

REPORTABLE

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

+ **WRIT PETITION(CIVIL) NOS. 3774-78 OF 2006**

% **Date of Decision : March 18th, 2008.**

M/S JYOTI FARMS & OTHERS Petitioners

Through Mr. Jayant Bhushan, Sr. Advocate with
Mr. B.S. Maan, Advocate.

versus

DEPUTY COMMISSIONER (SW) & ORS Respondents

Through Ms. Avnish Ahlawat, Advocate.

Capt. Dilawar Singh, respondent No. 4 in
person.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J:

1. M/s Jyoti Farms, Ms. Usha Wadhwa, Mr. Kanwar Lal Gupta, Mr. Rakesh Kohli & Mr. Rajesh Kohli (hereinafter referred to as the

petitioners) are owners/recorded bhumidars of land located in the revenue estate of village Bijwasan, New Delhi. Ms. S.M. Stella Kujur, respondent No. 2, is Principal of Sarvodaya Kanya Vidhayalaya, which is located in khasra No. 50, village Samalka, New Delhi. It is alleged that there is a demarcation dispute between the petitioners and the respondent No. 2 in respect of a small portion of land, which is being used by the petitioners for ingress and egress to their land in village Bijwasan. It is the contention of the petitioners that the raasta or road falls in khasra Nos. 80/16/1 and 80/15/2 of village Bijwasan, whereas the respondent No. 2 claims that the raasta or road is part of khasra No. 50 of village Samalka.

2. One Mr. Om Prakash Taneja was granted a lease of three bighas of land in khasra No. 50 by the Gaon Sabha village Samalka on 10th March, 1975. The lease was for a period of six years and was to expire on 9th March, 1981. It is the case of respondent No. 2 that the Gaon Panchayat cancelled the lease on 23rd February, 1978 and refunded the balance lease money of Rs.1,350/- to Mr. Om Prakash Taneja by cheque.

3. The respondent No. 2 school was established in the year 1976 on 23 bighas 4 biswas of land in khasra No.50 of village Samalka. The said khasra comprises of 26 bighas and 4 biswas. It is the case of respondent No. 2 that Gaon Sabha vide resolution

dated 8th May, 1980 donated three bighas of land, which was earlier on lease with Mr. Om Prakash Taneja to the said school. Thus, the said school has become owner/bhumidar of entire 26 bighas and 4 biswas of land in khasra No. 50, village Samalka.

4. It appears that claim in respect of 3 bighas of land and right of Mr. Om Prakash Taneja on the land was continuously asserted by him. In the meanwhile, Mr. Om Prakash Taneja in 1993 sold and transferred his rights in land in Bijwasan in favour of the petitioners, while retaining bhumidari rights in respect of part area.

5. In March, 1997, the Government of Delhi initiated action for removal of encroachments on Gaon Sabha land. This prompted Mr. Om Prakash Taneja to file Writ Petition (Civil) No. 1013/1997 in Delhi Hlgh Court claiming that he was bhumidar of 43 bighas of land in village Bijwasan and his possession was being disturbed and interfered with. The writ petition was disposed of by order dated 11th March, 1997, inter alia, observing as under:-

“The plea as to whether the disputed land belongs to the petitioner or the Gaon Sabha cannot be entertained in this writ petition and can be relied in the proceedings before an appropriate forum is permissible in law. These proceedings, as stated by learned counsel for the petitioner, have since been initiated. Therefore, no orders can be passed in this writ petition in exercise of powers under Article 226 of the Constitution of India as it will require adjudication of facts and the petitioner has already availed of an alternative remedy in this regard. The respondents shall, however, not disturb or interfere with the

lawful enjoyment of the land by the petitioner and will not interfere with his right of ingress and egress in respect of the land over which has valid and legal title. This will be, in any case, subject to the ultimate occasion in the proceedings which the petitioner has taken to agitate has(sic) rights. No further orders are necessary in this writ petition. The same is disposed of.”

6. Thus, Hon’ble Court felt that the issue with regard to demarcation should be examined by the revenue authorities but subject to final decision it was directed that the respondents would not interfere with right of ingress and egress to land of which Mr. Om Prakash Taneja had legal and valid title. Subsequently, a review application or clarification application being CM No. 2114/1994 was filed and disposed of on 25th March, 1997. The said order records that Mr. Om Prakash Taneja had moved applications under Sections 27 and 28 of the Delhi Land Revenue Act, 1954 (hereinafter referred to as the Act, for short) for demarcation of land and these would be decided within a period of four weeks and in the meanwhile Mr. Om Prakash Taneja and his family/employees would be granted reasonable and unobstructed passage for ingress and egress.

