

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

+ **RSA No. 100/2010**

% **17th August, 2016**

SMT. VIDYA DEVI (THROUGH HER LR's) Appellants

Through: Mr. Gurpreet Singh, proxy counsel.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Shobhna Takiar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed against the impugned Judgment of the First Appellate Court dated 25.01.2010 dismissing the suit for injunction against dispossession filed by the appellants/plaintiffs. Once again today adjournment is sought on behalf of the appellants and which is very vehemently opposed on behalf of the respondent/DDA. On the last date i.e on 19.4.2016 adjournment was taken on behalf of the appellants and the court passed the following order:-

“Learned counsel appearing for the appellant submits that he wishes to put in his objection to the demarcation report. The same could not be done in the past as some other lawyer was handling this case and he has been engaged only recently.

In case any objection is to be filed, the same ought to be done on or before the next date fixed.

Re-list on 17.08.2016.”

2. No objections have been filed to the demarcation report and in fact none could have been filed as stated hereinafter. It is seen that the appellants are deliberately seeking adjournments for less than honest purpose and this is clear from the Order passed by this Court on 28.1.2014 which records that in case the land on which the appellants are situated falls in Khasra no.236/2/2 of Village Shakarpur Illaqa Shahdara, Delhi, and which is an acquired land, then, appellants will claim no rights in such land. The Order dated 28.1.2014 was passed to resolve the controversy as to whether appellants/plaintiffs are in possession of land which is Khasra No. 236/3 at Village Shakarpur, Illaqa Shahdara, Delhi as claimed by the appellants or they are physically located in Khasra No. 236/2/2 of Village Shakarpur Illaqa Shahdara, Delhi and which is an acquired land. The Order dated 28.1.2014 reads as under:-

“1. By this regular second appeal, appellants impugn the judgment of the trial court dated 25.1.2010 which accepted the appeal of the respondent herein and dismissed the suit for injunction filed by the appellants herein, and the plaintiffs in the trial court.

2. The controversy in the present case is whether the appellants/plaintiffs are in possession of land which falls in Khasra No. 236/3 at Village Shakarpur Khas, Illaqa Shahdara, Delhi or actually appellants/plaintiffs are in physical possession of land which falls in Khasra No. 236/2/2 at Village Shakarpur Illaqa Shahdara, Delhi, which is the acquired land.

3. In order to resolve the controversy between the parties and in order to ensure complete justice is done, counsel for the appellant agrees that under Order 41 Rule 27 CPC read with Section 165 of the Evidence Act, 1872, a demarcation be now done as to of which land the appellants/plaintiffs are claiming the right to be in possession. The demarcation can be done of the land which is claimed by the appellants-plaintiffs by the total station method and for which costs will be borne by the appellants in the first instance and which would be ultimately shared if the appellants have to succeed in the appeal. The competent authority will now prepare a demarcation report as to whether appellants/plaintiffs are claiming possession of which land and that

what is the Khasra number on which such land is situated and whether such land does or does not form part of the land of which acquisition has already been made by the Union of India and possession also of which was taken.

4. On behalf of the appellants, it is agreed that in case the land which the appellants claim is found to have been acquired by the Government and possession taken, no rights will be claimed in such land by the appellants/plaintiffs.

5. Both the parties will ensure that they will give complete cooperation to the competent authority which will demarcate the land to determine as to where the land is situated, in which Khasra number the land is situated and whether the appellants/plaintiffs are in possession of the land which has been acquired by the Government or not.

6. Let a copy of this order be given Dasti to counsel for the parties so that the same is given to the Deputy Commissioner of the area concerned and who will nominate an appropriate authority for carrying out demarcation in terms of the present order. The revenue authorities are also specifically directed to ensure that the demarcation proceedings be completed within a period of two months positively failing which the highest officer of the Revenue Department of the concerned area will be personally present in the Court on the next date of hearing. Appellants will ensure that the charges of the demarcation by total station method are positively deposited within a period of two weeks from today with the concerned authority as will be specified by the Deputy Commissioner. Let the demarcation report which is prepared in terms of the present order be filed in this Court at least 10 days before the next date of hearing.

7. List on 13th May, 2014.” (underlining added)

3. Para 4 of the aforesaid order is relevant because the admission of the appellants is recorded that in case appellants are found to be situated on the acquired government land i.e Khasra no.236/2/2, then, they will claim no rights in the land.

4. Pursuant to the Order dated 28.1.2014, the demarcation was carried out by the revenue authorities and the demarcation report prepared reads as under:-

“Demarcation of Khasra No. 236/2/2 and 236/3, Vill-Shakarpur Khas, Sub-Division Gandhi Nagar, Distt. East

Sh. Rajendra Prasad S/o Late Chothmal R/o 59/23, NIT, Faridabad, Haryana made an application for demarcation of Khasra No.236/2/2 and 236/3, Vill-Shakarpur Khas, Sub-Division Gandhi Nagar, Distt. East alongwith a copy of the order of Hon’ble High Court in RSA 100/2010 & CM 9010/2010 titled Vidhya Devi Deceased Thr. LRs Vs. Delhi Development Authority. The Hon’ble High Court has directed the Revenue Department to demarcate the above said khasras by Total Station Machine method, the cost of which has to be borne by the plaintiff Sh. Rajendra Prasad.

