

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

%

Date of Decision: 10th January, 2017

1. CRL.M.C. No. 3309/2014

CAPITAL LAND BUILDER PVT. LTD.Petitioner

Through: Mr.Naresh Kaushik, Advocate with
Mr.B.Tripathy and Mr. Randhir
Pandey, Advocates.

versus

STATE (GOVT. OF NCT, DELHI AND OTHERS) Respondents

Through: Mr.Izhar Ahmad. APP for State
Mr.Amjet Andlay, Advocate with
Mr.Arun K. Sharma, Advocate for
R-3.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I.S.MEHTA, J:

1. The instant petition is preferred by the petitioner under Section 482 of the Code of Criminal Procedure Code, 1973 for quashing and setting aside the impugned order dated 05.06.2014 in Crl. Rev. No. 1/2014 passed the learned ASJ/Special Judge: CBI-03 (PC ACT) South District: Saket Courts: New Delhi wherein the revision petition qua against the order dated 27.01.2014 in case No. 292/RA/MEH/2013/6538-40 under

Section 145 Cr.P.C. passed by the learned Sub Divisional Magistrate/Revenue Assistant (Mehrauli) Old Thesil Building, Mehrauli, New Delhi was dismissed.

2. The brief facts stated are that initially a complaint vide DD. No. 36-B dated 28.01.2013 was made by Shri Ashish Kishore, Director of the petitioner/M/s Capital Land Builder (P) Ltd. against the respondent No.3/Charan Singh, his family and their associates to the SHO Mehrauli alleging therein that they were trying to trespass the petitioner's property thereby trying to erect a wall at their land forming part of khasra no. 595 at Chattarpur.

3. Subsequently, a complaint was addressed by the respondent No.3/Charan Singh qua against his three sons, i.e., Pritam Singh, Gorakh Singh and Bagh Singh, dated 13.05.2013 to the SHO Mehrauli which was reduced down in writing vide Dy. No. 1397/LC dated 13.05.2013. The aforesaid complaint was made by the respondent No.3 against his three sons who had extended threats to him and had illegally occupied one of his plots and due to their misbehaviour towards the respondent No.3, he had debarred them from his property and several complaints regarding the same were also made earlier to the concerned police station on 31.05.2010, 30.09.2011, 17.05.2011 and 17.05.2012 but no appropriate action was taken. Before making the aforesaid complaint dated 13.05.2014 the respondent No.3/Charan Singh wanted to install an iron gate on his plot in khasra no. 594 which was lying vacant, which was

objected by his three sons and they threatened him with dire consequences, for which he had sought necessary protection from the police against his sons to lead a comfortable life.

4. Thereafter, another complaint vide, Dy. No. 1562/LC dated 30.05.2013 was made by the Shri Ashish Kishore, Director of the petitioner to the SHO, Mehrauli qua against the respondent No.3/Charan Singh, his daughter Sheela Kaur, his family and their associates for forceful possession, criminal trespass, threatening for life and property and false implication in criminal case.
5. The inquiry pertaining to the aforesaid complaints were carried out by the police and the police found a vacant plot to which both the parties claims to be theirs. The petitioner claims the land to be part of khasra no. 595 and the respondent No.3/Charan Singh claims the land to be part of khasra no. 594 and as per the police report the demarcation report was awaited.
6. Subsequently, a Kalandra bearing DD No. 40A dated 01.06.2013 under Section 145 Cr.P.C. was submitted by the S.H.O. police station Mehrauli to the learned SDM, Saket. The learned SDM after going through the contents of the report submitted by the SHO and on being satisfied passed a preliminary order under Section 145(1) Cr.P.C. dated 11.07.2013. During the inquiry a report was called by the learned SDM which was filed by the Halka Patwari as directed.
7. The learned SDM after inquiry on the basis of the report of the Halka Patwari passed an order dated 27.01.2014 in case

No. 292/RA/MEH/2013/6538-40 wherein the respondent No.3/Charan Singh was declared having possession of the said land admeasuring 362/370 square yards in khasra no. 595, at village Chattarpur, New Delhi entitling him to retain such possession until ousted by due course of law.

