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

+ **W.P.(C) 14368/2023 & CM APPLs. 56852/2023 and 52141/2024**

SH. ASHOK KAKKAR & ANR.Petitioners

Through: **Ms. Akanksha Kaul, Advocate**

versus

GOVERNMENT OF NCT OF DELHI & ORS.Respondents

Through: **Mr. Tushar Sannu, Advocate for Respondents No.1 to 6.**

Mr. Chetanya Singh and Mr. Samarth Tyagi, Advocates for Respondent No.7/MCD.

Mr. Dhruv Tamta, Advocate for Respondent No.8.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

18.12.2024

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1. This writ petition has been preferred on behalf of the Petitioners seeking a direction to the Respondents to carry out demarcation of land admeasuring 141 Bighas 12 Biswas, i.e. 29.5 acres, situated in Khasra No.(s) 14 min (0-10), 34 min (0-10), 38 min (0-10), 43 min (0-10), 44 min (1-0), 49 min (1-0), 50 min (0-15), 780 (1-17), 770/2 (3-0), 783 (2-9), 784 min (2-5), 853/1 (3-4), 852/1 (3-15), 854/1 (3-7), 837/1 (3-16), 818 (4-16), 874/2 (3-7), 878 (1-2), 885 (4-16), 889 (3-16), 891/2 min (3-6), 1430 (0-10), 1574 (1-1), 1948 (4-16), 839 (4-16), 1436 (4-16), 1437 (4-16), 1438 min (3-10), 1450 (4-16), 1451 (4-16), 1478 (4-16), 1487 (4-16), 1363 min (2-16), 1364 min (3-6), 1410 min (4-10), 806 (4-16), 1900 min (2-13), 1922 (4-16), 1923 (4-8), 1924 (4-16), 1925 (4-17), 1936/2 (2-2), 1937 (4-16), 1938 (4-16), falling in the revenue estate of Village Aya Nagar, Delhi ('subject land')



allegedly partitioned in favour of the Petitioners vide order dated 05.02.2008 passed by learned SDM, Hauz Khas.

2. Petitioners and their family members are stated to be the recorded owners of the subject land. It is averred in the petition that one owner of the other portions of lands falling in the same Khasras had filed a suit for partition under Section 55 of the Delhi Land Reforms Act, 1954 ('1954 Act') before the learned SDM seeking partition of the then undivided land which measured 826 Bighas 2 Biswas, i.e. 172.10 acres. By order dated 05.02.2008, the learned SDM partitioned the aforesaid lands and Petitioners have been repeatedly requesting the learned Tehsildar to demarcate the land falling in the exclusive partitioned ownership of the Petitioners, however, till date no action has been taken compelling the Petitioners to approach this Court.

3. Ms. Akanksha Kaul, learned counsel appearing on behalf of the Petitioners submits that Petitioners along with the real brother of Petitioner No.1, namely Mr. Suresh Kakkar are recorded owners of land measuring 141 Bighas and 12 Biswas, i.e. the subject land. By order dated 05.02.2008, learned SDM, Hauz Khas partitioned the lands based on a purported land survey report by Respondent No.3 on the ground that parties had consented for the partition *albeit* no such consent was given by the Petitioners. This order was passed *ex parte* and therefore, the Petitioners had filed an appeal bearing No.35/2008 under Section 185 of 1954 Act on 25.07.2008 and vide order dated 29.07.2008, the Appellate Court had restrained from creating third party rights qua the entire land until further orders as also stayed the operation of order dated 05.02.2008. The appeal was dismissed on 16.09.2019 for non-prosecution and Petitioners are running from pillar to



post for adjudication on the application seeking revival of the appeal but apparently, the files are not traceable.

4. It is further urged that this Court had directed the learned SDM, Hauz Khas to file an affidavit detailing the steps taken to trace out the file which has been filed, in which it is stated that the file is not traceable and an FIR has been lodged on 13.08.2024 in Police Station: Neb Sarai and in these circumstances, Petitioners cannot be left remediless. Since Petitioners were not party to the *ex parte* proceedings, they are unaware of any map or demarcation report that may have been produced and therefore, the only solution is to direct the concerned authorities to carry out a fresh demarcation of the subject land to the extent the partitioned land falls to the share of the Petitioners as per order dated 05.02.2008 without prejudice to the rights of the Petitioners to make further claims if required.

5. Learned counsel appearing for the DDA submits that the land is not a DDA Gram Sabha land and therefore, under the 1957 Act, the DDA is not in a position to carry out the demarcation and the onus was squarely falls on the Revenue Officials.

6. Mr. Sannu, learned counsel submits that an affidavit has been filed stating that the Petitioners had filed an appeal before the District Magistrate (South) on 25.07.2008 challenging the order of the Revenue Assistant dated 05.02.2008 but the file is not traceable and an FIR has been lodged in this regard. Insofar as demarcation is concerned, the Revenue Officials do not have any jurisdiction considering that village Aya Nagar where the subject land is situated has been urbanised. It is also submitted that in the affidavit filed by the answering Respondent on 26.08.2024, a categorical stand is taken that Petitioners cannot demand demarcation of the subject land except



for Khasra Nos. 44 and 1923 as all other parcels of land which form part of the subject land have vested in Gaon Sabha, Aya Nagar as per Section 81 of 1954 Act.

7. Heard counsels for the parties.

8. This case reflects a peculiar situation where an order of partition was passed by the learned SDM, Hauz Khas on 05.02.2008 partitioning the then undivided land measuring 826 Bighas and 2 Biswas on a suit filed under Section 55 of the 1954 Act. The order was passed *ex parte* against the Petitioners and they filed an appeal challenging the said order, which was dismissed for non-prosecution and application was filed for restoration, but the file is untraceable and an FIR is stated to have been lodged in this regard on direction of District Magistrate (South) on 13.08.2024. Therefore, on one hand Petitioners are unable to seek adjudication of application for revival of their appeal, which was dismissed for non-prosecution, on the other hand, Revenue Officials take a stand that they have no role to play in the demarcation at this stage as the village in which subject land is situated stands urbanised. Ms. Kaul is right in her submission that Petitioners cannot be left remediless and solution has to be found. Petitioners are willing to seek demarcation of the land which presently and admittedly, falls to their share as per the order of partition dated 05.02.2008, subject to further claims, if any.

9. In my considered view, the only alternative is to direct the Respondents to jointly carry out demarcation of the subject land and while doing so, Petitioners and all other stakeholders will be called upon to join the proceedings of demarcation. Needless to state that the Revenue Officials and the DDA will co-operate with each other to carry out this exercise,



which shall be commenced and concluded within 06 months from today. In case of any surviving grievance, Petitioners will be entitled to seek revival of the writ petition.

10. Writ petition stands disposed of in the aforesaid terms along with pending applications.

JYOTI SINGH, J

DECEMBER 18, 2024/j