



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

Date of decision: 20th November, 2023

IN THE MATTER OF:

+ **W.P.(C) 14354/2023**

RAJESH SHARMA

..... Petitioner

Through: **Mr. Anil Kumar Aggarwal, Advocate**

versus

**GOVT. BOYS SR. SEC. SCHOOL NO. 2, D-BLOCK, JANAKPURI,
NEWDELHI THROUGH ITS PRINCIPAL** Respondent

Through: **Mr. Santosh Kumar Tripathi, SC(C)
for GNCTD with Mr. Pradymn Rao,
Mr. Arun Panwar, Mr. Rishabh
Srivastava, Mr. Utkarsh Singh, Ms.
Prashansa Sharma and Mr. Kartik
Sharma, Advocates.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court for a direction to the Respondents to vacate and handover peaceful possession of land measuring 216.75 Sq. Yd. marked as Plot No. 2 in Khasra No. 268/2 (*hereinafter referred to as 'the Plot in question'*) in the revenue estate of erstwhile village Nangal Raya near D-Block of Janakpuri and bearing House No.1391/33 in the records of MCD to the Petitioner.

2. The facts of the case, as narrated by the Petitioner, are that the Petitioner purchased the plot in question by way of a registered sale deed dated 30.01.2006. It is stated that after purchasing the plot the Petitioner herein constructed a boundary wall around it. It is stated that the erstwhile principal of the Respondent School filed a complaint against the Petitioner



alleging encroachment over school land. It is stated that FIR No.171/2007 dated 05.07.2007 was registered against the Petitioner at Police Station Mayapuri for offences under Sections 447/34 of the IPC. It is stated that the Petitioner was arrested and faced trial and the boundary wall constructed by the Petitioner over the plot in question was also demolished. It is stated that the Plot in question was merged with the Respondent School land. It is further stated that *vide* Order dated 30.01.2017, the Petitioner was acquitted. It is stated that the Petitioner wrote a number of letters to the Revenue Authorities for demarcating the plot in question and to separate it from the land enclosed by the Respondent School. It is stated that on 10.03.2022 the Revenue Authorities refused to demarcate the plot in question on the ground that the since Village Nagal Raya has been urbanised, the Revenue Authorities do not have the jurisdiction to demarcate any land in the said village. The Petitioner has, thereafter, approached this Court with the following prayers:

“a) to issue a writ of or in the nature of mandamus and/or any other appropriate writ/s, order/s or direction/s directing the Respondent to vacate, and handover peaceful possession of land measuring 216.75 Sq. Yd. marked as Plot No. 2 in Khasra No. 268/2 in the revenue estate of erstwhile village Nangal Raya near D-Block of Janakpuri and bearing House No.1391/33 in the records of MCD to the Petitioner in the presence of a local commissioner appointed for this purpose by this Hon 'ble Court; and

b) award the cost of the proceeding in favour of the petitioner against the respondent; and

c) pass such other and further orders as may be deemed fit and proper in the fact and circumstances of the case and to meet the end of justice.”



3. It is stated by the learned Counsel for the Petitioner that the Petitioner has wrongly been dispossessed from the plot in question and, therefore, the Petitioner is entitled to be put back in possession of the said plot. Learned Counsel for the Petitioner places reliance on the judgment of the Division Bench of this Court in Anju Devi v. Commissioner of Police, 1994 SCC OnLine Del 327 & Vijay Khanna v. Union of India, 1998 SCC OnLine Del 846. Learned Counsel for the Petitioner also states that the Petitioner has been deprived of his rights under Article 300A of the Constitution of India.

4. Material on record discloses that an FIR has been filed against the Petitioner for encroaching the property belonging to the Respondent School. The Petitioner was discharged *vide* Order dated 30.01.2017 primarily on the ground that there was no allegation that the plot in question has been trespassed and that no document has been brought on record which would suggest that the plot in question belongs to the Respondent School. The Trial Court held that since the prosecution has failed to prove the charges against the Petitioner beyond reasonable doubt, the Petitioner is entitled to be acquitted.

