

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

+ **RSA No. 80/2010**

% **27th September, 2011**

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. P.K.Mittal, Advocate

VERSUS

VIJAY PAL SINGH & ORS. Respondents
Through: Mr. Rajan Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

VALMIKI J. MEHTA, J (ORAL)

CM No.7560/2010 (condonation of delay)

For the reasons stated in the application the delay is condoned and the application stands disposed of.

RSA No. 80/2010 & CM No. 7559/2010

1. This Regular Second Appeal challenges the two concurrent judgments of the courts below, the first dated 6.2.2006 of the original court and the second dated 1.9.2009 of the Appellate Court, and by which judgments, the

suit of the respondents/plaintiffs for injunction to restrain the appellant from dispossessing the respondents/plaintiffs from the suit property was decreed.

2. The only issue in the case is whether the property of which the respondents/plaintiffs claim ownership is situated in Khasra No. 399 or Khasra No.405 of village Gujran Khadar, Ghonda, Delhi. Admittedly, Khasra No. 399 has never been acquired whereas it was Khasra No. 405, which was acquired and of which, ownership was claimed by the appellant/DDA. The issue before the court was therefore whether the subject property is situated in Khasra No. 399 or Khasra No. 405.

3. The Appellate Court has referred to the fact that there was earlier litigation before the civil court and which litigation was decided in favour of the respondents herein vide judgment dated 1.12.1999. In the said suit no. 434/1995, filed by the respondents against the appellant even the application under Order 39 Rules 1 and 2 CPC for injunction was allowed in favour of the respondents, and the appellant was restrained from dispossessing the respondents from the said property. Besides the civil litigation, there were also proceedings under Section 84 of the Delhi Land Reforms Act, 1954, and these proceedings were also decided in favour of the respondents by the SDM vide judgment dated 21.1.1992.

4. Before the courts below, whereas the appellant relied upon its own demarcation report which was conducted ex parte, the respondents relied

upon the report of the Local Commissioner who was appointed pursuant to the orders of the court itself, and which Local Commissioner was the revenue official/govt. employee. The revenue official carried out the demarcation and report of which has been exhibited before the trial court as Ex. PW6/1. Before carrying out the demarcation, notices were issued to the appellant but it chose not to be represented. The Local Commissioner also prepared a map/aks-sijra with respect to the location of the disputed land. The Local Commissioner thus appointed by the court, found that the respondents were in actual physical possession of Khasra No. 399 and not Khasra No. 405 as was being alleged by the appellant/DDA.

5. Objections were filed by the DDA to the report of the Local Commissioner being the Tehsildar, Seelampur. The courts below have observed that the objections to the report are wholly vague and there are no specific objections of any substance for setting aside the report. Learned counsel for the appellant invited attention of this court to para 4 of the report dated 6.11.2000 to argue that the demarcation report was bound to be set aside. A reference to para 4 in the first part says that the writing of 21 Gattas as 18 + 3 Gattas instead of 21 Gattas is a mistake in the demarcation report. How this is a mistake. I really fail to understand as surely 18+3 is 21 Gattas. Further, when it is written in this para-4 as regards measurement having been taken on the western side of Khasra No. 405, and which creates confusion, I ask the counsel for the appellant in substance what does it really

mean, but the counsel for the appellant, fairly stated that he could not make out much from the same. No evidence on these aspects was also led on behalf of the appellant. The Appellate Court while allowing the appeal has made the following relevant observations, and to which, I completely agree. These observations are contained in para 10 and 11 of the impugned judgment which read as under:-

“10. It is admitted case of parties that land in khasra no.399 has not been acquired, whereas the land forming part of khasra no. 405 has already been acquired and vested in appellant/DDA. The only material question for determination of the case is, whether the land falls in khasra no.399 as claimed by the present respondents or it falls in khasra no. 405 as claimed by DDA? Ld. Trial Judge has taken pains in analyzing the documents proved on record and the testimony of witnesses. Ld. Trial Judge has considered the evidence on record in detail. Thereafter, taking into consideration the documents Ex.PW6/1 to PW6/4, order of SDM, khatoni in favour of plaintiff and report of Ld. Local commissioner appointed by the court, Ld. Civil Judge concluded that suit land falls in baigosa of khasra no.399 which is part and parcel of main khasra and the land of khasra no. 399 is not acquired by DDA.

