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

+ **W.P.(C) 1317/2012**

**ADARSH NAGAR EXTENSION RESIDENTS' WELFARE
ASSOCIATION(REGD)**

.....Petitioner

Through: Mr. Vikram Aggarwal, Adv.

versus

MCD AND ORS

.....Respondent

Through: Mr. Rajesh Yadav, Sr. Counsel with
Mr. Anirudh, Mr. Ayush, Advocates.
Mr. Sanjay Poddar, Sr. Advocate, Mr.
Siddhant Nath, ASC, Mr. Bhavishya
Makhija, Mr. Varun, Advocates.
Mr. Prashant Manchanda, ASC,
GNCTD with Mr. Mayank Kamra,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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31.07.2024

1. This petition has been filed praying for the following relief:-

“To issue writ of mandamus against the respondents thereby directing to the respondents to unlock the parks and further directed to remove the unauthorized wall raised on the side gates of on of the two public parks situated between the Shivaji Road and Dairy Road of Adarsh Nagar Extn Derhi-110033 forming part of Khasra No. 262/258/217/4/3 in the revenue estate of Village Bharoraabadi known as Adarsh Nagar Extension, Delhi as specifically shown in red corner in the site plan as Annexure-A.”

2. Upon hearing the learned senior counsels appearing for the parties, it becomes evident that there is a dispute concerning the ownership of the subject property. This property is alleged to encompass two public parks situated between Shivaji Road and Dairy Road in Adarsh Nagar Extension,



Delhi-110033, forming part of Khasra No. 262/258/217/4/3 in the revenue estate of village Bharora Abadi, known as Adarsh Nagar Extension, Delhi.

3. Learned senior counsel appearing for respondent no.3 submits that there is a decree with respect to the concerned land, *vide* a judgment and decree dated 28.02.2004, wherein, the learned trial court granted a decree of possession of the subject property in favour of the said respondent. By virtue of this decree granted by the competent court, respondent no.3 asserts his right to enjoy the said property uninterruptedly. Learned counsel further contends that even the possession of land in question was duly handed over during execution proceedings.

4. However, this position is contested by the learned senior counsel appearing for the respondent-MCD and the learned counsel appearing for the petitioner.

5. The Court, on 17.12.2012, considered this matter to some extent and passed the following order:-

*“16. Assuming that possession was handed over to respondent no.3 pursuant to the judgment and decree passed by the Civil Court, prima facie it appears that only symbolic possession was handed over to the respondent no.3. The documents placed on record by the MCD and the photographs prima facie show that MCD was maintaining the parks and the same were being used by the general public. Since respondent no.3 did not have actual physical possession over the area it is only because of this reason that the residents were using the parks, however, the MCD was maintain both the parks and paying not only for the maintenance but also for the monthly electricity bills. **Although respondent no.3 did file a civil suit and has obtained a decree, the main relief sought in the civil suit was only against defendant no.1, which is evident from the judgment which has been placed on record and, thus, the decree was only qua said defendant no.1 and not MCD.***

17. Having regard to the fact that no person can be permitted to take law in his/her own hands and taking into consideration that respondent no.3 could not have locked the gates of the park, which were installed by the MCD, which is a public authority; and the said public authority has



spent money for maintenance of the parks and provided benches, swings for children, electricity, etc, for the residents of the locality including children and the elderly, till the disposal of the writ petition respondent no.3 is directed to open the locks of the gates of both the parks within one week from today. In case the locks are not opened Delhi Police is directed to break open the locks. MCD is directed to maintain the parks, till further orders. It is made clear that passing this order will not create any special equity in favour of either the petitioner or the MCD.”

6. The aforesaid order came to be challenged by respondent no.3 and *vide* order dated 18.02.2013 in LPA 89/2013, the Division Bench of this Court disposed of the LPA with the following observations:-

“This appeal relates to certain extent of lands in the site plan Ex.PW-1/5 shown in the site plan in question. It appears that the writ petition was filed by Adarsh Nagar Ext. Residents Welfare Association seeking for a direction to the appellant herein, to unlock the gates of the parks on the ground that it is meant for the members to use. That was resisted by the appellant on the ground that the appellant had obtained a decree of possession and by virtue of that decree, the possession has been taken through the process of the Court. However, the learned Judge having noticed that the appellant though had obtained the decree for possession had not taken possession as per law and he has taken only symbolic possession, has directed the removal of lock put up by the appellant.

