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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 10240/2024**
CHANDER BHAN (SINCE DECEASED)
THROUGH LRS & ORS.Petitioners

Through: Mr. Sanjeev Ralli, Sr. Advocate with
Mr. Mohit Mudgal, Mr. Subham
Yadav, Mr. Ravi Kant Yadav, Mr.
Chetanya Baweja and Mr. Praful
Nawaj, Advocates

versus

STATE GOVT. OF NCT OF DELHI AND ORS.Respondents
Through: Mr. Naval Kishore Jha, APP for the
State with SI Mohit Batan, PS
Bawana

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **24.12.2024**

CRL. M.A. 39241/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL. M.A. 39240/2024 (under Section 528 of BNSS, 2023 for filing addl. documents on record)

3. For the reasons mentioned in the application, the same is allowed.
Notice dated 06.12.2024 (Annexure-27) is taken on record.
4. The application stands disposed of.

CRL.M.C. 10240/2024 & CRL.M.A. 39239/2024 (under Section 528 of BNSS, 2023 filed by the petitioners seeking interim order)

5. The present petition has been filed against the impugned order dated 08.07.2024 passed by the learned ASJ-02, North District, Rohini Courts, Delhi in Crl. Rev. Petition No. 114/2021, titled as 'Guggan & Ors. Vs State &



Ors.’ whereby the order dated 27.10.2021 passed by the learned Sub-Divisional Magistrate, Naya Bans, Delhi under Section 145 Cr. P.C., 1973, has been set aside and remanded the case back to the SDM for fresh decision.

6. Mr. Sanjeev Ralli, learned Senior Counsel appearing for the petitioners submits that *vide* order dated 27.10.2021 passed by the learned SDM, the possession of the land/property in question was ordered to be restored back to the petitioners as *Bhumidars*. However, learned ASJ *vide* impugned order dated 08.07.2024 set aside the order of the learned SDM and remanded the case back to the learned SDM with certain directions which are contained in para 21 of the impugned order, that read as under:

*“21. In view of the aforesaid detailed discussion and observations, the impugned order dated 27.10.2021 is **set aside** present matter is **remanded back** to the Ld. SDM with directions to re-appreciate the facts in accordance with law and in the light of the aforesaid findings and re-hear arguments of the parties and also seek further additional evidence, if any required by giving due opportunity to both the parties and pass appropriate orders in accordance with law.”*

7. He submits that while remanding the matter, the learned ASJ has returned findings and made certain observations which can influence the decision of the learned SDM. He further submits that the petitioners have no grievance in case the learned SDM rehear the matter afresh by considering the facts and pleas of both the parties uninfluenced by any observations and findings recorded in the impugned order.

8. He invites the attention of the Court to paras 15, 18 and 19 of the impugned order to contend that a finding has been returned by the learned



ASJ to the effect that no suit for declaration has been filed by the petitioners herein to declare the judgment of the civil court as null and void. He submits that such an observation was unwarranted, in as much as the judgment of the learned Sub-Judge dated 22.03.1990 as well as that of learned Appellate Court dated 14.11.1994, were *nonest* and not required to be challenged.

9. He further submits that the learned ASJ in the impugned order has not considered the findings of the criminal court in a Sessions Case No. 240/1974 arising out of the FIR No. 203/1974 registered at Police Station Narela, which led to the acquittal of the present petitioners.

10. He submits that the judgment of acquittal was affirmed by this Court. He further submits that in the judgment of acquittal it has been observed that possibility of petitioners being in possession of the property in question on the date of incident i.e. 29.09.1974 cannot be ruled out, which was not appreciated in proper perspective by the learned ASJ in the impugned order.

11. In view of the above, issue notice to the respondents by all permissible modes returnable on 23.04.2025.

12. The learned SDM is directed to postpone the hearing of the proceedings under Section 145 Cr. P.C. (now 164 of BNSS 2023) after the date fixed before this Court.

VIKAS MAHAJAN, J

DECEMBER 24, 2024/‘rs’