7. Mr. Om Prakash Taneja had on 11th March, 1997 filed an application under Section 28 of the Act for demarcation of the land stating, inter alia, that he was bhumidar of 43 bighas of land in the revenue estate of village Bijwasan, which adjoins and shares

boundary with village Samalka. The application also states that khasra No. 50 of village Samalka adjoins Mr. Om Prakash Taneja's land on eastern boundary and dispute exists about proper demarcation of the area and possession of land. On this application, notice was issued to Mr. Rajendra Gupta, who is owner of adjacent land in village Bijwasan, M/s Jyoti Farms and Wadhwa Farms, respondent No. 2 as well as village pradhan. Demarcation of the entire area was done by the Revenue Assistant/SDM, Vasant Vihar. On 5th August, 1997, preliminary demarcation report was made and thereafter on 26th September, 1997 final demarcation report was made. Order of the Revenue Assistant/SDM records that the demarcation was done on the basis of permanent points fixed by demarcating officer in khasra Nos. 2 and 3 of village Kapashera and the entire exercise thereafter was carried out. It was noticed that the dispute was with regard to location and boundary of khasra No. 81/16/1 of village Bijwasan and khasra No. 50 of village Samalka (i.e. the same dispute as in the present case). As per the said report, owner of the farm house of khasra No. 80/16/2 viz. Mr. Rajendra Gupta had encroached upon land belonging to Mr. Om Prakash Taneja. It was further held in the demarcation report that Mr. Om Prakash Taneja had no right, title or interest of any kind in the passage or for ingress and egress in khasra No. 50 of village Samalka whose

boundary wall extended upto the stone wall. Observing that owners of khasra No. 80/16/2 of village Bijwasan had encroached upon khasra No. 80/16/1 belonging to Mr. Om Prakash Taneja, he was asked to take legal action against bhumidhar of khasra No. 80/16/2.

8. Mr. Rajiv Yaduvanshi, Collector (South West) by order dated 30th July, 1999 rejected the appeal filed by Mr. Om Prakash Taneja under Section 64 of the Act. Thereupon, Mr. Om Prakash Taneja filed a writ petition in this Court, which was withdrawn in view of the alternative remedy by way of revision under Section 66 of the Act before the Financial Commissioner. The revision petition filed by Mr. Om Prakash Taneja was also dismissed on 27th September, 1999. It also appears that Mr. Om Prakash Taneja had filed a civil suit and Civil Writ No. 2991/1998. In the civil suit, initially status quo was ordered to be maintained. In the writ petition by order dated 19th June, 1998 it was directed that the respondents therein would not block access to the residence of Mr. Om Prakash Taneja by constructing any wall. Ultimately, however, no final order was passed in favour of Mr. Om Prakash Taneja. The demarcation report has attained finality.

9. Parent Teacher Association of respondent No. 2 school also filed a writ petition in this Court being Civil Writ No. 2272/1997. On 21st February, 2000, in this writ petition a detailed order was

passed by a Single Judge after noticing order dated 12th June, 1998 passed by Sub-Divisional Magistrate in respect of the boundary dispute. Learned Single Judge of this Court after noticing the said order issued following directions:-

“There appears to be dispute between the respondents 4 & 5 with regard to status, position, location and title of the land in question. In order to ascertain the factual position, in my considered opinion, it is necessary that a fresh demarcation be carried out at the site of the land in question along with the adjacent land so as to ascertain as to whether the petitioner has a right of passage of ingress and egress from the Najafgarh Road and such a passage used by him is illegally blocked. The aforesaid demarcation shall be carried out by the Sub Divisional Magistrate, Vasant Vihar under the supervision of the collector. The aforesaid demarcation process would commence on 23.2.2000 and shall be completed positively by 24.2.2000. It shall also be indicated in the said report to be submitted before this Court as to the area of land to which the school authority is entitled to showing in the map the point to which land of the school extends to. The report shall also indicate the status and position of the Gaon Sabha land which is stated to be adjacent to the land of the applicant and the school. The report along with the map shall be placed in this Court by the evening hours of 24.2.2000 and the matter shall be taken up on 25.2.2000.”

10. Subsequently on 10th March, 2000 another order was passed in this abovementioned writ petition directing, inter alia, right of ingress and egress to Mr. Om Prakash Taneja in terms of the Order of this Court passed on 11th March, 1997 in Civil Writ No.

1013/1997. Reference in this regard was also made to the order passed by Additional District Judge in Suit No. 270/1997, directing the parties to maintain status quo as on 24th July, 1997 in respect of 3 bighas of land that was earlier granted on lease to Mr. Om Prakash Taneja. The Court also recorded that an application under Section 27 of the Act was pending before the appropriate authority and the same was required to be disposed of at an early date in accordance with law.

