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

+ W.P.(C) 2686/2023 & CM APPL. 13713/2023

DELHI WAQF BOARD Petitioner
Through: Mr. Rahul Mehra, Sr. Advocate with
Mr. Wajeeh Shafiq, Standing Counsel
and Ms. Ramsha Shan, Advocate.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Chetan Sharma, ASG with Mr.
Kritiman Singh, CGSC, Mr. Waize Ali
Noor, Mr. Amit Gupta, Mr. Saurabh
Tripathi, Mr. Vikramaditya Singh,
Ms. Shreya V. Mehra and Mr.
Madhav Bajaj, Advocates for UOI.
Ms. Shobhana Takiar, Standing
Counsel, DDA.
Mr. Sanjay Poddar, Sr. Advocate with
Mr. Parvinder Chauhan and Mr.
Sushil Dixit, Advocates for applicant.

AND

W.P.(C) 2620/2023 & CM APPL. 13449/2023

SYED KALBE JAWAD NAQVI & ANR. Petitioners
Through: Ms. Tasneem Ahmadi and Ms.
Mahima Rathi, Advocates.

Versus

MINISTRY OF HOME AFFAIRS & ORS. Respondents
Through: Mr. Chetan Sharma, ASG with Mr.
Kritiman Singh, CGSC, Mr. Waize Ali
Noor, Mr. Amit Gupta, Mr. S. Tripathi,

Mr.Vikramaditya Singh, Ms.Shreya V. Mehra and Mr.Madhav Bajaj, Advocates for UOI.

Ms. Shobhana Takiar, Standing Counsel, DDA.

Mr. Wajeeh Shafiq, Standing Counsel with Ms.Ramsha Shan, Advocate for Delhi Waqf Board.

Mr. Syed Hasan Isfahani, Advocate for applicant.

Mr.Sanjay Poddar, Sr. Advocate with Mr.Parvinder Chauhan and Mr. Sushil Dixit, Advocates for applicant.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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26.04.2023

CM APPL. 10371/2023 in W.P.(C) 2686/2023 (Exemption)

CM APPL. 10137/2023 in W.P.(C) 2620/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Applications are disposed of.

W.P.(C) 2686/2023

W.P.(C) 2620/2023

1. Issue notice.
2. Mr. Kritiman Singh, learned CGSC for Union of India/respondent No.1 accepts notice and seeks time to file Counter Affidavit. Let the same be filed within six weeks with an advance copy to the counsel for the petitioner who may file Rejoinder, if any, before the next date of hearing.
3. Learned counsels for the other respondents also accept notice respectively.

4. Renotify on 06.11.2023.

CM APPL. 10372/2023 & CM APPL. 18098/2023 (Both Directions) in W.P.(C) 2686/2023

CM APPL. 10136/2023 (Stay) in W.P.(C) 2620/2023

1. By way of captioned applications, the petitioners seek stay of the impugned letter dated 08.02.2023 issued by respondent No.1/Union of India with respect to 123 properties (hereafter referred to as ‘subject properties’) which it claims to have vested in Delhi Waqf Board (hereafter referred to as DWB) under Section 32 of the Waqf Act, 1995.

2. The Union has disputed the petitioner’s claim and submitted that the subject properties had been acquired by it in the acquisition proceedings taken out in the year 1911-1915 pursuant to which necessary mutation was carried out in the revenue records. Union claims to be in continuous legal possession of the subject properties and relies upon the judgment of the Constitution Bench in Indore Development Authority v. Manohar Lal reported as (2020) 8 SCC 129, to contend that upon the “acquisition”, the subject properties continue to be “vested” in it.

3. Apparently, on account of disputes pending before the Courts in relation to certain properties including the subject properties being claimed as Waqf properties, a “Committee of Officers” was constituted by the Union to look into the claims made by Waqf. The ‘Committee of Officers’, submitted its report, pursuant to which, a decision was taken by the Government to transfer the subject properties, amongst others, which were statedly under the control of L&DO/DDA, on perpetual lease hold basis to DWB subject to certain terms and conditions. An order in this regard was issued on 27.03.1984 by Government of India.

This order was challenged by way of W.P.(C) 1512/1984 in this Court. The Division Bench vide order dated 01.06.1984 directed that status quo be maintained in relation to the subject properties. It was also directed by the Court that no lease deed be executed unless already done. The said writ petition eventually came to be disposed of on 12.01.2011 with the following directions:-

“6. On perusal of the orders passed and the stand taken, we are of the considered opinion that the Union of India is required to consider the matter. Let the Union of India re-look at the matter and take a decision within six months from today. Till then, the interim order passed by this Court on 1st June, 1984 shall remain in force. Needless to say when we have directed that the Union of India shall have a fresh look into the matter, it shall keep in view the law in praesenti and the factual position. All other issues and contentions are left open. With the aforesaid direction, the writ petition stands disposed of.”

