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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 Ms.
Chanchala Sharma, Advs.

versus

UNION OF INDIA & ORS.

..... Defendants

Through: Mr. Ajay Digpaul, CGSC for UOI
with Mr. Kamal Digpaul, Ms Ishita
Pathak, Advs.
Mr. Tushar Sannu, Standing Counsel
for D-2/MCD with Mr. Devvrat
Tiwari, Mr. Sahaj Karan Singh, Advs.
Ms. Kritika Gupta, Mr. Kaushal Jeet
Kait, Advs. for D-3/DDA.
Mr. Rupesh Kumar, Adv. for
applicant in I.A. 1898/2024.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

08.02.2024

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I.A. 26312/2023

1. The present application has been filed under Order XXXIX Rules 1 and 2 read with Section 151 CPC for Ex-parte Ad-interim injunction.
2. Pursuant to the order dated 22.01.2024, a Local Commissioner was appointed in the present matter.
3. Learned senior counsel for the plaintiff submits that his briefing



counsel received the copy of the local commissioner's report yesterday at 10:00 P.M. only and therefore he could not read the report.

4. Learned senior counsel submits that there are ample documents on record to show that the land belongs to the plaintiff. Learned senior counsel further submitted that in fact this land had been declared as residential land on 15.06.2012.
5. Learned senior counsel for the plaintiff has also submitted that he would prefer the objections against the report of the Local Commissioner.
6. Learned counsel submitted that the possession of the plaintiff may be protected and the defendants may be restrained from constructing any boundary wall.
7. The Local Commissioner has filed his report. The Local Commissioner in its report inter alia held as under:

“12. Upon thorough physical examination of the suit premises, it seems as if the land under dispute is vacant and without any construction. The LC found nothing to indicate that the suit property was under the exclusive possession of the plaintiff. Instead, numerous indicators showed that the land was being used as a thoroughfare by local residents and as a park by neighbouring children. Saplings, enclosures, lights and boundaries indicate that the suit property is regularly being maintained as a park by government authorities.

13. This Report includes 21 photos and one rough site map. There are also 2 videos of the site inspection which can be supplied on request, if required.”

8. Along with the report certain photographs have also been placed on record.



9. On going through the report of the Local Commissioner and the photographs, *prima facie* it does not appear to be private property and seems to be a public property. However, this is only a *prima facie* view and since the plaintiff is claiming the ownership, this would be a matter of trial and the evidence to be done by both the parties.
10. Learned counsel for defendants submitted that they may be permitted to construct the boundary wall so as to protect the property from illegal encroachment. Even if the plaintiff is claiming the ownership and they succeed in a suit, it is necessary to protect the property from any encroachment. The learned counsels for defendants have stated that in fact this is a park which is being used by the children of the locality for playing.
11. The report of the Local Commissioner also says that land is being used as a thoroughfare by local residents and as a park by neighboring children. The report further indicates that the suit property is regularly being maintained as a park by government authorities. Thus, it is necessary that a boundary wall be constructed.
12. In the above circumstances, the defendants may construct a boundary wall, and the land be put to use as per the master plan.
13. However, the boundary wall and the usage of the land shall be subject to the final disposal.
14. In the circumstances, in view of the discussion made herein above, this court does not find any *prima facie* case at this stage. Furthermore, in case of a conflict between private rights and public interest the justice requires that public interest should be given more weightage. The premises in dispute is stated to be used as a park by the children. The



court as a guardian of citizen's right is duty bound to ensure that such amenities should not be disturbed on account of rights being claimed by the private parties.

15. List before the Joint Registrar (Judicial) for completion of pleadings on 26.02.2024 i.e., the date already fixed.

I.A. 1898/20224 & CS(OS) 885/2023

16. The present application has been filed under Order I Rule 10 CPC read with Section 151 CPC for impleadment as a defendant on behalf of applicant Deepak Kumar.
17. Learned counsel for defendant Nos. 1 and 2 states that they have no objection. However, learned senior counsel for the plaintiff submits that he has an objection for the impleadment and he wants to file the reply.
18. Let the reply be filed.
19. List before the Joint Registrar (Judicial) on 26.02.2024.

DINESH KUMAR SHARMA, J

FEBRUARY 8, 2024/AR..