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

% Judgment delivered on: 07.03.2024

+ **W.P.(C) 1445/2024****SUBNAM GUPTA SABNAM GUPTA** Petitioner

versus

UNION OF INDIA Respondent**Advocates who appeared in this case:**

For the Petitioner : Mr. Ashok K. Goyal and Ms. Shiwani, Advocates.

For the Respondents : Mr. Satya Ranjan Swain, SPC for UOI with Mr. Kautilya Birat, Advocate and Mr. Vedansh Anand, GP for UOI.
Ms. Harshita Nathrani, Advocate for Mr. Sameer Vashisht, ASC (Civil) for GNCTD.
Ms. Nanda Devi Deka, Panel Counsel for Ms. Prabhsahay Kaur, Standing Counsel for DDA with Ms. K.S. Jaggi and Ms. Mahan Rankawat, Advocates for R-3/DDA.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 5986/2024 (for exemption)**

1. Exemption is allowed, subject to all just exceptions.



2. The application stands disposed of.

CM APPL. 14477/2024 (for marking appearances)

3. This is an application seeking recording of the appearance, which was inadvertently missed in the order dated 13.02.2024.

4. For the reasons stated therein, the application is allowed.

5. The appearance of Mr. Satya Ranjan Swain, Senior Panel Counsel and Mr. Vedansh Anand, Government Pleader is recorded for respondent No.1 – Union of India.

6. The application stands disposed of.

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

“i) Issue writ in the nature of certiorari to set-aside and quash the impugned order dated 11.08.2023 passed by the Ld Financial Commissioner, Delhi as and;

ii) Issue writ in the nature of mandamus to direct the respondent to demarcate the land of the petitioner and handover to the petitioner;

iii) Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.

iv) Cost of the proceedings may also be awarded in favour of Petitioner and against the respondent”

8. Learned counsel appearing for the petitioner has challenged the order dated 11.08.2023 passed by the Financial Commissioner, Delhi, whereby the Financial Commissioner on the point of the jurisdiction of the Revenue Courts post Notification under Section 507 (a) of the Delhi Municipal Corporation Act, 1957 declaring that the village is urbanized and read with the judgment of the Supreme Court in ***Mohinder Singh (Dead) through LRs and Another vs. Narain Singh and Others***



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reported in **2023 SCC OnLine SC 261**, has dismissed the appeal, granting sixty days' to the parties to approach appropriate forum of law for redressal of their grievances, if any. It was also simultaneously directed that no third party interest shall be created by any parties in this impugned land for such period.

9. The said order was passed on 11.08.2023. Learned counsel submits that having regard to the fact that the Financial Commissioner had not considered the case on merits, the present petition has been filed.

10. Mr. Goyal, learned counsel appearing for the petitioner submits that the notice under Section 81 of Delhi Land Revenue Act, 1954 was issued to one Sh. Arjun Das on 20.10.1984, whereas the mother of the petitioner late Smt. Prem Lata was never issued any such notice. On 28.10.1986, the Revenue Assistant/ SDM, (Kingsway Camp), Delhi passed order.

11. The petitioner claims that the moment she came to realize that the SDM had passed such an order, an appeal under Section 64 of the Delhi Land Revenue Act, 1954 was filed against the order dated 28.10.1986 passed by the Revenue Assistant.

12. It is this appeal, which was dismissed by way of the impugned judgment of the Financial Commissioner.

13. Ms. Nanda Devi Deka, learned counsel appearing for respondent No.3 – DDA as also Ms. Harshita Nathrani, learned counsel appearing on behalf of Mr. Sameer Vashisht, learned ASC (Civil) for respondent - GNCTD draw attention of this Court to the judgment dated 14.01.2013 filed by one Smt. Prem Lata Gupta through the LR of Sh. Laxman



Prasad Gupta, who is stated to be the father of the present petitioner.

14. Ms. Deka submits that in the operative portion of the said judgment, the learned Trial Court had made observations that the plaintiff was unable to prove his ownership, and as such, the suit for injunction was dismissed on 14.01.2013 on the said ground, as also on the other grounds.

15. After having observed the fact that the learned Trial Court had categorically recorded as a finding of fact that the plaintiff has not been able to establish his/ her ownership and was in possession of the said land and had dismissed the suit, the Appellate Court by way of the judgment dated 28.07.2015 had dismissed the appeal.

