



2023:DHC:8287



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

% **Date of order : 1st November, 2023**

+ **W.P.(C) 2751/2023**

MR ISHWAR CHAND SAINI AND ANR Petitioners

Through: **Ms. Debarshi Bhuyan Advocate**

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: **Ms. Manika Tripathy, Mr. Ashutosh Kaushik, Mr. Chandra Prakash Tiwari, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A. Pass a writ/order/direction in the nature of mandamus or any other appropriate writ in favour of the Petitioners and against the Respondent thereby directing the Respondent authority to remove its signboard which has been planted unauthorizedly and illegally at the occupational site of the Petitioners adjacent to Prachin Shiv Shakti Durga mandironKhasra No.78 and accordingly restore the possession of the land to the Petitioners to carry out the occupation viz., running the corner shop on 36 sq. yds.

B. Pass a writ/order/direction in the nature of mandamus or any other appropriate writ in favour of the Petitioners and against the Respondent authority thereby directing them to pay



adequate compensation to the Petitioners for causing damages to the store items as well as causing tremendous stress and mental agony led to the loss of income and livelihood on account of the illegal demolition.

C. Pass such further or other orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice.

D. Award costs of the petition to the petitioner.”

2. As per the material on record, it has been alleged that the petitioner's ancestors were permanently allotted a plot/property in Khirki village by the Ministry of Rehabilitation, Government of India and in the year 1980, the petitioners' father opened a corner shop on 36 sq. yds., adjacent to Prachin Shiv Shakti Durga Mandir, bearing shop No. 102-B on Khasra sakni No. 10 which forms part of Khasra No. 78 within the lal dora abadi deh of village Khirki The petitioners have been in possession of the same since more than four decades.

3. In the year 1984, the petitioners' shop was entered into the assessment list under Section 126 of the Delhi Municipal Corporation Act, 1957, issued by the Municipal Corporation of Delhi, , subsequent to which the petitioners have been paying property tax.

4. In the year 2018, on the basis of maps shared by the Archeological Survey of India, the petitioners were apprised of the fact that the petitioners' shop is identified at Khasrasakni No. 10 which forms part of Khasra No.78 of Abadi Deh of village Khirki.

5. Thereafter, the petitioners filed an RTI application dated 20th September 2022, to enquire about the status of acquiring of certain Khasras



and plots, by the respondent/Delhi Development Authority (hereinafter “DDA”), and to further enquire whether any acquired land falls within the Abadi area of Khasra No.78/1. In response to the same, the respondent/DDA issued reply dated 6th October 2022, thereby, providing the particulars of the Khasra numbers acquired by the respondent Authority for the purpose of planned development of Delhi.

6. On 15th November 2022, the respondent/DDA demolished the petitioners’ shop. Therefore, aggrieved by the said demolition and being implicated as encroachers, the petitioners have preferred the instant petition.

7. Learned counsel appearing on behalf of the petitioners submitted that the act of demolition is without any authority of law, patently illegal and violative of the fundamental and constitutional rights of the petitioners.

8. It is submitted that the respondent/DDA has carried out the demolition without providing any prior notice or a reasonable opportunity to the petitioners to show their *bona fide* right over the said property.

9. It is further submitted that the petitioners have been wrongfully implicated as encroachers and that they are the rightful owners of the shop situated on the Khasra sakni No. 10 which forms part of Khasra No. 78 that falls within the lal dora abadi of Khirki village as per the revenue record.

10. It is submitted that the shop of the petitioners does not fall into any plot/khasra acquired by the respondent/DDA for public usage rather the said shop falls on Khasra No. 78, which is however, not vested with the Respondent Authority and has been classified as “Abadi deh” as per the field book maintained by the Office Kanungo Tehsil, Hauz Khas, District South.



2023:DHC:8287



11. It is submitted that the respondent/DDA has failed to comply with the provisions of Section 30 of the Delhi Development Act, 1957, whereby, a reasonable opportunity must be granted to show cause to the owner of the property, where such demolition is to be carried out.