11. Pursuant to the directions given in the order dated 21st February, 2000 as quoted above and the order dated 10th March, 2000 in Civil Writ No. 2272/1997, Deputy Commissioner (South West) passed an order recording his findings under Section 27(2) of the Act. Thereafter another order was passed on 3rd May, 2002 by Deputy Commissioner (South West), Mr. Rajiv Yaduvanshi. This aspect has been dealt with and examined later on. It is the case of the petitioners that in the demarcation report it has been held that the raasta/road in question is located in village Bijwasan and not in village Samalka and therefore is not located on the land of the respondent no.2 school i.e. khasra No. 50 of village Samalka.

12. On 21st June, 2000, Director (Panchayat) passed an order allotting three bighas of land in khasra No. 50 of village Samalka to respondent No. 2 school on premium of Rs.9,10,000/- and subject

to payment of annual ground rent of Rs.22,750/- per acre per year. The said order, however, recorded that the allotment would not include the land comprising ten feet wide passage leading to the farm of Mr. Om Prakash Taneja in view of the directions of the High Court in interim order dated 10th March, 2000 and the said allotment would be subject to the decision of the High Court in Civil Writ No. 2272/1997.

13. This writ petition was disposed of on 16th September, 2002 after taking on record the office order dated 21st June, 2000 passed by Director (Panchayat). Learned Single Judge held that the entire dispute in the writ petition was only in respect of three bighas of land, which stands transferred to the school in view of the order dated 21st June, 2000. While disposing of the writ petition, the learned Single Judge recorded as under:-

“In view of the aforesaid, it is clarified that the interim order 10.3.2000 will not come in the way of implementation of the final decision taken on 3.5.2000 and the subsequent order dated 21.6.2000 subject of course to any other orders which may have been passed by any competent Court.”

14. The interim orders passed in this writ petition ceased to exist and the entire three bighas of land was transferred to the respondent No. 2 school. The contention of the respondent No. 2 and Parent Teacher Association is that the preliminary demarcation reports dated 5th August, 1997 and the final

demarcation report dated 26th September, 1997 have become final and binding. In view of the said reports, the petitioners cannot question and challenge that the passage or raasta/road falls in khasra No. 50 in village Samalka. The petitioners cannot contend and raise any claim that the said passage falls in village Bijwasan. It is, therefore, submitted that there is no question of any fresh demarcation and the petitioners in terms of the said demarcation report should initiate proceedings against the owners/bhumidars of Hans Raj Gupta Farm.

15. The petitioners, on the other hand, states that their only access to the plots and residence is through this raasta/road and if this is closed, they will not have access to their land and property. The site plans have been shown, which indicate that in case the raasta/road is blocked, the petitioners will not have any access to their land, which is circled by land belonging to third parties and this is the only passage to their land.

16. The petitioners cannot claim right of passage through land in village Samalka. They are owners of land in village Bijwasan. Right of passage has to be given to the petitioners through village Bijwasan and not through the land of village Samalka. The petitioners cannot claim any right in khasra No. 50 including three bighas of land, which were subject matter of lease in favour of Mr. Om Prakash Taneja in 1975. The said issue is also concluded and

decided by judgment dated 16th September, 2002 holding that the respondent No. 2 school is owner of entire land in khasra No. 50 of village Samalka. In case the petitioners had any grievance against the demarcation reports dated 5th August, 1997 and 26th September, 1997, they should have filed appeals or proceedings challenging the order dated 12th June, 1998 passed by Revenue Assistant/SDM. Only Mr. Om Prakash Taneja had filed appeals against the said order. The petitioners have accepted the said order, though there is evidence on record that they were served before demarcation proceedings were undertaken. The demarcation order having attained finality operates as res-judicata. Principle of res judicata is based on equity, good conscience and justice that issue once raised and decided, should not be allowed to be raised again. The cause merges with the decision. It bars retrial. The petitioners cannot challenge the demarcation reports made on 5th August, 1997 and 26th Sept., 1997.

17. Orders dated 21st February, 2000 and 10th March, 2000 passed in Civil Writ No. 2272/1997 and the subsequent orders passed by the Tehsildar dated 25th April, 2000 have, however, complicated the issue. Order dated 21st February, 2000 has been quoted above. Direction was given for fresh demarcation in spite of earlier demarcation reports. Order dated 10th March, 2000 also refers to an application under Section 27, which was stated to be

pending before appropriate authorities. However, the said orders were interim orders that have lost their relevance after Civil writ petition No. 2272/1997 was disposed of on 16th September, 2002. Earlier demarcation reports dated 5th August, 1997 and 26th Sept., 1997 have not been set aside and declared as incorrect by any court including proceedings in W.P. (C) No. 2272/1997. The reports have attained finality and are binding.

