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

+ CM(M) No.987/2017 & CM No.33016/2017 (for stay).

SHER NABI CHAMAN

..... Petitioner

Through: Mr. A. Maitri and Ms. Radhika
Chandrashekhar, Advs.

versus

M S SHARMA & ORS

..... Respondent

Through: Mr. Pawan Mathur, Adv. for DDA.

Mr. Santosh Kr. Tripathi, ASC
(GNCTD) for R-4&6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.09.2017

CM No.33017/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.987/2017 & CM No.33016/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 24th August, 2017 in Suit No.8531/16 of the Court of Additional Senior Civil Judge (East), Karkardooma Courts, Delhi) dismissing the application of the petitioner / plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (CPC).
4. The counsel for the respondents / defendants Delhi Development Authority (DDA) and Director of Education (DoE), Government of National Capital Territory of Delhi (GNCTD) appear on advance notice.
5. The suit from which this petition arises was instituted by the petitioner / plaintiff way back in November, 1996 i.e. more than 20 years

ago, to restrain respondents / defendants DDA and DoE, GNCTD and their officers from forcefully dispossessing the petitioner / plaintiff from peaceful use and enjoyment of land *ad measuring 12 bighas 13 biswas* falling in Khasra No.22/3(4-4), 22/4(4-4), 22/8(4-16), 22/9(4-10), 25/20/2(1-8) and from fencing the said land.

6. An interim order in favour of the petitioner / plaintiff and against the respondents/ defendant restraining the respondents / defendants from so dispossessing the petitioner / plaintiff from the land was granted in the suit as far back as on 5th December, 1996.

7. DDA as well as DoE preferred CM(M) No.304/2014 and CM(M) No.632/2014 in this Court against the aforesaid interim order.

8. The aforesaid petitions were disposed of by this Court vide order dated 7th November, 2014 as under:-

“1. The issue in the present proceedings, which impugns the orders of the court below deciding the application under Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 (CPC), is whether the land which is in possession of the respondent no.1/plaintiff falls in khasra no.22/3, 22/4, 22/8, 22/9 and 25/20/2 between Block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi or the land is actually part of khasra no.976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi. Whereas the respondent no.1/plaintiff states that the suit property is located in khasra no.22/3, 22/4, 22/8, 22/9 and 25/20/2 between Block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi, the petitioner/DDA as also the Director of Education, Government of NCT of Delhi (respondent no.6 herein and who is petitioner in C.M.(M) No.632/2014) contend that the suit property is situated in khasra no. 976

min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi. Admittedly petitioner and the Director of Education do not claim any rights in the khasra no.22/3,22/4, 22/8, 22/9 and 25/20/2 between Block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi and which land is not acquired land, and the petitioner and the Director of Education only claim that they have rights in khasra no. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi being the lands which have been acquired under the Land Acquisition Act, 1894. The respondent no.1/plaintiff states that he has nothing to do and is not staying or occupying khasra no. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi as claimed by the petitioner and the Director of Education.

2. The issue therefore clearly boils down to the location of the property which is occupied by the respondent no.1/plaintiff. If the land of the respondent no.1/plaintiff is not situated in khasra no. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi as claimed by the petitioner and the Director of Education, then, surely the respondent no.1/plaintiff will have complete rights with respect to the land on which the respondent no.1/plaintiff is staying and petitioner and the Director of Education will not be entitled to disturb the possession of the respondent no.1/plaintiff in the land in which the respondent/plaintiff is located as the said land is not situated in khasra no. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi.

3. Counsel for the parties have taken instructions and it is agreed that demarcation of the land which is occupied and in possession of the respondent no.1/plaintiff be now conducted by the total station method by the concerned

SDM of the area with the assistance of the necessary revenue officials at the cost to be equally shared by both the parties. It is also agreed that none of the parties will file any objections to the demarcation report which will be conducted by the concerned revenue authorities in the presence of the parties and their Advocates. The object of demarcation being done by the total station method, and objections not being filed by the parties, is because the report is to be prepared in the presence of the parties and their Advocates, and the same is to ensure that the present litigation as also the suit comes to an end because none of the parties claim rights/ownership of the land/properties of other party and issue is only of location which will be sorted out in terms of the demarcation report prepared by the total station method.

