

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA. No. 699 of 2005 & CM No. 5595/2008 (directions)

Date of decision: May 27, 2008.

DELHI DEVELOPMENT AUTHORITY ... Appellant
Through: Mr. Rajiv Bansal, Advocate.

versus

RAJBIR SINGH Respondent
Through : Mr. Arjun Bhandari and
Mr. Ashok Chhabaria, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

1. This appeal by the Delhi Development Authority ('DDA') is directed against the order dated 25th February, 2004 passed by the learned Single Judge of this Court disposing of Writ Petition (Civil) No. 7693 of 2003 filed by the respondent.

2. The case of the respondent writ petitioner before this Court was that he was absolute owner of land measuring 6 bighas and 17 biswas in Village Khora Loni in Uttar Pradesh by virtue of a sale deed dated 21st April, 1987 and that this land was adjoining the land forming part of Khasra Nos. 413,

414, 415 and 425 of Village Gharoli, Delhi which had been acquired by the DDA. The positive claim of the appellant was that land owned by him is in Ghaziabad in the State of UP. According to him a demarcation exercise undertaken in 1983 confirmed this. The respondent claimed that in 1999 the DDA had unauthorisedly encroached on his land although it did not form part of the land acquired by the DDA.

3. Consequently, the respondent applied to the Sub Divisional Magistrate ('SDM'), Ghaziabad seeking a fresh demarcation of Khasra No. 292 in Village Khora, Loni. He simultaneously filed Suit No. 105 of 2001 in the court of Civil Judge, Senior Division, Gautam Budh Nagar, UP seeking permanent injunction restraining the DDA from taking forcible possession of the land which he claimed belonged to him. According to the respondent, the demarcation of the land was undertaken on 19th April, 2001 after notice was issued to the DDA by the SDM, Ghaziabad through Tehsildar, Preet Vihar, Delhi. The respondent claimed that the demarcation took place in the presence of the revenue officials in Ghaziabad, Mr. Dharampal Kanoongo of the DDA, Mr. Charan Singh Patwari and Mr. Bala Dutt Patwari of Revenue Department. The demarcation report dated 19th April, 2001 was prepared by the revenue officials in Ghaziabad. According to the respondent the site plan annexed to the demarcation report revealed that "the boundary on the eastern side i.e. towards Ghaziabad has been fixed and identified by a road/drain and the land situated 8 feet from the said nala towards east comprises the Khasra No. 292, Village Khora part of which belongs to petitioner." The respondent submitted

that the demarcation report became final since no appeal was filed by either party. Consequently, the respondent withdrew the Suit No. 105 of 2001. It was asserted in the writ petition that “admittedly in the present case the said report dated 19.4.2001 has become final and the respective boundaries of Khasra No. 292 of Village Khora, Ghaziabad, U.P. and Khasra No. 413/414/415, 425 of Village Gharoli has been demarcated and fixed.”

4. In grounds B and C of the writ petition it was stated:

“B. Because the demarcation carried out at the time of acquisition of the Village Gharoli by the respondent has clearly established the boundary between the Village Gharoli and Village Khora demarcating the two States, U.P. and Delhi. The boundary was fixed at the nala which is at adjacent to the road.

C. Because the demarcation carried out by the SDM Ghaziabad on 19.3.2001 has also established that the boundary line is Nala at the East of Road. Beyond 8 ft. East of the Nala is the land of Khasra No. 292 village Khora, Loni, U.P. The said land belonging to the petitioner is beyond the boundary line fixed by the said demarcation report.”

5. The relief sought in the writ petition was for a mandamus to the DDA to abide by the demarcation reports of 1983 and April 2001 and to restore the status-quo with respect to the boundary in terms of the said demarcation report dated 19th April, 2001. The further specific prayer reads as under:-

“issue writ of mandamus/direction directing the respondent to remove encroachment made in the Khasra no. 292 of Khora Village, Loni, Distt. Ghaziabad, U.P. the land East of U.P. beyond the boundary of demarcation reports of 1983 and 19.4. 2001 respectively.”

