

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

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Date of decision: 3rd September, 2015

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W.P.(C) No.1911/2014

RAJINDER MOHAN MALHOTRA

.... Appellant

Through: Mr. P. Chakraborty, Adv.

Versus

**VICE-CHAIRMAN, DELHI DEVELOPMENT
AUTHORITY**

.... Respondent

Through: Mr. S.R. Sharma, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition impugns the demand dated 15th October, 2013 of the respondent Delhi Development Authority (DDA) on the petitioner of Rs.28,26,671/- towards damage charges for encroachment of government land as a pre-condition for considering the application of the petitioner for conversion of leasehold rights in plot of land ad-measuring 115 sq. mtrs. bearing No.E-18, Mayapuri, Phase-II, Delhi into freehold. Axiomatically, the petitioner also seeks a mandamus to the respondent DDA to convert the leasehold rights in the said plot of land into freehold. Ancillary relief of mandamus directing the respondent DDA to remove the encroachments and

confiscate the *kabar* (junk material) dumped at the back of plot No.E-18 and to take penal action against persons in unauthorized occupation is also claimed.

2. Notice of the petition was issued and a counter affidavit has been filed by the respondent DDA. No rejoinder has been filed by the petitioner in spite of opportunity. The petition was dismissed in default of appearance of the petitioner on 2nd July, 2015 but on the applications of the petitioner was restored. The counsels have been heard.

3. It is the case of the petitioner:

- (i) That the respondent DDA allotted plot No.E-18, Mayapuri Industrial Area, Phase-II, Delhi ad-measuring 115 sq. mtrs. out of plot of land ad-measuring total 157.5 sq. mtrs. in favour of one Sh. Laxman Dass Madan; allotment of the entire plot of land ad-measuring 157.5 sq. mtrs. was not made as the area in excess of 115 sq. mtrs. at the back of the plot was under encroachment.

- (ii) That in the year 2005, the petitioner acquired the aforesaid plot of land i.e. ad-measuring 115 sq. mtrs. from Sh. Laxman Dass Madan on GPA and Agreement to Sell basis.
- (iii) The petitioner on 31st December, 2005, in accordance with the Policy of Conversion of Leasehold Rights into Freehold notified on 2nd March, 2006 applied for conversion of the leasehold rights under the aforesaid plot of land into freehold and paid Rs.2,30,000/- therefor.
- (iv) The respondent DDA however vide its letter dated 29th September, 2006 refused such conversion on the ground of encroachment of a big portion of land under occupation of the petitioner even though the encroachment was not by the petitioner.
- (v) That the backside of the plot, ad-measuring 42.5 sq. mtrs. including the back lane, is under encroachment of kabaries who are allottees of plot Nos.E-21 to E-25 and who have existed at the site since prior to the date when 115 sq. mtrs. of plot No.E-18 was allotted to Sh. Laxman Dass Madan.

- (vi) That though in the year 2007, at the behest of the petitioner, DDA had removed the encroachment but the said remaining portion of the plot was again encroached upon.
- (vii) That the petitioner has never used any area of the plot in excess of 115 sq. mtrs. or the land at the rear of the plot though has fenced the area to prevent illegal construction and dumping of malba in the gali.
- (viii) That since the petitioner pressed for conversion, the respondent DDA sent a demand dated 2nd September, 2009 for Rs.28,26,671/- towards damage charges without mentioning the period for which the damages were charged and the rate of damages or the calculation thereof.
- (ix) The petitioner earlier filed W.P.(C) No.601/2010 in this regard in this Court which was disposed of vide order dated 20th April, 2010 though quashing the demand for Rs.28,26,671/- but directing the respondent DDA to after giving an opportunity of hearing to the petitioner pass a speaking order and if raising a fresh demand by setting out the method of calculation thereof.

- (x) However the respondent DDA did not comply with the order compelling the petitioner to file W.P.(C) No.5650/2013 which was disposed of vide order dated 9th September, 2013 directing the respondent DDA to comply with the order dated 20th April, 2010 in the earlier writ petition.
- (xi) That the petitioner availed the opportunity of hearing and again impressed upon the respondent DDA that he never used the area fenced by him and the area was fenced purely in the interest of respondent DDA and for no personal gain or benefit of the petitioner.
- (xii) That the respondent DDA however in the impugned order / demand dated 15th October, 2010 reiterated the demand.
- (xiii) Though, the petitioner alleging contempt by the respondent DDA of the orders in the earlier writ petitions filed Cont.Cas (C) No.80/2014, but the same was dismissed.

Accordingly, this petition has been filed contending:

(a) that only the Estate Officer of the respondent DDA appointed under Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 could have passed the order for payment of damages for unauthorized use and occupation of public premises and in accordance with the procedure prescribed therein and demand for damages for unauthorized use and occupation made by the DDA otherwise is illegal, and,

(b) That the demand / order dated 15th October, 2013 does not deal with the contentions of the petitioner.

4. The respondent DDA in the impugned demand / order dated 15th October, 2013 has recorded:

(I) That the application filed by the petitioner for conversion of leasehold rights into freehold was rejected owing to the petitioner having encroached on a portion of the land adjacent to land allotted to his predecessor in interest.