4. Let the parties deposit the charges for the demarcation by the total station method with the concerned authorities within a period of four weeks of the concerned SDM/revenue officials informing the parties as to the amounts which have to be deposited for conduct of the demarcation by total station method. The charges will be intimated to the parties by the revenue officials positively within four weeks of the receipts of the copy of this order. Within eight weeks thereafter the SDM of the area alongwith the concerned revenue officials will prepare the demarcation report of the land in possession and occupation of the respondent no.1/plaintiff. Both the parties at the time of depositing of the charges with the concerned authority will file with the concerned authority their addresses as also addresses of their Advocates so that the SDM before conducting of the demarcation by total station method can give notices to the respective parties and their Advocates. Respective parties and their Advocates will also

exchange communications in writing by registered post informing the other party and their Advocates with respect to the date which is fixed for demarcation of the land in question.

5. As stated above, the parties agree to abide by the finality of the demarcation report prepared in terms of the present order.

6. The SDM after preparation of the demarcation report will give a copy of the demarcation report to each of the parties and their Advocates by taking an endorsement in writing with respect to giving of the demarcation report.

7. Both the parties will maintain status quo with respect to title, possession and construction with respect to the land in question till preparation of the demarcation report and whereafter parties will abide by the demarcation report and the directions otherwise contained in the present order. If demarcation report is in favour of the respondent no.1/plaintiff, the petitioner and the Director of Education will not in any manner disturb the rights of the respondent no.1/plaintiff and if demarcation report is in favour of the present petitioner/DDA and the Director of Education, the respondent no.1/plaintiff will not object to the DDA and the Director of Education demolishing whatever constructions which exist on the on the land which would be found in khasra no. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi as claimed by the DDA and the Director of Education, and taking of the possession of those lands by DDA/Director of Education falling in khasra no. 976 min, 977 min, 978 min and 979 min of Village Mandoli, Shahdara, Delhi.

8. The petitions as also the suit will stand disposed of in terms of aforesaid directions and observations, leaving the parties to bear their own costs.”

(emphasis added)

9. The petitioner / plaintiff, who was the respondent in the aforesaid petitions, filed CM No.2130/2015 though titled for “modification” of the said order but otherwise for review thereof.

10. The said application was disposed of vide order dated 24th February, 2015 which, after reproducing the earlier order in the first paragraph thereof, is as under:-

“2. Before I turn to the contents of the order dated 07.11.2014, the context in which the said consent order had been passed is required to be noted. The subject suit was a suit for injunction filed by the respondent no.1/plaintiff/applicant/review petitioner claiming rights and injunction against dispossession of land admeasuring about 12 bighas and 18 biswas (approx. 19000 sq. yds or 1,60,000 sq. ft) situated in the area of village Mandoli, Shahdara, Delhi. The respondent no.1/plaintiff/applicant/review petitioner filed the subject suit in June vacations and obtained an ex parte order of status quo. This ex parte order of status quo was vacated by the trial court thereafter noting that the respondent no.1/plaintiff/applicant/review petitioner in the guise of the ex parte order of status quo had started making construction on the suit land. The main injunction application of the respondent no.1/plaintiff/applicant/review petitioner thereafter was argued and the same was dismissed by the trial court in terms of its order dated 01.5.2013 by making the following pertinent observations and conclusions:-

