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

% **Date of decision: 1st July, 2014**

\+ **CS(OS) 1441/2004 & I.A.7527/2013 (of defendant u/O 7 R-11 CPC)**

SAMANIT ENTERPRISES & ANR ..... Plaintiffs
Through: Mr. Amit Gupta, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR ..... Defendants
Through: Mr. Pawan Mathur, Advocate.

AND

\+ **CS(OS) 1442/2004 & I.A.7528/2013 (of defendant u/O 7 R-11 CPC)**

ULTIMATE SERVICES PVT. LTD. & ANR ..... Plaintiffs
Through: Mr. Amit Gupta, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR ..... Defendants
Through: Mr. Pawan Mathur, Advocate.

AND

\+ **CS(OS) 818/2006 & I.A.7526/2013 (of defendant u/O 7 R-11 CPC)**

SH. HARI RAM AND ORS. ..... Plaintiffs
Through: Mr. D.V. Khatri, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY ..... Defendant
Through: Mr. Pawan Mathur, Advocate.

AND

+ **CS(OS) 1128/2008 & I.A. No.21037/2011 (for correction in the cross-examination of PW-1)**

JASBIR SINGH ..... Plaintiff

Through: Mr. Rajat Aneja, Ms. Rashi Verma and Ms. Swati Gupta, Advocates.

Versus

DDA AND ORS ..... Defendants

Through: Mr. Pawan Mathur, Advocate.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All these four suits concern the same property and were consolidated and the aspect of their maintainability is for consideration.

2. The two plaintiffs in CS(OS) No.1441/2004 viz. M/s Samanit Enterprises, a partnership firm and its partner Sh. Ashok Gupta (since deceased, through his legal representatives) and the two plaintiffs in CS(OS) No.1442/2004 viz. M/s Ultimate Services Pvt. Ltd. and its Director Mr. G. Verghese, in or about the year 1997 filed Civil Writ No.533/1997 and Civil Writ No.534/1997 respectively in this Court and which writ petitions were disposed of vide common order dated 08.01.2003. The said order records:

(i) that on 03.09.1957, a notification under Section 4 of the Land Acquisition Act, 1894 was issued, seeking to acquire besides other lands, land measuring 1 bigha and 13 biswas comprising Khasra

No.51 and 1 bigha and 18 biswas comprising Khasra No.52 situated in village Humayunpur, Delhi;

(ii) that vide award No.1170, the aforesaid 1 bigha 13 biswas of land comprising Khasra No.51 and 1 bigha of land out of Khasra No.52, comprising of total 1 bigha and 18 biswas was acquired;

(iii) that another award No.1170A was made on 23.10.1963 vide which another 11 biswas of land out of Khasra No.52 was acquired;

(iv) thus 7 biswas of land out of Khasra No.52 remained to be acquired;

(v) no further proceedings were taken with respect to the said 7 biswas of land and thus the acquisition proceedings initiated with respect to the said 7 biswas of land lapsed;

(vi) the petitioners in both the writ petitions claimed to be subsequent purchasers from the previous owners and claimed to have acquired title in the said 7 biswas of land which, in the revenue records, was described as Khasra No.52/2/2 of village Humayunpur and had filed the writ petitions for declaration that there was no award made with respect to the said 7 biswas of land and to restrain the

respondents in the writ petitions i.e. Union of India and another from taking possession of the said 7 biswas of land;

(vii) that though the petitioners (i.e. the plaintiffs in CS(OS) No.1441/2004 and CS(OS) 1442/2004) were entitled to the relief to the extent that 7 biswas of land comprised in Khasra No.52/2/2 of village Humayunpur was free from acquisition but were not entitled to the relief of restraining the respondents in the writ petition from not taking over the possession of the land in their occupation, in view of the report of demarcation dated 20.04.2000 of the Sub-Divisional Magistrate (SDM), Hauz Khas, New Delhi appointed to take steps to identify the land measuring 7 biswas and in which report, it was stated that the buildings / plot occupied by the petitioners fell in Khasra No.51 which was acquired land;

(viii) accordingly, the writ petitions were disposed of declaring that the land comprised in Khasra No.52/2/2 measuring 7 biswas was free from acquisition but declining the relief of restraining the respondents from not taking possession of the land in occupation of the petitioners.

3. The plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 after nearly two years of the disposal of the aforesaid writ petitions filed by them (the writ petitions as aforesaid were disposed of on 08.01.2003 and the suits came up first before this Court on 14.12.2004 and 15.12.2004 respectively) instituted the suits for the relief of declaration that the demarcation report dated 20.04.2000 aforesaid is incorrect, illegal and bad in law and for permanent injunction restraining the defendant Delhi Development Authority (DDA) in both the suits from interfering in the peaceful possession of the plaintiffs in and on the land measuring 7 biswas comprised in Khasra No.52/2/2 of village Humayunpur.

