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

+ LPA 44/2024 & CM APPL. 2198/2024 CM APPL. 2199/2024

MR ISHWAR CHAND SAINI & ANR. Appellants

Through: Mr. Debarshi Bhuyan with Mr.
Gaurav Saini and Ms. Kirti Saini,
Advocates

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Manika Tripathy, Standing
Counsel, DDA

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **12.01.2024**

1. The present appeal has been filed under Clause 10 of the Letters Patent Act, 1865 impugning the order dated 01.11.2023 passed in WP(C) 2751/2023, titled as **Mr. Ishwar Chand Saini & Anr. v. Delhi Development Authority**, whereby the learned Single Judge dismissed the petition filed by the Appellants herein.

1.1. The Appellants herein were running a small corner shop on 36 sq. yds., adjacent to the Prachin Shiv Shakti Durga Mandir, bearing Shop No. 102-B, which as per the Appellants falls in Khasra Sakni No.10 forming part of Khasra No. 78 in the Village Khirki's Lal Dora abadi deh; abutting Khirki Mosque.

1.2. The Appellants state that they sought information from the Archeological Survey of India ('ASI'), regarding the protected areas around



Khirkhi Mosque. As per the Appellants, according to the information received from the ASI on 19.02.2018, the Appellants' shop fell in Khasra Sakni No. 10, near the 'well' and next to the temple, which forms part of Khasra No. 78 of abadi deh of Village Khirkhi.

1.3. It is stated that the shop of the Appellants was unlawfully demolished on 15.11.2022 by the Respondent without prior notice and further the Respondent installed a sign board proclaiming that the land belongs to the Delhi Development Authority ('DDA'). The Appellants state that it is a matter of record that Khasra No. 78 has not been acquired by Respondent; and therefore, the said actions of the Respondent were unlawful.

1.4. Initially, both the said demolition action as well as erection of the sign-board was challenged in the writ petition. However, the Appellant at the first hearing on 12.04.2023 restricted the challenge in the writ petition to the erection of the sign-board alone and did not press for the other reliefs.

1.5. The said writ petition has been dismissed by the learned Single Judge vide impugned judgment dated 01.11.2023 and has also adjudicated upon the reliefs which had been withdrawn vide order dated 12.04.2023.

Arguments of the Appellants

2. The learned counsel for the Appellants states that the impugned order is erroneous inasmuch as it fails to notice the previous orders dated 12.04.2023 and 31.08.2023 which recorded that the relief in the writ petition had been limited to the removal of the sign board installed by the Respondent (prayer clause [a]).

2.1 He states that the remaining prayers in the original writ stood deleted. He states however, in the impugned order the learned Single Judge has adjudicated upon the deleted prayers and this has caused prejudice to the



Appellants herein; as the Appellants had reserved the right to approach the competent court for adjudication of the reliefs which were deleted vide the order dated 12.04.2023.

2.2 He states that the relief of removal of sign-board has been decided by the learned Single Judge without perusing maps issued by the office of the Patwari and ASI. He states the said map duly reflects the location of the shop of the Appellants in Khasra No. 78, which has admittedly not been acquired. He states that Respondent claims right over Khasra Nos. 230 and 231 and therefore the sign-board has been wrongly erected in Khasra No. 78.

2.3 He states that the Appellants as well as the predecessor of the Appellants had been running a shop in Khasra No. 78 which was illegally demolished by the Respondent. He states that the Appellants had been paying property tax to the municipal corporation regularly for the said shop and therefore the Appellants has locus to maintain the writ petition.

Arguments of the Respondent

3. In reply, learned counsel for the Respondent states that it is a matter of record that the Appellants herein had confined their reliefs as recorded in order dated 12.04.2023.

3.1 She states that however, even with respect to the relief of removal of sign-board sought by the Appellants, the same is not maintainable and is without any merits. She states that the Respondent has erected the sign-board on the land, which stands acquired and has therefore been lawfully erected. She states that the Respondent disputes that the sign-board has been erected on Khasra No. 78 as alleged by the Appellant. She states that the Respondent disputes the correctness of the map of the Patwari or ASI as



relied upon by the Appellants and states that inferences drawn from the said map(s) are not admitted.