“10. It is argued by Ld. Counsel for plaintiff that plaintiff is in possession of the suit property and he can not be evicted from the suit property except with due

process of law. Ld. Counsel for plaintiff relied upon two documents one is demarcation report dated 10.08.98 and another is a letter dated 18.11.98 written by Director Land Management East DDA. I have perused the file. There is no demarcation report of dated 10.08.98. The plaintiff has placed on record the demarcation report dated 16.06.99. The document dated 10.08.98 is a copy of the record got from the Tehsildar Seemapuri. This document describes that DDA has no concerned with khasra no.22/3, 4, 8, 9 and 25/20/2, of village Mandoli. But it is not the dispute between the plaintiff and the defendants. The main dispute is whether the suit property falls in khasra no. 22/3, 4, 8, 9 and 25/20/2, of village Mandoli or falls in khasra no. 976 min., 977 min., 978 min. and 979 min of village Mandoli. The plaintiff has placed on record the demarcation report dated 16.06.99 and the defendant DDA has placed on record the demarcation report dated 16.06.2004. From the perusal of demarcation report dated 16.06.99 it reveals that the same has been conducted by a retired Kanoongo Meerut U. P. The retired Kanoongo UP was engaged by the plaintiff to assist him. The demarcation dated 16.06.99 has been conducted by the Kanoongo by foot (by kadmi). The demarcation report dated 16.06.99 in itself prima facie is not correct because the demarcation/measurement can not be done by foot. It has to be done by chain zarif or by fita. The demarcation by foot can not be deemed to be a correct demarcation. On the other hand the defendant/DDA has placed on record the demarcation report dated 16.06.04 which is conducted by the senior officers including Tehsildar Seema Puri, Tehsildar Slum & JJ along with other Kanoongos of Department of

Revenue, Slum & JJ as well as of DDA. The demarcation report placed on record by the DDA is more reliable than the demarcation report relied by the plaintiff. Moreover the site plan placed on record by the plaintiff as well as by DDA along with demarcation report shows the location of the suit property differently. The site plan filed by the DDA shows that there is a distance of 440 Ghathe between the khasra no. 22/3, 4, 8, 9 and 25/20/2, of village Mandoli and khasra no. 976 min., 977 min., 978 min. and 979 min of village Mandoli. The distance is significant.

12. For granting injunction the conduct of the party who seeks injunction is also relevant. I have gone through the file. The present suit was filed during vacations of June and plaintiff had able to get exparte status quo. But after taking the protection of status quo plaintiff has starting to plotting of the suit property. Thereafter my Ld. Predecessor has vacated status quo and observed that the cumulative study of all the photographs shows that plaintiff has raised many construction inside the suit land but he has not fenced his land for which status quo ante was granted. From the perusal of these photographs the conduct of the plaintiff is clearly reflect that he has raised illegal construction inside the suit property without seeking permission of this Court and has misused the order of this court. Court has passed status quo ante order in respect of the suit property which was also binding upon the plaintiff. It is not the case of the plaintiff that someone else has raised the construction inside the suit property and not the plaintiff. It is the settled law that a party who seeks equity must approach the court with clean hands. The acts and dealings of the plaintiff

seeking injunction must be above the board and free from any taint and illegality. In the present case plaintiff was never allowed to raise any construction inside the property which he has done as proved from the photographs. The dividing the land into plots by raising pakka wall and also raising a pakka room is a clear cut misuse of the process of this court and the order issued by this court. In my opinion in these circumstances plaintiff is not entitled for any protection from this court. Hence it is a fit case where a status quo order should be recalled. Therefore, the application of the defendant is allowed & status quo order dated 04.06.99 is recalled and plaintiff is restrained from raising any further construction over the suit land till final disposal of the suit.

13. *Moreover, the plaintiff has initially not made party to the DDA. And he has also not disclosed anywhere in his original plaint that he had also filed a suit against the DDA. But in the amended plaint the plaintiff has stated in para no. 12 that earlier he had filed a suit against the DDA which was dismissed in default on 04.12.96. It is clear cut concealment by the plaintiff by not disclosing the filing of earlier suit. It might be possible that plaintiff has deliberately not made the DDA as party initially in the present suit with malafide intention for getting the status quo in which he has succeeded. This sole ground also made disentitled the plaintiff for ad-interim injunction.*

