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

+ **W.P.(C) 6004/2022 & CM APPL. 18037/2022**

NEENA LUTHRA & ORS.

..... Petitioners

Through: Mr. Saket Sikri, Mr. Ajay Pal Singh
Kullar, Mr. Vikalp Mudgal and Mr.
K.V. Sriwas Narayanan, Advocates.

versus

**DY. CONSERVATION OF FORESTS SOUTH FOREST
DIVISION AND ANR.**

..... Respondents

Through: Mr. Avishkar Singhvi, ASC for
GNCTD with Mr. Naved Ahmed, Mr.
Vivek Kumar Singh and Mr.
Deokinandan Sharma, Advocates
along with Ms. Nikita Mishra, PA
Legal.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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29.01.2024

1. The Petitioners have approached this Court challenging the Notice dated 03.01.2022 bearing No. F.No.14/DCF(S)/ENER./DERA MANDI/2021-22/19212-17 and Notice dated 03.01.2022 bearing No.F.No. 14/DCF(S)/ENER./DERA MANDI/2021-22/19218-23 issued by the Deputy Conservator of Forests, South Forest Division treating the Petitioners as encroachers on forest land and directing them to vacate the forest land within a period of seven days.

2. Learned Counsels appearing for the Petitioners and the Respondents



are *ad idem* that against similar notices, writ petitions were filed and a Division Bench of this Court on 22.09.2022 passed the following Order in LPA 546/2022:

1. *The present LPA is arising out of an order dated 22.08.2022, passed by the learned Single Judge in W.P.(C) 5710/2022.*

2. *Learned Counsel for the Appellant has straight away drawn the attention of this Court towards an order dated 19.09.2022 passed in LPA No. 540/2022 and his contention is that in similar circumstances where the learned Single Judge has passed two different orders in identical cases, this Court has intervened in the matter. He has also stated that the dispute in the present LPA is again arising out of the same locality and the land which is subject matter of the present dispute forms part of Khasra No. 515 which is not forest land as per the demarcation done earlier.*

3. *The order dated 19.09.2022 passed by this Court reads as under:*

“1. The present LPA arises out of an Order dated 22.08.2022 passed by the learned Single Judge in W.P.(C) 5921/2022, Smt. Meena Saini v. Govt. of NCT of Delhi & Ors.

2. The facts of the case reveal that a writ petition bearing W.P.(C) No.5921/2022 was preferred by the Appellant herein stating that the property under her ownership situated at W-514 C, Lane-12, Western Avenue, Sainik Farm, Khasra No. 514, Village Neb Sarai, New Delhi110074 does not belong to the Forest Department. The Appellant also brought to the notice of the learned Single Judge, a demarcation of the ridge area that had been carried out by the Forest Department and argued that Khasra No. 514, situated at Village Neb Sarai, New Delhi110074 is not mentioned in the notification issued



by the Forest Department as a forest land, and, therefore, the action against the Appellant is bad in law. The learned Single Judge disposed of the said writ petition vide Order dated 22.08.2022. The relevant portion of the said Order reads as under:-

“7. It is evident that the property of the petitioner bearing Khasra No.5 I4, situated at Village Neb Sarai, New Delhi-1 10074 is not mentioned in the notification issued by the Forest Department, and hence, prima facie cannot be said to an encroachment upon the forest land. However, keeping in view the facts and circumstances of the case, as well as in light of the arguments advanced by learned counsel appearing on behalf of the respondents, if any encroachment is caused due to the acts of the petitioner in the adjacent forest land situated in other Khasras, the respondents may take necessary action against the petitioner as per the direction passed by the National Green Tribunal in the Order dated 15 January 2021. It is accordingly directed that in case of any encroachment made by the petitioner, the respondents shall take necessary action against the petitioner after issuing a show cause notice and granting him a reasonable opportunity of being heard with respect to the reply of the notice within the prescribed period in accordance with law.

8. With the aforesaid directions, the instant petition along with the pending applications stand disposed of.”

3. Learned counsel for the Appellant submits that in an identical writ petition bearing W.P.(C) No.8863/2022, Teja Singh & Ors. v. State of NCT of Delhi & Ors., which was preferred by similarly situated persons who made a statement that the land in question in that petition is not



forest land and the learned Single Judge vide Order dated 16.08.2022, has observed as under:-

“7. The petitioners are directed to file an appropriate application alongwith requisite fee before the SDM/Tehsildar, M.B. Road, Sak. et within two weeks from today. After receiving the said application, the concerned SDM is directed to decide the application of demarcation of property in question, in the presence of all the patties by way of passing a speaking order in accordance with law, expeditiously, preferably within three months.

8. It is made clear that the concerned authority shall not take any action against the petitioners pertaining to the property in question till the disposal of the application for demarcation, if the same has been filed within two weeks.

9. With the aforesaid directions, the petition alongwith the pending application stand disposed of.”

4. The learned Single Judge vide Order dated 16.08.2022 in W.P.(C) 8863/2022, Teja Singh & Ors. v. State of NCT of Delhi & Ors., granted liberty to the Petitioners therein to prefer an application before the SDM/Tehsildar, M.B. Road, Saket and directed the SDM/Tehsildar, M.B. Road, Saket to decide the application of demarcation in presence of all the parties.

5. Learned counsel for the Forest Department, very fairly states that a similar order can be passed in the present case also. Resultantly, without commenting on the merits of the case, the Appellant is permitted to file an appropriate application along with requisite fee before the SDM/Tehsildar, M.B. Road, Saket within two weeks from today.

6. On receipt of such an application, the SDM/Tehsildar,



M.B. Road, Saket shall decide the application of demarcation of the property in question in the presence of all the parties by passing a speaking order in accordance with law, as expeditiously as possible, preferably within a period of three months from today.

7. The Respondents shall not take any coercive action against the Appellant till the application is decided, as directed by this Court. It is also made clear that parties shall be at liberty to take further steps in the matter based on the demarcation.

8. It is made clear that this Court has not made any observations on the merits of the case and the order has been passed by this Court with the consent of the parties.

9. The LPA is disposed of, with the above observations. Pending applications, if any, stand disposed of”

4. In the light of the aforesaid, especially in the light of the fact that the Counsel for the Forest Department has stated that a similar order can be passed in the present case without commenting on the merits of the case, the LPA is allowed. The order passed by the learned Single Judge is hereby set aside.

5. On receipt of such an application, the SDM/Tehsildar, M.B. Road, Saket shall decide the application of demarcation of the property in question in the presence of all the parties by passing a speaking order in accordance with law, as expeditiously as possible, preferably within a period of three months from today.

6. The Respondents shall not take any coercive action against the Appellant till the application is decided, as directed by this Court. It is also made clear that parties shall be at liberty to take further steps in the matter based on the demarcation.

7. It is made clear that this Court has not made any



observations on the merits of the case and the order has been passed by this Court with the consent of the parties. 8. The LPA is disposed of, with the above observations. Pending applications, if any, stand disposed of”

3. In light of the aforesaid Order dated 22.09.2022 passed by the Division Bench, the Petitioners are permitted to prefer an application of demarcation before the SDM/Tehsildar, M.B. Road, Saket to decide the same in the presence of all the parties.
4. As directed by the Division Bench, the Respondents shall not take any coercive action against the Petitioners till the application is decided by the concerned SDM/Tehsildar.
5. In view of the above, the writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 29, 2024

S. Zakir