4. Later, on 05.03.2014, a gazette notification came to be published vide which, while exercising powers under Section 93 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the respondent conveyed its decision to withdraw the subject properties from acquisition. The said notification was challenged by way of W.P.(C) 2901/2014 before the Division Bench of this Court. The petition came to be disposed of on 20.08.2014 with the following directions:-

“Shri Sanjay Jain, the learned ASG who appeared on advance notice represented on instructions that the issue involved in this writ petition has already been taken note of by the Respondent No.1 and 2 and the same under active consideration. It is also represented that the present writ petition will be treated as a

representation and the grievance of the petitioners will also be considered and appropriate decision will be taken at the earliest.

The statement of the learned ASG is placed on record and the writ petition is accordingly disposed of leaving it open to the respondents No.1 and 2 to take an appropriate decision after giving an opportunity of hearing to all the stakeholders, particularly the respondent No. 4/Delhi Waqf Board. Till such time, status quo obtaining as on today with regard to the possession of the land in question shall be maintained.”

5. Reportedly, in deference to the aforesaid order dated 20.08.2014, the Union on 19.05.2016 constituted a One Member Committee to hear all the stakeholders/affected parties of staking claim to the subject properties. Admittedly, petitioners appeared before the One Member Committee. The Government found the report of the One Member Committee inconclusive and open ended, so it constituted a Two Member Committee on 10.02.2021. The terms of the reference of the Committee were delineated as under :-

- “i. To issue Public Notices to all stakeholder/affected parties providing opportunities of personal hearing.*
- ii. To hear all stakeholder/affected parties, record their statements and if required, allow them to make written submissions.*
- iii. To examine the statements given/written submissions made by stakeholders/affected parties and submit its report along with recommendations in respect of 123 denotified Waqf properties to the Government of India, Ministry of Urban Development.*
- iv. Demarcation of Waqf properties and Nazul lands wherever they co-exist.”*

6. Aggrieved by the constitution of Two Member Committee, DWB went to court by filing the writ petition W.P.(C) 1961/2022, wherein, vide

CM APPL. 5619/2022, an interim restraining order was sought against the functioning of the Committee. The relief sought in the petition was declined by a Coordinate Bench of this Court vide order dated 09.03.2022. The petitioner's challenge by way of LPA 273/2022 came to be dismissed by the Division Bench vide its order dated 20.04.2022. The petitioner preferred a Review Petition 146/2022 which also came to be dismissed by the Division Bench on 27.05.2022. The orders were not further challenged and thus attained finality.

The Two Member Committee in its order dated 19.05.2022 noted that DWB had sought 45 days' time to file objections however, no such objections were filed. Concededly, DWB did not file any representation/reply before the Committee.

7. It is claimed by the Union that Two Member Committee submitted its report based on which the impugned letter dated 08.02.2023 was issued whereby decision was taken to absolve the DWB of subject properties and carry physical inspection of the same.

8. In the above backdrop, the Union has filed a short affidavit putting out their contentions to oppose the grant of interim relief to the petitioners and asserted its right to inspect the subject properties. Learned ASG referred to the Short Affidavit placed on record to submit that as of now only physical inspection is sought whereafter, all the relevant material would be placed before the competent authority for appropriate decision in terms of the directions passed by the Division Bench in W.P.(C) 2901/2014 on 20.08.2014.

9. Though the matter was heard in some detail however, the issue at hand being one that is dated back to the year 1911, it would be appropriate

that a detailed counter affidavit is called for by the respondent and petitioners be given an opportunity to meet the contentions by filing a rejoinder. This calls for a more detailed hearing as the issues at hand involve complex facts and legally nuanced arguments advanced by the parties.

10. For the present, learned ASG has submitted that the respondent is confining its request only to the physical inspection of the properties in question, sought for in the communication dated 08.02.2023. Reference in this regard is made to paragraph 28 of the short affidavit of the respondent. The stated intent behind the issuance of letter dated 08.02.2023 is to carry out inspection of the subject properties and place all the relevant material before the competent authority in order to take an appropriate decision in the matter. This stand is stated to be without prejudice to respondent's contentions about having the title and ownership of the subject properties.

11. During the course of submissions, learned counsels for the parties have referred to the copy of the Counter Affidavit that was filed on behalf of Union in W.P.(C) 1512/1984. A perusal of the same would show that prior to passing of the order 27.03.1984 (whereby it was decided to transfer the subject properties on lease to the DWB), a Committee of Officers under the Chairmanship of Sh. Meer Nasrullah, Special Secretary (Minority Cell), Ministry of Home Affairs was set up on 22.08.1983 to survey many properties including the subject properties. The Committee included officers from Ministry of Work & Housing, Ministry of Home Affairs, Delhi Development Authority, L&DO and DWB. The Committee surveyed the subject properties in detail and assessed the nature of each property in the context of requirement of development of capital city. Reportedly, during the said survey, site verification of all the subject properties was also carried

out.

On a specific query put by the court to the learned counsel for the petitioners, it was confirmed that physical site inspection of the subject properties was carried out even in the past-in the year 1983.

12. In view thereof, pending a final decision in the present petition, respondent may act upon its letter dated 08.02.2023 to carry out the inspection while ensuring minimal disruption in the day-to-day administration of the subject properties by the petitioners. CM applications filed by the petitioners for interim directions, are kept pending for disposal after the completion of pleadings. Reply, if any be filed before the next date of hearing.

13. List on 06.11.2023.

MANOJ KUMAR OHRI, J

APRIL 26, 2023

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