18. The demarcation report dated 25th April, 2000, it was stated by the petitioners, is contrary to the demarcation reports dated 5th August, 1997 and 26th September, 1997. For the sake of convenience, I am reproducing the relevant portion of the demarcation report dated 25th April, 2000:-

“ The Sarvodaya Kanya Vidyalaya and the Directorate of Education has misinterpreted the orders of Hon. High Court dated_____ for construction of wall where it originally existed. Thereby, they have left the Samalkha Village and entered into the Bijwasan Village and constructed a walls in a manner so that the right of ingress and egress of the following persons has been closed.

1. Sh. O.P. Taneja in Kh. No. 80/15/2 min measuring 6 Biswa and 80/16/1 min. 6 Biswa of Bijwasan Village measuring_____Biswa.

2. Sh. H.K. L. Maggu in Kh. No. 80/16/1 of Bijwasan Village measuring 5 Biswa.

3. Sh. Satish Wadhwa in Kh. No. 80/15/1 of Bijwasan Village measuring 5 Biswa.

Additionally, they have encroached upon 3 Bigha of Gaon Sabha Land in Kh. No. 50 of Samalkha Village belonging to B.D.O. (South West), Panchayat Department which were given on lease to Sh. O.P. Taneja till 1990 and High Court in its Order dated 10.3.2000

has held that the same is to be treated as in the possession of Sh. O.P. Taneja Respondent No. 4 as the land could only be taken back from him in accordance with law and not in any other manner.

The following is the list of persons best entitled to the land and for making entries Annual Register on the basis of possession.

1. Sh. O.P. Taneja in Kh. No. 80/16/2 Bijwasan Village.
2. Sh. H.K.L. Maggu in Kh. No. 80/16/1 Bijwasan Village.
3. Sh. Satish Wadhwa in Kh. No. 80/16/1 Bijwasan Village.

The Right of way through Kh. No. 50 of Sh. O.P. Taneja existed which is defined by a road 10 feet wide and 500 feet long and having 40 (forty) Ashoka Pendulam Trees planted on both sides by Sh. O.P. Taneja since 1980. The remaining land is in possession of the B.D.O. (South West) and Panchayat Department. A map showing solution is enclosed. Hence, in pursuance or order of Hon. High Court dated 10.3.2000 and the order dated 24.07.1997 of Hon. ADJ Court for maintaining status quo. The following entry is to be made in Kh. No. 50 of Samalkha Village:-

1. Sh. O.P. Taneja:- Road 16 ½ feet wide and 365 feet long (bounded by 40 Ashoka Trees on both sides) total measuring 13 Biswas as shown in enclosed map. Portion marked as "A".
2. Gaon Sabha Samalkha through B.D.O. South West area of 2 Bigha 8 Biswa (3 Bigha 12 Biswa) marked as "B".
3. Sarvodya Girls School, Samalkha 23 Bigha 4 Biswa marked as "C".

19. There is merit in the contention of the respondents that the order dated 25th April, 2000 does not record the basis of the findings and the findings themselves are contradictory. In the first

portion of the finding, the Tehsildar records that respondent No. 2 school has left Samalka village and entered Bijwasan village. It also records that the school has encroached upon three bighas of Gaon Sabha land in khasra No. 50. It further records that the pathway existing on the land in question is ten feet wide and five hundred feet long and the same is located in khasra No. 50. The said khasra is of village Samalka and not of village Bijwasan. This becomes clear if one sees the last portion of the report dated 25th April, 2000. It is mentioned in the last portion of the report that Gaon Sabha is in possession of two bighas and eight biswas of land and respondent No. 2 school is in possession of 23 bighas and 4 biswas of land in khasra No. 50 of village Samalka. The balance portion of land in khasra No. 50 of village Samalka is in possession of Mr. Om Prakash Taneja. The Deputy Commissioner (South West), Delhi Mr. Rajiv Yaduvanshi vide his order dated 3rd May, 2000 accepted the said report and had observed that the petitioners' right to ingress and egress had been violated by blocking their passage in khasra Nos. 80/16/1 and 80/16/2 of village Bijwasan. Mr. Rajiv Yaduvanshi had, in fact, passed the earlier order dated 30th July, 1999 rejecting the appeal of Mr. Om Prakash Taneja challenging demarcation reports dated 5th August, 1997 and 26th September, 1997. Perhaps the earlier order dated 30th July, 1999 passed in the appeal filed by Mr. Om

Prakash Taneja was not brought to the notice of Mr. Rajiv Yaduvanshi, when he passed the order dated 3rd May, 2000.