8. Aggrieved from the order dated 27.01.2014 passed by the learned SDM the petitioner filed a criminal revision petition before the learned ASJ/Special Judge:CBI-03, Saket and the learned ASJ dismissed the revision petition filed by the petitioner vide impugned order dated 05.06.2014.

Hence the present petition.

9. The learned counsel for the petitioner has submitted that the petitioner had initially demarcated the land khasra No. 595 at Chattarpur. As per the demarcation report dated 05.04.2013, it does not show any possession of the respondent No.3 over the land khasra no. 595 at Chattarpur, New Delhi.

10. The learned counsel for the petitioner has further submitted that when the respondent No.3 was trying to encroach upon the aforesaid land, i.e., khasra no. 595, complaint to this effect was made to the concerned police station of the area and thereafter the respondent No.3/Charan Singh he himself had filed a complaint qua against his three sons claiming therein that he is the owner in possession of the land khasra no. 594 at Chattarpur.

11. The learned counsel for the petitioner has further submitted that the respondent No.3 never remained in

possession of any part of the land bearing khasra no. 595 as the complaint filed by the respondent No.3 dated 13.05.2013 is evident to this effect.

12. The learned counsel for the petitioner has further submitted that the police of the local area carried out an inquiry and the alleged land was found to be a vacant land and a Kalandra under Section 145 Cr.P.C. was prepared and no definite report of the possession by either party was submitted before the learned SDM.

13. The learned counsel for the petitioner has further submitted that the learned SDM, Mehrauli on his presumption without application of mind took cognizance. The learned counsel for the petitioner has further submitted that the learned SDM has without application of mind handed over the land measuring 362/370 square yards of khasra no. 595 of village Chattarpur, New Delhi in favour of the respondent No.3/Charan Singh until he is ousted by due course of law which is bad, illegal and liable to be set aside and the subsequent order passed by the learned ASJ dated 05.06.2014 too is also liable to be set aside. The learned counsel for the petitioner has relied upon the judgment of this Court in the case of *Smt. Maya Devi & Others vs. Shri Bhagat Singh Bedi* reported at **1982 (22) DLT 443**.

14. On the contrary the learned counsel for the respondent No.3/Charan Singh submitted that the allegations alleged are false. The respondent No.3 is in possession of the land khasra no. 595 which is reported by revenue records and only order

passed by the learned SDM is to maintain the status quo. The learned counsel for the respondent No.3 has further submitted that the learned SDM has not gone into the merits of the case and has only granted the possession to the respondent No.3.

15. The learned counsel for the respondent No.3 has shown para 8 and 9 of the order passed by the learned ASJ. The learned counsel for the respondent further submits that the possession of respondent No.3 is recorded on Khasra Girdawari and has relied on the Khasra Girdawari.

16. The learned counsel for the respondent No.3 has further submitted that the Court below has rightly appreciated the facts on record and the impugned order is just and proper, and that the same requires no interference. He further submits that the present petition be dismissed and has relied on the judgment of this Court in the case of *Master Nikunj Kumar Gupta & Ans. vs. State & Ors.* reported at *2003 (3) JCC 1823*.

17. The whole dispute hinges around whether the learned SDM while entitling the respondent No.3/Charan Singh the possession of the land measuring 362/370 square yards of khasra no. 595 at village Chattarpur, New Delhi applied his mind properly?

The answer is **NO**.

18. The facts emerging from the record are that the SHO police station, Mehrauli on 01.06.2013 submitted a Kalandra under Section 145 Cr.P.C. before the concerned SDM and the learned SDM took cognizance under Section 145(1) Cr.P.C. on

11.07.2013 and thereafter issued directions to the Halka Patwari to submit specific report regarding who is in the possession of khasra no. 595 min (1-19) and how much area constructed and further specific report of khasra no. 595 min (0-4), who is in possession and how much area constructed and status of the vacant land.

19. The Halka Patwari submitted his report dated 14-09-2013 along with the Khasra Girdawari of khasra no. 595 min (0-4) and khasra no. 595 min (1-19).