Accordingly, notice dated 18/7/14 was issued to Sh. Rajendra Prasad and Dy. Director (LM) East, DDA to be present on 23/07/14 alongwith all the documents/records so that the demarcation of Khasra No. 236/2/2 and 236/3 through TSM could be initiated. Both the parties were present on 23/7/14 and Sh. Rajendra Prasad agreed to bear the cost of demarcation. The revenue record of khasra No.236/3 and 236/2/2 village Shakarpur Khas was perused and it was observed as under:

1. **There is no khasra no.236/3 in the revenue records available in this Department. Hence the khasra no. given is not correct.**

2. The details of Khasra No.236 (Total Area 13 Bigha 04 Biswa) Village Shakarpur Khas are as under:

Sl. No	Khasra No.	Area	Ownership as per revenue record
1.	236/1	4 Bigha 02 Biswa	Northern Railway
2.	236/2/1	2 Bigha 06 Biswa	Northern Railway
3.	236/2/2	04 Bigha 03 biswa	Mukbuja Land & Building DDA

4.	236/2/2	01 Bigha 05 Bisw a	Rewati, Balwant Singh Sons of Sh. Dewan etc.
5.	236/2/2	01 Bigha 04 Bisw a	Vidya Devi W/o Chothmal
6.	236/2/2	04 Bisw a	Jawahar Lal S/o Narsin Das

The total area of khasra No.236(13 Bigha 04 Biswa) has been awarded vide award no.7/1969 as per the revenue record.

A letter to M/s Dhyani Consultant Inc. (TSM Agency) was issued for carrying out the demarcation of Khasra No.236/2/2 Vill-Shakarpur Khas. The DDA vide letter dated 25/7/14 requested this department to carry out the demarcation in the presence of DDA staff. On 11/8/14, the disputed plot and the points of reference for demarcation was surveyed and identified through the available revenue records and in consultation with senior and old local villagers in the presence of Sh. Rajendra Prasad, Sh. P.C Dhyani from M/s Dhyani Consultant Inc and Revenue Officers/Officials of DDA. All the representatives agreed with the reference points identified. Further, all the available revenue records were provided to Sh. P.C. Dhyani, M/s Dhyani Consultant Inc. and Sh. Rajendra Prasad & staff of DDA were requested to extend their full cooperation to the TSM Agency for demarcation.

Sh. P.C. Dhyani, M/s Dhyani Consultant Inc. informed over telephone that the disputed plot is near the land belonging to Indian Railway and hence the titama and railway land map in Village Shakarpur Khas is required for completing the demarcation. The General Manager, Northern Railway was requested vide this office letter dated 9/10/14 to depute officials from railway alongwith revenue records and other relevant records of the land in vill Shakarpur Khas on 27/10/14 in this office.

On 27/10/14, the Officers/officials from Railway attended this office and produced the titama, map and measurement of land belonging to railway. A joint survey of the area was conducted by the revenue staff of this Department and Railway staff. This map and record provided by the railway was found

correct and the same was handed over to M/s Dhyani Consultant Inc. for completing the demarcation.

M/s Dhyani Consultant Inc. has submitted the demarcation report/graph. As per the demarcation graph, the following reference points have been taken for demarcation of khasra no. 236/2/2.

Reference point:-

1. RF 1-South East Corner Khasra No. 43/25, Village Khureji Khas
2. RF 2- South West Corner of Khasra No. 45/10, Village Khureji Khas
3. RF 3- Temple in Khasra No. 378 Village Mandawali Fazalpur
4. RF 4- Railway bridge Khasra No. 277 Village Mandawali Fazalpur
5. RF 5- Railway bridge Khasra No. 305/212/2/3/1 Village Shakarpur Khas

The total area of disputed plot is 01 Bigha 16 Biswa (approx. 1800 Sq. Yards).

As per demarcation report submitted by M/s Dhyani Consultant Inc., the disputed plot falls in khasra No. 236/2/2 Vill- Shakarpur khas and hence demarcation is completed. The demarcation graph/map is enclosed herewith.”
(underlining added)

5. It is clear from the aforesaid demarcation report that the appellants are situated on acquired land falling in Khasra no. 236/2/2 and in fact there is no land bearing description of Khasra no. 236/3 and in which latter khasra number the appellants claimed that they were located on. Clearly therefore, appellants are in possession of acquired government land falling in khasra no. 236/2/2 and hence appellants are not entitled to any relief in this regular second appeal.

6. It is noted that the impugned judgment of the first appellate court deals in detail as regards the reference to the land falling Khasra no. 236/2/2 being the government land, and of which possession was taken by the respondent/DDA as per possession proceedings dated 1.6.1977. The Award acquiring the land was proved by the respondent/defendant as Ex.DW1/1,

possession proceedings dated 1.6.1977 were proved as Ex.DW1/2 and Notification for planned development of land dated 3.1.1968 was proved as Ex.DW1/3. The first appellate court therefore has rightly concluded that the appellants were in possession of the acquired government land as duly demonstrated from unimpeachable evidence led on behalf of the respondent/defendant.

7. Only in order to do justice, this Court has passed the Order dated 28.1.2014 in order to find out as to whether the appellants were or were not in possession of the acquired government land, and the demarcation report filed leaves no manner of doubt that appellants are in possession of acquired government land situated in Khasra no.236/2/2 and in fact there is no Khasra no.236/3 as claimed by the appellants.

8. In view of the above, no substantial question of law arises for this appeal to be entertained under Section 100 CPC.

9. Dismissed.

AUGUST 17, 2016
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VALMIKI J. MEHTA, J