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

+ **CS(OS) 885/2023**

BHISHAM KUMAR

..... Plaintiff

Through:

Mr.K.K.Sharma, Sr.Adv. with
Dr.D.S.Chaudhary, Dr.Ajay
Chaudhary, Mr.Bharat Chaudhary and
Ms.Chanchala Sharma, advts.

versus

UNION OF INDIA & ORS.

..... Defendants

Through:

Mr.Kamal R.Digpaul and Ms.Ishita
Pathak, Advts. for Mr.Ajay Digpaul,
CGSC for UOI.
Ms.Kritika Gupta and Mr.Kaushal
Jeet Kait, advts. for D-2/DDA.
Mr.Tushar Sannu, standing counsel
for MCD with Mr.Sahaj Karan Singh,
adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

22.01.2024

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I.A. 26312/2023 (under Order 39 R 1 AND 2 CPC)

The present application has been filed on behalf of the plaintiff under Order XXXIX rules 1 and 2 CPC.

Mr. K.K. Sharma, learned senior counsel for the plaintiff, is pressing for ad interim injunction. Learned senior counsel submits that even as per the documents of the defendants, the plaintiff is in possession of the land in question. Learned senior counsel therefore submits that since the plaintiff is in settled possession, the defendants may be restrained from constructing the



boundary wall. Learned senior counsel submits that the plaintiff had moved an application under Order I Rule 10 CPC in W.P.(C) 1710/2021 titled as **Deepak Kumar vs. Union of India**. Learned senior counsel further submits that the writ court vide order dated 26.08.2022 while issuing notice of the application granted protection to the plaintiff. It has further been submitted that the writ was disposed of vide order dated 31.10.2023 and the learned writ court inter alia held as under:

“6. In these circumstances, the writ petition is disposed of with a direction that, subject to the result of any civil proceedings that the intervenor may choose to institute, MCD will construct the boundary wall expeditiously, in terms of the order dated 15.12.2021 and 14.07.2022, and will take necessary steps to ensure that the property is not encroached upon.

7. In the event the intervenor files any civil proceedings, he may apply for interim orders therein which will bind the parties. In order to enable him to do so, parties are directed to maintain status quo for a period of four weeks from today.”

Learned senior counsel also submits that in pursuance to the order dated 31.10.2023, the present suit has been filed and therefore the plaintiff may be granted some protection otherwise the defendants are bent upon constructing a boundary wall around the property of the plaintiff.

Ms. Kritika Gupta, learned counsel for DDA/defendant no.2 submits that in fact the entire land in Khasra No.291 consisting of 12 Bighas and 13 Biswas was acquired, out of which possession of 9 bighas and 13 Biswas was taken, however, possession of the remaining land could not be taken as it was heavily built. It has been further submitted that out of this land, the subject matter of the present property is lying vacant. Learned counsel also submits that the plaintiff is not in possession of this land and the present suit



is filed only with the intent to grab the land.

Mr.Tushar Sannu, learned counsel for MCD/defendant no.3 also submits that the present land is a public park that has been maintained by the MCD since 1990. Learned counsel submits that W.P.(C) 1710/2021 was filed by a public person seeking direction to the MCD for constructing the boundary wall.

Learned senior counsel submits that a Local Commissioner may be appointed so as to ascertain that whether the land in question is a park or is in possession of the plaintiff.

In view of the submissions made in the application, this Court deems it appropriate to appoint Mr. Ganesh Khemka, Advocate (Mobile No.9463441118) as Local Commissioner (LC) who shall visit the aforementioned premises. LC shall be at liberty to take photographs as well as videos of the proceedings. LC shall also be at liberty to take assistance of the SHO of the concerned Police Station, who shall provide all such assistance as may be required. Defendant shall cooperate in the execution of the commission. The fee of the LC is fixed at Rs.1,50,000/- which shall be paid by the plaintiff. The Local commissioner shall execute the commission tomorrow at 5 p.m.

Let the report of the local commissioner be filed within one week.

List on 08.02.2024.

In the meantime, *status quo* be maintained *qua* the suit property.

DINESH KUMAR SHARMA, J

JANUARY 22, 2024

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