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

+ **CONT.CAS(C) 331/2019**

BHAN SINGH

..... Petitioner

Through: Mr. Akshay Ringe with Ms. Shelly Singh, Advocates.
(M): 9910664137

versus

MITALI GOEL ,SDM(MEHRAULI) & ANR Respondents

Through: Mr. Anuj Aggarwal, ASC, GNCTD with Ms. Arshya Sing, Mr. Yash Upadhyay and Mr. Siddhant Dutt, Advocates for respondent no. 1 and 2.
(M): 9891363718

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Date of Decision: 03rd April, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed alleging non-compliance of the order dated 30th August, 2018 passed in *W.P. (C) No. 6782/2015*.
2. By the said order dated 30th August, 2018, directions had been issued to the respondents to conduct a complete enquiry to ascertain the reasons as to why the records which were required by the petitioner went missing. It was further directed that in case the respondents are successful in tracing the report of the Tehsildar dated 23rd September, 1988, then the same ought to be provided to the petitioner.



3. Pursuant to the aforesaid order, an Inquiry report dated 17th October, 2019 was filed by the respondents. Subsequently, a second report dated 24th March, 2023 has been filed by the respondents, wherein it is clearly stated that the said documents are not traceable. Thus, Mr. Anuj Aggarwal, learned counsel appearing for the respondents submits that the directions as issued in order dated 30th August, 2018, stand complied with.

4. Per contra, learned counsel appearing for the petitioner submits that the petitioner is an old person and that his valuable rights would be curtailed, if the requisite document is not provided to him. He, thus, submits that directions may be issued to the respondents that fresh inspection be carried out by the respondents, so that valuable right of the petitioner with respect to his title to the property in question is safeguarded.

5. I have heard learned counsel for the parties and have perused the record.

6. At the outset, this Court notes that by the order dated 30th August, 2018 passed in *W.P. (C) No. 6782/2015*, the following directions had been issued by the Court:-

“1. The petitioner has filed the present petition, inter alia, praying as under:-

“A. Set aside the impugned order dated 01.04.2015 passed by the Learned Central Information Commission in second appeal/ File No. CIC/DS/A/2013/001858-SA.

B. Direct the respondent to provide the documents / information i.e. order dated 23.05.1989 passed by Shri A.S.Gaur, Tehsildar Mehrauli in case bearing No. CG 11/1986 along with the inspection report prepared by the Shri A.S. Gaur, Tehsildar, Mehrauli.

C. Award litigation cost to the Petitioner.

2. The petitioner has filed an application dated 02.04.2013 under the Right



to Information Act, 2005 (hereafter 'the Act'), inter alia, seeking a report of the Tehsildar, Mehrauli with regard to the inspection of the property (Khasra No. 351/3/1 min, Village Chirag Delhi, New Delhi 110017) stated to have been carried out on 23.09.1988. The said inspection report was not provided to the petitioner as the same is not available with the respondent. In this context, the petitioner had filed an appeal under Section 19 of the Act before the First Appellate Authority and thereafter, escalated the matter to the Chief Information Commission (CIC) by filing a second appeal under Section 19(3) of the Act. In the aforesaid proceedings, the CIC has passed an order dated 01.04.2015 (impugned herein), the operative part of which reads as under

"7. The appellant wanted to know the reasons why the file is not traceable. Thus Commission directs the respondent authority to furnish the reason, circumstances behind absence of file and also explain efforts to find same within 15 days from the date of receipt of order."

3. In view of the above, the prayer made by the petitioner for quashing the said order is clearly misconceived as it is in favour of the petitioner.

4. Insofar as the second prayer - that is, the prayer seeking direction to the respondents to provide the order dated 23.05.1989 passed by Tehsildar as well as the inspection report dated 23.09.1988 - is concerned, this Court is informed that the order dated 23.05.1989 has already been provided to the petitioner. Therefore, this prayer does not survive. The only issue that remains to be considered related to providing the inspection report which is stated to have been prepared by Tehsildar, Mehrauli on 23.09.1988.

5. Mr Satyakam, learned counsel appearing for the respondents states that despite the best efforts, the said report is not traceable.

6. In this view, the relief as sought for by the petitioner cannot be granted. However, the respondents are directed to conduct a complete inquiry to ascertain the reasons for the said record going missing. The said inquiry shall be conducted as expeditiously as possible, preferably within a period of eight weeks from today.

7. It is clarified that in the event the respondents are successful in tracing the documents sought for by the petitioner (report of the Tehsildar dated 23.09.1988), the same would be provided to the petitioner. The respondents shall also inform the petitioners the results of the said inquiry.

8. No further orders are required to be passed in this petition and the same is disposed of."



7. Perusal of the aforesaid order clearly shows that the twin directions passed by the Court in the aforesaid order was, one with respect to conducting a complete inquiry to ascertain the reasons for the record which had gone missing; and to provide copy of the inquiry to the petitioner and to inform the petitioner as regards the result of the inquiry.

8. It had also been directed that in case the respondents are successful in tracing the documents sought for by the petitioner i.e., report of the Tehsildar dated 23rd September, 1988, the same would be provided to the petitioner.

9. This Court notes that earlier a first inquiry report dated 17th October, 2019 was submitted by the respondent. However, by order dated 27th October, 2022, the Court held that the inquiry report did not advert to the role and responsibility of the senior officers under whose watch the relevant record went missing. Thus, the respondents had agreed that a fresh inquiry would be conducted to ascertain the role/omissions on the part of the senior officers. The relevant para of the order dated 27th October, 2022 reads as under:

“xxx xxx xxx

4. In the circumstances, after some hearing, learned counsel for the respondents agrees that a fresh inquiry would be conducted to ascertain the role/omissions on the part of the senior officer(s) in-charge/head of departments at the relevant time and an attempt will be made to fix responsibility for the missing record and the procedural and other lapses, if any.