4. Though vide *ex parte* ad-interim order dated 14.12.2004 in CS(OS) No.1441/2004, while issuing summons of the said suit, *status quo* was directed to be maintained but vide order dated 15.12.2004 in CS(OS) 1441/2004, the application of the plaintiffs for interim relief of restraining the defendant DDA from taking possession of the land in occupation of the plaintiffs in that suit was dismissed, observing:

> (a) that the Division Bench of this Court vide order dated 08.01.2003 (supra) in the writ petitions filed by the plaintiffs had declined any protection of possession over the built up property;

(b) the plaintiffs had not filed any SLP against the said order;

(c) that though the contention of the plaintiffs was that it was open to the plaintiffs to challenge the correctness of the demarcation report dated 20.04.2000 but the plaintiffs had not taken any steps for getting the property re-demarcated;

(d) the Division Bench in the order dated 08.01.2013 in the writ petitions preferred by the plaintiffs had already acted upon the demarcation report and declined the relief of protection of possession to the plaintiffs;

(e) there was no other authentic material on record to show that the built up property of which the plaintiffs claimed, to be in possession fell in Khasra No.52/2/2, and not in Khasra No.51 as reported in the demarcation report dated 20.04.2000.

5. CS(OS) No.1442/2004 came up first before this Court on 15.12.2004 before the same Hon'ble Judge who dismissed the application for interim relief as aforesaid in CS(OS) No.1441/2004 and no interim relief was granted therein also, in view of the order dated 08.01.2003 in the writ petition filed by the plaintiffs therein.

6. The plaintiffs in CS(OS) No.1441/2004 as also the plaintiffs in CS(OS) 1442/2004 preferred FAO(OS) No.290/2004 and FAO(OS) No.3/2005 respectively to the Division Bench of this Court against the refusal / decline of the interim order. Vide ad-interim order dated 17.12.2004 in FAO(OS) No.290/2004 *status quo* was directed to be maintained. The said interim order appears to have continued and perhaps there was a similar interim order in FAO(OS) No.3/2005 and the two FAO(OS)s were being taken up together. The order dated 09.02.2005 in FAO(OS) No.290/2004 records that the "simple case of the plaintiffs / appellants was that if according to the defendant / respondent DDA, the building and attached land in occupation of the plaintiffs / appellants was falling in Khasra No.51 and was acquired land, then the plaintiffs / appellants were entitled to be put in possession of 7 biswas of un-acquired land wherever it was vacated." The Division Bench, observing that since the demarcation report dated 20.04.2000 did not refer to location of the 7 biswas of un-acquired land in Khasra No.52/2/2, issued notice to the Director of Lands, DDA and to SDM, Hauz Khas. The order dated 27.04.2005 in FAO(OS) 290/2004 records, (a) that an affidavit had been filed by the SDM in this regard; and, (b) that it was the contention of the

counsel for the appellants / plaintiffs that the measurement, while carrying out the demarcation on 20.04.2000, was not done from the fixed point but was based on the old demarcation report and that the partner of the plaintiff's firm in CS(OS) No.1441/2004 though was present at the time of demarcation dated 20.04.2000 but had not signed the demarcation report. The Division Bench, vide the said order directed a fresh demarcation in the presence of a Court Commissioner. However the orders on record in FAO (OS) No.290/2004 and FAO (OS) No.3/2005 do not show the outcome of the demarcation so ordered and the FAO (OS) No.290/2004 and FAO (OS) No.3/2005 were disposed of vide order dated 12.12.2007 observing:

(I) that the Division Bench was informed that with respect to the same 7 biswas of land, besides CS(OS) No.1441/2004 and CS(OS) No.1442/2004, two others suits were also pending;

(II) The Division Bench in view thereof held that to avoid conflicting judgments, the four suits should be consolidated;

(III) of the said four suits, CS(OS) No.1441/2004 and CS(OS) No.1442/2004 were ordered to be treated as lead suits and their hearing was expedited and till these four suits were disposed of, the interim order dated 17.12.2004 of *status quo* in FAO(OS)

No.290/2004 be maintained and DDA was given liberty to seek appropriate interim directions from the Single/Suit Judge.

It may be highlighted that the Division Bench did not set aside or interfere in the detailed reasoning given in order dated 15.12.2004 of the Single/Suit Judge in CS(OS) No.1441/2004, of dismissing the application for interim relief.

7. During the pendency of appeals aforesaid, the plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 got the plaint in the two suits amended to *inter alia* also take the pleas, (a) that the demarcation dated 20.04.2000 was not in accordance with the provisions of the Punjab Land Revenue Act, 1887 and not in accordance of the principles of natural justice; and, (b) that even if the land in their possession was acquired one, only the Collector could take possession from them and the defendant DDA could not without prior notice under Section 30 of the Delhi Development Act, 1957 have carried out demolition action. The plaintiffs in both the suits also got impleaded the Municipal Corporation of Delhi (MCD) as defendant no.2 thereto, contending that it is only the MCD which has jurisdiction over the suit property and consequential amendment to that effect was also carried out in the plaint.

