

\$~44

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

% *Decided on: 24th May, 2023*

+ W.P.(C) 5208/2023 & CM APPL. 28060/2023

SHRI KARAMBIR & ORS. Petitioners

Through: Mr. N.S. Dalal with Mr. Alok
Kumar and Ms. Rachana Dalal,
Advocates.
(M): 7082348017
Email: chamberofnsdalal@gmail.com

versus

GAON SABHA RANGPURI & ANR. Respondents

Through: Mr. Mohit Bhardwaj, Advocate
for respondent no. 1.
Mr. Arun Panwar, Advocate
with Mr. Pankaj Yadav, OSD
(Litigation) and Mr. Surender,
APO for respondent/DOE.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. With the consent of the parties, the present petition is taken up for final disposal today itself.
2. *CM APPL. 27037/2023* has been filed on behalf of the Directorate of Education (DOE) under Order 1 Rule 10 read with Section 151 CPC seeking impleadment in the present writ petition, being a necessary and proper party.
3. Notice had been issued on the said application on 22.05.2023. With the consent of the parties, the present application is taken up for adjudication today itself.
4. *CM APPL. 28060/2023* is an application on behalf of the

Directorate of Education for vacation of the ex-parte interim order dated 25.04.2023.

5. Issue notice.

6. Notice is accepted by learned counsel appearing for the petitioners.

7. With the consent of the parties, the present application is also taken up for final hearing today itself.

8. By way of the aforesaid applications, it has been submitted on behalf of the DOE that the petitioners have no right, title and interest in the property bearing Khasra No. 662 (23-04) bearing Khatouni Number 503/72, Village Malikpur Kohi alias Rangpuri, Delhi. It is submitted that petitioners have never been in the physical possession of the said property, therefore, there is no question of dispossessing the petitioners from the said property.

9. It is further the case on behalf of the DOE that the land in question was earlier in possession of respondent no. 1 i.e. the Gaon Sabha. After following due procedure of law, the said property was allotted to the Directorate of Education vide orders no. F-16/Land/Rangpuri/AL-18(1)/2011/225 dated 19.09.2012 & F No. BDO/SW/Allot/Rangpuri/12012/1168-1179 dated 14.06.2012. It is submitted that after the allotment of the said land, possession of the property was handed over to the DOE on 26.09.2012.

10. It is further submitted on behalf of the DOE that the present petition filed on behalf of the petitioners, is an abuse of process of law. It is submitted that the petitioners have not approached this Court with clean hands and are guilty of suppressing relevant and material

facts. It is submitted that the petitioners are guilty of misrepresenting the facts before this Court.

11. Learned counsel appearing for the DOE relies upon the judgment in the case of ***K. Jayaram and Others Vs Bangalore Development Authority and Others***, (2022) 12 SCC 815. By referring to the said judgment, it is contended that wherever there is an abuse of process of law and there is concealment and suppression of material facts, the same would amount to playing fraud with the Court. Thus, if there is non-disclosure of full facts before this Court, then no indulgence can be given to such litigants.

12. It is the case on behalf of the DOE that the petitioners herein had filed a civil suit in the year 2013, titled as ***Jai Bhagwan & Others Vs. Gaon Sabha Rangpuri & Another***, Case No. 25/RA/2013. In the said suit, the petitioners herein had sought declaration of bhumidari rights before the Court of Learned Sub Divisional Magistrate (SDM)/Revenue Assistant (RA), Vasant Vihar, Kapashera, New Delhi. The DOE was not made a party before the learned SDM/RA in the said proceedings. Subsequently, upon an application on behalf of DOE, the DOE was made a party in the said proceedings. It is submitted that the learned SDM/RA, Vasant Vihar, Kapashera, New Delhi dismissed the said suit of the petitioners for non-prosecution vide order dated 12.01.2023.

13. It is further submitted that the petitioners filed another suit for permanent injunction titled as ***Jai Bhagwan Vs. Govt of NCT of Delhi***, CS No. 16733/2016 before the Court of ADJ, Dwarka Courts in the year 2016. It is submitted that petitioner no. 1 herein was plaintiff

no. 5 in the said suit; petitioner no. 2 was plaintiff no. 8; petitioner no. 3 was plaintiff no. 49 and petitioner no. 4 herein was plaintiff no. 113 in the said suit.

14. It is submitted that since the petitioners had not made DOE a party in the said suit, an application was filed on behalf of DOE for its impleadment as necessary and proper party. Thus, vide order dated 10.11.2014, the application of the DOE was allowed and DOE was impleaded as a necessary party.

15. It is submitted that the said Civil Suit, *CS No. 16733/2016* was ultimately dismissed in default on 14.12.2017. It is submitted that the petitioners have not challenged the said order dated 14.12.2017 and that the said order has attained finality against the petitioners.

