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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 2811/2024, CRL.M.A. 27488/2024 &
CRL.M.A. 27489/2024

H P AGRAWALPetitioner
Through: Mr. Hemant Kumar & Mr.
Bhavishya Mohaniya,
Advocates.

versus

STATE OF NCT OF DELHI AND ANR.
& ANR.Respondents
Through: Mr. Rahul Tyagi, ASC-
CRL for the State.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
11.09.2024

1. The present petition is filed challenging the order dated 24.01.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Karkardooma Courts in Cr. Rev. No. 216/2023 titled *H P Aggarwal vs. State & Anr.*
2. By impugned order, the learned ASJ dismissed the revision petition filed by the petitioner against the order dated 03.07.2023 passed by the learned Chief Metropolitan Magistrate ('**CMM**'), Karkardooma Courts whereby Respondent No. 2 was permitted to file a protest petition in respect of the cancellation report in the FIR which was registered to find out the offenders who had encroached upon the government land.
3. The learned ASJ noted that permitting Respondent No. 2, who is not cited as an accused in the present case to file a protest petition, is merely an interlocutory order and did not curtail the W.P.(CRL) 2811/2024

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right of the petitioner in any manner. The learned ASJ accordingly dismissed the revision petition filed by the petitioner.

4. The FIR in the present case being FIR No. 1276/2015 was registered on the directions of the learned Special Judge (PC Act) CBI, East, Karkardooma Courts, Delhi under Sections 420/447/34 of the Indian Penal Code, 1860 ('IPC'). It was noted that the subject property was awarded to DDA, and the physical possession of the subject property was handed over to the DDA on 01.10.1982. It was further noted that the subject property, as per the DDA record, also belonged to the DDA. It was observed that the previous encroachers of the subject property had taken over the government land for their own use. It was further observed that the encroachers had made the subject property their own by cheating the government, and had sold/purchased it.

5. Subsequently, the investigating agency filed a cancellation report stating the following:

“Ownership of property lies with whoever have any document related to that property as per Section 2(a) of the National Territory of Delhi (Recognition of property Right of Residents in unauthorized colony) Act, 2019.

In view of the facts & circumstances, as enumerated above it is quite clear that despite the facts that land was acquired by DDA, it was encroached upon and a full-fledged unauthorized colony with all amenities is flourishing there. As per the The National Territory of Delhi (Special Provisions) ordinance 2007 and The National Territory of Delhi (Recognition of property Rights of Residents in Unauthorized Colonies) Act 2019, no action can be taken against the property holders and for all practical purpose they are the owners with documents as per the Act.

In these circumstances, when land acquiring agency i.e. DDA is not making any claim against the owners of the property of the encroached land on the basis of documents Act and infact have regularized their ownership.”



6. It is the case of the petitioner that as per The National Territory of Delhi (Recognition of property Rights of Residents in Unauthorized Colonies) Act 2019, the petitioner is the effective owner of the subject property.

7. The learned Trial Court on 16.12.2021, registered the cancellation report and issued notice to the petitioner. Subsequently, on 18.01.2023, the son of the petitioner appeared and submitted that he had no objection if the cancellation report was accepted. It is seen that thereafter, Respondent No. 2 sought time to file a protest petition which was allowed by the learned CMM *vide* order dated 03.07.2023.

8. The learned counsel for the petitioner submits that the learned ASJ erred in upholding the order dated 03.07.2023 passed by the learned CMM thereby allowing Respondent No. 2 to file a protest petition. He submits that the petitioner is the effective owner of the subject property. He submits that since Respondent No. 2 is a third party, and is unconcerned with the outcome of the investigation, the learned CMM ought not to have allowed Respondent No. 2 to file a protest petition in the present case.

9. It is pertinent to mention that the petitioner is essentially aggrieved by the order dated 03.07.2023 whereby Respondent No. 2's request to file a protest petition was allowed.

10. It is seen that no adverse order has been passed so as to cause prejudice to the petitioner. Merely because Respondent No. 2 was permitted to file a protest petition in respect of a cancellation report in an FIR where neither the petitioner is the complainant nor Respondent No. 2 an accused, does not infringe any right or cause prejudice to the petitioner in any manner.



11. It is the case of the petitioner that Respondent No. 2 had forged certain documents including an agreement to sell, a power of attorney, a will, a receipt to claim title over the property of the petitioner for which an FIR being FIR No. 676/2014 had been lodged and the same is pending trial wherein Respondent No. 2 is arrayed as an accused.

12. However, it is pertinent to mention that at this stage, Respondent No. 2 has only been allowed to file an application. The locus of Respondent No. 2 or the merits of the arguments raised by Respondent No. 2 is yet to be decided.

13. It is further pertinent to note that the petitioner too was not the complainant in the present case. The FIR was registered on the directions of the learned Special Judge to enquire into the illegal encroachment of the DDA land. Consequently, merely because Respondent No. 2 was allowed to file a protest petition where neither the petitioner was the complainant nor the Respondent No. 2 an accused does not infringe the right of the petitioner in any manner.

14. In view of the aforesaid, this Court does not find any reason to interfere with the impugned order.

15. The present petition is therefore dismissed.

16. Needless to say, the petitioner is permitted to take all arguments before the learned Trial Court.

AMIT MAHAJAN, J

SEPTEMBER 11, 2024

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