8. The defendant DDA contested both CS(OS) No.1441/2004 and CS(OS) No.1442/2004 pleading that though the sale deeds claimed by the plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 are with respect to 116 sq. yds. and of 220 sq. yds. respectively, purported to be in Khasra No.52/2/2, but the plaintiffs are in possession of Khasra No.51 which is acquired land and in possession of the defendant DDA, and of unauthorized construction wherein part demolition had also been carried out. No written statement of the defendant MCD is found on record.

9. CS(OS) No.818/2006 has been filed by Sh. Hari Ram, Shri Bihari Lal and Sh. Girdhari Lal, all three sons of Sh. Chuna Ram, pleading:

(A) that they / their predecessor in interest have been in use and occupation of property bearing No.2/1, admeasuring 350 sq. yds. comprising in Khasra No.52/2/2 since the year 1972 and had been running their shop of hardware and building material therein;

(B) that they / their predecessor in interest was inducted in the said property as a tenant by one Sh. Sukhbir Singh (not impleaded as a party to the suit) who claimed to be the owner thereof;

(C) that they / their predecessor in interest had also filed a suit for permanent injunction in the Court of Civil Judge, Delhi against said

Sh. Sukhbir Singh to restrain him from forcibly dispossessing them from the said property and vide interim order dated 14.02.1990 therein, Sh. Sukhbir Singh was so restrained;

(D) that the Khasra No.52/2/2 was free from acquisition as held by this Court in order dated 08.01.2003 in W.P.(C) No.534/1997 (i.e. filed by the plaintiffs in CS(OS) No.1442/2004);

(E) that the defendant DDA had however on 14.12.2004 started demolition proceedings over the property;

(F) that the plaintiffs filed W.P.(C) No.1383-85/2005 in which though initially ad-interim stay was granted against the DDA but the writ petition was dismissed vide order dated 15.12.2005 holding that the remedy if any was to challenge the demarcation report (a perusal of the order dated 15.12.2005 shows; i) that the same also disposed of W.P.(C) No.12784/2005 filed by Sh. Sukhbir Singh; ii) that the claim in the writ petition was for compensation for the demolition already carried out by the DDA and for restraining the DDA from interfering in the possession of the petitioners; iii) that W.P.(C) No.71/2005 filed by Sh. Jasbir Singh, plaintiff in CS(OS) No.1128/2008, was dismissed vide order dated 29.09.2005 observing "that the

demarcation got done pursuant to orders in W.P.(C) No.533/1997 (filed by plaintiffs in CS(OS) No.1441/2004) was not got set aside and DDA would be entitled to act pursuant to the demarcation for the reason that the said demarcation had a stamp of legitimacy"; iv) that as per DDA, it had only removed the encroachments on acquired land and the construction continued to exists on the un-acquired land);

(G) that the DDA was relying upon two demarcation reports i.e. report dated 20.04.2000 and report dated 01.03.2005 which were contradictory to each other and demarcation report dated 20.04.2000 had already been challenged vide CS(OS) No.1442/2004;

(H) that both the demarcation reports dated 20.04.2000 and 01.03.2005 were factually incorrect and violative of the provisions of Punjab Land Revenue Act, 1887 as well as the provisions relating to demarcation contained in the High Court Rules.

Accordingly, the relief of declaration that the demarcation reports dated 20.04.2000 and 01.03.2005 were incorrect and of permanent injunction restraining the defendant DDA from interfering with the peaceful possession of the plaintiffs of land comprised in Khasra No.52/2/2 was claimed.

10. The defendant DDA contested CS(OS) No.818/2006 pleading:

(i) that while only 7 biswas i.e. about 350 sq. yds. was left out of acquisition, various persons were staking claim thereto; list thereof was given in the written statement and taking together the claim of all the persons, the area of un-acquired Khasra No.52/2/2 would exceed 1 bigha;

(ii) that in compliance of order dated 09.02.2005 in FAO(OS) No.290/2004 (supra) to disclose the location and ownership of un-acquired portion of Khasra No.52 i.e. 7 biwas of land in Khasra No.52/2/2/, necessary exercise was carried out and it was found that one Sh. Ved Prakash and the plaintiffs Sh. Hari Ram, Sh. Bihari Lal and Sh. Girdhari Lal were in possession of Khasra No.52/2/2;

(iii) that the plaintiffs Sh. Hari Ram, Sh. Bihari Lal and Sh. Girdhari Lal were partly in possession of Khasra No.52/2/1 and partly in possession of Khasra No.52/2/2 and the demolition activity carried out on 14.01.2004 (sic for 14.12.2004) was confined to the portion falling in Khasra No.52/2/1, without touching the room falling in Khasra No.52/2/2.