12. In view of the foregoing submissions, it is prayed that the present petition may be allowed and the petitioners' possession of their shop may be restored.

13. *Per contra*, learned counsel appearing on behalf of the respondent/DDA vehemently opposed the arguments advanced on behalf of the petitioner.

14. Learned counsel appearing on behalf of the respondent/DDA placed reliance on affidavit/status report dated 29th August 2023, whereby, it has been stated that as per report dated 8th October 2022, the petitioners' shop falls in Khasra No. 230 (3-11) and 231 (11-100) of village Khirki as per the land records (L.R/DOA) and the same has been acquired vide the Award No. 1582.

15. It is submitted that Khasra No. 230/3(1-18) and 231 (0-8) has been transferred to the Engineering Department/DDA for Residential Scheme of housing as on 2nd April 1969.

16. It is also submitted that the petitioners have failed to place on record any documents evidencing their title or ownership, which makes it evident that the petitioners are indeed encroachers seeking to grab the DDA land on the basis of forged documents, thereby, making the act of demolition well within the rights of the respondent/DDA.



17. It is further submitted that the demolition action was carried out on the land acquired by the respondent/DDA in accordance with the law and hence, there is no obligation to restore the possession of the land to the petitioners since the same would be contrary to the law.

18. In view of the foregoing, it is prayed that the instant petition may be dismissed as the petitioner has no *locus standi* in the matter.

19. Heard the parties and perused the material on record.

20. It is the case of the petitioners that the respondent/DDA has illegally demolished their shop on 36 sq. yds., adjacent to Prachin Shiv Shakti Durga Mandir, bearing shop No. 102-B on Khasra sakni No. 10 which forms part of Khasra No. 78 within the lal dora abadi deh of village Khirki as per the revenue records. Subsequently, the respondent/DDA demolished the petitioners' shop on 15th November 2022. It has been contended by the petitioners that their shop does not fall into any plot/khasra acquired by the respondent/DDA for public usage but falls under the Khasra No. 78, which is not vested with the respondent/DDA and has been classified as "Abadi deh" as per the field book maintained by the Office Kanungo Tehsil, Hauz Khas, District South.

21. In rival contentions it has been submitted on behalf of the respondent that as per the report dated 8th October 2022, the petitioners' shop falls in Khasra No. 230 (3-11) and 231 (11-100) of village Khirki as per the land record (L.R/DOA) and the same has been acquired vide Award No. 1582. It has been also contended that Khasra No.230/3(1-18) and 231 (0-8) has been transferred to the Engineering Department/DDA for residential scheme of



housing as on 2nd April 1969. It has been further submitted that the petitioners have failed to place on record any documentary evidence proving their title or ownership *qua* the above said property.

22. At this juncture, it becomes imperative to analyse the scope of this Courts writ jurisdiction. A prerogative writ, like, a Mandamus cannot be demanded *ex debito justitiae*, it may be issued by the Court's discretion. The Courts under Article 226 must refrain from issuing a writ of mandamus in cases there is no such illegality in the functioning of the statutory authorities against which the writ has been preferred.

23. The Court should be hyper vigilant while exercising its power under Article 226 and the same should be done very cautiously and sparingly in exceptional circumstances.

24. Before delving into the merits of the instant petition, it is prudent to set out the settled legal principles. The law with regard to relief being granted to encroachers, who have no title of possession of the land, has been analysed at length by different Courts. The Hon'ble Supreme Court in case titled ***Mandal Revenue Officer v. Goundla Venkaiah***, (2010) 2 SCC 461, observed the following:

“47. In this context, it is necessary to remember that it is well-nigh impossible for the State and its instrumentalities including the local authorities to keep everyday vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the



State apparatus for getting their occupation/possession and construction regularised. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers.”