20. I may also note here that the demarcation report dated 25th April, 2000 does not mention how and in what manner demarcation was done. The permanent points on the basis of which the calculation was done, are not stated. Without first locating permanent points it is not possible to carry out demarcation. Calculations can be done only after locating permanent points. It is also not stated whether any notice was given to respondent No. 2 and Gaon Sabha Samalka before the demarcation was done. In this regard, learned counsel for the respondent No. 2 has also drawn my attention to Section 27 of the Act. Section 27(1) of the Act relates to settlement of disputes regarding entries in the annual register or whether a particular area of land is held and occupied for public purpose or work for public utility. Section 27(2) of the Act, on the other hand, states that all other disputes relating to entries in the annual register shall be decided by the Tehsildar on the basis of possession. Section 28(1) of the Act stipulates that all disputes regarding boundaries shall be decided by Deputy Commissioner on the basis of existing survey maps, but if this is not possible, boundaries shall be fixed on the basis of actual possession. Sub-Section 2 also provides for an enquiry to be made in case Deputy Commissioner is unable to

satisfy himself as to the party, who is in possession or if it is shown that possession has been obtained by forceful eviction of lawful occupants of the property. I, therefore, find merit in the contention of the learned counsel for the respondents that the demarcation report dated 25th April, 2000 under section 27(2) of the Act and order dated 3rd May, 2000 under 28 (2) of the Act have to be ignored and cannot be accepted. The demarcation reports dated 5th August, 1997 and 26th September, 1997 have attained finality. The demarcation reports and the order passed on 12th June, 1998, were made subject matter of appeal and then revision before the Financial Commissioner, but were upheld. The demarcation reports and the said order cannot and should not be allowed to be reopened.

21. Yet at the same time I am conscious and concerned that the petitioners should not be denied access to their land, which is blocked on all sides. To deny access and right of ingress and egress will cause hardship and inconvenience to the petitioners, which cannot be accepted. To some extent, the petitioners themselves are responsible for the said hardship as they have failed to abide by the directions given in the order dated 12th June, 1998, whereby it was left to the owners/bhumidars to initiate proceedings against bhumidars of khasra No. 80/16/2 of village Bijwasan. The petitioners have not taken any action thereafter.

Even the owners of the said khasra have not been impleaded as a party to this writ petition.

22. The Revenue Authorities in their counter affidavit have stated as under:-

“The so-called rasta for ingress/egress falls in khasra No. 50 of Village Samalka and not in khasra No. 80//16/1 (0-11) and 80//15/2 (0-11) of Village Bijwasan as per the demarcation dated 05/08/1997 and 26/09/1997. As far as the petitioner’s claim of grant of passage for ingress/egress is concerned, it is submitted that since the petitioners are Bhumidars of Village Bijwasan, the Rasta/Passage should be granted from and in Village Bijwasan only. The petitioners may file a request for grant of passage for ingress/egress before the Consolidation Officer, Village Bijwasan as the consolidation proceedings are still on.”

23. Keeping in view the above facts and balancing out equities, it is directed as under:-

- (i) Liberty is granted to the petitioners to initiate proceedings against owners/bhumidars of khasra No. 80/16/2 or to file an application before Consolidation Officer of village Bijwasan for providing alternative access/road to the petitioners.
- (ii) The petitioners may file an application/representation in this regard within a period of three weeks from the date judgment is pronounced. The Consolidation Officer or the revenue authorities will process the

application/representation filed by the petitioners expeditiously and preferably within a period of three months thereafter. The demarcation reports dated 5th August, 1997 and 26th September, 1997 will be binding on the authorities.

- (iii) Each of the five petitioners will pay Rs.1,000/- per month to respondent No. 2 school for use of the passage till alternative passage is made available to the petitioners. Petitioners will not be entitled to carry out any construction or install any gate on the passage but the petitioners; their employees/servants will be entitled to use the same. If the aforesaid arrangement is continued beyond six months, then each of the five petitioners will be liable to pay enhanced amount of Rs.1500/- per month to the respondent No. 2 school. In case there is delay beyond a period of 12 months the respondent No. 2 will be entitled to file an application in this Court for further enhancement of the said amount.

24. Writ petition is disposed of. No costs.

(SANJIV KHANNA)

JUDGE

MARCH 18, 2008.

VKR/P