20. The learned SDM relying on the report of the Halka Patwari passed an order dated 27.01.2014 in favour of the respondent No.3 entitling him to retain the possession of the land measuring 362/370 square yards situated in khasra no. 595 at village Chattarpur, New Delhi until ousted by due course of law.

21. In the instant case, whether holding the respondent No.3 in possession of the land measuring 362/370 square yards in khasra no. 595 at Chattarpur, New Delhi by the learned SDM holds good in law and further entitling him to hold such possession of the aforesaid land until ousted by due course of law is correct?

The answer obviously is NO.

On the following reasons:-

22. In the present case the petitioner/Capital Land Builders Pvt. Ltd. had filed complaints with the concerned police station dated 28.01.2013 and 30.05.2013 qua against the respondent

No.3/Charan Singh, his family members and their associates
which is reproduced as under:

"To
The SHO, Mehrauli
New Delhi

Complaint against Charan Singh, his family, their associates, some local property dealer and anti social elements whose identity known to Charan Singh only for threatening of life and property and trying to trespass our land for illegal possession thereby trying to erect wall at our Land forming part of khasra no 595, Situted at back side of Bhudia Wali Masjid, Chatarpur extention, New Delhi, punishable under various section of IPC.

Sir,

That the undersigned is a director and AR of the Capital Land Builder (P) Ltd. and hence competent to file the present complaint against the above person.

That the land in question was purchased by th company's undersigned from Teja Singh vise sale deed dated 21-02-1964 and thereafter the said land had got mutated in favour of our company.

That today around 8 am morning, our manager visited to above side and during his visit, some people around the above land threatened our manager and asked him not to enter the land, and further abused him saying " sale yahan se bhag jaa, neheto tume aur tumara malik ko dekhlenge". Further they are claiming as persons of Charan Singh and told our manager that they are going to erect the wall/do construction shortly under the instructions of Charan Singh.

In the above said fact and circumstances it is just, necessary and proper to investigate the matter and punish the accused as per law.

sd/-

Ashish Kishor

Director

M/s Capital Land Builder (P) Ltd

5/1, Doctor lane, Gole market

New Delhi

Cc
ACP, Mehrauli
DCP (South)
Commissioner Of Police"

(XXXX XXXX XXXX)

To
IO of PCR CALL at about 10 am, Morning
THROUGH SHO MEHRAULI
PS MEHRAULI, NEW DELHI.

COMPLAINT AGAINST THE CHARAN SINGH AND HIS
DAUGHTER SHEELA AND HIS FAMILY MEMBER AND
ASSOCIATES FOR FORCEFUL POSSESSION, CRIMINAL
TRESSPASS, THREATENING FOR LIFE AND PROPERTY &
FALSE IMPLICATION IN CRIMINAL CASE.

MOSTRESPECTHFULLY SHOWETH

- 1. That I am Ashish Kishore, Director of capital land builder (p) ltd and hence competent to file this complaint before the police authority.*
- 2. That our company is owner and possession of land and property measuring 380 sq yard forming part of khasra no 595, Chatarpur, New Delhi.*
Copy of sale deed, khatoni and sizra are annexed herewith and marked as Annexure-1(colly).
- 3. That the above accused person tried twice previously for trace passing our above land for illegal possession, but due to intervention of police, they had not succeeded in their illegal intention.*
Copy of complaints are annexed herewith and marked as Annexure-2(colly).
- 4. That today the above accused person at about 9 am, the above all accused persons entered our land and trying to carryout construction on the plot, on receiving this message our manager immediately Rush to the spot and made complaint to PCR and after intervention of police, the accused persons stop the construction.*

5. *That due to our utter surprise, when our manager, reach the spot, he found that the above accused person put their lock on our lock at the store room on the land in question.*
6. *That the intentions of the above persons are illegal and they are trying to take the illegal possession of our land repeatedly and the above accused sheela Kaur taking the advantage being ladies used to threaten our employee to implicate in false case.*

In the above said fact and circumstances, it is hereby requested to your good office to instigate the matter and punish the accused as per law and give protection to our staff and employee.

