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

\+ W.P.(C) 10649/2015, CM APPLs. 27257/2015, 9951/2017, 25351/2019 & 45451/2021

SARDAR SINGH & ORS. .....Petitioners

Through: Mr.Dinesh Garg, Adv.

versus

THE EAST DELHI MUNICIPAL CORPORATION & ANR. .....Respondents

Through: Mr.Tushar Sannu. SC for for MCD with Mr.Sahaj Karan Singh, Advs. Ms.Aakriti Garg and Ms.Mahima Anand, Advs for DUSIB.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 20.08.2024

1. A brief overview of the facts of the case reveals that it pertains to the acquisition of land by the respondents pursuant to a notification dated 13.11.1959, purportedly owned by the ancestors of the petitioner.

2. The petitioner, through the instant writ petition, seeks directions against the respondents to vacate the subject land and hand over its vacant and unencumbered possession.

3. The learned counsel for the petitioners submits that the subject property was acquired by the respondents pursuant to Notification No. F.15 (III)/59/LSG dated 13.11.1959, issued under Section 4 of the Land Acquisition Act, 1894. According to him, the aforementioned notification

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was followed by various consequential acquisition notifications, culminating in the final acquisition of the land by the respondents on 19.09.1986.

4. He further submits that during the pendency of the instant writ petition, possession was handed over to the petitioner, however, it was subsequently reclaimed by the official respondents based on an erroneous assumption. In light of these circumstances, he prays that the Court may direct the respondents to restore possession to the petitioners.

5. Having heard the arguments advanced by the learned counsel for the petitioners, the Court is of the considered opinion that the petitioner has to resort to the appropriate civil remedy. The remedy under Article 226 of the Constitution of India cannot be a substitute to the proceedings under Civil Suit.

6. The question of whether the petitioners are entitled to possession of the land in question must be determined based on various facts and circumstances, which can only be properly assessed when the parties are given an appropriate opportunity to present oral and documentary evidence. Granting the relief sought would effectively amount to decreeing a suit for possession, a remedy typically not entertained within writ jurisdiction. The Court, therefore, leaves it open to the petitioner to pursue the appropriate remedy under civil law.

7. The stand adopted by this Court is fortified in view of the law laid down by the Supreme Court in ***Sohan Lal v. Union of India***[1], where the Court held that it does not adjudicate on the merits of rival claims to property title under writ jurisdiction. The relevant portion is extracted hereunder: -

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> *"5. We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered."*

8. Further reliance is placed on ***Sri Tirumala Venkateswara Timber & Bamboo Firm v. CTO***[2], wherein, the Supreme Court has held that even in a case of mixed questions of fact and law, the appropriate forum has to determine such mixed questions and the same cannot be determined under Article 226 of the Constitution of India. The relevant paragraph of the said decision reads as under:-

> *"It is manifest that the question as to whether the transactions in the present case are sales or contracts of agency is a mixed question of fact and law and must be investigated with reference to the material which the appellant might be able to place before the appropriate authority. The question is not one which can properly be determined in an application for a writ under Article 226 of the Constitution."*

9. Further, the Supreme Court in ***P.R. Murlidharan v. Swami Dharmananda Theertha Padar***[3], has held that a writ proceeding cannot be a substitute for a civil suit. The relevant paragraph reads as under:-

> *"12…In this view of the matter, we are of the opinion that such*

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[1] 1957 SCC OnLine SC 39.
[2] 1967 SCC OnLine SC 178.
[3] (2006) 4 SCC 501.

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disputed questions could not have been gone into by the High Court in a writ proceeding.
13. Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit."

10. Learned counsel for the petitioners, however, submits that the petitioners require some time to arrange for the court fee, which will reasonably delay the process of approaching the appropriate Civil Court. He therefore, requests that until the petitioners are able to take appropriate recourse before the Civil Court, the respondents be restrained from making any alteration to the position of the disputed land.

11. Considering that the instant petition has been pending for a significant period, the Court directs the respondents to maintain the current *status quo* for a period of 20 days from today.

12. Needless to state, the Court has not dealt with the controversy on the merits of the case and all rights and contentions are left open. If the petitioners take appropriate remedy, let the same be decided strictly in accordance with law.

13. The instant petition stands disposed of in the aforesaid terms.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 20, 2024/MJ

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