14. *Ld. Counsel for plaintiff argued that plaintiff is in settled possession of the suit property and he can not be evicted without following due process of law. The settled possession must be i) effective, ii) undisturbed, and iii) to the knowledge of the owner or without any*

concealment by the trespasser. The photographs placed on record shows that the land is vacant land. The plaintiff has also not placed on record any document which shows that the predecessor in interest of plaintiff was in possession of suit property immediate before the said property was sold to the plaintiff. So, I am of the prima facie opinion that plaintiff is not in settled possession of the suit property. The demarcation report filed by the plaintiff is not prima facie trust worthy. The land in dispute has been allotted to the Director Education for construction of a senior secondary school. Prima facie suit land falls in khasra no. 976 min., 977 min., 978 min. and 979 min of village Mandoli that land is an acquired land. The Hon. Supreme Court of India in case titled as Premji Ratansay Shah & Ors. V/s. UOI & Ors (supra) has held that no injunction can be granted in favour of encroachment on public land and against the true owner. I am of the view that plaintiff is not entitled for the relief of ad-interim injunction. Application stands dismissed.

*Nothing is stated herein above tantamount of the expressions on the merits of the case as parties has yet to lead evidence and prove their case on merits.”
(emphasis added)*

3. A reference to the aforesaid observations and conclusions of the trial court shows the gross dishonesty of the respondent no.1/plaintiff/applicant/review petitioner and the mala fide nature of the subject suit in which the application for ad-interim injunction under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (CPC) was filed. The respondent no.1/plaintiff/applicant/review petitioner claimed to be in possession of the suit land, however, the respondent no.1/plaintiff/applicant/review petitioner could not show any

proof of settled possession. The photographs filed on record show that the land was a vacant land and some constructions were made by the respondent no.1/plaintiff/applicant/review petitioner taking advantage of the ex parte status quo order obtained in June vacations. That order as stated above was recalled and the injunction application which was argued by which, the respondent no.1/plaintiff/applicant/review petitioner again sought the interim order, and hence the aforesaid observations were made by the trial court which has been reproduced above, to decline the grant of interim injunction. The trial court noted that the main dispute was as to whether the suit property falls in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli as claimed by the respondent no.1/plaintiff/applicant/review petitioner or the property fell in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli as was the case of DDA. The trial court as stated above, dismissed the injunction application filed by the respondent no.1/plaintiff/applicant/review petitioner by which the respondent no.1/plaintiff/applicant/review petitioner claimed the rights to continue in possession of the land in question.

4. I may at this stage itself note and repeat that the area of the land would be roughly about 19,000 sq. yds in the city of Delhi and even on a conservative estimate the price would be around Rs.50-100 crores.

5. The respondent no.1/plaintiff/applicant/review petitioner since was not successful before the trial court in getting his interim application allowed, filed an appeal before the appellate court being MCA No.14/13 and the appellate court by a perfunctory and a casual order dated 13.09.2013 allowed the appeal by simply observing as under:-

“It was submitted by the Ld. Counsel for the appellant that the appellant is the owner of suit property. It was contended that the suit property was never acquired by

the government. It was contended that DDA has admitted that there is no dispute regarding the ownership and possession of appellant over suit property. It was also contended that as per demarcation report the suit property of appellant is separate from the land of DDA. It was further contended that the order passed by the Ld. Trial Court is against the facts and law and the same is liable to be set aside.

On the other hand, it was submitted by the Ld. Counsel for the respondents that the impugned order is justified and there is no infirmity in the impugned order. It was contended that the appellant has no right, title or interest in the suit property as the suit property falls within the land which has been acquired by the government through award no.1956. It was contended that the appellant is encroacher upon the land of DDA. It was contended that the appellant being encroacher is not entitled to any interim injunction in his favour.

Admittedly, the appellant is in physical possession of the suit property. There is also no dispute from the side of DDA regarding the ownership of the property.

The main controversy between DDA and appellant is regarding the location of the suit property. As per DDA suit property is situated between F-1 and F-2 Blocks, Sunder Nagri, Village Mandoli, Shahdara, Delhi which falls in Khasra Nos. 976 to 979 and the same is acquired land. On the other hand, the main contention of the appellant is that suit property falls in Khasra No.22/3, 22/4, 22/8, 22/9 and 25/20/2 between block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi which was never acquired by the government.

