

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 09, 2018

Judgment delivered on: July 16, 2018

+ W.P.(C) 1720/2018, CM Nos. 7144/2018, 8852/2018 & 24671/2018

TULSI RAM

..... Petitioner

Through: Mr. Kamlesh Kr. Mishra and
Mr. Sanjay Baniwal, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rajiv Bansal, Sr. Adv. with
Ms. Beenashaw Soni and Ms. Fiza
Saluja, Advs.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with
the following prayers-

*“It is therefore, prayed that this Hon’ble Court may
be pleased to*

*I. Pass an order directing respondent DDA to
not to dispose the petitioner herein from the
possession of the land admeasuring 16 Bighas 00
Biswas in Khasra No. 341 Min IP Estate, New Delhi*

without following the due process of law.

II. Pass an order directing the respondent DDA to comply in letter and spirit the final order and judgment dated 19.04.2006 in WP (C) 14260 of 2004

III. Pass an order directing respondent DDA to comply to its own resolution No. 6 passed at an ordinary meeting of the Delhi Development Authority held on 30.04.1973 and grant direct lease to the petitioner herein;

IV. Pass an order directing Respondent to cease any further evictions or harassment of petitioner that been using the abovementioned area;

V. Pass an order directing the concerned respondent to compensate the petitioner for the loses been suffered by him due to illegal eviction proceedings;

VI. Pass such other and further order(s) as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case."

2. The case set up by the petitioner in the writ petition is, that the land in question has been given on lease by the Government of India to one Pandit Kishan Chand, who in turn sublet the same to the Delhi Peasant Cooperative Multipurpose Society Ltd. (hereinafter referred to as 'Society') for the purpose

of cultivation. The Society continued to pay lease money to Delhi Improvement Trust to whom the land has been handed over by the Government of India for the purpose of management and the Members of the Society continued to pay rent of the Society. It is also stated that the Society has been originally a direct tenant, however, after the incorporation of the Society, the petitioner as a Member was entitled to exercise his right over the land and was thus paying rent to the Society for his share of the land.

3. It is averred that immediately on receipt of the first show cause notice, the petitioner appeared and filed his objection stating that he is a poor person and with hard labour / efforts, has developed the barren land for agricultural purpose and earning the livelihood from the same and as such, he is not an unauthorized occupant. It is his case that on one hand the Government is regularizing the unauthorized colonies and squatters on Government land and on the other uprooting the poor farmers who are earning their livelihood by cultivation on the land in dispute. It is averred that even otherwise, after coming into force of the Delhi Land Reforms Act, 1954 the petitioner has a vested right in the land and the petitioner could

not be evicted from the premises other than in accordance with the provisions of the said Act.

4. It is contended by Mr. Kamlesh Kumar Mishra, learned counsel for the petitioner that the petitioner is a poor farmer having been cultivating the land and raising crops on the land of 16 Bighas 00 Biswas in Khasra No. 341 Min Inderpath Estate, New Delhi. In support of his submission, he has relied upon Khasra Girdawari at pages 34 to 37 of the paper book which are of the years 1989-2000. According to him, it was only in the year 2004, the DDA started using force against the cultivators, who through the Society had approached this Court. In substance, it is his submission that in terms of the Khasra Girdawari, the petitioner having been recognized as a cultivator, no action of eviction can be taken without due process of law. Mr. Mishra states, if as per the case of the DDA, the land has been handed over by the L&DO to the DDA in the year 2004, it is clear that for the period before that, the land was in possession of the L&DO and L&DO becomes a necessary party and the application for impleadment need to be allowed to enable this Court to know the exact position with regard to the land.

5. On the other hand, Mr. Rajiv Bansal, learned Senior

Counsel for the respondent DDA submitted that the present petition is an abuse of the process of law, as the petitioner has filed fabricated documents, inasmuch as the Khasra Girdawari of various years on which reliance is being placed, does not form part of the record of the DDA. That apart, it was his submission, the petitioner is claiming his rights in respect of 16 Bighas 00 biswas in Khasra No. 341 Min Inderpath Estate, New Delhi, which land was transferred by L&DO to DDA on December 03, 2004. The land in question was situated in Zone “O” of Yamuna river bed. As per the record of the land maintained by the respondent, the land is under the ownership of “*Sarkardaulatmadar*” which would mean that the recorded owner of the land is the Government and presently under management of DDA. He stated, from time to time this Court had passed orders including in W.P.(C) No. 2112/2002 titled ***Wazirpur Bartan Nirmata Sangh v. UOI*** in the year 2003 itself for removal of all kinds of illegal persons/occupants from the Yamuna river bed. In compliance of various orders passed by Courts, the respondent has cleared the Yamuna river bed by conducting demolition drives from time to time to remove illegal / unauthorized occupants. However, some of the persons have

been time and again attempting to encroach upon the Government land and the DDA from time to time keep on removing them. He would also refer to the judgment of the Division Bench of this Court dated April 03, 2013 in W.P.(C) No. 2029/2012 titled *Haq through its Member Abdul Shakeel v/s DDA and another*, wherein the Division Bench has passed order of removal of unauthorized occupants.

