



2024:DHC:768



\$~55

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

% Judgment delivered on: 01.02.2024

+ **W.P.(C) 1435/2024****SH TILAK RAJ**

..... Petitioner

versus

DY CONSERVATOR OF FOREST

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sudhir Nandrajog, Senior Advocate with Mr. Swastik Singh, Advocate.

For the Respondent : Mr. Satyakam, ASC for GNCTD.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 5942/2024 (for exemption)**

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 1435/2024 & CM APPL. 5943/2024 (for stay)

3. This is a writ petition under Article 226 of the Constitution of India, 1950, *inter alia*, seeking the following prayers:-

"Certiorari, thereby quashing the order dated 17.01.2024 being no. F.8/DCF (W)/Land/Ghitorni/2023-24/12935-12942 passed by the Respondent directing the Petitioner



to remove the alleged encroachment from Khasra no. 607, land admeasuring 4 Bhigas 16 Biswas falling in Village Ghitorni, Delhi or in the alternative prohibition thereby restraining the Respondent from taking any coercive action in respect of the aforesaid land till an appropriate remedy can be sought in a court of competent jurisdiction.”

4. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the petitioner submits that the father and uncle of the petitioner filed an application under Section 74(4) of the Delhi Land Revenue Act, 1954 (hereinafter referred to as “the Act”) on 21.09.1987, asserting that the father of the applicants therein, was allotted 1 Acre of land, comprising khasra No. 607 situated in the Revenue Estate of Ghitorni, New Delhi by the then Panchayat of Village Ghitorni.

5. It is stated that during the continuance of the said allotment, the father unfortunately had passed away, leaving behind the applicants as the surviving legal heirs. Under such circumstances, a decree of declaration was sought, as provided under Section 74 (4) of the Act.

6. While the application was pending, it is stated that the same was dismissed in default on 19.03.2004, as the applicants were not duly represented.

7. It is also submitted that on 27.08.2015, when the petitioner had filed an application under Appendix 6 Rule 14 of the Act, that they realized that the application was dismissed in default and had filed an application seeking recall of the order dated 19.03.2004. The said application was dismissed by the learned SDM on 09.06.2017, which was appealed against before the learned Additional Collector, which also was dismissed on 17.09.2018. The said appeal was dismissed on the



ground that the land upon which the application was filed seeking declaration, was included in the forest land in the year 1996, and as such, the applicants were held to be not persons, who are interested in the land.

8. The said order dated 17.09.2018 was further challenged before the Financial Commissioner under the provisions of Section 187 of the Act on the ground that the petitioner herein and others were throughout in continuance cultivatory possession of the said land, and as such, could not have been included in the forest land.

9. The Financial Commissioner had disposed of the said appeal *vide* the order dated 29.09.2023 based on the judgment of the Hon'ble Supreme Court in ***Mohinder Singh (Dead) through LR's & Another vs. Narain Singh & Ors***, reported in **2023 SCC OnLine SC 261** and on the ground that the village having been urbanized by way of notification under Section 507 (a) of the DMC Act, 1957, the provisions of the Act cease to apply and as such, the proceedings pending before it became *non est* in law.

10. Simultaneously, the petitioner was granted sixty days to approach the appropriate forum. Apparently, the petitioner did not avail any remedy within that sixty days period.

11. Mr. Nandrajog, learned Senior Counsel appearing for the petitioner takes the Court through the documents placed on record, which were part of the record of the application filed under Section 74(4) of the Act and also the evidence that was brought on record by the predecessors-in-interest of the petitioner, to submit that, *prima facie*, it shows that the predecessor-in-interest, one Sh. Lakhi Chand was allotted the aforesaid land in khasra No. 607. The other officials, who were also



examined, also supported the case.

12. He submits that due to unfortunate circumstances and for non-appearance of the applicants therein, the application was dismissed. He submits that there was no decision on merits.

13. Learned Senior Counsels submits that it is trite that the case ought to be considered on merits and not on technicalities. As such, he further submits that the dismissal in default may not be considered to be a disentitlement of the petitioner from raising this issue further.

14. Learned Senior Counsel further submits that though the sixty days period was provided by the Financial Commissioner to the petitioner to avail of his remedies, however, the rustic villagers/ petitioner failed to take appropriate steps in time.

15. Learned Senior Counsel submits that the present petition may be considered sympathetically and the petitioner be provided one opportunity to take the appropriate recourse to avail the proper remedies in accordance with law.

16. *Per contra*, Mr. Satyakam, learned ASC appearing for the GNCTD submits that the facts as stated in the writ petition are not admitted and the remedy that was already provided to the petitioner was not availed of within the time granted by the Financial Commissioner.

17. He submits that the petitioner cannot be stated to be rustic villagers, since once the petitioner challenged the dismissal in default of their application, they were legally bound to be vigilant about all such proceedings. In any case, Mr. Satyakam, learned ASC submits that the petition cannot be entertained by this Court and ought to be dismissed.

18. This Court has heard the learned Senior Counsel appearing for the



petitioner as also the learned ASC appearing for the respondent and perused the documents on record.

19. This Court intends to agree with Mr. Satyakam, learned ASC for respondent, on the issue of facts, however, keeping in view the fact that there is some material placed on record, which could possibly give the petitioner an opportunity to stake their claims *qua* the land, this Court is of the considered opinion that one opportunity can be granted to the petitioner to assert his rights, if any, *qua* the land ad-measuring 4 bighas 16 biswas within khasra No. 607, Village Ghitorni, Delhi, by way of any other alternate remedy since the proceedings hitherto before pending before the Appellate Authority – learned ADM, has been considered to be *non est* in view of the judgment passed in ***Mohinder Singh*** (*supra*).

20. The petitioner is granted thirty days time as a last and final opportunity to take appropriate remedies in accordance with law.

21. It is made clear that this Court has not expressed any expression on merits.

22. No coercive action shall be taken by the respondent for the period of thirty days, commencing today.

23. In view of the above, the present petition along with pending application is disposed of.

TUSHAR RAO GEDELA, J.

FEBRUARY 1, 2024
nd