

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 29.08.2018

W.P.(C) 9094/2018

ASHA DEVI AND ANR.

..... Petitioners

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Pardeep Gupta, Mr. Parinav Gupta, Ms. Mansi Gupta, Mr. Wazir Singh Malik and Mr. Moazzam Ali, Advocates.
For the Respondents : Ms. Jyoti Taneja, Advocate for respondent Nos. 1 & 4/GNCTD.
Mr. Ram Kumar, Standing Counsel along with Mr. Sushil Kumar, Advocates for respondent Nos. 2, 4 & 5/NDMC.
Mr. Arjun Pant, Advocate for DDA.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India, prays as follows:

“i) Respondents No. 1 & 2 be directed to make the payment/compensation in respect of the land which has been forcibly taken over by the respondents for construction/widening of road out of plot no. RZ-52, Sayed Nangloi, i.e. road Meera Bagh to GH-8, Paschim Vihar, New Delhi.

ii) Respondents may be directed not to interfere in the possession land of the land out of plot No. RZ 49 to RZ 52 including the land which has illegally been in default beyond the area earmarked by the respondent for development. Hence it may be declared that beside land already converted into road, rest of the land belong to the owner thereof and the respondent have no right over that; and

iii) to pass any other such or similar directions which court may deem fit and proper in the facts and circumstances of the case.”

2. The petitioners' case is predicated on the circumstance that, the Municipal Corporation of Delhi (for short 'MCD'), on the pretext of widening the road, demolished a portion of the property bearing No. RZ-49 and RZ-52, Village Syed Nangloi, Delhi-110087 (hereinafter referred to as 'the subject property'). It is the petitioner's assertion that, in terms of the mandate of Article 300A of the Constitution of India, read with the proviso to Article 31A thereof, the right to property is a constitutional right and that consequently, the State cannot acquire their property without following due process of law.

3. It is, therefore, prayed that, the official respondents having acquired their property, contrary to the mandate of law, be directed to pay compensation to them, in respect of the land forcibly acquired in the process of widening of the road. It is further prayed that, the respondents be directed

not to interfere in the petitioners' possession of the subject land.

4. At the outset, it must be pointed out that, predicated on the same cause of action, the petitioners had earlier instituted a proceeding on 8th March, 2016 in Civil Suit No. 03/2010, titled as "*Jagpal Singh Yadav vs. Municipal Corporation of Delhi*", before the Court of competent jurisdiction. In that proceeding, the petitioners had sought relief by way of a permanent injunction to restrain the official respondents from interfering with the reconstruction being carried out by them in the subject property.

5. The MCD in its written statement filed in the said proceedings had categorically asserted that, the subject property was never recognized by any Municipal Authority or any other Government Department and that, the address thereof had been fictitiously created by the petitioners. It was further stated that, the subject property existed within the area of encroachment that was duly cleared by them, in accordance with law.

6. The learned Civil Judge observed that, the petitioners had failed to challenge the act of demolition on the part of the MCD whilst, seeking the relief of permanent injunction, and had thereby acquiesced and accepted the demolition of the subject property as legal. It was also held by the learned Civil Judge that, no order of injunction can be passed, which may have the

effect of disabling a statutory body from carrying out its functions. In view of the foregoing findings, the learned Civil Judge dismissed the said suit as being not maintainable for want of cause of action.

7. The petitioners carried the said order dated 8th March, 2016, rendered in the said suit, in appeal. It is an admitted position that, the appeal instituted on behalf of the petitioners has since been dismissed and the findings returned by the learned Civil Judge have attained finality.

8. On a specific query from the Court, as to why the petitioners have not instituted a civil suit seeking compensation for the alleged wrongful dispossession from his property; it is urged that, the provisions of the Delhi Municipal Corporation Act, 1957 (for short 'DMC Act'), and in particular, the provisions of Sections 476 and 477 thereof, bar the institution of a civil suit, for the said relief. It is further urged that, since the subject property has been acquired by the official respondents, within the meaning of the provisions of the Land Acquisition Act, no civil suit lies within the mandate of the latter Act, as well. In other words, it has been asserted that, the petitioners have no other remedy barring the present proceedings under Article 226 of the Constitution of India, to seek the relief of compensation for wrongful deprivation of property.

9. Having heard learned counsel appearing on behalf of the parties, I find myself unable to agree with the contentions raised on behalf of the petitioners. The assertion of the petitioners that, the subject property belongs to them is disputed on behalf of the official respondents, as aforestated. Therefore, what the petitioners seek, is a declaration of their title over the subject property, as a precursor to the grant of compensation for deprivation thereof. In this behalf, it is trite to state that, this Court in extraordinary proceedings under Article 226 of the Constitution of India, cannot determine title of a person to any property. That, needless to state, lies within the exclusive domain of a Court of competent civil jurisdiction.

10. Furthermore, the grant of compensation, being contingent upon the declaration of the petitioners' title cannot be granted in the present petition. In this behalf, it is relevant to observe that, the findings of the learned Civil Judge insofar as, the petitioners have accepted the demolition of the subject property is concerned, the same has attained finality. That being so, the grant of compensation is not tenable in relation to the subject property.

11. Insofar as, the submission made on behalf of the petitioners that, the mandate of Article 300A and the proviso to Article 31A of the Constitution of India, have not been followed whilst acquiring the subject property is

concerned, the same is held to be fallacious, inasmuch as, the official respondents cannot acquire land that belongs to them, in the first place. Therefore, the submission that, the acquisition is without following due process of law, is devoid of any merit.

12. It is a settled law that what cannot be done directly, cannot be permitted to be done indirectly. The provisions of law cannot be evaded by contrivance. The writ jurisdiction of this court cannot be used to subvert the provisions of a statute as that would defeat the objective of the same. In this view of the matter, it is observed that, it was open to the petitioners to seek compensation in the civil suit instituted by them before the Court of competent jurisdiction. Having failed to do so, the petitioners cannot be permitted to seek that relief in the present proceedings under Article 226 of the Constitution of India.

13. Lastly, the submission made on behalf of the learned counsel appearing on behalf of the petitioners to the effect that, the provisions of the DMC Act and the Land Acquisition Act bar the institution of civil suits is concerned, the same is completely misplaced in the facts and circumstances elaborated hereinabove. A reference to the provisions of Section 478 of the DMC Act, leaves no manner of doubt that, civil suits can be instituted

against the official respondents in respect of any act done, or purporting to have been done, in pursuance of the DMC Act or any rule, regulation or bye-law made thereunder subject, however, to the issuance of a two months' notice in writing by the aggrieved party, in that behalf.

14. In my considered view, therefore, before a party can be permitted to contest infringement of his constitutional right to hold property and seek compensation for the deprivation thereof, he must establish that, he has the title to the subject property and when his title itself is in dispute, he cannot put forward any claim based on that title, unless and until, his right, title and interest over the subject property has been determined by a Court of competent jurisdiction, in accordance with law.

15. In view of the foregoing, the present writ petition is devoid of merits and is accordingly dismissed.

**SIDDHARTH MRIDUL
(JUDGE)**

AUGUST 29, 2018
RS