CAPITAL LAND BUILDERS (P) LTD.

s/d-

DIRECTOR

Ashish Kishore"

23. Subsequently, the respondent No.3/Charan Singh too had filed complaint dated 13.05.2013 qua against his three sons, i.e., Pritam Singh, Gorakh Singh and Bhag Singh. The complaint is in Hindi therefore the translated copy in English is reproduced as under:

To,

The SHO

P.S. Mehrauli, New Delhi

Sub: For taking appropriate legal action against Pritam Singh, Gorakh Singh and Bhag Singh

Sir,

It is submitted that I, Charan Singh, S/o late Shri Mehtaab Singh, R/o 331-A, Chatarpur, near Government hospital, lives along with my old wife Smt. Anit Kaur and daughter Sheela Kaur and her children. I being senior citizen and since I am not healthy physically and also suffering from paralysis, I am unable to speak and walk. None of my son looks after me, therefore, my elder daughter Sheela and I look after me. I have no source of livelihood. I receive very meager amount of rent,

which is the only source of our maintenance. My daughters help me if I need something. Any of my son does not take care of and look after me and my wife Anit Kaur nor do they ever provide any financial help.

It is submitted as stated above that all the properties which I had, all that (agricultural land and residential land) were divided by me amongst all my three sons equally and I kept some of the share with me for smooth livelihood. Out of the share kept by me, my sons have already occupied one of the plots. My sons abuse me daily and they also beat me up. They come to my house daily and extent threat with deaths. I always have apprehension of the security of my and my wife's life. I feel absolutely insecure from my three sons (Gorakh Singh, Bhag Singh and Pritam Singh). I after getting fed up with all these misbehaviors of my sons, I have debarred them from my property.

I have made complaints about their misbehaviors from time to time at the Police Station Mehrauli and Chatarpur Police Post and its datewise details is as follows – I have made reports on 31.05.2010, 30.09.2011, 17.05.2011 and 17.05.2012, but no appropriate action has been taken.

Sometime before, I want to fix the iron-gate on my plot No. (Khasra No.594) which is lying vacant so that I could use it, but all my three sons ill-treat me. When I depute labour there, they stop the work there and harass me and they extent threat with death to me.

Keeping in view all the above facts, kindly arrange to get the gate fixed in my plot No.594 and kindly protect us (me and my wife) from my three sons as we are the senior citizens of India and if any untoward incident takes place with us, then they will be responsible for it and it is my folded request to you that kindly take legal action against them so that we could lead our life comfortably.

I shall be grateful to you.

Yours faithfully

sd/-

(Charan Singh, S/o
late Sh. Mahtab
Singh)

Copy to the Police Post, Chatarpur, New Delhi for appropriate action.

24. The petitioner in its complaints had sought police help for stopping the respondent No.3/Charan Singh, his family members and their associates from trespassing into the land forming part of khasra no. 595 at Chattarpur, New Delhi.

Whereas the respondent No.3 in his complaint had sought police help against his aforesaid three sons who were threatening him with dire consequences and were causing obstruction when he was trying to install an iron gate on the vacant land forming part of khasra no. 594.

25. The respondent No.3/Charan Singh never alleges in his complaint that the disputed land is part of khasra no. 595 and he specifically alleges that the land in question is a vacant land and the same is forming part of khasra no. 594 and his sons are causing obstruction while installing an iron gate on the said land.

26. The respondent No.3/Charan Singh never alleges in his complaint that the petitioner/Capital Land Builders Pvt. Ltd. at any point of time had ever threatened him or that there was any dispute with the petitioner regarding the aforesaid land.

27. On the basis of the aforesaid complaints an inquiry was carried out by ASI Bijendra Singh, P.S Mehrauli who had stated

in the Kalandra that the disputed area is a vacant land measuring 360/370 square yards to which some people say that the land belongs to the petitioner and some people say that the land belongs to the respondent No.3. The ownership of the aforesaid land cannot be determined whether it is part of khasra no. 595 or khasra no. 594 for want of demarcation and the Kalandra under Section 145 Cr.P.C. was submitted before the concerned SDM for consideration/adjudication.