25. Similarly, in case titled ***Abha Tyagi v. Union of India, 2010 SCC OnLine Del 3971***, a coordinate Bench of this Court observed the following:

“12. It is pertinent to mention that in regards to the above stated reference has also been made to a judgment in the case of Rajinder Kakkar v. DDA, 1994 (1) AD (DELHI) 432. Sh. K.C. Tyagi was one of the petitioner in that case to whom the appellant is trying to trace his title in this case. In the aforesaid case, it was held that the petitioners including Sh. K.C. Tyagi (Petitioner No. 6) had no title in the suit property and all of them were unauthorized occupants. Relevant observations made by the Division Bench in the aforesaid judgment is reproduced hereunder:

...(12) The position in law as a result of the aforesaid Notification, therefore, was that all the Gaon Sabha land vested in the Central Government with the issuance of the Notification of 3rd June, 1966 under Section 507 of the DMC Act read with Section 150 of the Delhi Land Reforms Act. This land was nazul land and vide Notification dated 20th August, 1974 was placed at the disposal of the DDA for maintaining the same as a green area. For some time this land was not to be regarded as a development area but since 26th July, 1989 this area has continuously become part of the development area.

(13) It is in this background that one has to view and determine as to whether the petitioners have any legal right in the land in



question. This aspect is important because it has been contended by the learned counsel for the respondents that the petitioners are encroachers of public land who have raised unauthorised buildings and are, therefore, not entitled to the discretionary reliefs under Article 226 of the Constitution.

(14) Petitioners 1, 2 and 5 have not placed on record the documents whereby they claim to have acquired the ownership of the land in question. Learned counsel for the “petitioners has, however, admitted that there is no sale deed executed in their favor. No permission or no objection certificate under the 1972 Act has been taken by them. What is important to note is that there is no document on record showing that the vendors had any right, title or interest which they could pass on to the said petitioners. As regards the other petitioners, in support of their title they have merely placed on record agreements to sell which have been executed. An agreement to sell does not transfer ownership in land. That apart, in the said agreements to sell it has been stated that the vendor has absolute right as an owner and is the owner in possession but there is no document showing that any of the vendors had ownership right. The land in question had vested in the Gaon Sabha on the promulgation of the Delhi Land Reforms Act, 1954 and thereafter became the property of the Central Government on the issuance of the Notification under Section 507 of the DMC Act on 3rd June, 1966. Under these circumstances the question of any person claiming ownership right in the land in question could not arise. The recital in the agreements to sell, therefore, to the ‘effect that the vendors were absolute owners of the land in question was palpably false.

(15) We also have had the benefit of seeing the revenue record which has been produced by the Patwari of Mehrauli. The respondents have also placed on record the Khatauni of the village in question which shows that as per the last entry in 1980 the land in I question belongs to the Gaon Sabha. In actual effect this land should have been shown as that of Central



Government but be that as it may, it is evident that the land does not belong, as per the said revenue record, either to the petitioners or their predecessors in interest. In the KhasraGirdawri also, the possession of the petitioners or their predecessors in interest is not shown.

(16) Apart from the bare recital in the agreements to sell there is no document on record to show that there was any legal title or legal right to possession of the land in question in any of the petitioners or their predecessors in interest. It is no doubt true that the petitioners have been occupying the land for some time but their occupation was of trespassers or encroachers of public land. They have no legal right, title or interest in the same. As we have already noted, the main grievance of the learned counsel for the petitioners is that the respondents have acted and are threatening to act without complying with the provisions of Section 30 of the Delhi Development Act. We will deal with this contention presently but we cannot help but observe that the contention of the petitioners in effect comes to this that they have violated the law and will continue to do so but this does not give the DDA a right to follow the petitioners' example. In other words the law is meant to be obeyed by the DDA alone and not by the petitioners.

