

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

Date of decision: 4th February, 2011.

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W.P.(C) 6028/2007

DHAPU

..... Petitioner

Through: Mr. A. Maitri, Adv.

Versus

GOVT. OF N.C.T. OF DELHI & ANR.

..... Respondents

Through: Ms. Reeta Kaul, Adv.

AND

+

W.P.(C) 6098/2007 & CM No.21993/2010 (u/S 151 CPC)

SH. NANAK CHAND

..... Petitioner

Through: Mr. A. Maitri, Adv.

Versus

GOVT. OF N.C.T. OF DELHI & ANR.

..... Respondents

Through: Mr. V.K. Tandon, Adv.

AND

+

W.P.(C) 6099/2007 & CM No.21994/2010 (u/S 151 CPC)

SMT. ANGOORI

..... Petitioner

Through: Mr. A. Maitri, Adv.

Versus

GOVT. OF N.C.T. OF DELHI & ANR.

..... Respondents

Through: Mr. V.K. Tandon, Adv.

AND

+ **W.P.(C) 6100/2007 & CM No.21877/2010 (for stay)**

SH. MUKUT **Petitioner**

Through: Mr. A. Maitri, Adv.

Versus

GOVT. OF N.C.T. OF DELHI & ANR. **Respondents**

Through: Mr. V.K. Tandon, Adv.

AND

+ **W.P.(C) 6260/2007 & CM No.21992/2010 (u/S 151 CPC)**

SH. HUKUM **Petitioner**

Through: Mr. A. Maitri, Adv.

Versus

GOVT OF NCT OF DELHI & ANR **Respondents**

Through: Mr. V.K. Tandon, Adv.

AND

+ **W.P.(C) 6261/2007 & CM No.21880/2010 (for directions)**

SH. PREM SINGH **Petitioner**

Through: Mr. A. Maitri, Adv.

Versus

GOVT OF NCT OF DELHI & ANR **Respondents**

Through: Mr. V.K. Tandon, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may

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| | be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Each of the petitioners claim to have been allotted 100 sq. yrds of land at Chhattarpur Pahari, Mehrauli, New Delhi under the then 20-Point Programme of the Government. The petitioners in the year 2004 filed writ petitions being W.P.(C) No.17638/2004, W.P.(C) No.17634/2004, W.P.(C) No.17633/2004, W.P.(C) No.17632/2004, W.P.(C) No.17642/2004 & W.P.(C) No.17629/2004, in this Court averring that the respondents were trying to illegally dispossess them from the land so allotted to them. It may be noticed that the petitioners in support of their claim of allotment rely upon Patta Certificates claimed to have been issued to them and in which the plot numbers and the number of the Khasra where the allotted plot was situated/located in the Revenue Estate of Gram Sabha, Chhattarpur, Mehrauli, are mentioned. It was the contention of the respondents in the earlier writ petitions that the petitioners in the garb of

those writ petitions were trying to encroach upon the land comprised in Khasra Nos.142 & 143 of Village-Chhattarpur and in which Khasra Numbers the plots allotted to the petitioners were not situated. This Court being of the view that the controversy in the earlier writ petitions was purely a question of fact as to whether the petitioners were occupying the plots which they claimed to have been allotted to them or had encroached upon the land comprised in Khasra Nos.142 & 143 disposed of the writ petitions vide order dated 22nd February, 2006 by directing demarcation to be carried out after notice to the petitioners and with further direction that if demarcation revealed that the sites occupied by the petitioners were comprised in Khasra Nos.142 & 143, the respondents would be free to resume possession. It was observed that if the demarcation showed that the petitioners were not occupying to Khasra Nos.142 & 143 and were occupying the sites claimed to have been allotted to them, the respondents would not interfere with the possession of the petitioners.

2. The present writ petitions have been filed averring that notwithstanding the direction in the earlier writ petitions, the demarcation

was not carried out; that in the year 1995 an MID Plan (informed to be 'Mines & Irrigation Department' Plan) of the area was prepared by the Mines & Irrigation Department of the Govt. of NCT of Delhi showing the location of various plots of land of Chhattarpur Pahari and at that stage the plots were re-numbered; that under 20-Point Programme, 799 plots were allotted at Chhattarpur Pahari and the other allottees continued to be in occupation of their plots; though no demarcation was carried out but the respondents claiming that the properties in possession of the petitioners to be in Khasra Nos.142 & 143 had demolished the structure raised by the petitioners on their plots and were seeking to dispossess the petitioners and consequently seeking the relief of restraining the respondents from forcibly dispossessing the petitioners and for allowing the petitioners to re-construct their properties.

3. Notice of the writ petitions was issued on 24th August, 2007 and *status quo* qua title, construction and possession directed to be maintained. The said interim order has continued in force. The respondents have filed counter affidavits and to which rejoinders have been filed by the

petitioners. The counsels for the parties have been heard.

4. It has been enquired from the counsel for the petitioners, that the matter having already been considered and decided in the earlier round of litigation in aforesaid writ petitions, and if demarcation as directed has not been carried out, the remedy of the petitioners would be by way of contempt and it has been enquired as to how these second round of writ petitions are maintainable.