11. CS(OS) No.1128/2008, was filed originally in the Court of the Senior Civil Judge, Delhi and was transferred to this Court pursuant to the order aforesaid dated 12.12.2007 of the Division Bench in FAO(OS) No.290/2004 and FAO(OS) No.3/2005 of consolidation of the four suits, pleading:

(a) that the plaintiff Sh. Jasbir Singh therein was a tenant in a shop under Sh. Sukhbir Singh (impleaded as defendant No.5) since the year 1972;

(b) that the defendant no.1 DDA on 14.12.2004 carried out demolition activity including of the shop of the plaintiff, without issuing any notice;

(c) that the plaintiff Jasbir Singh filed W.P.(C) No.71/2005 before this Court and in which vide order dated 07.01.2005 *status quo* qua title and possession was directed to be maintained; however vide order dated 29.09.2005, after taking into consideration the averments in the counter affidavit of the DDA, the said writ petition was dismissed with the observation that the remedy of the plaintiff / petitioner was to file a civil suit, lead evidence and thereafter obtain a decision (a perusal of the said order shows that reliance was placed on the order dated 08.01.2003 (supra) in W.P.(C) No.533/1997 and it

was observed that in view of the said order dated 08.01.2003 there was a stamp, of legitimacy, of this Court on the demarcation report dated 20.04.2000 and it was further noticed that as on 29.09.2005, was no structure existed on the spot).

Accordingly, the suit with the relief, of possession and of permanent injunction restraining the DDA from creating third party interest in the property and for mandatory injunction directing the DDA to either pay compensation or to give alternative accommodation to the plaintiff, was filed.

12. The defence of the DDA in the said suit also is that the plaintiff Jasbir Singh was an illegal encroacher qua acquired land in Khasra No.51.

13. Vide separate orders all dated 21.07.2009, the following issues were framed in CS(OS) No.1441/2004 & CS(OS) No.1442/2004:

> *"(1) Is the report dated 20th April, 2000 of the SDM bad in law? OPP*
>
> *(2) Is the Plaintiff entitled to an injunction restraining the Defendant from interfering in the possession of the land comprised in Khasra No.52/2/2, village Humanyun Pur measuring 7 biswas? OPP*
>
> *(3) Relief."*

the following issues were framed in CS(OS) No.818/2006:

"(1) Are the demarcation reports dated 20th April, 2000 and 1st March, 2005 of the SDM bad in law? OPP

(2) Is the Plaintiff entitled to an injunction restraining the Defendant from interfering in the possession of the land comprised in Khasra No.52/2/2, village Humanyun Pur measuring 350 sq. yards? OPP

(3) Relief."

and the following issues were framed in CS(OS) No.1128/2008:

"(1) Is the shop bearing No.S-1, Arjun Nagar, New Delhi located in Khasra No.52/2/2? OPP

(2) Is the Plaintiff entitled for a decree of possession in respect of shop bearing No. S-1, Arjun Nagar, New Delhi as shown in red in the site plan annexed to the plaint? OPP

(3) Is the Plaintiff entitled for a decree of permanent injunction against the Defendants restraining them from transferring, selling or creating third party interest in the suit shop being S-1, Arjun Nagar, New Delhi? OPP

(4) Is the Plaintiff entitled in the alternative to a mandatory injunction directing defendants to pay compensation or allot alternative accommodation to the Plaintiff in lieu of the suit shop being S-1, Arjun Nagar, New Delhi? OPP

(5) Relief."

14. All the four suits were separately put to trial.

15. In CS(OS) No.1441/2004 & CS(OS) No.1442/2004, the plaintiffs have examined the four witnesses each. In CS(OS) No.818/2006 cross-examination of PW1 is underway and in CS(OS) No.1128/2008, the

plaintiff has closed his evidence after examining himself and the matter is pending at the stage of defendants evidence and for consideration of an application of the plaintiff for seeking correction of an error in recording the cross-examination of the plaintiff.

16. The order dated 22.05.2012 in all the suits records that the counsel for the plaintiffs in each suit and the counsel for the DDA took adjournment to take instructions as to whether demarcation could be carried out by the SDM by Station House Method, after issuing notice to all the concerned parties. The subsequent order dated 08.10.2012 in CS(OS) No.1128/2008 is as under:

> *"**IA No.12206/2010 (under Section 151 CPC)***
>
> *Learned counsel for the DDA states on instructions that the demarcation can be carried out by the Sub-Divisional Magistrate by Station House Method after issuing notice to all the concerned parties, provided the cost for the demarcation is borne by the parties/plaintiff.*
>
> *Counsel for the plaintiffs in CS(OS) No.1441/2004, CS(OS) No.1442/2004 and CS(OS) No.818/2006 also state that they have no objection to the prayer of the plaintiff in the present case for demarcation being granted, if the costs are borne by the plaintiff in the present suit.*
>
> *It is accordingly directed that the Sub-Divisional Magistrate (Mehrauli) shall demarcate the suit property bearing No.S-1, Arjun Nagar, New Delhi after ascertaining whether the same falls in Khasra No.50/2011, Khasra No.52/2/2 or Khasra No.53. The expense of the demarcation shall be borne by the plaintiff in the first instance.*

The application stands disposed of accordingly.