(17) Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect for law. The wheels of justice grind slowly and the violators of law are seeking to take advantage of the laws delays. That is why they insist on the letter of the law being complied with by the respondents while, at the same time, showing their-complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased manifold in recent years viz., large scale encroachment on public land and unauthorised construction thereon, most of which could not have taken place without such encroachers getting blessings or tacit approval from the powers that be including the Municipal



or the local employees. Should the Courts give protection to violators of the law? The answer in our opinion must be in the negative. Time has now come when the Courts have to be satisfied, before they interfere with the action taken or proposed to be taken by the governmental authorities qua removal of encroachment or sealing or demolishing unauthorised construction especially when such construction, like the present, is commercial in nature.

(18) Before action for demolition or removal of encroachment is taken the Court must be satisfied, prima facie, on the basis of some document or other tangible evidence that the petitioners or the applicants have a legal title to the property or a right to remain in possession thereof. Where a person is an encroacher and never had any right to legal possession of public land, the Courts should not grant any injunction or relief which will have the result of permitting or protecting the continued illegal occupation of public land. There may be a case where at a point of time the possession or occupation may have been valid under a lease or a grant and which lease or grant may have subsequently been wrongfully terminated and the termination challenged, such a case may, however, fall in a different category where the question of balance of convenience will have to be carefully examined specially when the action of termination of lease or grant is seriously challenged. But, in a case like the present, where at no point of time the petitioners had any valid right, title or interest to the property the Court ought not to grant any relief to such a petitioner even if there has been any procedural irregularity by the respondent while seeking to get back possession of public land.

26. The Hon'ble Supreme Court, in its judgment titled ***Mandal Revenue Officer (Supra)*** has propounded that land grabbers and encroachers approach the Courts frequently, however it is imperative for the Courts to stop offering consolation and the assistance to such land grabbers and



encroachers in the name of rule of law. Similarly, in the case of *Abha Tyagi (Supra)*, a coordinate bench of this Court observed that when there is no document to show that the person so claiming the relief does indeed have any interest or title in the land, such individuals cannot claim any relief from the Court.

27. In situations where possession was initially valid under a lease or grant, but later terminated and legally contested, the Court must assess the balance of convenience, especially when the termination is vigorously disputed. However, in cases like the present one, where the petitioners have failed to produce any documents before this Court to establish their valid right, title or interest in the property. Therefore, in the instant case, I don't find any reason to issue any direction or writ to the respondent-authority as prayed in the instant petition. It is also established law in such type of cases, the Court may refrain from providing any relief. As per the settled principle of law, the disputed facts may not be adjudicated in the writ proceedings. It is also settled that the Courts refrain from providing relief to such encroachers, who themselves are violating the due process of law and taking advantage the slow grinding wheels of justice.

28. In the present case, it is the petitioners' grievance that the respondent/DDA has acted in violation of Section 30 of the Delhi Development Act, 1957. However, upon perusal of the record and the arguments advanced on behalf of the respondent, it is observed that the petitioners are failed to prove that they are the rightful owners of the land in question and hence the respondent/DDA is well within their rights while



2023:DHC:8287



performing such demolition actions. The land in question has been awarded to the respondent/DDA vide Award No. 1582, which is placed at the disposal of the respondent/DDA under Section 22(i) of the DDA Act bearing notification No. F8(49)/63(L)&H(ii) dated 30th November 1965 and notification No. F8(49)/63 L&H dated 3rd January 1968, which makes any action undertaken by the respondent/DDA, on the said property well within their rights.

29. In view of the above facts, scenarios and the status report dated 29th August 2023, filed on behalf of the respondent/DDA, this Court finds no merit in the instant petition.

30. This Court is of the view that there is no force in the arguments advanced on behalf of the petitioners and it is held that the instant petition is not a fit case to exercise the writ jurisdiction conferred upon this Court.

31. Accordingly, the instant petition, being devoid of any merits, stands dismissed along with pending applications, if any.

32. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 1, 2023

rk/sv/ds/ryp

Click here to check corrigendum, if any