28. It is an undisputed fact on the record that the concerned SDM never demarcated the land khasra no. 595 or the land khasra no. 594 in presence of the parties rather a report from the Halka Patwari was sought by an order dated 30.08.2013 which is reproduced as under:

"30.08.2013-case called

-Present Sh. B. Tripathi Advocate for the party no.1

-Present Sh. V.P. Yadav, Advocate for the party no.2.

-Adv. for party no.1 Sh. B. Tripathy submitted that suit land exists in Kh. No.595 and there is no boundary wall but it is surrounded by other properties.

-Adv. For party no.1 submitted that the lock on the room was his and none of land was in possession of party no.1.

-Adv. For party no.2 submitted that they have Khasra Gifdawari of year 2013 which shows that on 18/02/13 Sh. Charan Singh was in possession of vacant land alongwith built up 0.4.

-H/p is directed to submit specific report that is Kh. No.595 min (1-19) who is/are in possession and how much area constructed, again H/p is also directed to submit specific report of Kh.595 min (0-4) that who is/are in possession and how much area constructed and status of vacant land.

-H/p is directed to submit report that any boundary is existing on Kh. No. 595 vacant land.

-Case fixed on 16/09/13.

Sd/- 30.08.2013"

29. The learned SDM without even proper compliance of his own order dated 30.08.2013 hastily without application of mind reached to the wrong conclusion that the disputed land measuring 362/370 square yards is part of khasra no. 595 whereas the Khasra Girdawari itself shows that there are two min numbers of khasra no. 595. The ownership and possession in khasra no. 595 min (1-19) is with the petitioner/Capital Land Builders Pvt. Ltd. and in khasra no. 595 min (0-4) there is already a constructed house in possession of the respondent No.3/Charan Singh. There is no source proving on record for determination of the disputed land to be measuring 362/370 square yards for want of proper demarcation as per procedure neither there is any single document coming on record that the disputed land is measuring 362/370 square yards, whereas both the parties do not dispute that the land in dispute is a vacant land.
30. In these circumstances the order of the learned SDM under Section 145(1) Cr.P.C. of apprehension of breach of peace, without even recording the statements of the parties or the statements of other witnesses is not convincing.
31. As discussed above it is apparent on the record that the possession of the land measuring 362/370 square yards in khasra no. 595 at village Chattarpur as mentioned by the learned SDM is contrary to the record as the land khasra no. 595 min (1-19) in the Khasra Girdawari itself shows to be in the possession

of the petitioner/Capital Land Builders Pvt. Ltd. as gairmumkin makan chardiwari. Here it is not out of place to mention that miscarriage of justice has taken place by holding the respondent No. 3 in possession of the land measuring 362/370 square yards situated in khasra no. 595 at Chattarpur, New Delhi without proper demarcation and supporting evidence of revenue records or ocular evidence from the side of the respondent No.3/Charan Singh. The respondent No.3 himself does not claim in his complaint possession over the land khasra no. 595 at village Chattarpur.

The disputed land as alleged in the Kalandra does not determine on which khasra no. the disputed land is situated and the order dated 27.01.2014 passed by the learned SDM entitling the respondent No.3/Charan Singh possession of the aforesaid land until ousted by due course of law is bad and without any reason therefore, is set aside and the position of the said land is restored back to its original position. Resultantly, the subsequent order passed by the learned ASJ/Special Judge:CBI-03, Saket dated 05.06.2014 too is set aside. Reliance is place on the judgment of this Court in the case of *Smt. Maya Devi* (supra).

32. The contentions of the learned counsel for the respondent No.3 has no force and the judgment relied by him is not applicable in the facts and circumstance of the present case.

33. Consequently, the present petition is allowed. One copy of this judgment be sent to the learned SDM, Mehrauli and also to the learned ASJ/Special Judge:CBI-03, Saket.

No order as to costs.

I.S.MEHTA, J

JANUARY 10, 2017

