



2024:DHC:3147



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

% Judgment delivered on: 16.04.2024

+ **W.P.(C) 5462/2024****MALSH CHARITABLE TRUST THROUGH
ITS TRUSTEE MS. JAYSHREE SINGH**

..... Petitioner

versus

**LIEUTENANT GOVERNOR,
GOVT. OF NCT OF DELHI AND ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vivek Kohli, Senior Advocate with
Mr. Shahshank Aggarwal and Ms.
Bhavya Bhatia, Advocates

For the Respondents : Ms. Hetu Arora Sethi, ASC, GNCTD

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. 22540/2024**

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

W.P.(C) 5462/2024 & CM APPL. 22539/2024

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

W.P.(C) 5462/2024

Page 1 of 7



“a) Issue a writ of Certiorari and/or other order(s) of the similar nature quashing the arbitrary and illegal Notice bearing No.F. NO.52/DCF(S)/LAND/ASOLA/2022-23/12642-49,Dated 06.01.2024 illegally affixed by Respondent No.2; and

b) Issue a writ of mandamus and/or other order(s) of the similar nature directing the Respondents directing the Respondents to carry out a wholistic and complete demarcation of all land in village Asola, by the prescribed procedure, after giving due notice to the Petitioner.”

4. Mr. Vivek Kohli, learned senior counsel appearing for the petitioner submits that this Court had by a catena of judgments protected the interests of the parties who have appeared before this Court. He submits that the present petition is also similar to those matters. Learned senior counsel submits that though it is the stand of the petitioner that the impugned notice dated 06.01.2024 was pasted on 02.04.2024, however even assuming that it was indeed pasted on 06.01.2024 the threat of coercive action remains.

5. He submits that by way of a registered sale deed the present petitioner had purchased the properties more particularly enumerated in para 5 of the writ petition comprising Khasra Nos. 1743(8-6), 1741(5-0), 1737(4-0), 1734(3-0), 1747(1-0), 1747(5-2), 1739(0-10), 1734(1-1), 1737(1-16), 1741(3-0), 1741(4-17), 1747(1-18) admeasuring 8.12 acres and also of the Khasra Nos. 1735(0-19), 1736(11-16), 1740(5-7) & 1748(28-19) admeasuring 9.80 acres and 1737, 1744, 1745, 1746, 1747, 1748 & 1756 admeasuring 19.70 acres, total ad measuring 37.62 acres. Out of the Khasra Nos. 1743, 1741, 1737, 1734, 1747, 1747, 1739, 1734, 1737, 1741, 1741 and 1747 area admeasuring 8.12. acres by way



of a registered sale deed were presented by petitioner and the remaining by way of Agreement to Sell and other similar documents.

6. Learned senior counsel submits that this Court had in judgment of Asola Homes Welfare Association & Anr. vs. GNCT of Delhi & Ors. vide the order dated 23.05.2022 while examining Section 28 of Delhi Land Reforms Act, 1954 had passed certain directions to the respondent – Forest Department as well as to the Deputy Commissioner, Department of Revenue. The said directions may be made applicable to the present case to be similar on facts.

7. Learned senior counsel also submits that the impugned notice dated 06.01.2024 refers to Khasra Nos.1498, 1528, 1506 and 1552 of Village Asola, Tehsil Saket which according to the Notification is a reserved forest land as per Notification dated 24.05.1994 and 02.04.1996. It is alleged in the said notice that the petitioner has encroached upon the said forest land which is a violation of Section 26 of Indian Forest Act, 1927 and Forest Conservation Act, 1980 and as such were directed to vacate the said lands. It also referred to the act of demolition in case of non compliance.

8. Learned senior counsel submits that the petitioner either by himself or through the predecessor-in-interest was in occupation of the said land from the year 1994 itself till today consistently and continuously without any hindrance whatsoever. He submits that the demarcation reports have been placed on record by the petitioner as also the original Masavi of the year 1908.

9. By relying upon the judgment of this Court in ***Ishwar Sahai vs. Govt. of NCT of Delhi & Ors*** passed on 18.01.2024 as also ***Rajshree***



Singh vs. Lt. Governor, Govt. of NCT of Delhi & Ors. rendered on 31.01.2024 that in similar circumstances this Court had interfered in such notices and had passed detailed directions.