A copy of this order shall be given to the counsel for the plaintiff for onward transmission to the Sub-Divisional Magistrate and for ensuring compliance with the order.

CS(OS) 1128/2008

List on 6th February, 2013, as prayed."

and the yet subsequent order dated 06.02.2013 is as under:

"A common issue that arises in civil suits bearing CS(OS) Nos.1441/2004, 1442/2004, 818/2006 and 1128/2008 is as to who is the occupier of Khasra No. 52/2/2.

Learned counsel for the plaintiffs in CS(OS) No. 818/2006 states that demarcation as directed by this Court on 8th October, 2012 in CS(OS) 1128/2008 shall not be binding on him and cannot be read as a part of the evidence in CS(OS) 818/2006.

This Court is of the view that it may reach contrary conclusions in different suits if fresh demarcation report is not made a part of the evidence in all the four suits.

A perusal of the order dated 10th January, 2012 also shows that demarcation was to be ordered if plaintiffs in all four suits were aggreable to the same. Faced with this predicament, all the counsel pray for an adjournment.

Re-notify on 16th May, 2013."

17. The defendant DDA has filed applications under Order VII Rule 11 of the CPC in CS(OS) 1441/2004 and CS(OS) No.1442/2004 and CS(OS) No.818/2006, for rejection of the plaints therein, contending:

(aa) that the disputes with respect to boundaries are settled under the provision of Section 28 of the Delhi Land Revenue Act, 1954 and the impugned demarcation was carried out thereunder;

(bb) that the demarcation carried out by the SDM can be challenged, but as per the provisions of Section 64 of the Revenue Act, only before the notified authority i.e. the Revenue Assistant / Collector or Tehsildar;

(cc) any party not satisfied with the order of the Revenue Assistant / Collector or Tehsildar has the remedy of appeal before other revenue authorities;

(dd) thus the challenge to a demarcation can be before the revenue authority only and not before the Civil Court and the suits challenging the demarcation by the SDM and the consequential relief of permanent injunction are not maintainable;

(ee) that the Government of NCT of Delhi is a necessary party to the suits being the authority whose demarcation report is challenged and has not been impleaded as a party to the suit.

18. The plaintiffs have contested the said applications by filing replies.

19. Though no application under Order VII Rule 11 of the CPC has been filed in CS(OS) No.1128/2008, but while hearing arguments on the applications under Order VII Rule 11 in the other three suits, the arguments on the maintainability of CS(OS) No.1128/2008 were also heard.

20. The counsel for the defendant DDA has drawn attention to Section 28 (supra) of the Revenue Act which provides that all disputes regarding boundaries shall be decided by the Deputy Commissioner on the basis of the existing survey maps but if this is not possible, the boundaries shall be fixed on the basis of actual possession; to Section 64(c) which provides for an appeal to the Chief Commissioner from the orders of the Deputy Commissioner, Additional Collector, Settlement Office or Record Officer; and, to Section 64(2) which provides that no appeal shall be allowed from a non-judicial order not connected with settlement passed by the Deputy Commissioner.

21. The counsel for the defendant DDA has relied on:

(a) ***Phoolwati Vs. Ram Dei*** 150 (2008) DLT 105 laying down that possession of agricultural land goes with title and the revenue records are prepared in respect of agricultural land on the basis of physical verification by the Patwari and if one is aggrieved by the entries in

the revenue record, the remedy is provided under the Delhi Land Reforms Act, 1954 and the Civil Court is barred from entertaining such claims and is bound to honour the revenue records as correct and only the revenue authorities have been given the power to decide the issue in respect of agricultural land;

He has however contended that the revenue authorities whose demarcation report is challenged in these suits have not even been impleaded as a party to the suits.

(b) ***Indraprastha Medical Corporation Vs. National Highways Authority of India*** 2009 (5) AD (Delhi) 586 of the Division Bench of this Court holding as under:

> *"15. Having heard learned counsel for the parties, we are of the view that the present petitioner deserves to be dismissed for more than one reason. Firstly we find that the petitioner has not raised a challenge to the demarcation reports in its writ petition which was filed on or about 1.5.2007 i.e. after all these reports have been made by the revenue department of the Government of NCT of Delhi. Demarcation, it appears, was carried out on 12.05.2006, 12.04.2007 and again on 17.04.2007. Pertinently, the petitioner participated in all the demarcation proceedings. Merely raising a challenge to two of the reports in the rejoinder filed in the present writ petition, does not amount to a challenge to the proceedings to seek a relief of quashing the same. No relief in respect of the said demarcation reports has been*

sought, and none could have been sought. Section 28(1) of the Delhi Land Revenue Act, 1954 states that "All disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps, ……. The demarcation reports above referred to, including those dated 12.05.2006 and 12.04.2007 are referable to Section 28 of the Delhi Land Revenue Act, 1954. Section 64 of this Act confers a right of appeal, and under Section 64(1)(c), an appeal lies "to the Chief Commissioner from orders passed by the Deputy Commissioner, Additional Collector, Settlement Officer or Record Officer." Consequently, the petitioner had an efficacious remedy available to it to challenge the demarcation reports, which right the petitioner has failed to exercise.