Perusal of the file shows that the demarcation was carried out in respect to the location of the suit property

on 10.09.1998. This demarcation was carried out by the revenue department. As per this demarcation report, the suit property of appellant falling in Khasra No.22/3, 22/4, 22/8, 22/9 and 25/20/2 between Block F-1 and F-2, Sunder Nagri, Village Mandoli, Shahdara, Delhi is very much separate from the land of the DDA and the property of appellant has no concern with DDA or MCD or any other government department.

The perusal of the file further shows that the appellant has been enjoying the interim protection for several years. As per demarcation report, the property of the appellant is separate from the property of DDA. Admittedly, the appellant is in possession of the suit property.

In view of the above discussion, I am of the considered view that the impugned order cannot be sustained and the same is set aside. The appeal is allowed. The respondents are restrained from interfering in the possession of the appellant in respect of the suit property.

Trial Court record be sent back along with copy of the judgment.

The case is old one. It is about 17 years old. The trial has not yet commenced. The trial court shall expedite the trial and decide the case expeditiously.

The appeal file be consigned to the Record Room.”

6. *A reading of the aforesaid observations of the first appellate court shows that the first appellate court did not refer to the relevant observations and conclusions of the trial court and without finding the respondent no.1/plaintiff/applicant/review petitioner to be in settled possession of the land granted the interim injunction order on the basis of a self-serving*

demarcation report filed by the respondent no.1/plaintiff/applicant/review petitioner dated 10.9.1998

7. It is in the aforesaid context of lack of validity of the order of the first appellate court and the validity of the order of the trial court that the case was argued on 07.11.2014 resulting in passing of the consent order on 07.11.2014, which disposed of not only the petition but also the suit inasmuch as it was not the case of the respondent no.1/plaintiff/applicant/review petitioner that he had any rights in the khasra nos. 976 min., 977 min., 978 min. and 979 min. of village Mandoli, Shahdara, Delhi which the petitioner/DDA said to be belonging to it, and in which according to the petitioner/DDA, the respondent no.1/plaintiff/applicant/review petitioner actually was squatting and not in khasra nos. 22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli, Shahdara, Delhi as claimed by the respondent no.1/plaintiff/applicant/review petitioner. By the consent order dated 07.11.2014, since the issue was crystallized that the respondent no.1/plaintiff/applicant/review petitioner only claimed the rights to khasra nos. 22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli, if the respondent no.1/plaintiff/applicant/review petitioner was not in possession of khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli, but was on the land comprising in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli as claimed by the petitioner/DDA, the respondent no.1/plaintiff/applicant/review petitioner would have no rights to the land area which he was occupying once that was the land of the petitioner/DDA. In law it is perfectly justified for parties to arrive at a settlement by disposing of not only a challenge to an order deciding an injunction application under Order XXXIX CPC but also the suit itself inasmuch as the controversy was in a narrow compass of the respondent no.1/plaintiff/applicant/review petitioner whether or not was occupying land in khasra nos.22/3, 22/4, 22/8, 22/9

and 25/20/2 of village Mandoli or the land in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli as claimed by the petitioner/DDA.

8. It is required to be stated at this stage that originally in Delhi, when the village areas and rural areas were unbuilt, there used to be traditional methods of demarcation in terms of the revenue laws, and which presupposed existence of fields i.e unconstructed lands being rural and agricultural lands. Over a point of time due to unplanned development of various colonies in Delhi, colonies came up even on rural lands. Construction having been made, the demarcation no longer could be done by the traditional methods and demarcation is now done by the laser method called as the Total Station Method by of course following the principles contained in the revenue laws of having fixed points of location. A constructed area in a colony cannot surely be demarcated like fields where there is no construction and therefore it is not in any manner illegal using the Total Station Method which involves laser technology and which has been done in Delhi in hundreds and thousands of cases, whereby demarcation disputes have been resolved by the revenue authorities. Obviously, since the respondent no.1/plaintiff/applicant/review petitioner had no rights in khasra nos. 976 min., 977 min., 978 min. and 979 min. of village Mandoli which were claimed by the petitioner/DDA, the respondent no.1/plaintiff/applicant/review petitioner agreed in passing of the aforesaid consent order dated 07.11.2014.