5. Accordingly, let a fresh inquiry be conducted within a period of eight weeks from today and a report thereof be placed on record before the next date of hearing. Let an officer in the rank of District Magistrate be made the inquiry officer to conduct the inquiry.

xxx xxx xxx”



10. Accordingly, pursuant to the aforesaid directions, a fresh inquiry has been conducted by the respondents and a fresh inquiry report in terms of the aforesaid order has been filed. The relevant portions of the said inquiry report read as under:-

“xxx xxx xxx

IV STATEMENTS RECORDED:-

4.1 Pursuant to the appointment of the undersigned, a number of notices were sent to the following officers of various departments which are tabulated as follows:-

S.NO	Particulars	Date(s) on which
1.	Tehsildar Mehrauli	05.04.2023
2.	Record Room in Charge, Saket, South Delhi District.	31.03.2023
3.	Patwari (Chirag Delhi)	31.03.2023
4.	Tehsildar (Hauzkhas)	31.03.2023
5.	SDM (Hauzkhas)	31.03.2023
6.	General Administration Branch, South Delhi District.	03.04.2023

xxx xxx xxx

F.No. DM(S)-F013/2/2022/GA/122051/4241-47 Dated:-13/01/2023

ORDER

The transfer/posting of the following officials is hereby ordered with immediate effect:-

Sl. no	Name & Designation	Present Posting	Transferred to
1.	Sh. Harish Kumar, GR.II	O/o Sub Division Mehrauli	O/o Sub Division (HK) & look after the additional charge of Record Room District South located in



			<i>The building of Sub Division (Saket)</i>
2	<i>Sh. Pawan Kumar Chabra, Kanungo</i>	<i>O/o Sub Division (HK) & look after the additional charge of Record Room District South located in The building of Sub Division (Saket)</i>	<i>O/o Sub Division Mehrauli</i>

This issues with the prior approval of D.M. (South)

*SDM (HQ)
DISTT. SOUTH*

xxx xxx xxx

VI Finding:-

a. *That the provision of Public Record Act, 1993 as well as the procedure which is laid down in Manual was not followed and the office record steered very unceremoniously.*

b. *Thus it can be said that there are procedural lapses on the part of record-in charge as there is no handing over and taking over of records.*

c. *Further it is also stated by Tehsildar Mehrauli that an FIR vide no. 0232 dated 15.04.2019 U/S 380 IPC, 1860 has already been lodged in P.S. Mehrauli in respect of records pertaining to Kh. 351/3/1 Min, Village Chirag Delhi. In the said FIR it has already been mentioned by the then Tehsildar (Mehrauli) that efforts were made to trace the file and circular was also issued to all concerned officials of the office of the DM (South), ADM (South), SDM (Mehrauli), SDM (Saket). SDM (Hauzkhas), vide*



dated 28.02.2019 with the request and directions to trace the concerned file and submit report within a period of 05 days. However, no fruitful results were obtained.

d. That the certified copy of the order in question passed by the Tehsildar in year 1989 was obtained by the petitioner from record room and same was taken on record by Hon'ble high court vide dated 30/08/2018 in WP (C) no. 6782/2015.

e. The only issues to be consider related to providing the inspection report which was in the file CG-11/86, titled as Dully Ram V/s Waqf Board, and same could not be traceable despite the best efforts.

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VII CONCLUSION

1. After careful thorough review of the previous inquiry report conducted by ADM (S) along with other relevant evidences placed on record. It has been concluded that there are procedural lapses on the part record in-charge since long back, as the record room was shifted multiple times from Tis hazari to Mehrauli and Mehrauli to Saket in 2017.

2. The copy of the order in Case No. CG-11/86 attested by Sh. Maichand (the then record room in charge) through which it is evident that the said case file CG-11/86 dated 15.04.86 has been submitted to record room after completion of the proceedings in year 1989.

3. Since an FIR has already been lodged in respect record of Kh No. 351/3/1 min village Chirag Delhi vide dated 15.04.19 hence direction may be issued to investigation officer (I.O.) to conduct the investigation properly and submit the inquiry report timely before concerned court. "

11. Perusal of the aforesaid shows that it is the clear stand of the respondents that in terms of the inquiry, it came to the fore that there were procedural lapses with respect to maintenance of the record. This was also primarily on account of the reason that the record room was shifted multiple times from Tis Hazari to Mehrauli and Mehrauli to Saket in 2017. Further, as per the inquiry report, it is not possible to fix responsibility on any one particular officer. However, FIR has already been lodged in this regard.

12. Accordingly, this Court is of the view that substantial compliance of



the order dated 30th August, 2018 has been done by the respondents. A detailed investigation has been carried out by the respondents and copy of the same has also been provided to the petitioner. An FIR has already been lodged, and the investigation with regard thereto is stated to be underway.

13. As regards the prayer of the petitioner with regard to carrying out a fresh inspection by the Sub-Divisional Magistrate (“SDM”), Mehrauli, liberty is granted to the petitioner to seek the said prayer in appropriate proceedings, on the basis of the inquiry report filed on behalf of the respondents. The petitioner is further granted liberty to take appropriate remedies in accordance with law, including making a representation before the SDM, Mehrauli in this regard.

14. Needless to state, if such a representation is made by the petitioner, the same shall be considered on its merits expeditiously.

15. With the aforesaid directions, the present petition is disposed of.

MINI PUSHKARNA, J

APRIL 3, 2024

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