganj, Delhi, which is a centrally protected monument declared of national importance vide Notification No. 7331 dated 13.12.1922 and published in the Gazette of India on 23.12.1922. ASI has placed on record the official site plan of D'Eremao Cemetery, Kishan Ganj, Delhi. There is no dispute qua this site plan. ASI passed the Impugned Eviction Orders after affording proper opportunity of hearing to the Petitioners.
44. Accordingly, the present Writ Petitions are hereby dismissed as the Petitioners have not been able to show any impunity in the Impugned Eviction Orders.
45. Pending applications, if any, are disposed of in above terms. No orders as to costs.

GAURANG KANTH, J.

JULY 11, 2023
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