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

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Date of decision: 25.11.2019

+ W.P.(C) 5737/2014

SANDEEP MEHRA

..... Petitioner

Through

Mr.N.K.Kukreja,
petitioner-in-person

Adv.

with

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through

Ms.Purnima Maheshwari, Adv. for
R-1 to 3.

Mr.Dhanesh Relan, Standing Counsel
for DDA

Mr.Ajjay Arora and Mr.Kapil Dutta,
Advs. for SDMC/R-4

Mr.Santosh Kr.Tripathi, ASC
(GNCTD) with Mr.Arpit Bisht, Adv.
for R-3 and R-5.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This Writ Petition is filed by the petitioner seeking a direction to call for the records relating to action of respondents No.1 with the help of respondent No. 3 of demolition of a temporary boundary wall of property bearing No.WZ 436 Pili Kothi situated in Khasra No.2066 and 2078/2 Hari Nagar, New Delhi, in the form of tin shed on angles of property belonging to the petitioner on 28.8.2014.

2. The case of the petitioner is that the petitioner alongwith his family members is the owner of the said property. While most of the land comprising of Khasra No.2067, 2068, 2078/1, 2079 and 2080 were acquired by DDA, it is stated that khasra Nos.2066 and 2078/2 were left in possession

of the petitioner and some of his family members. The land has been recorded in the ownership of the elder brother of the petitioner, namely, Shri Satish Mehra. Reliance is also placed on an order passed by this court on 31.3.2003 in W.P.(C)1720/2001 whereby the Halqa Patwari was directed to demarcate the land including the property in question. It is submitted by the petitioner that the demarcation report dated 4.8.2003 alongwith the site plan prepared by the demarcation team clearly brings out the possession and ownership of the petitioner over the property and land in question. It is claimed that the petitioner is running a business of car parking/storage in the property in question under a valid license.

3. The grievance of the petitioner is that the officials of respondent No.1 accompanied by respondent No.3 and other police officials of PS Hari Nagar came on the property on 28.8.2014 and demolished the tin shed which was the boundary wall of the property in question and took away the material used in the said boundary wall. Respondents had also threatened to take over the physical possession forcibly of the part of the land out of Khasra No.2066 and 2078/2 belonging to the petitioner. It is claimed by the petitioner that this property where demolition has been carried out belongs to the petitioner and has never been acquired.

4. The above contention has been refuted by learned counsel appearing for respondent No.1/PWD. Learned counsel has taken me through the records to show that as per the demarcation report that was prepared pursuant to order of this court dated 31.3.2003, the land in question clearly is shown to be not belonging to the petitioner. The land is said to belong to DDA and has been taken over by PWD. It is further stated that pursuant to the interim order passed by this court on 1.9.2014 large amount of malba is

lying in the area in question which is causing highly unsanitary conditions. I have been taken through the various Counter-Affidavits filed

5. I may first look at the order of this court dated 31.3.2003. That was a Writ Petition filed by Shri Pawan Mehra the brother of the petitioner. The dispute raised was about exact location of the plot where the mall was constructed by the DDA. It is stated that the mall was being constructed at the land of the petitioner while DDA has submitted that the mall is being constructed on different khasra No. which vests with the DDA. This court passed the following order:-

“ After some hearing, it is noticed that there is a dispute about exact location of the place where the wall is being constructed by the respondent No.4- DDA. The contention of petitioner is that the wall is being constructed on the land of the petitioner, while the respondent No.4 submits that the wall is being constructed in a different Khasra No. which vest with the DDA and the land having been acquired.

Learned counsel for the petitioner has referred to the challan (Annexure P-9) deposited with the Tehsildar for demarcation of the land.

In view of the aforesaid, I am of the considered view that the only directions to be issued in the present writ petition is to direct the respondent No. 3 to carry out demarcation of the area in question. In order to avoid any further delay, it is directed that a fresh application be made by the petitioner within a period of one week to SDM of the area concerned and in such application being made , a demarcation shall be carried out at site by the competent authority after giving advance notice to the petitioner and the DDA. The needful shall be done within a maximum period of 3 months from the date of the application of the petitioner for demarcation.

Needless to say that if any of the parties are aggrieved by the final adjudication in respect of the demarcation, it is

open to the parties to take steps in with law to impugn the said demarcation.”

6. Pursuant to the above direction, the Halqa Patwari carried out the necessary demarcation process which has been placed on record. Regarding the land in question the demarcation report states as follows:-

“.... But, at the west Dol of Khasra No.2066, the DDA has constructed the wall admeasuring about 168 feet of length and 5 feet of width. Upon the northern Dol the wall of 192 feet of length and 5feets of width is constructed. On eastern Dol 52 feet of length thereafter giving one turn 52 feet thereafter giving one turn 32 feet of wall is constructed, map of which is as under.