18. Since the aforesaid demarcation reports have not been challenged before the competent forum and have not been upset in appeal, we see no reason not to rely upon the same."

(c) ***Sachin Gandas Vs. Gaon Sabha, Mehrauli*** 158 (2009) DLT 749 dismissing a writ petition owing to the alternative remedy being available under Section 64 of the Revenue Act (I may however record that the proceeding in that case was for misuse of agricultural land).

22. The counsel for the plaintiffs in CS(OS) No.818/2006 has drawn attention to the order dated 08.02.2007 therein vide which application being IA No.11273/2006 earlier filed by the defendant DDA under Order VII Rule 11 of the CPC was dismissed observing that from a reading of the plaint, it could not be said that the plaintiffs therein were in occupation of the

property which did not fall in Khasra No.52/2/2 and whether the said assertion of the plaintiff was correct or incorrect was a matter to be decided at the stage of trial. He has further contended that the Revenue Act is not applicable as the area of operation thereof vide Section 1 (2) does not include any area specified in sub-section (2) of Section 1 of the Delhi Land Reforms Act, 1954. Attention was then invited to Section 2(a)&(c) of the Reforms Act which excludes from operation thereof the areas included in a municipality and / or areas acquired under the Land Acquisition Act, 1894. It is contended that the subject land falls within the municipal limits and thus the report of demarcation purportedly under the Revenue Act has no value and the challenge thereto is not to be under the Revenue Act before the Civil Court. Attention was next invited to Section 3(9) of the Revenue Act defining the world "settlement" as "settlement of land revenue" and it was contended that the Division Bench in ***Indraprastha Medical Corporation*** (supra) ignored the said position and the said judgment is thus *per incuriam*. It is yet further argued that the plaintiffs were in possession of the property for the last 40 years and could not be dispossessed without due process of law.

23. The counsel for the plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 has adopted the arguments of the counsel for the plaintiff in CS(OS) No.818/2006.

24. The counsel for the plaintiff in CS(OS) No.1128/2008 has argued, (a) that the suits were clubbed owing to the order dated 12.12.2007 (supra) of the Division Bench; (b) otherwise they are dissimilar; (c) that the plaintiff therein is a tenant under the defendant no.5 therein Sh. Sukhbir Singh; (d) that the said Sh. Sukhbir Singh has sold the property including the portion under the tenancy of the plaintiff therein to the plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004; (e) that the sale deeds in favour of the plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 were executed with the prior permission of the revenue authorities; (f) that the demarcation should be carried out as agreed to by the DDA and as recorded in the order dated 08.10.2012 in CS(OS) No.1128/2010 (as reproduced above) and it is only by such demarcation can the dispute be resolved.

25. The counsel for the DDA in rejoinder has contended that when Sh. Sukhbir Singh landlord of the plaintiff in CS(OS) No.1128/2008 is not challenging the demarcation, the tenant has no right to sue for possession.

26. The counsel for the plaintiff in CS(OS) No.1128/2008 has responded by contending that no such plea has been taken.

27. The counsel for the DDA has further contended in rejoinder that the plaintiff in CS(OS) No.1128/2008 has in his cross-examination stated "Khasra No.52/2/2 is situated about 10 yards from my shop", thereby admitting that the property in his possession was not situated in the said Khasra number which is the un-acquired land.

28. The counsel for the plaintiff in CS(OS) No.1128/2008 has again responded by contending that no application for dismissal of the suit on the said ground has been filed.

29. Though the counsels had argued in short but a perusal of the records has disclosed the factual scenario in the four suits as has been narrated above.

30. Having considered the aspect of maintainability of the suits, without entering into any factual controversy, I find the suits to be not maintainable and liable to be dismissed at this stage only, for the following reasons:

(i) As far as the plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 are concerned, they had prior to the institution of the suits filed writ petitions No. 533/1997 & 534/1997 as aforesaid

claiming the same relief as claimed in the suits, of restraining the DDA from interfering with their possession of immovable property which they claimed to be situated in Khasra No.52/2/2 and which they further claimed had not been acquired. The said writ petitions as aforesaid were disposed of vide order dated 08.01.2003. In the said order, though their claim of the land in Khasra No.52/2/2 having not been acquired was upheld, they were still denied the relief claimed of restraining the defendant DDA from dispossessing them from the immovable properties in their occupation / possession. They were denied the latter relief owing to the demarcation report dated 20.04.2000 and as per which the property in their possession / occupation was situated not in Khasra No.52/2/2 but was situated in Khasra No.51. The said order had attained finality. The Division Bench in the said order did not record that any objections had been raised to the report of demarcation which appears to have been carried out as per the directions in the said writ petition. The order also does not record that the said demarcation report was challenged at the time of hearing. The said order does not even give the said plaintiffs any liberty to take appropriate proceedings for challenging