3.2 She states that the Respondent also contests the locus of the Appellants to maintain the writ petition. She states that the Appellant has no right, title or interest either in the land forming part of Khasra No. 78 or in the land forming part of Khasra No. 230 and 231.

Analysis and Findings

4. This Court has considered the submission of the counsel for the parties and perused the record.

5. This Court has perused the order dated 12.04.2023 and 31.08.2023 passed in the writ petition. The submission of the Appellants that they had limited their relief in the writ petition is correct. For the sake of completeness, the surviving relief in the writ petition to which the Appellant confined himself reads as under:

“A. Pass a writ/order/direction in the nature of mandamus or any other appropriate writ in favour of the Petitioners and against the Respondent thereby directing the Respondent authority to remove its signboard which has been planted unauthorizedly and illegally at the occupational site of the Petitioners adjacent to Prachin Shiv Shakti Durga mandir on Khasra No.78....”

(Emphasis Supplied)

6. The remaining reliefs in the writ petition were permitted to be withdrawn on 12.04.2023 and therefore, could not have been adjudicated upon by the learned Single Judge.

7. In light of the pleadings of the parties, even with respect to the limited relief of removal of sign-board prayed for in the writ petition, the Appellants are not entitled to the said relief in a writ proceeding, in view of the disputed facts.



7.1 The Appellants have relied upon the map issued by the office of Patwari and documents received from ASI under the cover of letter dated 19.02.2018 to contend that the demolished shop of the Appellants was located in Khasra No. 78 and the sign-board by Respondent has also been erected on Khasra No. 78. The Respondent has disputed the said documents relied upon by the Appellants and the inferences drawn by the Appellants that their shop and sign board was located in Khasra No. 78. It is the stand of the Respondent that Appellants shop was set up in Khasra No. 230 and 231 and since the same was unauthorized it has been demolished.

7.2 It is a matter of record that neither ASI nor the Patwari have marked the location of Appellants demolished shop on this map. The Appellants want this Court to arrive at a finding that their shop was located at Khasra No. 78, by appreciating the said maps on the basis of the common structures marked out in the said maps. However, on a mere perusal of the said documents, this Court is unable to conclude that the location of the demolished shop and the existing sign-board falls in Khasra No. 78.

7.3 The Appellants contends that the sign-board is erected on Khasra No. 78, whereas, Respondent disputes the said facts and contends that the sign-board has been erected on the acquired land falling in Khasra Nos. 230 and 231.

7.1 Pertinently, the Appellants do not dispute that land in Khasra No. 230 and 231 has been acquired by the Respondent; and as per the Respondent the sign-board is erected in Khasra Nos. 230 and 231. It is also not in dispute that Khasra Nos. 78, 230 and 231 are adjoining each other.

7.2 Therefore, the issue as regards the physical location of the sign-board with respect to the Khasra number in which it is installed would have to be



determined by a competent court on the basis of the evidence led by the parties.

7.3 Similarly, in view of the disputes raised by the Respondent, the Appellants will have to prove the documents relied upon from the office of the ASI and the Patwari and explain how the said maps proves his contentions.

7.4 This Court is of the opinion that in these disputed facts the relief of the removal of the sign-board cannot be granted in the writ proceedings. We therefore, grant liberty to the Appellants to seek the relief of removal of sign-board (as well as the reliefs withdrawn vide order dated 12.04.2023 in the writ petition) before a competent court in accordance with law.

8. In view of the order dated 12.04.2023 passed in the writ petition and the liberty granted by this order, upon the Appellants approaching a competent court for the said reliefs, it is clarified that the observations made by the learned Single Judge in the impugned order dated 01.11.2023 shall not be relied upon by the Respondent; and the competent court shall decide the claims of the Appellants in accordance with law. It is clarified that all the rights and contentions of both the parties are left open.

9. With the aforesaid directions, the present appeal along with applications is disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 12, 2024/hp/sk