*It is the contention of the appellant that the decree has been rendered meaningless as the possession has already been taken by the appellant, through pursuant to the decree and the question of unlocking the gate does not arise. In our opinion, the order under appeal is only as an interim arrangement and the matter has to be finally decided by the learned Judge in the writ petition. As on today, it is not in dispute that pursuant to the order, the seal has been unlocked and the place in question has been used by the residents/public. Be that as it may, for our consideration, particularly, when the issue has to be adjudicated and decided after hearing both the appellants and respondents in the writ petition, we only direct that the present position, namely, status quo, that is, prevalent as on today shall be maintained and the **controversy raised by both the appellant and the respondents, could be adjudicated by the learned Judge as expeditiously.** In view of the above, we dispose of this appeal with the direction to maintain the status quo by both the parties, that is, prevalent as on today. We request the learned Judge to hear the matter on the next adjourned date. We have not decided the case on merits*



and has not expressed our opinion on the contention. All the contentions are left open for consideration by the learned Judge.

The writ petition shall be disposed of without reference to any of the observation in the order.”

7. It is thus observed that the parties were directed to maintain *status quo*, and this Court was requested by the Division Bench to resolve the controversy expeditiously. However, despite the Division Bench's order to hear and decide the matter promptly, this petition has remained pending for over a decade. Even today, a request for an adjournment was made by the petitioner's counsel, which the Court declined.

8. In the present case, on one hand, the private respondent asserts ownership of the land in question; on the other hand, the respondent-Corporation maintains its custodianship of the park in the larger public interest. The order issued by this Court on 17.12.2012 records that although symbolic possession may have been transferred to the private respondent, however, the physical possession remains with the respondent-Corporation. It is noted that the respondent-Corporation has invested substantial resources into the land, as reflected in paragraph no.17 of the order dated 17.12.2012. The parties have submitted that the land in question is currently being utilized by the public, and the *status quo* order passed by the Division Bench is being maintained.

9. The respondent-MCD was admittedly not a party to the civil suit. It is also acknowledged that the respondent-MCD has spent public funds to maintain the park. There is also a dispute regarding whether physical possession of the land was, in fact, handed over to the private respondent. The private respondent's claim over the land is based on the civil suit; however,



the respondent-MCD contends that the land is public property and that the decree from the civil suit does not benefit the private respondent. The said assertion is made on the strength of the fact that the suit was filed based on a generic Khasra number rather than specific details. The identity of the land was not precisely defined, and at the time of the alleged execution of the decree, no demarcation of the land was carried out. Therefore, land designated as a public park cannot be reclassified as private property. The status of the parks remains unchanged despite the decree, and they continue to be maintained as public parks.

10. Thus, based on a comprehensive examination of the petition, it is evident that the case at hand requires meticulous scrutiny of details, documents, witness statements, and other pertinent factors related to title, possession, adverse possession, construction actions, and additional considerations necessary to arrive at a conclusive judgment.

11. The Supreme Court in the case of *Sohan Lal v. Union of India*¹, has held that declaration of title to property and allied reliefs cannot be granted in writ jurisdiction. Similarly, in *Sri Tirumala Venkateswara Timber and Bamboo Firm v. Commercial Tax Officer, Rajahmundry*², the Supreme Court observed that the civil suit would be an appropriate forum to decide a controversy which involves mixed questions of law and fact and more particularly, highly disputed questions. It is thus seen that as a settled principle of law, the writ courts should normally keep their hands off from adjudicating issues which require intensive appreciation of disputed questions of facts and law.

¹1957 SCC OnLine SC 39

²(1968) 21 STC 312



12. In light of the aforementioned facts and circumstances, the Court, while exercising jurisdiction under Article 226 of the Constitution of India, finds itself unable to adjudicate the correctness of the assertions made by the parties. The Court, however, leaves the doors open for the private respondent to exercise the option to institute a civil suit to seek restoration of possession, if so advised and chosen.

13. Accordingly, the writ petition stands dismissed. Pending application(s), if any, are also disposed of.

14. Needless to state, if the private respondent institutes a suit, it shall be adjudicated solely based on the evidence and materials presented by the parties, without being influenced by any of the observations made by this Court during the current proceedings. It is further clarified that the interim orders were issued only to facilitate interim arrangements until the petition is finally adjudicated and their application is confined to that extent only.

15. All rights and contentions are left open.

PURUSHAINDR KUMAR KAURAV, J

JULY 31, 2024/KG