the said demarcation. Rather, it does not even record that any such liberty was claimed. The said plaintiffs, inspite of their writ petitions in so far as claiming the relief of restraining the DDA from dispossessing them having been dismissed, allowed the said order to attain finality; they neither preferred any Special Leave Petition thereagainst nor applied for review of the said order claiming liberty to challenge the demarcation report. Rather, the suits were filed after two years from the disposal of the writ petitions, only when faced again with demolition. The said conduct of the plaintiffs in my view amounts to unequivocal acceptance by them of the demarcation report dated 20.04.2000 and they are not entitled to approbate and reprobate i.e. to accept the demarcation reports in the writ petition and to after two years file a suit challenging the same demarcation report. The question, whether the said plaintiffs were in possession of Khasra No.52/2/2, as claimed by them or were in possession of Khasra No.51, as claimed by the governmental authorities, stood decided in the said writ petitions, on the basis of the said demarcation report and finding them to be in possession of Khasra No.51, the relief claimed

by them, of restraining their dispossession, was denied. They could not reagitate the same question in the subsequent suits.

(ii) A five Judge Bench of the Supreme Court in ***Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*** AIR 1965 SC 1153 was concerned directly with the question whether a decision of the High Court on merits on certain matter after contest in a writ petition under Article 226 of the Constitution operates as *res judicata* in a regular suit with respect to the same matter between the same parties. The Constitution Bench held that on the general principle of *res judicata*, the decision of the High Court on a writ petition under Article 226 on merits on a matter after contest will operate as *res judicata* in a subsequent regular suit between the same parties with respect to the same matter. Subsequently, in ***Union of India Vs. Nanak Singh*** AIR 1968 SC 1370, while reiterating the same view, it was held that it is not necessary that the Court deciding the matter formerly, be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter and that there is no good reason to preclude such decisions on matters in controversy in writ proceedings from operating as *res*

judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of finality of decision after full contest. A recent Constitution Bench in ***State of Tamil Nadu Vs. State of Kerala*** MANU/SC/0425/2014, while affirming ***Gulabchand Chhotalal Parikh*** and ***Nanak Singh*** (supra) held, that the rule of *res judicata* which is founded on public policy prevents not only a new decision in the subsequent suit but also prevents new investigation; it prevents the defendant from setting up a plea in a subsequent suit which was decided between the parties in the previous proceedings; that the legal position with regard to rule of *res judicata* is fairly well settled that the decision on a matter in controversy in writ proceeding operates as *res judicata* in subsequent suit on the same matters in controversy between the same parties and a decision in previous proceeding, like under Article 32 or under Article 226 of the Constitution, which is not a suit, will be binding on the parties in the subsequent suit, on the principle of *res judicata*.

(iii) It was so held vide detailed order dated 15.12.2004 while dismissing the application for interim relief in CS(OS) No.1441/2004;

though appeal being FAO(OS) No.290/2004 was preferred thereagainst but in the order dated 12.12.2007 disposing of the same, the said finding even though on a *prima facie* view of the matter was not disturbed nor as aforesaid the order set aside; the appeal was rather disposed of directing *status quo* to be maintained only for the reason of pendency of other suits also with respect to the same land. In my view, on such legal aspect, the finding at the *prima facie* stage and at the final stage cannot be different as the said aspect is not concerned with anything to emerge in the trial. Unfortunately, after the disposal of the appeal, the suits were mechanically listed for trial. However, in the face of the said legal position, I fail to see as to what purpose the trial will serve.

(iv) Though the said aspect was also noticed in the order dated 29.09.2005 (supra) in W.P.(C) No.71/2005 preferred by the plaintiff in CS(OS) No.1128/2008, where it was observed that "the demarcation report dated 20.04.2000 had a stamp of legitimacy in view of order dated 08.01.2003 in W.P.(C) No.553/1997" but even while considering that suit, the same escaped the attention and that suit also as aforesaid was mechanically put to trial.

(v) The plaintiffs in CS(OS) No.1441/2004 and CS(OS) No.1442/2004 are also found to have, in appeals being FAO(OS) No.290/2004 and FAO(OS) No.3/2005 liberally conceded that the land in their possession was in Khasra No.51 and sought identification of land in Khasra No.52/2/2 which they had purchased vide Sale Deeds in their favour and it was owing to their said stand only that vide order dated 09.02.2005 supra in the said appeals, direction for identification of Khasra No.52/2/2 was issued. They however subsequently turned turtle.

(vi) Thus CS(OS) No.1441/2004 and CS(OS) No.1442/2004 are clearly barred by *res judicata*.