6. It was the submission of Mr. Rajiv Bansal that the respondent has seven phase plan for the development of Yamuna River bed. The work of phase one is under process and the redevelopment plan is being executed in the southern part of river bed i.e the area which falls between old iron frame bridge to ITO bridge. The comprehensive plan of Zone “O” is as per directions of the Principal Committee of NGT. The land under reference falls in the flood prone area of Yamuna river and get submerges in the river water at the time of flood. A perusal of the satellite images would show that there is no habitation on the river bed. Any temporary jhuggi/chhappar raised to keep a watch on crops and fertilizers/pesticides and other related items does not entitle them to remain in possession of river bed.

7. Mr. Rajiv Bansal has also pointed out to the Court that in

the additional affidavit filed by the petitioner, a diametrically opposite stand has been taken as compared to the one taken in the writ petition, inasmuch as the petitioner is not a Member of the Society. According to him, the present petition needs to be dismissed on this ground only.

8. Having heard the learned counsel for the parties, first and foremost, with regard to the contradiction in the stand taken by the petitioner in the writ petition. It is the case of the petitioner in the writ petition that he is a Member of the Society and he has been paying lagan to the said Society. Unfortunately, a diametrically opposite stand has been taken in the additional affidavit, inasmuch as, he is not a Member of the said Society. It appears, the same has been taken for the reasons that the Members of the Society have not succeeded in the litigation filed by them against their eviction.

9. Even otherwise, the reliance placed by the petitioner on the Khasra Girdawari at pages 34 to 37 alleged to have been issued from time to time between 1989 to 2000, interestingly, depicts at page 35, which is dated October 09, 1989, that the same has been issued by Patwari DDA. If the case of the respondent is that the land has been transferred by the L&DO to

the DDA only in the year 2004, there was no reason why an Officer of the DDA would have issued the khasra girdawari in 1989. Be that as it may, it is the stand of the DDA as canvassed by Mr. Rajiv Bansal by relying on compilation of documents filed, to show that the DDA records does not show issuance of any Khasra Girdawari in favour of the petitioner, is appealing. Even otherwise, the litigation with regard to the Yamuna river bed was initiated in the year 2004, there was no reason for the petitioner not to be part of the said litigation. It is difficult to comprehend that no action has been taken by DDA for these number of years.

10. I agree with the submission of Mr. Bansal that, even though action has been taken against the petitioner but he re-surfaced on the land in question after some time. This I say so because from the perusal of the photographs placed on record by the parties, it is noted the structures in place are of tin / asbestos, and temporary in nature. Had the petitioner been occupying the land in question for more than four decades (as contended) then surely, the structures in which he is said to be residing would not be of tin sheds, but pakka structures, which is not the case. Even otherwise, the Khasra Girdawari, on which reliance is sought to

be placed by the petitioner shows, the land as Sailaab, which is a water body, and as such the petitioner cannot be a cultivator in a pond. There is no dispute that the land in question is part of the Yamuna river bed. It is not the case of the petitioner he is the owner of the land and has a legal right thereto. Mr. Bansal during his submissions stated that the petitioner is the lone person who is occupying the land is appealing. Hence, it is a case of an encroachment, which is sought to be removed by the DDA, which they are under obligation to do. It must be borne in mind that there is no habitation on the land in question and therefore few tin sheds appear in the photographs filed with the petition are not for human habitation. Hence, no right accrue to the petitioner for holding on to the land. I find that the Division bench in the case of *Haq through its Member Abdul Shakeel (supra)*, has rejected the writ petition with the following observations:

“5. Another important aspect in this regard is that according to the DDA, there is no habitation at all on the land in question and, therefore, there can be no question of rehabilitation of any person occupying the said land. We have perused the aerial images filed by DDA along with its reply as well as the photographs available on the file. It is quite clear from a perusal of these documents that the land in question is not being used for human habitation and is being used only for farming purposes. Few thatch huts appear in the

photographs filed with the petition, but they appear to be the huts put up for the purpose of safeguarding the crops and not for human habitation. That being the position, there can be no question of the respondents providing for rehabilitation of the persons who are in illegal occupation of the said land. Once the land in question is acquired, no one has a legal right to continue farming on the said land and any such activity by the encroachers would be per se illegal. We, therefore, find no merit in the writ petition and the same is hereby dismissed.”

11. The petitioner being similarly placed is also not entitled to any relief as being sought. The writ petition is dismissed. No costs.

CM No. 24671/2018 application under Order 1 Rule 10 read with Section 151 CPC for impleadment

In view of my aforesaid discussion, the application is rejected.

CM Nos. 7144/2018 (for direction) & 8852/2018 (for direction)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 16, 2018/ak