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

+ W.P.(C) 6776/2022 & CM APPL. 64853-64854/2024

I.K.SAINI

.....Petitioner

Through: Petitioner in Person.

versus

THE SOUTH DELHI MUNICIPAL
CORPORATION AND ORS

.....Respondents

Through: Mr. Divya Prakash Pande,
Standing Counsel for MCD.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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06.11.2024

1. The petitioner in person is a grandson of late Mr. Som Nath Saini, who was the owner of House No. A-70, South Extension, Part-II, New Delhi-110049 [“subject property”]. He has filed this writ petition, under Article 226 of the Constitution, against the Municipal Corporation of Delhi [“MCD”] and also arrayed respondent Nos. 5, 6 and 7, who are stated to be occupants of various parts of the subject property.

2. The petitioner is the son of late Mr. Krishan Kumar Saini, who was a son of late Mr. Som Nath Saini. Respondent No. 5 is the wife of late Mr. Surinder Kumar Saini, one of the other sons of late Mr. Som Nath Saini. Respondent Nos. 6 and 7 are in occupation of part of the subject property, claiming to be the wife and son of late Mr. Rajinder Kumar Saini, another son of late Mr. Som Nath Saini. The status of respondent



Nos. 6 and 7 is disputed by the petitioner.

3. The grievance with which the petitioner has approached this Court is that the subject property has been mutated by MCD in the names of late Mr. Surender Kumar Saini and late Mr. Rajinder Kumar Saini, both uncles of the present petitioner, to the exclusion of the petitioner's branch of the family.

4. By an order dated 13.09.2022, the petitioner's relief was restricted to the following prayers:

"A. That the Hon'ble Court may issue Writ of mandamus to show cause the respondent Nos. 1 & 2 of property tax as to why the illegal mutation of the property No. A-70, South Extension, Part-II, New Delhi-110049 of Late Som Nath Saini should not be cancelled;

B. A direction upon the respondent Nos. 1 & 2 to include the name of the family of Late Krishan Kumar Saini (Karta of the family of Late Som Nath Saini) in the property tax Records (being the significant government records of the property) of the property of his father Late Som Nath Saini;

C. A direction upon the Respondent Nos. 1 & 2 to issue a non-dues certificate against the representation dated 08.06.2020 by aged Senior citizen Smt. Asha Saini;

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F. A Writ in the nature of mandamus directing the respondent No. 3 to remove any construction which is deviation and/or otherwise from the building plans of property No. A-70, South Extension, Part-II, New Delhi-110049;"

5. The petitioner's attempt to reopen prayers (d) and (e) has been rejected by orders dated 23.11.2022, 14.02.2023 and 23.05.2023, on various applications filed by him. The present petition is therefore confined to the above prayers.

6. Factually, the position is that the mutation of the property in favour of late Mr. Surender Kumar Saini and late Mr. Rajinder Kumar Saini was undertaken by MCD on their application, which was accompanied by an



alleged will of late Mr. Som Nath Saini dated 26.08.1982. However, the learned District Court rejected a probate petition of the alleged will, filed by late Mr. Surinder Kumar Saini, in Probate Case No. PC 280A/1984. The learned District Court, by judgment dated 27.02.1987, came to the conclusion that the execution of a valid will by late Mr. Som Nath Saini, had not been proved. The judgment was carried in appeal to this Court by late Mr. Rajinder Kumar Saini [FAO 104/1987], and was upheld by a judgment of this Court dated 09.05.2016. The judgment of this Court has not been challenged. The present situation, therefore, is that the will relied upon in support of the impugned mutation, has been held to be invalid by the competent court.

7. As far as mutation in favour of late Mr. Surinder Kumar Saini and late Mr. Rajinder Kumar Saini is concerned, Mr. Divya Prakash Pande, learned Standing Counsel for MCD, states that the petitioner may approach MCD alongwith the required documents. MCD will take a decision, in accordance with law, after notice to the other heirs of late Mr. Som Nath Saini. While taking a decision on the aforesaid issue, MCD will also take into consideration the orders passed in the civil proceedings between the parties. The petitioner is at liberty to approach MCD within 4 weeks for this purpose, and MCD to take a decision, in accordance with law, within three months thereafter.

8. In the meanwhile, the petitioner's father, late Mr. Krishan Kumar Saini filed a suit in this Court for partition of the suit property, which has since been transferred to the District Court. In the partition suit, a preliminary decree was passed by the District Court on 10.06.2022, which has been challenged by the petitioner in RFA 1/2023. The appeal



remains pending and further proceedings in the partition suit have been stayed by an order of this Court dated 20.02.2023. In these circumstances, it appears to me that the petitioner's rights and entitlements are required to be settled in the civil proceedings between members of the family. The ultimate decision on entitlement to the property and the shares of each party are pending adjudication before the Civil Court.

9. The aforesaid directions take care of prayer (a) and (b) of the petition.

10. As far as prayer (c) is concerned, the petitioner seeks issuance of a no dues certificate in terms of a representation dated 05.06.2020, in which the petitioner's mother sought a no dues certificate in respect of property tax arrears for the subject property. MCD is directed to inform the petitioner as to the present status of the property tax dues in respect of the subject property, within a period of eight weeks from today.

11. The only remaining prayer [prayer (f)] is with regard to alleged unauthorised construction in the property. As far as this aspect is concerned, MCD has filed a status report dated 02.05.2024, in which it is stated that unauthorised construction was found in the nature of excess coverage in the shape of washroom/toilet on the ground floor of the subject property. A show cause notice dated 11.03.2024 has been issued to the owners/occupiers. A demolition order has already been passed on 21.03.2024. MCD is at liberty to take action in accordance with law as far as this aspect is concerned. It is made clear that this direction is made without prejudice to the rights and contentions of the owners/occupants of the property, whose rights and remedies available in law are expressly reserved. MCD is directed to take action strictly in accordance with law,



and after complying with all statutory requirements.

12. The petitioner claims that unauthorised construction in the property is in fact more than the construction identified by MCD. If the petitioner has any further grievance with regard to unauthorised construction, he is at liberty to approach the the Special Task Force [“STF”], constituted by the Supreme Court *vide* orders dated 24.04.2018 and 18.07.2018 in W.P.(C) 4677/1985 [*M.C. Mehta vs Union of India & Ors.*]. This direction is made with reference to the decisions of the Division Bench in *Devender vs. Govt. of NCT of Delhi and Ors* [order dated 20.09.2018 in W.P.(C) 1807/2018], *Sneh Lata & Anr. vs. North Delhi Municipal Corporation & Anr.* [order dated 08.04.2019 in LPA 245/2019], *Fazruddin vs. DDA & Ors.* [order dated 23.04.2019 in WP (C) 4649/2017], and in *Himanshu vs. East Delhi Municipal Corporation & Anr.* [order dated 31.07.2023 in W.P.(C) 8104/2022], and decisions of Coordinate Benches in *Abdul Gaffar vs South Delhi Municipal Corporation & Ors.* [order dated 28.02.2019 in W.P.(C) 1773/2019] and *Rashiduddin Malik vs. MCD & Ors.* [order dated 02.09.2024 in WP (C) 12102/2024]. If the petitioner approaches the STF, STF may take action expeditiously, in accordance with law.

13. The writ petition stands disposed of with the aforesaid directions.

PRATEEK JALAN, J

NOVEMBER 6, 2024

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