9. It also bears note that even in the present application, it is not the case of the respondent no.1/plaintiff/applicant/review petitioner that the consent given as recorded on 07.11.2014, was not given by and on behalf of the respondent no.1/plaintiff/applicant/review petitioner. It is only argued that the consent order has been passed by ignoring the earlier demarcation report and that the consent arrangement as

recorded in the order dated 07.11.2014 has no basis in terms of the revenue laws as applicable to Delhi.

10. Let me at this stage refer to the arguments which have been urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner and which are:-

(i) There is no bar in recalling of a consent order, more so because till date no benefit has been taken by the respondent no.1/plaintiff/applicant/review petitioner of the consent order.

(ii) The consent order is violative of the provisions of the Delhi Land Reforms Act, 1954 and the related revenue laws because there is no provision of demarcation by the Total Station Method under the revenue laws.

(iii) The main petition which had been disposed of by the consent order dated 07.11.2014 was only a limited petition to challenge the disposal of an injunction application, and therefore the suit itself could not have been disposed of and the suit could have been disposed of only after trial/ leading of evidence.

(iv) The consent given with respect to non-filing of the objections to the demarcation report to be prepared in terms of the consent order dated 07.11.2014 takes away valuable rights and forecloses rights of the respondent no.1/plaintiff/applicant/review petitioner to file objections to the demarcation report, and therefore such a consent could not have been given.

(v) The respondent no.1/plaintiff/applicant/review petitioner was the owner of the valuable land and even if the respondent no.1/plaintiff/applicant/review petitioner is found to be situated not in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli but on khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli of the petitioner/DDA, since the respondent no.1/plaintiff/applicant/review petitioner after all was the owner of the valuable land and which land comprising in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli which would be with the DDA, the position which emerges is that

loss would be caused to the respondent no.1/plaintiff/applicant/review petitioner because on the one hand, on his land DDA would be found to be situated, and on the other hand, it is the DDA who continued on the suit land existing in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli.

11. In my opinion all the arguments urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner are nothing but sheer abuse of the process of the law and an endeavour to get out of the clear-cut consent terms as recorded in the consent order dated 07.11.2014. The intention of the respondent no.1/plaintiff/applicant/review petitioner is to somehow or the other keep on occupying valuable government land of about 19,000 sq. yds. in the city of Delhi and whose value on a conservative estimate as stated above would be at least in the region of Rs.50-100 crores. Each of the arguments urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner are without any substance or merit whatsoever and are dealt with hereinafter.

12. The first argument urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner that a consent order can be recalled, more so because no benefit is taken of the same by the respondent no.1/plaintiff/applicant/review petitioner, is an argument without any merit whatsoever for the reason that in the subject application, it is nowhere the case of the respondent no.1/plaintiff/applicant/review petitioner that the consent was not given. Giving or not giving of consent is a factual aspect and once that factual aspect is not sought to be recalled, it is therefore a fact that consent was indeed given for passing of the order dated 07.11.2014. Therefore, a consent order cannot be recalled unless and until the consent is based on a concession which is not in accordance with the law and which is not the position here. Also, it is relevant to note that if a legal

proceeding creates rights which can be waived then waiver of such rights would not mean that the consent given is against the law. Reference in this behalf can be made to the judgment of the Supreme Court in the case of Martin & Harris Ltd. Vs. VIth Additional Distt. Judge & Ors. (1998) 1 SCC 732, wherein the Supreme Court has observed that there cannot be estoppel against the law only if the legal provision is one which is not capable of being waived, but if the legal provision is with respect to a matter of private interest, such a private interest can always be waived ie only matters of public policy and public interest comprised in a statute cannot be waived but private interest can always be waived. Therefore, an entitlement to file objections to a demarcation report, being the private right of the respondent no.1/plaintiff/applicant/review petitioner, can and could always have been waived by the respondent no.1/plaintiff/applicant/review petitioner, more so in the facts of the present case where the respondent no.1/plaintiff/applicant/review petitioner claims no rights whatsoever on the land comprising in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli and only claims rights in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli.