(II) That though the petitioner earlier stated that it was not him but kabaries who had encroached upon the land adjacent to the plot

allotted to the predecessor in interest of the petitioner but subsequently admitted that the petitioner himself had fenced the area to prevent the kabaries and jhuggiwals from performing illegal activities on the said land – the petitioner thus admitted being in possession of the said land.

(III) That this was also confirmed by the field inspection reports from time to time.

(IV) That the demand for Rs.28.26,671/- has been raised for the period from 14th September, 1994 to 24th April, 2007 for an area of 91.10 sq. mtrs. on the basis of commercial rates as per policy.

5. That the respondent DDA in its counter affidavit has pleaded:

(a) That the counsel for the petitioner, when this writ petition first came up before this Court on 24th March, 2014, confined the challenge herein only to the jurisdiction and powers of Director (CL) of the respondent DDA and who had issued the impugned demand / order dated 15th October, 2013 to levy damages and had withdrawn the challenge if any on the merits of the

calculation of the damages; thus the scope of this petition is confined to the jurisdiction and power of Director (CL) of the respondent DDA to raise the demand.

- (b) That the Director (CL) has passed the said order in accordance with the specific directions of this Court in order dated 9th September, 2013 in W.P.(C) No.5650/2013 earlier preferred by the petitioner and thus it is not open to the petitioner to challenge its jurisdiction.
- (c) That the Director (CL) of the respondent DDA has been conferred the powers of a Estate Officer by a notification dated 6th August, 2003 under Section 3 of the PP Act and had passed the impugned order dated 15th October, 2013 after giving an opportunity to the petitioner.
- (d) That thus there was no merit in the challenge by the petitioner to the jurisdiction of Director (CL) of the respondent DDA and to which challenge this petition was confined.

On merits, it is pleaded that the petitioner, for his use, has unauthorizedly occupied an area of 92.02 sq. mtrs. belonging to the

government adjacent to his plot No.E-18, ad-measuring 115 sq. mtrs. and that the petitioner by stating that he has fenced the area, has admitted to the encroachment.

6. The counsels argued on the line of their respective pleadings.

7. I not only find merit in the contention of the counsel for the respondent DDA that the only ground to which the petitioner confined the challenge in this petition, i.e. Director (CL) of the respondent DDA not having jurisdiction to assess the damages as the damages can be assessed only by an Estate Officer under the PP Act stands met as the Director (CL) of the respondent DDA has been conferred the powers of an Estate Officer, but I am also of the view that irrespective of the aforesaid, this writ petition is not maintainable.

8. As would be borne out from what is set out hereinabove, the controversy is whether it is the petitioner who is in encroachment of land adjacent to 115 sq. mtrs. of plot No.E-18 allotted to the predecessor in interest of the petitioner, as claimed by the respondent DDA or the said encroachment is by third persons as contended by the petitioner. The said dispute is incapable of adjudication in writ jurisdiction. In writ jurisdiction,

on the basis of respective pleadings, this Court cannot find out which of the two, petitioner or the respondent DDA is speaking the truth. All that can be observed is that from the reasoning given by the respondent DDA in the impugned order dated 15th October, 2013, of the petitioner by admitting to having fenced the said adjacent land has admitted to the encroachment, cannot be said to be such which is so illogical and arbitrary which no reasonable person could have reached.

9. Insofar as the challenge by the petitioner to the demand for damages for unauthorized occupation and assessment thereof otherwise than by way of a proceeding under the PP Act is concerned, I may notice that the said demand has been raised by the respondent DDA on the petitioner as a pre-condition to the conversion of leasehold rights in 115 sq. mtrs. of land to which title is claimed by the petitioner into freehold. In spite of my repeated asking, the counsel for the petitioner has been unable to show the demand made on the petitioner in the said fashion to be illegal. The respondent DDA, when approached for such conversion, is fully entitled to ensure that the encroachment if any done by the applicant of adjacent land is removed and the charges therefor are paid. It is not as if the respondent DDA on its own, without resorting to the proceedings under the PP Act has made such a

demand on the petitioner. A demand for charges for unauthorized use and occupation in accordance with the rules applicable to assessment thereof can always be made as a pre-condition for conversion sought. The said damages are not required to be assessed by the Estate Officer in a proceeding under the PP Act. I have in *N.K. Varma Vs. Union of India* MANU/DE/0455/2012 held that a claim for damages for unauthorised use and occupation, as a condition for grant of lease of such land, can be made without the assessment thereof by the Estate Officer under the provisions of PP Act. LPA No.124/2012 preferred thereagainst is found to have been disposed of vide order dated 11th July, 2012 recording a compromise wherein Mr. N.K. Varma agreed to pay damages for use and occupation recomputed by Land & Development Office (L&DO).

10. I am thus of the view that besides on the ground pleaded by the respondent DDA, there is otherwise also no merit in the petition.

11. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 03, 2015/‘gsr’
(corrected & released on 21st October, 2015)