(vii) As far as the other two suits i.e. CS(OS) No.818/2006 and CS(OS) No.1128/2008 are concerned, though the plaintiffs therein also, prior to the filing of the suits had preferred writ petitions and which were dismissed owing to the order dated 08.01.2003 (supra), but giving liberty to file the appropriate proceedings challenging the demarcation report. Such liberty was given, perhaps because the said plaintiffs were not parties to the writ petitions which were disposed of vide order dated 08.01.2003; while granting such liberty in one of the

orders, the expression "liberty to file suit" was also used. However the use of such expression cannot create a right to file a suit which does not lie or which suit otherwise is not maintainable.

(viii) It may not further be lost sight of that the plaintiffs in CS(OS) No.818/2006 and CS(OS) No.1128/2008 do not claim any ownership in the land in Khasra No.52/2/2 – they only claim to be tenants under one Sh. Sukhbir Singh in portions of the buildings on the said land. However what has emerged is that the said Sh. Sukhbir Singh himself had filed W.P.(C) No.12784/2005 claiming the same relief but which was dismissed vide order dated 15.12.2005, also holding that the demarcation report dated 20.04.2000 had a stamp of legitimacy owing to having been accepted in the order dated 08.01.2003 (supra). The said order in the writ petition filed by Sh. Sukhbir Singh has also attained finality. The plaintiffs in CS(OS) No.818/2006 and CS(OS) No.1128/2008, claiming as tenants under Sh. Sukhbir Singh are bound by the said order and there cannot be multiplicity of proceedings and a tenant cannot be allowed a second round, after dismissal of a proceeding on the same subject matter by his landlord.

(ix) Though at the time of hearing, it was argued that Sh. Sukhbir Singh has sold the property to the plaintiffs in CS(OS) No.1441/2004 & CS(OS) No.1442/2004 but there is no plea to the said effect. Even if it be so, the plaintiffs in CS(OS) No.1441/2004 & CS(OS) No.1442/2004 have also been held to be not entitled to maintain the suits and the plaintiffs in CS(OS) No.818/2006 and CS(OS) No.1128/2008 even if tenants under the plaintiffs in CS(OS) No.1441/2004 & CS(OS) No.1442/2004 would still not be entitled to maintain an independent claim.

(x) Thus CS(OS) No.818/2006 and CS(OS) No.1128/2008 are also not maintainable and liable to be dismissed summarily.

(xi) It is unfortunate that such non maintainable suits which ought not to have been entertained have taken up the precious time of this Court for the last nearly ten years.

(xii) As far as the ground for rejection of the plaint urged by the defendant DDA is concerned, the same is fortified by the judgment of the Division Bench of this Court in ***Indraprastha Medical Corporation*** (supra) and by which I am bound. The argument of the plaintiffs, of the said judgment being *per incuriam*, is of no avail.

There is no foundation for such an argument in the pleadings. Moreover, as aforesaid, the plaintiffs cannot be allowed to approbate and reprobate. As aforesaid they cannot allow W.P.(C) Nos. 533/1997 & 534/1997 culminating in the order dated 08.01.2003 to be decided on the basis of a demarcation got done in those proceedings and now contend that the said demarcation was not by the appropriate authority. A challenge to a demarcation got done in one proceeding and on the basis of which demarcation that proceeding is disposed of cannot be made in a separate proceeding without specific leave of the Court in which demarcation was got done and the report received wherein is sought to be challenged. Even though the plaintiffs in CS(OS) No.818/2006 and CS(OS) No.1128/2008 were not parties to the proceedings in which demarcation was done but they being mere tenants are bound by the orders in the proceedings initiated by their landlords and or by the successors in interest of their landlord.

(xiii) Judicial propriety also demands to respect the view taken in ***Phoolwati*** (supra) by another Single Judge and with which in the facts of this case, I do not see any reason to disagree.

(xiv) The admission by the plaintiff in CS(OS) No.1128/2008 in cross-examination, of Khasra No.52/2/2 in which he in the plaint claimed the property in his possession to be situated being 10 yards away from the property in his possession cannot also be lost sight of and in the face of such an admission and of which there is no explanation in the application filed for correction of another portion of the cross-examination, also the suit is liable to be dismissed at this stage only.

(xv) The arguments of the plaintiffs, of being not liable to be dispossessed owing to long possession, is also misconceived. Neither have the plaintiffs sued on that basis nor are found to have any case on the said premises. As aforesaid, part possession has already been taken by the DDA and demolition has already been effected and the possession / occupation even if any of the plaintiffs under protection of interim orders in these proceedings is of no avail.

(xvi) Once the suits are found to be not maintainable, the question of ordering any fresh order of demarcation therein does not arise. The same if permitted, would lead to carrying out demarcation of which there is no provision in law.

31. Resultantly, all the suits fail and are dismissed summarily for aforesaid reasons with costs. Counsel's fee payable to the DDA in each case assessed at Rs.20,000/-.

Decree sheets be prepared.

RAJIV SAHAI ENDLAW, J.

JULY 01, 2014
'gsr'