13. At this stage, I may also deal with and dispose of an argument urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner that the right to file objections if taken away would seriously affect the rights of the respondent no.1/plaintiff/applicant/review petitioner, however, this argument conveniently ignores the fact that both the parties agreed to be bound by the fresh demarcation report to be carried out in terms of the Total Station Method. Since both the parties agreed, more so because there was a very narrow scope of the respondent no.1/plaintiff/applicant/review petitioner existing whether in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of

village Mandoli as claimed by him or in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli which was the land of the petitioner/DDA, therefore, there is no prejudice to the respondent no.1/plaintiff/applicant/review petitioner and hence these arguments urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner are rejected.

14. The next argument which was urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner was that the revenue law does not entitle the demarcation by the Total Station Method, however, in my opinion, this is an argument of desperation because there is no bar under the revenue law not to carry out demarcation by the Total Station Method. Merely because a particular method is provided in the revenue laws which was passed many decades back, does not mean that the modern methods with respect to demarcation cannot be adopted by the revenue authorities, more so when such a method is now the only available proper method, because the traditional methods were with respect to areas and lands which were unconstructed and wherein demarcation could be done by traditional methods, but when the entire city is built up, demarcation will have to be done by the laser method i.e the Total Station Method inasmuch as which is done with respect to the fixed and specific points in terms of the revenue law. This argument urged on behalf of the respondent no.1/plaintiff/applicant/review petitioner is also therefore rejected.

15. The respondent no.1/plaintiff/applicant/review petitioner next argued that since only an interim order was being challenged in the present petition, the main suit itself could not have been disposed of, however, this argument has to be rejected because surely it is conceivable for parties at any stage of the suit, including before an appellate court, to dispose of not only the interim application but also the suit itself. Once parties give

consent to disposal of a suit and an interim order in a particular manner, I fail to understand as to how the convenient argument can now be sought to be urged to set aside the consent terms recorded in the order dated 07.11.2014.

16. Finally, it was argued on behalf of the respondent no.1/plaintiff/applicant/review petitioner that he is after all the owner of the valuable land comprising in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli, and his land would in fact be with the petitioner/DDA, which has built up a colony therein. Even this argument, in my opinion is totally frivolous and specious because this was not the issue in the suit filed by the respondent no.1/plaintiff/applicant/review petitioner wherein the issue only was that whether the respondent no.1/plaintiff/applicant/review petitioner's land is located in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli as claimed by him or is in fact squatting on the government land or public land of the petitioner/DDA situated in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli. Therefore, the argument that the respondent no.1/plaintiff/applicant/review petitioner is being prejudiced is an argument totally without merit because surely the respondent no.1/plaintiff/applicant/review petitioner can file the appropriate proceedings to claim the land claimed to be owned by him and stated to be situated in khasra nos.22/3, 22/4, 22/8, 22/9 and 25/20/2 of village Mandoli, however, the same cannot mean that the respondent no.1/plaintiff/applicant/review petitioner can continue to illegally occupy a public land belonging to the petitioner/DDA comprising in khasra nos.976 min., 977 min., 978 min. and 979 min. of village Mandoli.

17. In view of the above, the present application being an endeavour to overreach not only the petitioner/DDA but also this Court, and that too for a malafide purpose of holding on valuable public land, the review petition is therefore dismissed

with costs of Rs.2 lacs inasmuch as it is high-time that to certain sections of litigants of this country a very strong message be sent that the courts are in no manner lenient in allowing the illegal occupation of the government/public land. Costs can be recovered by the petitioner/DDA by filing execution proceedings against the respondent no.1/plaintiff/applicant/review petitioner.”

