

\$~9

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

+ W.P.(C) 1413/2013

MAHENDER SINGH AND ANR

..... Petitioners

Through :Mr. Anil K. Aggarwal and Md.
Imtiyaz, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

Through :Ms. Mini Pushkarna, Standing
Counsel with Ms. Anushruti, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

21.01.2016

1. By this writ petition under Article 226 of the Constitution of India, petitioners have prayed that respondent be directed to remove the public park and clear all encroachment over the petitioners' land bearing Khasra no. 30/11, situated in Village Shakurpur, Delhi and handover the vacant possession thereof to the petitioners. In essence, petitioners are seeking possession of the subject land from the respondent, claiming themselves to be the owners thereof.

2. Petitioners have alleged that respondent (North Delhi Municipal Corporation) had wrongfully encroached the said land in the year 2007. On noticing the encroachment, petitioners approached the Revenue

Assistant/Sub-Divisional Magistrate, North – West District for mutating the lands of the petitioners including the subject land in the name of petitioners. Vide order dated 31st December, 2008 Revenue Assistant directed the Tehsildar to record mutation in respect of the land forming part of Khasra no. 30/11, amongst other lands, in Village Shakarpur, in the names of petitioners. In the year 2009, petitioners prayed for the demarcation of land, which was carried out by the Revenue Authorities. However, Tehsildar did not handover possession of the land to the petitioners, since the same was with the respondent.

3. In the counter affidavit, respondent (North Delhi Municipal Corporation) has alleged that subject land is, in fact, a public park maintained by the respondent since long. Petitioners cannot claim title over the land on the basis of revenue entries alone. Subject land was, being used as a public park right from 1963 onwards. Village Shakarpur was urbanized in the year 1963. DDA prepared regularization plan of the area including Shakur Basti, Rani Bagh, Rishi Nagar, Mohindra Park, Sant Nagar and Majnis Park in the year 1979 vide Resolution No. 25. Copy of the Resolution no. 25 has been annexed as Annexure R-1. It is further stated that subsequently, layout plan of Rani Bagh and other adjacent areas was

formulated by the DDA, which included the land in question and was earmarked for park in the said plan. Copy of the layout plan has been annexed as Annexure R-2. It is also the case of respondent that services of the area were handed over to Municipal Corporation of Delhi in the year 1988 and since then, respondent is maintaining the subject land as a park. Document regarding handing over of the area has been annexed as Annexure R-3. It is further alleged that claim of the petitioners on the basis of the revenue entries, appears to be false and vague, since many residential buildings are existing adjacent to the park in question, which are in possession of different persons.

4. It is, thus, clear that petition involves disputed questions of fact, which cannot be resolved on the basis of affidavits alone. Evidence is required to be led. Claim of the respondent is that the area was urbanized in the year 1963, inasmuch as layout plan was drawn by the DDA and the area was handed over to the respondent in the year 1988 and since then, subject land is being maintained by the respondent as a park. Documents in support thereof have been filed. The stand of petitioners is contrary to this stand of respondent. Petitioners have relied on revenue records. Both the sides have to lead evidence and proved their stand, which is not in the domain of writ

jurisdiction.

5. Learned counsel for the petitioners has relied upon the judgments, that is, in Harbanslal Sahnia and Another vs. Indian Oil Corporation Ltd. and Others (2003) 2 Supreme Court Cases 107, Ram Niwas vs. Financial Commissioner, Delhi & Ors. (2011) 122 DRJ 708 (DB) and State of Haryana vs. Mukesh Kumar and Others (2011) 10 Supreme Court Cases 404 to buttress his contention that writ petition is maintainable; Revenue record is conclusive proof of title and further said that plea of adverse possession cannot be entertained. I find the judgments to be in the context of different facts and are of no help to the petitioners, in the facts and circumstances as detailed hereinabove. In Harbanslal's case (supra) dealership granted by the respondents to the appellants was cancelled, which was in issue. In Mukesh Kumar's case (supra), parties had already lead evidence and proved their respective stands during the trial in the suit.

6. Writ petition is dismissed.

A.K. PATHAK, J.

JANUARY 21, 2016

rb