6. A reply affidavit was filed by the DDA in which it was denied that a boundary wall has been constructed on the land belonging to the Respondent writ petitioner. The correctness of the demarcation proceedings was disputed and it was contended as under:

“8. As regards the demarcation proceedings conducted on 19.3.2001 it is submitted that Shri Dharampal Kannogo & Shri Charan Singh Patwari employed with the respondent authority represented the New Leases Branch of the Authority. Since the Boundary wall was constructed by the land management East Zone no representative from the said branch of the Authority was present on that day therefore no demarcation proceeding/exercise was undertaken on that day as is evident from the proceedings of 19.3.2001. Therefore no invitation was received from the Ghaziabad Authorities. The Proceedings dated 19.04.2001 have been recorded without the knowledge of respondent Authorities on its back since nobody from the Authorities was present in the proceedings dated 19.4.2001 therefore same are not binding. The proceedings were come to the notice as the respondent authorised only by way of the present writ petition.”

7. The learned Single Judge passed the impugned order on 25th February, 2004 by which the writ petition was disposed of. The order is a short one and is therefore reproduced in full as under:

“WP (C) No. 7693/2003

Rule.

I have heard learned counsel for the parties. It is contended on behalf of the Petitioner that a piece of land has been in their possession since 1985 till date. Demarcation proceedings have also been concluded in respect of this very piece of land and possession has continued thereafter. In respect of the Demarcation proceedings it is the Petitioner's case that the DDA had been duly notified. The presence of Dharampal, Kanungo, DDA (NL), Charan Singh, Patwari, DDA (NL) is duly recorded in the Demarcation proceedings on 19.3.2001. Learned counsel for the Respondents, however, contends that proper notice had not been served on the DDA and that the aforementioned officials could not have represented the concerned department of DDA.

It cannot be gainsaid that the remedy against the grievance in respect of a Demarcation is to file an appeal under Section 64 of the Land Reforms Act. In similar circumstances, in WP(C) No. 4051/2003 Hon'ble Mr. Justice Sanjay Kishan Kaul had made a similar observation in his Order dated 28.7.2003. In these circumstances the Writ Petition is allowed with the direction that the Respondents or their officials shall not interfere with the possession of the Petitioner over the land in question. They may, however, seek their remedy in accordance with law in the event that it is their opinion that the Demarcation has not been carried out in accordance with law. Since a boundary wall has already been constructed by the DDA no useful purpose will be

served if that boundary wall is removed. The boundary wall may be removed by the Petitioner after four months.

The Writ Petition is disposed of.

A copy of this Order be given Dasti to learned counsel for the parties.”

8. It is contended by Mr. Rajiv Bansal, learned counsel appearing for the DDA that even according to the respondent writ petitioner the land on which the alleged encroachment is said to have been committed by the DDA was located in Ghaziabad in Uttar Pradesh and in support of that contention the respondent writ petitioner has relied upon a demarcation report of 19th April, 2001 prepared by the Revenue officials in Uttar Pradesh. Therefore no writ petition could have been filed in this Court seeking directions in respect of a land which according to the petitioner was not in the territorial jurisdiction of this Court but in U.P.

9. Secondly, it was submitted that if indeed according to the petitioner the demarcation proceedings on which the respondent writ petitioner was relying upon had been conducted by the U.P. revenue officials, there was no question of the DDA challenging such demarcation report in an appeal under the Delhi Land Reforms Act, 1954 ('DLRA'). It is pointed that considering the

demarcation was done by the U.P. revenue officials, the reference to Section 64 obviously was not in relation to the DLRA. In any event Section 64 DLRA does not provide for an appeal against demarcation proceedings. He submits that by the impugned order the learned Single Judge has, in a writ petition under Article 226, decided a highly disputed question of fact relating to possession. This could not have been decided without first determining whether the land in question fell in the territory of Uttar Pradesh or in the National Capital Territory of Delhi which exercise could be undertaken only by a civil court in the first instance. It is submitted that while in the penultimate sentence of the third paragraph of the impugned order it is observed that no useful purpose will be served if the boundary wall is removed, in the next sentence the writ petitioner was permitted to remove it after four months. As a result, the boundary wall constructed by the DDA was demolished by the respondent thus seeking the relief of possession which could have been granted only by a civil court after examination of evidence.

10. Appearing for respondent No.1 Mr. Arjun Bhandari, learned counsel submitted that the demarcation report of 19th April, 2001 shows the presence of the officials from the DDA and therefore it is not open to the DDA now to challenge those proceedings. According to him, all that the learned Single Judge has done is to give effect to the factual and legal position emanating from the said demarcation report. Therefore, no fault can be found with the impugned order. According to him a part of the cause of action did arise in Delhi and therefore this Court had jurisdiction to entertain the writ petition.