5. The counsel for the petitioners informs that contempt petition being Cont. Case Nos.412-415/2007, Cont. Case No.418/2007 & Cont. Case No.426/2007 were filed and which were disposed of vide common order dated 13th April, 2010, a copy whereof is handed over in the Court. The said order discloses that though it was the case of the respondents in the said contempt proceedings that in pursuance to the order in the earlier round of litigation, demarcation was carried out on 5th July, 2007 after notifying the petitioners but the respondents nevertheless agreed to carry out fresh demarcation after issuing fresh notices to the petitioners. Recording the said statement, the contempt petitions were disposed of.

6. The counsel for the respondents informs that in pursuance to the said order in the contempt case, fresh demarcation is in progress. The counsel for the petitioners confirms the same.

7. The counsel for the petitioners has however contended that the benefit of allotment of land which was given to the petitioners under the 20-Point Programme and which was a beneficial programme cannot be whittled away by so depriving the petitioners of their lands. It is contended that the Number of the Khasra in which the 100 sq. yds. of land allotted to the petitioners was situated, were written by the then Pradhan of the Gram Sabha and the petitioners had no occasion to verify the same. He contends that the land allotted to the petitioners was the land of which the petitioners are in possession till today and even if the said land is situated in Khasra Nos.142 & 143 as now claimed by the respondents and not in the Khasra Numbers mentioned in the allotment letters, the petitioners cannot be deprived of the benefit vested in them. It is contended that the other beneficiaries of the scheme continue to be in occupation and present petitioners alone are being singled out. It is yet further urged that even if

the land in possession of the petitioners is now required by the respondents for the Transport Department as is being claimed, the petitioners are entitled to alternative sites of 100 sq. yds.

8. What has been argued today is in excess of the relief granted to the petitioners in the earlier round of litigation. In the earlier round of litigations, it was not the case of the petitioners that they were entitled to continue in possession of land irrespective of wheresoever it was situated, whether in the Khasra Numbers mentioned in the allotment letters or in Khasra Nos.142 & 143 in which the respondents claimed petitioners to be in unauthorized possession of. Rather, the counsel for the petitioners had then controverted the claim of the respondents and denied that the land in their possession were part of Khasra Nos.142 & 143. In such factual matrix, this Court had directed that the petitioners would be liable to be dispossessed if found in Khasra Nos.142 & 143.

9. The attempt now of the petitioners is to overreach the order dated 22nd February, 2006 in the earlier writ petitions and which has attained finality. The same cannot be permitted. If the petitioners had any

grievance against the order dated 22nd February, 2006, they ought to have agitated the same. Rather, it appears that the said order was in the nature of a consent order. The petitioners cannot be permitted to subsequently as an after thought, improve their case.

10. Faced with the aforesaid, the counsel for the petitioners states that in fact applications for clarification raising the same pleas were moved in the earlier round of writ petitions and attention is invited to the order dated 26th May, 2006 disposing of those applications for clarification. Though the application for clarification has not been filed but the contention of the counsel for the petitioners re-affirms that what was agitated in the earlier round of litigation and relief with respect thereto denied to the petitioners, cannot now be allowed to the petitioners.

11. The counsel for the petitioners contends that justice has to be done by this Court and the petitioners cannot be left remediless. It is contended that the respondents have not disclosed as to where is the land which was allotted to the petitioners; the respondents rather in their counter affidavits have stated that the records of allotment were not made available by the

then Pradhan; attention is also invited to the counter affidavit where the respondents admitted preparation of the MID Plan and willingness to produce the same if required by the Court. It is argued that this Court should direct the respondents to produce the said MID Plan and conduct an investigation as to where the land allotted to the petitioners has disappeared.

12. This Bench is not sitting in appeal over the order dated 22nd February, 2006 in the earlier round of litigation which categorically decided the lis between the parties by ordering the petitioners liable to be dispossessed if found in Khasra Nos.142 & 143. The law does not permit such a course of action. There has to be finality of decisions and decisions cannot be re-opened by invoking the argument of justice and deprivation.

13. The counsels for the respondents have contended that in fact the petitioners were dispossessed from the land and have in the garb of the interim order in the present writ petitions again encroached upon the land. It is further argued that if the petitioners are aggrieved with the demarcation now underway, their remedy would be by way of challenging

the demarcation report before the Revenue Authorities in accordance with the provisions provided therefor.

14. I therefore find the writ petitions to be not maintainable in view of the controversy having been decided in the earlier round of litigation and the petitioners being not entitled to re-open/re-agitate the same.

15. The writ petitions are accordingly dismissed. The interim orders are vacated; the petitioners though found to have indulged in re-litigation, I refrain from imposing any costs on the petitioners.

16. The counsel for the petitioners at this stage states that the petitioners be granted liberty to apply to the respondents for alternative land in case the subject land is found to be in Khasra Nos.142 & 143. Liberty granted.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 04, 2011

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