10. Issue notice.

11. Notice accepted by Ms. Hetu Arora Sethi, learned counsel appearing for respondents. She submits that it has been incorrectly stated that the notices were affixed on 02.04.2024. She submits that the notices were indeed pasted on 06.01.2024 and as such the petitioner has approached this Court with inordinate delay. She submits that no action has yet been taken. However, this Court may not interfere with the reclamation of the lands belonging to the Forest Department. She also submits that it is clear from the recitals of the impugned notice that the said khasra numbers indicated in the impugned notice were declared as reserved forest land as per Notification dated 24.05.1994 and 02.04.1996. As such the encroachment by the petitioner would be violation of the law. Having regard thereto, Ms. Sethi submits that this Court ought not to interfere in the proceedings and let the law take its own course.

12. After having heard the parties, this Court passes the following order.

13. There is little doubt the fact that the petitioner has been in possession of the said land for the last more than a decade by virtue of the registered sale deed dated 13.10.2008, which has already been annexed to the present writ petition in respect of the Khasra Nos. 1734, 1734, 1737, 1737, 1739, 1741, 1741, 1747 and 1743.

14. This Court in Asola Homes Welfare Association and Another vs.



GNCT of Delhi had made following observations and issued particular directions which are extracted hereunder:

“5. Section 28 of the Delhi Land Revenue Act, 1954 stipulates as under:-

“28. (1) All disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If in the course of an inquiry into a dispute under this section, the Deputy Commissioner is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry the Deputy Commissioner-

(a) in the first case, shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession; and

(b) in the second case, shall put the person so dispossessed in possession and shall then fix the boundary accordingly.”

6. The statutory provision enables the concerned parties to approach the Deputy Commissioner regarding any dispute relating to boundaries. The parties, herein, are also before this Court today with a limited issue pertaining to the similar subject matter.

7. Keeping in view the statutory provisions as well as the facts in the petition, this Court is inclined to allow the limited prayer made by learned counsel for the petitioners to move a detailed application along with the writ petition before the Deputy Commissioner (South), Department of Revenue, Government of NCT of Delhi within two weeks.



8. It is directed that after receipt of the application, the Deputy Commissioner (South), Department of Revenue, Government of NCT of Delhi, shall decide the dispute related to the incidental and ancillary issue of demarcation of the land in accordance with law, keeping into consideration the facts and contentions made in the instant writ petition and pass a detailed/well-reasoned order expeditiously, preferably within a period of six weeks. The petitioners are also directed to cooperate in the proceedings.

9. No coercive steps shall be taken against the petitioners as per the list of names given on page 77, Annexure-P4 to the petition till the disposal of the application. It is also directed that status quo with respect to the boundaries of the respective petitioners shall be maintained by both the parties.”

15. The petitioner in this case, with respect to the khasra numbers which were purchased by registered sale deed dated 13.10.2008 admeasuring 8.12 acres, appears to be the owner of the said property and claims to be in possession thereof and as such it would be appropriate to pass similar orders as passed by this Court in the aforesaid cases.

16. Accordingly, the petitioner, to the extent of the area covered by the registered sale deed is permitted to file a detailed representation annexing all the relevant documents before the Deputy Commissioner (South), Department of Revenue, Government of NCT of Delhi. The Deputy Commissioner would decide the dispute and ancillary issue of demarcation of land in accordance with law keeping in consideration the facts and contentions raised in the present writ petition and pass a detailed order. An opportunity of hearing shall also be provided to the representative of the petitioner.



17. The said representation be disposed of within six weeks from today in accordance with law. The petitioner is directed to ensure cooperation with the competent authority of the respondent.

18. In the meanwhile, till the representation is disposed of, no coercive steps shall be taken by the Forest Department in pursuance of the notice dated 06.01.2024.

19. With respect to the remaining portion of the property qua which only Agreement to Sell and other documents have been executed which are not registered, this Court is of the opinion that interest of justice would suffice if the petitioner is permitted to move the competent Court of civil jurisdiction on the touchstone of possessory rights of the petitioner. To that extent the petitioner may move the appropriate proceedings before the competent Court within three weeks from today. Till such time, no coercive action shall be taken by the Forest Department in respect of that portion too.

20. The petition is disposed of alongwith pending application with above directions with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 16, 2024

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