11. There have been subsequent developments that have taken place in the matter which this Court requires to take note of. In the reply filed by the respondent to the application for condonation of delay in filing this appeal, it is pointed out that “the respondent removed the boundary wall and has constructed on the said land and has sold a portion thereof and let out certain shop built up on his property.” It is further asserted that “the respondent has also constructed buildings on his properties some of which has been sold while the shops constructed have already been let out.”

12. It appears that the shops stated to have been constructed and sold by the respondent were subject to sealing orders passed by the Court Commissioner appointed by the Supreme Court of India in *M.C. Mehta v. Union of India* [Writ Petition (C) No. 4677 of 1985]. The shop owners appear to have filed certain applications in the said writ petition against the sealing orders. The following order was passed on the said applications by the Supreme Court of India on 10th March, 2008:

“I.A. Nos. 2239-41, 2242-44, 2245-47

We are told that there is a dispute about 12 shops being located in Ghaziabad, and LPA No. 699 of 2005 is pending before the High Court of Delhi. We request the High Court of Delhi to dispose of the said LPA by the end of April, 2008.”

13. Pursuant thereto the present appeal was taken up for final hearing. This Court is satisfied that on the basis of the averments made by the Respondent
LPA No. 699/2005

herein the writ petition, it could not have been entertained by this Court. The case of the respondent in the writ petition was that the land in question was located in Uttar Pradesh and that the demarcation report on 19th April 2001, prepared by the authorities in Uttar Pradesh, supported this position. In the light of these assertions it is not possible to accept the contention of learned counsel for the respondent that a part of the cause of action arose within the jurisdiction of this Court. The allegation that the DDA encroached on the property and unlawfully constructed a boundary wall does not change this position. In fact one of the reliefs sought for removal of the encroachment “made in Khasra No. 292 of Khora village, Loni, District Ghaziabad, U.P.” We are satisfied that, taking the averments in the writ petition on their face value, the writ petition filed by the respondent could not have been entertained by this Court as it lacked the territorial jurisdiction.

14. This Court is also unable to appreciate how a highly disputed question of fact as to the location of the land and its title could be decided in a petition under Article 226 of the Constitution. Without deciding this question, the relief of possession sought for by the respondent in the writ petition could not have been granted. Our attention has been drawn to an order passed by the Supreme Court on 25th August, 2005 in Civil Appeal No. 5300 of 2005 (***Delhi Development Authority v. Moti Board Industries (P) Ltd.***) where in similar circumstances an order passed by this Court under Article 226 issuing a direction to the Collector, Ghaziabad to settle a boundary dispute between the parties was set aside. The parties were permitted to raise the dispute before

the civil court.

15. We are therefore satisfied that the learned Single Judge ought not to have entertained the writ petition. Consequently the directions issued by the learned Single Judge permitting the respondent to remove the boundary wall constructed by the DDA are also unsustainable in law. We have therefore no hesitation in setting aside the impugned order dated 25th February, 2004.

16. The question is whether any consequential directions are to be issued in light of the subsequent developments. It was submitted by Mr. Bansal, learned counsel for the DDA that the status quo ante which was prevailing on the date of the impugned order should be directed to be restored. This would mean that the DDA should be permitted now to again construct the boundary wall and demolish the constructions raised on the disputed land by the respondent, some of which have been sold to third parties. This Court having taken the view that it has no jurisdiction to entertain the writ petition, it would not be appropriate to issue any such direction. At the same time, the parties cannot be without a remedy. It is open both to the respondent as well as to the DDA to avail of the appropriate remedies available to them in law including the filing of civil suit asserting their respective claims to title.

17. Keeping in view the facts and circumstances, it is directed:

(a) for a period of eight weeks from today all parties will maintain status quo on the property in question. There will no further construction or sale or

alteration of any structure on the said property for a period of eight weeks from today.

(b) It is open to the respondent as well as DDA to avail of the appropriate remedies in the civil court in respect of their respective claims to title and possession. Those proceedings will be adjudicated upon independent of any observation that may have been made on merits of the case by either the learned Single Judge or by this Court.

(c) the appropriate interim directions sought by the parties will be decided in those proceedings by the civil courts.

18. With the above directions, the appeal is allowed with no order as to costs. The pending application is disposed of.

CHIEF JUSTICE

S. MURALIDHAR, J.

MAY 26, 2008

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