16. It is further submitted that the DOE has been in possession of the land in question i.e. Khasra No. 662 (23-04) bearing Khatouni Number 503/72, Village Malikpur Kohi alias Rangpuri, Delhi, since the year 2012. Thus, it is submitted that DOE is a necessary party in the present writ petition. Further, it is also submitted that the stay that was granted by this Court on the first day of hearing i.e. 25.04.2023, may be vacated, as the same was procured by suppression of all the aforesaid facts.

17. Learned counsel appearing for respondent no. 1 Gram Sabha has also supported the case of the DOE. Learned counsel for the Gram Sabha has relied upon certain documents, which have been handed over to this Court. It is submitted on behalf of Learned counsel appearing for respondent no. 1/Gram Sabha, that the area in question has already been urbanized in the year 2019 vide notification dated

21.09.2019. After urbanization of the area, the land has been handed over by the Gram Sabha to the Delhi Development Authority (DDA) in the year 2021 on 30.07.2021.

18. By reference to the aforesaid documents, as handed over to this Court, it is submitted on behalf of respondent no. 1 that at the time of handing over of the land by the Gram Sabha to the DDA after its urbanization, it is recorded very categorically in the documents of handing over to DDA, that the land which is subject matter of the present petition, has already been handed over to the DOE.

19. On the other hand, learned counsel appearing for the petitioner submits that in the revenue records, Gram Sabha is still shown as bhumidar. It is further submitted that even before this Court, there is categorical admission on behalf of the learned counsel for the Gram Sabha that the land ultimately was handed over by the Gram Sabha to the DDA. Therefore, he submits that the DOE was not made a party in the proceedings that were initiated on behalf of the petitioners herein. He further submits that no rights can be created in favour of the DOE on the basis of the allotment letter as relied by the DOE. He further submits that the petitioners could have claimed bhumidari rights only against the person who is recorded as bhumidar in the revenue records. Therefore, DOE was never made a party and that there is no suppression of material facts from this Court. He further submits that no agricultural land could have been handed over for purposes, other than agricultural purposes.

20. I have heard learned counsels for the parties and perused the documents on record.

21. Perusal of the documents as filed on behalf of the DOE clearly show that by allotment letter dated 14.06.2012 issued by the Office of The Director (Panchayat) in favour of Director, Education, Directorate of Education, the land in question has already been handed over to the DOE.

22. By the said allotment letter dated 14.06.2012, allotment of land measuring 23 bighas 4 biswas of Gaon Sabha land in Village Rangpuri, District South west has been allotted to the Directorate of Education for opening of a new government school. This allotment letter was issued in favour of the DOE after approval from the Lieutenant Governor, Delhi.

23. The documents on record also show that the land in question has already been handed over to the DOE, vide Possession proceedings dated 26.09.2012. Thus, though the petitioners may be claiming bhumidari rights with respect to the land in question, however, the fact remains that as per the documents on record, the said land bearing Khasra No. 662 (23-04) bearing Khatouni Number 503/72, Village Malikpur Kohi alias Rangpuri, Delhi has already been allotted in favour of the DOE and possession of which is already with the DOE since the year 2012.

24. This Court also notes of the fact that in the previous litigation as initiated by the petitioners herein, the DOE was made a party, when application in this regard was made by the DOE.

25. Considering the aforesaid facts and circumstances of the present case, it is deemed expedient to make DOE as party in the present case. Thus, the application of the DOE being *CM APPL. 27037/2023* is

allowed and the Directorate of Education is impleaded as a party in the present writ petition.

26. Considering the aforesaid submissions, the application being *CM APPL. 28060/2023* is also allowed. The ex-parte stay order dated 25.04.2023 as granted by this Court with respect to maintaining status quo of the land in question, is hereby vacated.

27. Since the DOE has already been handed over the possession of the land in question, the DOE would be at liberty to carry out construction of school building as well as construction of a boundary wall for the purposes of securing the land in question.

28. However, since the petitioners are claiming bhumidari rights over the land in question, it is directed that any construction made by the DOE shall be subject to final adjudication of the claims of the petitioners with respect to their bhumidari rights in appropriate proceedings.

29. It is further clarified that this Court has not given any finding on the merits of the case of the petitioners or the DOE with respect to the entitlement of the land in question. The present petition is being decided on the basis of prima facie case as found in favour of the DOE, on the basis of documents as filed/produced before this Court by the DOE as well as by the Gram Sabha.

30. With the aforesaid directions, the present petition is disposed of.

31. The date of 30.05.2023 is cancelled.

MINI PUSHKARNA, J

MAY 24, 2023/c