

\$~

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

+ W.P.(C) 5027/2012

LAL CHAND

..... Petitioner

Through: Mr. Rakesh Tiku, Senior Advocate with
Mr. Praveen Chaturvedi, Advocate.

versus

MUNICIPAL CORPORATION
OF DELHI (SOUTH)

..... Respondent

Through: Ms. Biji Rajesh, Advocate for
Mr. Gaurang Kanth, Advocate.

%

Date of Decision: 24th December, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking a direction to respondent to hand over to petitioner vacant and peaceful possession of the Plot No.286-287, Lajwanti Garden, New Delhi as well as to enforce the report of the Special Committee dated 10th May, 2010.
2. Mr. Rakesh Tiku, learned senior counsel for petitioner states that respondent should be directed to hand over peaceful and vacant possession of the aforesaid property in view of the Committee's report headed by Mr. B.N. Singh, OSD (L&E). The conclusion reached by the internal Committee of respondent-Corporation is reproduced hereinbelow :-

“Under the totality of facts and circumstances as narrated above the following is concluded.

- 1. Plot nos. 286-287 Lajwanti garden are a private plots which were never transferred by DDA to MCD.*
- 2. Plot nos. 286-287 are not a community facility sites as per the lay out plan.*
- 3. Horticulture department’s possession over plot nos. 286-287 Lajwanti Garden is without any apparent justified basis.*
- 4. Horticulture department West Zone may immediately take possession of the 5th park which is as per the lay out plan which may be under encroachment.*
- 5. Proposal of DC(West) at 4/N may be considered for a conscious decision by the Competent authority.”*

3. Mr. Tiku also relies upon a judgment of the Supreme Court in ***City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and Others, (2009) 1 SCC 168*** to submit that the Court should be guided by notings in the official file and not the averments in the counter affidavit.

4. Ms. Biji Rajesh, learned counsel for respondent-Corporation has produced the file in which there are notings by various officers, some prior to the aforesaid Committee’s report and some subsequent to it. Though some of the notings prior to the Committee’s report are in petitioner’s favour, yet some of the subsequent notings are not in petitioner’s favour.

5. In fact, subsequent to the aforesaid Committee’s report headed by Mr. B.N. Singh, OSD (L&E), the Additional Commissioner (Horticulture) in his detailed note dated 05th June, 2010 concluded as under:-

“8. In the meantime, the DC West is in liaison with the Revenue authorities to search out further documents and also to get the demarcation of the plots done. But the documents already in our custody are sufficient to prove that MCD had been in rightful possession of the land and no other material has been produced which can upset the status quo. Based on this a letter to the Commission is placed below for kind perusal and approval.”

(emphasis supplied)

6. In the opinion of this Court, the Committee’s report headed by Mr. B.N. Singh, OSD (L&E) is an internal document which is not binding on the respondent-Corporation. On the basis of the said report, a writ court cannot direct delivery of possession to the petitioner especially when the respondent-Corporation in its counter affidavit has taken the categorical stand that the land in question is public land and has been maintained as a children’s park from 1988.

7. It is pertinent to mention that in the counter affidavit, it has also been averred that the jamabandi from the office of the Deputy Commissioner (Horticulture) shows that the property in question is Government land.

8. Moreover, the judgment of ***City and Industrial Development Corporation*** (supra) relied upon by Mr. Tiku, learned senior counsel for petitioner is clearly inapplicable to the facts of the present case. The Supreme Court in the said case held that no relief should be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. It was further held in the said case that the court below in all fairness ought to have directed the official respondents to file their detailed counter affidavits and

produce the entire material and the records in their possession for its consideration. In fact, the Supreme Court in the said case nowhere held that in writ jurisdiction property occupied by the State should be returned or handed back to an alleged owner in writ proceedings.

9. Further, the petitioner's status as an occupier of the land in question is not clear. Though the sale deed executed in petitioner's favour in 2006 states that the seller-owner has handed over possession of the land to the petitioner-purchaser, yet before the Committee as well as before this Court, it is admitted that the said averment in the sale deed is incorrect. It is strange that the OSD (L&E) has accepted the petitioner's explanation of the said term being a mistake on face value!

10. In the opinion of this Court, this is a matter where petitioner can get relief only if he leads evidence and proves his case in a trial.

11. This Court also takes judicial notice that normally all purchasers do due diligence before they purchase any land. The fact that the seller was not in possession of the land in question should have alerted the petitioner. It seems to this Court that the petitioner has taken a chance by purchasing land in 2006, even when the original seller-owner was not in possession of the same.

12. This Court is further of the view that writ proceedings cannot be used to direct delivery of possession of land/premises to private parties.

13. In fact, the present writ petition seems to have been filed by the petitioner to overcome the plea of limitation as though the respondent-Corporation has been in possession of land since 1988 and the petitioner has allegedly purchased the property in 2006, yet till date no suit for possession has been filed.

14. Consequently, present writ petition being bereft of merits, is dismissed.

MANMOHAN, J

DECEMBER 24, 2014

js