Now the measurement of khasra No.2078 is being started. The southern Dol of Khasra No.2066 also makes the northern Dol of Khasra no.2078.”

7. DDA in its counter-affidavit states as follows:-

“4.That the contents of para 2 of the application are incorrect and denied it is submitted that the boundary wall raised by DDA falls on Khasra nos. 2067 min and 2078/1 min plots of village Tehar which plots have been acquired by the DDA vide Award no 1867 and which have further been transferred to G-8 residential scheme of DDA on 8-4-1969 and the said land is under the disposal of DDA under section 22(i) of the Delhi Development Act, 1957 vide notification no. F-8 (49) 63/L &H iii dated 16-2-72.”

8. Hence, DDA claims title to the area where the boundary wall has been raised and states that they were acquired vide Award No.1867.

9. SDM has also filed a counter-affidavit where it is stated as follows:-

“2. That as per Khasra Girdawari of Village Tihar, Tehsildar Rajouri Garden, District West the ownership of Khasra No.2066 (E.No.4966) area 4-16 recorded in the name of Suresh Kumar and Satish Kumar Ss/o Dina Nath

(equal Share) and ownership of Khasra No.2078/2 (E.No.2518-2520) area 0-5 recorded in the name of Dinanath S/o Ganpat Ram.

3. That as per L.R. Register of Village Tihar Khasra No.2066 area 4-16 and Khasra No.2078 area (4-16) have been notified but the area of 4-11 of Khasra No.2078/1 has been awarded vide award No. 1867.”

10. Essentially the dispute continues to remain the same as what was adjudicated upon by the court by order dated 31.3.2003, namely, the exact location of the place where the land claimed by the petitioner is located. According to the petitioner this land which is a 30 feet wide area belongs to the petitioner. According to the respondents, DDA had built up a wall and demarcated its area and the same has been handed over to PWD for the purpose of road widening. I may note that the demarcation that was carried out pursuant to order of this court dated 31.3.2003 was not challenged by the petitioner despite liberty granted by this court in its order dated 31.3.2003.

11. Essentially, the dispute pertains to where the stated area allegedly claimed by the petitioner is located and whether the land in dispute stands already acquired by the respondents.

12. Section 28 of the Delhi Land Revenue Act, 1954 reads as follows:-

“Settlement of boundary disputes—(1) All disputes regarding boundaries shall be decided by the Deputy Commissioner, as far as possible, on the basis of existing survey maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If in the course of any inquiry into a dispute under this section, the Deputy Commissioner is unable to satisfy himself as to which party is in possession, or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupants of the property within a period of three months previous to the commencement of the inquiry, the

Deputy Commissioner—

- (a) in the first case, shall ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession; and
- (b) in the second case, shall put the person so dispossessed in possession and shall then fix the boundary accordingly.”

13. Clearly the disputes like the present one have to be adjudicated upon by the Deputy Commissioner. It is not for this court to go into the disputed questions of fact and to demarcate the land and to reach at the conclusion that the land in question belongs to the petitioner or has been handed over to respondent No.1/PWD.

14. Reference in this context may be had to the judgment of the Supreme Court in the case of ***Real Estate Agencies v. State of Goa & Ors., (2012) 12 SCC 170***. The court held as follows:

“17. However, there is no universal rule or principle of law which debars the writ court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate the contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [(2004) 3 SCC 553], the precise position of the law in this regard has been explained in paras 16, 17 and 19 of the judgment in the course of which the earlier views of this Court in *Gunwant Kaur v. Municipal Committee, Bhatinda* [(1969) 3 SCC 769] and *Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council* [(1970) 1 SCC 582] has been referred to.”

15. Hence, I dispose of the petition granting liberty to the petitioner to file appropriate proceedings before the Deputy Commissioner.

16. Regarding the interim order passed by this court on 1.9.2014 the same is modified to the extent that the respondent No.1 is free to remove the malba lying on the area so that it does not remain unhygienic. Respondent No.1 is also free to use the same as a kacha raasta. However, petitioner is free to move an appropriate petition/application before the Deputy Commissioner seeking appropriate interim relief regarding his stated rights in the property in question. In case such an application is filed for interim relief along with the main petition the learned Deputy Commissioner is requested to deal with the said application expeditiously preferably within two months from today. While disposing of the said application/petition that may be filed by the petitioner the learned Deputy Commissioner may not be influenced by any of the observations made by this court while disposing of the petition. The learned Deputy Commissioner is free to vacate/modify/confirm the interim order of this court. In case the petitioner does not move the learned Deputy Commissioner within one month from today the interim orders would stand vacated.

17. With the above observations the present petition stands disposed of.

18. A copy of this order be given Dasti under signatures of the Court master to learned counsel for the parties.

JAYANT NATH, J.

NOVEMBER 25, 2019/n

corrected & released on 02.12.2019