11. Ld. Trial Judge discussed demarcation report Ex.DW3/1 filed by the revenue staff of DDA. It was accepted by DDA that the said demarcation was carried out by the officials of DDA without any order from the Ld. Trial Court and the same was done under the directions of Dy. Director (LM-E) of DDA. It was accepted by the witnesses of DDA during cross examination that no proper notice had been given to the plaintiffs by DDA before carrying out the demarcation proceedings. Suomoto action of DDA in respect of demarcation, without giving notice to the respondents, creates doubts particularly when the suit was pending before the court. Ld. Trial Judge perused the aks-sijra prepared by revenue officials of DDA and aks sijra prepared by local commissioner and revenue official of Delhi Administration. The aks sijra prepared by local

commissioner Ex.PW6/4 and prepared by official of DDA Ex.DW3/P1 were not identical. The aks sijra prepared by Delhi administration and local commissioner (Ex.PW6/4), the biagosa has been shown below khasra no. 399 in souther side, while in Ex.PW3/P1 aks-sijra prepared by DDA no baigosa has been shown. Ld. Trial Judge observed that revenue staff of Delhi Admn. having jurisdiction and good knowledge about the land and being an independent agency which has no vested interest in the suit land should be relied, whereas the DDA has vested interest in the suit land. The demarcation report Ex.PW6/1 was carried out at the direction/orders of Ld. Trial court in accordance with the direction of Ld. Appellate court. Records exhibits that notices were duly issued as Ex.PW6/2 and PW6/3 which were sent through post and therefore the contention of Ld. Counsel for appellant that no notice was given to DDA at the time of demarcation report appears to be without any merit. On the other hand, it was admitted by the witnesses that when DDA officials prepared the demarcation report, no notice was ever given to the respondents. Therefore, the contentions of Id. counsel for appellant that both the reports were prepared without giving notice to the opposite party is also without any substance. In my opinion, the demarcation report made by PW6 Sh. Sukh Pal Singh (Kanoongo and Tehsildar, Seelampur and PW7 Sh. H.L.Vasudeva was in accordance with the directions of the court. Nothing material could be achieved to discredit their testimony. There is nothing on record to disbelieve the testimony of PW6 and PW7. There is nothing to presume that PW6 and 7 has any vested interest in the suit land. More over, Ld. Trial Judge has not accepted the claim of the present respondents only on the basis of demarcation report prepared by PW6 and PW 7. The findings are also corroborated by the order passed by Ld. SDM, aks-sijra and khatoni. On the other hand, the DDA based their claim on the basis of report prepared by their own officials without orders of the court and giving notice to the respondents as well as on the aks-sijra which was not identical with the relevant record. After careful consideration, in my opinion, in view of the testimony of witnesses and documents proved on record in balance of probabilities, the version of plaintiff inspires confidence in comparison to the submissions of appellant/DDA. In my view, Ld. Civil Judge has rightly concluded the issue that the suit land falls in

khasra no.399 as per the version of the present respondents. From the beginning, the same question was raised by the parties which was also decided by Ld. SDM in separate proceedings. The said land was re-occupied by the appellant as per the interim orders of the court. Therefore, in my view, the contentions of Ld. counsel for appellant in this regard is without any basis."

(underlining added)

6. In view of the above finding of fact that the subject land is situated in Khasra No. 399 and not in 405, earlier litigation having concluded in favour of the respondents, and earlier proceedings before the revenue official also being held in favour of the respondents, and in the present suit there was a demarcation report of Tehsildar of the area showing the subject land as existing in Khasra No. 399 and not in 405, I thus do not find that any substantial question of law arises to entertain this appeal under Section 100 CPC.

7. The appeal and the application are therefore dismissed leaving the parties to bear their own costs.

SEPTEMBER 27, 2011
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VALMIKI J. MEHTA, J.