

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

**Date of decision: 16<sup>th</sup> August, 2011**

+ **W.P.(C) 19506-08/2005**

% **BHARAT SINGH & ORS.** ..... **Petitioners**  
Through: Mr. Ajay Gupta & Mr. Jaswinder S.  
Nischal, Advocates.

Versus

**D.D.A. & ORS.** ..... **Respondents**  
Through: Mr. Amit Mehra, Adv. for Mr. Ajay  
Verma, Adv. for R-1 DDA.  
Mr. Pushkar Sood with Mr. A.S.  
Rao, Advocates for R-3 DMRC.  
Mr. Rama Shanker, Adv. for R-4.

**AND**

+ **W.P.(C) 10554/2009 & CM No.1348/2011 (for direction)**

% **BHARAT SINGH & ANR.** ..... **Petitioners**  
Through: Mr. Ajay Gupta & Mr. Jaswinder S.  
Nischal, Advocates.

Versus

**D.D.A. & ORS.** ..... **Respondents**  
Through: Mr. M.K. Singh, Adv. for R-1 DDA.  
Mr. Pushkar Sood with Mr. A.S.  
Rao, Advocates for R-2 DMRC.  
Dr. S.P. Sharma, Adv. for R-3.  
Mr. A.K. Singhla, Sr. Adv. with Mr.  
Rama Shanker, Adv. for R-4.

**CORAM :-**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

**RAJIV SAHAI ENDLAW, J.**

1. The three petitioners in W.P.(C) No.19506-08/2005 claim to be members of an undivided joint Hindu family comprising not only of the three petitioners but others also who are not before this Court; they further claim that the said undivided joint Hindu family is entitled to land admeasuring 8 bighas and 6 biswas falling in Khasra No.3741/3221/2752/734 in Village-Basai Darapur, New Delhi; they claim the said land to be their ancestral property; it is however their case that respondent DDA in September, 2003 demolished the structures existing on the said land, claiming the land to be of the DDA.

2. The three petitioners further claim that on their request the SDM, Patel Nagar in October/November, 2003 commenced proceedings for

demarcation of the land but the respondents DDA and Delhi Metro Rail Corporation Ltd. (DMRC) during the demarcation proceedings even started digging the land claiming that the land was required under the Rehabilitation Scheme for affected persons at Moti Nagar.

3. The petitioners claim to have earlier filed Civil Writ Petition No.7451-53/2003 which was disposed of by directing the demarcation proceedings to be completed. The petitioners claim that the said demarcation proceedings were completed and in which the land aforesaid was found to be of the petitioners only. It is further the claim of the petitioners that notwithstanding the same, DDA neither got the encroachment which had taken place on the land in the interregnum, removed from the land nor delivered the possession thereof.

4. W.P.(C) No.19506-08/2005 has been filed seeking mandamus to the respondents DDA, DMRC and Govt. of NCT of Delhi for delivering possession of the demarcated 8 bighas and 6 biswas of land to the petitioners and to prevent encroachments thereon.

5. Notice of the said petition was issued. One Mr. Rakesh Mehta applied for impleadment in W.P.(C) No.19506-08/2005 relying upon the order in W.P.(C) No.805/2005 preferred by him wherein he had made claim with respect to land admeasuring 100 sq. yds in the aforesaid Khasra numbers. It was his case that the petitioners in the garb of the relief claimed in W.P.(C) No.19506-08/2005 were seeking to dispossess him from his land/property.

6. Vide order in W.P.(C) No.19506-08/2005, a report was also called from the SDM regarding the demarcation proceedings. Such report was submitted. On 9<sup>th</sup> May, 2011 the counsel for the DDA informed that the demarcation carried out by SDM was unacceptable to DDA and objections to the demarcation carried out had been filed.

7. DDA in its counter affidavit in W.P.(C) No.19506-08/2005 has pleaded that land admeasuring 5.54 acres adjoining to land in Khasra No.3741/3221/2752/734 had been transferred to the DDA by the Ministry of Rehabilitation and possession thereof taken on 16<sup>th</sup> April, 1986. It is however admitted that the land measuring 8 bighas and 6 biswas in Khasra

No.3741/3221/2752/734 claimed by the petitioners herein was not included in the said 5.54 acres of land. DDA has further stated that Jhuggis on the said 5.54 acres of land were demolished in September 2003 as the same was required for DMRC. It was stated that none of the structures on the land of the petitioners was demolished and that the petitioners were in fact illegally claiming rights over the land of the DDA.

8. The report dated 24<sup>th</sup> February, 2009 of demarcation filed by the SDM shows the entire land to be built-up, either with houses, shops or in occupation of DMRC.

9. DMRC in its counter affidavit in W.P.(C) No.19506-08/2005 has stated that it had requested the DDA to provide land at Moti Nagar for its project and land measuring 5523.38 sq.mts. behind Natraj Cinema was handed over to DMRC on 21<sup>st</sup> October, 2003 for the MRTS project.

10. W.P.(C) No.10554/2009 has been filed by two of the three petitioners in the other writ petition, pleading that since Sh. Rakesh Mehta aforesaid (impleaded as respondent no.4 in this petition) had applied for

impleadment in the other writ petition claiming possession of part of the land with respect to which the other writ petition was filed, the said petitioners had realized that the said Sh. Rakesh Mehta had got the land mutated in his name. Mandamus for correction of revenue records relating to possession and ownership and declaration of title of the petitioners is claimed in W.P.(C) No.10554/2009. Notice of the said writ petition was also issued and pleadings therein have also been completed.