(emphasis added)

11. The petitioner / plaintiff preferred Special Leave Petition (SLP) (C) No.12916/2015 against the aforesaid order dated 24th February, 2015 and vide order dated 5th May, 2015 wherein *status quo* as it existed then was required to be maintained. However subsequently on 1st December, 2016 the petitioner / plaintiff withdrew the SLP and the same was dismissed as withdrawn and the interim order vacated.

12. The counsel for DoE on enquiry states that the respondent / defendant DoE is in possession of the property now.

13. Notwithstanding the aforesaid orders of this Court and the dismissal of the SLP thereagainst, the petitioner / plaintiff filed the application aforesaid under Order XXVI Rule 9 of the CPC before the Civil Judge before whom the suit was pending, pleading (i) that when demarcation was allowed to be conducted in the year 1998 and 1999 by the Suit Court, neither the DDA nor the Revenue Authorities attended the demarcation proceedings; (ii) that previously the copy of *Aks Sharja* supplied to the petitioner / plaintiff did not contain the number 54, 55 etc. but the copy supplied to the petitioner / plaintiff by the “defendant on 9.8.2017” contained “the alleged numbers” and therefore the said document was a manipulated document; (iii) that there was also no basis disclosed by the

respondent / defendant DoE to have carried out the demarcation in 2004; (iv) that since Khasra No.976 to 979 are only comprising of land about 14 *bighas* and in Khasra No.54, the total land shown is of more than 117 *bighas*, it is very doubtful how the land measuring 117 *bighas* in Khasra no.976 (the sentence in the application thereafter is incomplete); and, (v) that owing to three major points / issues viz. of the *Aks Sharja* supplied to the petitioner / plaintiff by the respondent / defendant DDA being a manipulated one, Khasra No.976 to 979 comprising of 14 *bigha* and not land *ad measuring* 117 *bighas* as per Award file and the demarcation being required to be carried out only in respect of Khasra no.976 to 979, it was appropriate that a Court Commissioner be appointed to carry out demarcation of Khasra No.976 to 979 in his presence and to videograph demarcation proceedings.

14. The filing of the aforesaid application before the Civil Judge, when demarcation was ordered by this Court, was itself in abuse of the process of the Court and an attempt to obtain an order from the Civil Judge which the Civil Judge could not have granted in view of the demarcation having been ordered by this Court.

15. Significantly, the order of demarcation of this Court was passed after both the counsels for the parties had taken instructions and the manner carrying out the demarcation so expressly prescribed in the order. Not only so, the parties had also agreed that none of the parties will file any objection to the demarcation report “which will be conducted by the concerned Revenue Authorities in the presence of the parties and their Advocates”. It is quite obvious that demarcation in the manner ordered was in pursuance to statements of the parties under Section 20 of the Indian Evidence Act, 1872

and are admissions of the parties and the filing of the application by the petitioner / plaintiff under Order XXVI Rule 9 of the CPC was nothing but an attempt to renege from such admissions and which the petitioner / plaintiff was not entitled to do.

16. The filing of this petition is also an attempt to wriggle out of the consent given and as contained in the order dated 7th November, 2014 aforesaid.

17. The petitioner / plaintiff is found to be abusing the process of the Court inspite of stringent observations made by this Court against him in the order dated 24th February, 2015.

18. I need say no more in view of the order dated 24th February, 2015 having been reproduced hereinabove.

19. The counsel for the respondent / defendant DoE states that the petitioner / plaintiff is still not permitting the respondent / defendant DoE to utilise the land for construction of a school and all officers of the respondent / defendant DoE are afraid of going to the site.

20. While dismissing this petition, the petitioner / plaintiff is restrained from interfering with the dealing by the respondent / defendant DoE of the land in pursuance to the order dated 24th February, 2015 supra.

21. The petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 11, 2017

‘pp’..

(Corrected and released on 29th September, 2017).