16. The petitioner had also filed a Regular Second Appeal thereto, before the District Court, however, the same being not maintainable was dismissed as withdrawn.

17. It is clear from the aforesaid, that the petitioner was unable to establish his title and ownership rights in the injunction suit. This Court is aware of the fact that in an injunction suit, the title may not be an issue which is decided, and as such, the same cannot be held against the present petitioner.

18. However, so far as the rights of his ownership and possession for the *prima facie* purpose of injunction, is concerned, the same has been found against the petitioner as a fact in the said orders.

19. For the purpose of clarity, the relevant paragraphs of the judgment dated 14.01.2013 of the learned Trial Court are extracted hereunder :-

“15. The present suit has been filed on behalf of the plaintiff on the basis of ownership of the suit plot and from the above noted testimony of the Patwari, who is an official witness, it is clear that the plaintiff was not the owner of the suit plot as on the date of



filing of the suit. There are copies of the Khatoni on record some of which have been exhibited such as Ex PW 3/P1 but the same have been written in Urdu language and no translated copy of the same has been filed by the plaintiff. The photographs Ex PW 1/5 to Ex PW 1/7 filed on behalf of the plaintiff are also of no use to the plaintiff as they have not been proved and no negatives have been filed in their support. The plaintiff has also filed original sale deed in respect of khasra no. 1182 but the same is also of no use to the plaintiff as the averments of the plaintiff herself with the suit plot in khasra no. 118/23/3 was allotted in the consolidation proceedings in lieu of her said land in khasra no. 1182. The plaintiff has to stand on her own legs and to prove her own case and cannot derive any benefit from any weakness on the part of the defendant to prove his case. Now that the plaintiff failed to establish her ownership in respect to the suit plot, hence, the plaintiff cannot be entitled to the relief of injunction. The issues are decided against the plaintiff accordingly”

20. For the purpose of clarity, the relevant paragraphs of the learned Appellate Court’s judgment dated 28.07.2015 is extracted hereunder :-

“22. Ld. Trial Court has rightly held that the present suit has been filed by the plaintiff on the basis of ownership and possession of the suit shop and the witness of plaintiff herself have deposed against the case of the plaintiff. PW3, Patwari who is an official witness has categorically stated that the plot owned by plaintiff in Khasra No. 118/23/3 has vested in Gaon Sabha vide order dt. 28.01.1986 i.e. much prior to the filing of the present suit. The plaintiff on the other hand did not prove on record any other document to show her ownership or possession over the suit property. Thus, the plaintiff has failed to discharge the onus upon her to prove her own case.

23. Ld. counsel for the plaintiff has argued that the khatoni paimaish proved by the plaintiff as Ex PW2 I 1 has not been considered by the Court merely because it is in Urdu and its translation has not been proved on record. Accordingly, plaintiff should be given an opportunity to prove translation of Ex PW2/l and Ex PW3/l. I have given my thoughtful consideration to the submissions made. Even if plaintiff is given an opportunity to prove the translation of Ex PW2 I 1 & Ex PW3 I 1 and the said khatauni shows rights of plaintiff over the suit plot, it will be of no help to the plaintiff as the said khataunis pertain to the year



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1980-81. Whereas, as per deposition of PW3, the plot of plaintiff had vested in Gaon Sabha in the year 1986.

24. In view of the reasons and findings given above, I find no infirmity in the impugned judgment and decree dated 14.01.2013. The Appeal is accordingly dismissed being meritless and the impugned order is upheld.”

21. This Court does not seek to indict or injunct the petitioner from seeking any relief, which the petitioner may be entitled to under similar proceeding before the Court of competent jurisdiction. As such, the present petition is dismissed, granting liberty to the petitioner to initiate further proceedings before any Civil Court of competent jurisdiction for the reassertion of her rights. Moreover, the issue relates to disputed questions of fact, which in any case, under Article 226 of the Constitution of India, 1950, this Court would be precluded from considering. This Court is fortified in its view by the ratio laid down in the judgment of this Court in ***Radiance Fincap P Ltd Through its Authorized Representative Shri Mukesh Rana vs. Govt of NCT of Delhi, Department of Revenue Through Divisional Commissioner & Another*** reported as **2023 SCC OnLine Del 3432**.

22. As such, the present petition along with pending applications is dismissed in *limine* without making any observations on the factual matrix, granting the aforesaid liberty to the petitioner to take remedial measures which are extended for a further period of six weeks. There is no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 7, 2024/nd