11. The counsel for the DDA has again stated that DDA had preferred objections to the demarcation report and which are pending consideration before the SDM, Patel Nagar.

12. The counsel for the petitioners contends that notwithstanding the demarcation carried out first in 2003 and again in 2009 having found the land under occupation of DDA and DMRC to be of the petitioners, the petitioners are without possession till now. It is contended that such governmental agencies are required to deliver possession once demarcation has found the land in their possession to be that of petitioners and without requiring the petitioners to institute proceedings for recovery of

possession.

13. The senior counsel for Sh. Rakesh Mehta contends that said Sh. Rakesh Mehta is concerned with only 700 sq. yds. out of 8 bighas and 6 biswas of land aforesaid and of which, 200 sq. yds. is on *tehbazari* under MCD and the other 500 sq. yds. is in the ownership of the said Sh. Rakesh Mehta.

14. The counsel for the petitioners controverts the aforesaid.

15. As far as the objection of the petitioners to the adjudication of the objections preferred by the DDA to the demarcation report is concerned, the same has no merit. Admittedly the law recognizes the procedure of preferring objections to the demarcation. The senior counsel for Sh. Rakesh Mehta in this regard invites attention to Rule 34 of the Delhi Land Revenue Rules, 1962. It is further pointed out by the senior counsel as well as by the counsel for the DDA that the persons aggrieved from adjudication of such objections/boundary disputes arising from demarcation have remedy of appeal to the Assistant Collector and

thereafter to the Financial Commissioner. The said process of law cannot be interfered with.

16. As far as the plea of the petitioners of delay is concerned, the same can be taken care of by providing for a time bound disposal by the SDM of the objections preferred by the DDA.

17. The counsel for the SDM, Patel Nagar with respect to the relief claimed in W.P.(C) No.10554/2009 has stated that the petitioners have not preferred any appeal against the mutation in the name of Sh. Rakesh Mehta. It is stated that the order of mutation in favour of Sh. Rakesh Mehta has attained finality.

18. The counsel for the petitioners however contends that the name of Sh. Rakesh Mehta who was merely a tenant of the petitioners could not have been mutated and the order of mutation is *mala fide*. He contends that the representation of the petitioners against the said mutation has been rejected and which led to filing of W.P.(C) No.10554/2009.

19. Needless to state that the senior counsel for Sh. Rakesh Mehta

controverts that Sh. Rakesh Mehta was a tenant under the petitioners.

20. The counsel for the petitioners has also contended that while Sh. Rakesh Mehta in application for impleadment filed in W.P.(C) No.805/2005 was claiming possession of only 100 sq. yds., he is now claiming possession of 700 sq. yds.

21. The aforesaid factual disputes cannot be adjudicated in these proceedings. The Delhi Land Revenue Act having provided for the remedy of appeal against the order of mutation, the writ petition claiming the same relief would not be maintainable particularly when disputed questions of fact appear to be involved and which are best left to be adjudicated under the mechanism provided under the Act. The contention of the counsel for the petitioners that the petitioners are seeking an enquiry, cannot be accepted. The Appeal and Revisional Authorities under the Land Revenue Act are well equipped to take care of such grievance.

22. Insofar as the claim of the petitioners to being put into possession is concerned, it has been enquired from the petitioners as to how such a

direction can be made even if the boundary disputes/objections to demarcation are finally decided in favour of the petitioners, inasmuch as as per the demarcation report the entire land is built up and occupied and the persons who are in occupation are not before this Court. In this regard it may be noticed that even possession of Sh. Rakesh Mehta which is now not disputed, was not disclosed by the petitioners in W.P.(C) No.19506-08/2005. The averments in the writ petition also, as aforesaid, show that the petitioners were/are aware of the encroachments on the land; without impleading the so called encroachers, a direction for delivery of possession has been sought.

23. The counsel for the petitioners however today states that the land is vacant and open even now. He, further under instructions of one of the petitioners present in Court, states that the land is in possession of the DMRC and is open, only with a boundary wall.

24. I have considered whether in these proceedings a direction for possession can be given. The area where the land is stated to be situated is in the heart of the city and is built up/constructed. There is nothing before

this Court to even gauge the location of the land in juxtaposition to the surroundings. In these circumstances, it is not possible for this Court to direct the delivery of possession of the land.

25. The writ petitions are therefore disposed of with the following directions:-

- (i) The SDM, Patel Nagar is directed to dispose of the objections preferred by DDA to the demarcation report on or before 31<sup>st</sup> December, 2011;
- (ii) The petitioners as well as Sh. Rakesh Mehta and any other concerned person shall be entitled to participate in the said proceedings;
- (iii) The party aggrieved from the decision of the SDM, Patel Nagar shall have remedies in accordance with law;
- (iv) The petitioners shall be entitled to challenge the mutation in the name of Sh. Rakesh Mehta by taking proceedings in accordance with law thereagainst. In computing the period of limitation for the

said proceedings, the period during which W.P.(C) No.10554/2009 remained pending in this Court i.e. from 27<sup>th</sup> July, 2009 till 31<sup>st</sup> August, 2011 shall be excluded therefrom;

(v) If ultimately the demarcation proceedings find the land of the petitioners to have been encroached upon, the petitioners shall be at liberty to take proceedings in accordance with law for recovery of possession thereof from the persons in possession thereof.

No order as to costs.

**CM No.3071/2011 in W.P.(C) No. 10554/2009 (of respondent no.4 of exemption)**

Allowed, subject to just exceptions.

Copy of this order be given *Dasti* to the parties.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**August 16, 2011**  
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