5. The present Writ Petition is nothing but a suit for declaration of title and possession. Writ Court is not the proper forum for deciding the title.

6. The Apex Court in Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil, (2010) 8 SCC 329, while discussing the scope of Article 226 of the Constitution of India for deciding the question of title of the property has observed as under:-

"59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In Mohd. Hanif v.



State of Assam [(1969) 2 SCC 782] a three-Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. (See SCC p. 786, para 5 of the Report.) In coming to the aforesaid conclusion in Hanif [(1969) 2 SCC 782] , this Court referred to the Constitution Bench decision in T.C. Basappa v. T. Nagappa [AIR 1954 SC 440] .

60. *Following the aforesaid principles in Hanif [(1969) 2 SCC 782] , this Court in Hindustan Steel Ltd. v. Kalyani Banerjee [(1973) 1 SCC 273] held that serious questions about title and possession of land cannot be dealt with by writ court. In formulating these principles in Kalyani Banerjee [(1973) 1 SCC 273] , this Court relied on the Constitution Bench decision in Sohan Lal [AIR 1957 SC 529] (see SCC p. 282, para 16 of the Report).*

61. *Again in State of Rajasthan v. Bhawani Singh [1993 Supp (1) SCC 306] this Court held that a writ petition is not the appropriate forum to declare a person's title to property. (See SCC p. 309, para 7 of the Report.)*

62. *Subsequently, again in Mohan Pandey v. Usha Rani Rajgaria [(1992) 4 SCC 61] , this Court held that a regular suit is the appropriate remedy for deciding property disputes between private persons and remedy under Article 226 is not available to decide such disputes unless there is violation of some statutory duty on the part of a statutory authority. (See p. 63, para 6 of the Report.)*

63. *Following the aforesaid ratio in Mohan Pandey [(1992) 4 SCC 61] , this Court again in Prasanna Kumar Roy Karmakar v. State of W.B. [(1996) 3 SCC 403] , held that in a dispute between the landlord and*



tenant, a tenant cannot be evicted from his possession by a writ court. Again in P.R. Murlidharan v. Swami Dharmananda Theertha Padar [(2006) 4 SCC 501] , this Court held that it would be an abuse of process to approach a writ court in connection with dispute on questions of title for deciding which the civil court is the appropriate forum.

64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority."

7. Since Village Nagal Raya has been declared as urban area, this Court cannot find any infirmity with the decision of the Revenue Authorities refusing to demarcate the plot in question. The judgments relied on by the Petitioner are not applicable to the facts of this case. In the said judgments the Petitioner therein was forcefully dispossessed by the authorities and in those facts this Court exercised jurisdiction under Article 226 of the Constitution of India and directed the Authorities who have dispossessed the Petitioner therein to put back the Petitioners in possession of their lands. In



the present case, the Petitioner has been alleged of trespassing the land of the Respondent School. The Criminal case against the Petitioner could not be proved because of the lacunae in the investigation.

8. The contention of the learned Counsel for the Petitioner that the Petitioner has been deprived of his rights under Article 300A of the Constitution of India is unsustainable because it is not the State which has deprived the Petitioner of his plot. It is the claim of the Respondent School that the Petitioner has trespassed their property. The Petitioner has not given any documents to the Revenue Authorities establishing his title over the property. The Petitioner has to establish the title by taking proper recourse under the law, i.e by filing a suit for declaration by paying the requisite Court fee.

9. In view of the fact that the Petitioner has to file a suit to get his title declared and seek possession of the plot in question, this Court is not inclined to interfere in the present matter.

10. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

11. It is made clear that this Court has not made any observations on the merits of the case and on the aspect of ownership of the plot in question and the Petitioner has to prove his title by leading documentary land oral evidence.

SUBRAMONIUM PRASAD, J

NOVEMBER 20, 2023

Rahul