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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 11.12.2023

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W.P.(C) 10229/2017

PRESIDENCY EDUCATIONAL SOCIETY

..... Petitioner

Through: Mr. Nitin Dahiya, Mr. Sushant
Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS

..... Respondent

Through: Mr. Chiranjiv Kumar, Mr. Mukesh
Sachdeva, Advs.

Mr. Sanjay Poddar, Sr. Adv. with Mr. Nitin
Mudgal, Mr. Tushar Sannu, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

:

JASMEET SINGH, J (ORAL)

1. This is a petition seeking issuance of the writ of *mandamus* for restoration of lawful and peaceful possession of land admeasuring 1 bigha and 6 biswas (1311 sq. yds. = 1096 sq. mtrs.) in Khasra No. 381/200 min in the Revenue Estate of Village Dhaka, Delhi to the petitioner.
2. It is stated by Mr. Dahiya, learned counsel for the petitioner that the land of the petitioner was sought to be acquired by a notification under Section 6 of the Land Acquisition Act.
3. The Hon'ble Division Bench on 10.02.1999 in WP(C) 2006/1986 was pleased to set aside the proceedings under the Land Acquisition Act with respect to the property of the petitioner. It is pertinent to mention



that the DDA was a party in WP(C) 2006/1986 and was duly represented by a counsel.

4. After the setting aside of the acquisition, the petitioner sought No Objection Certificate / permission from the office of Additional District Magistrate (LA), Delhi and the permission was duly accorded.
5. The order of the Hon'ble Writ Court was taken in review and SLP and both the challenges were dismissed.
6. Thereafter, the petitioner *vide* duly registered sale deed dated 08.04.2003 purchased the land from the erstwhile owners.
7. Subsequently, the petitioner also sought for demarcation of his 1 bigha and 6 biswas in Khasra No. 381/200 and the demarcation was duly carried out on 04.06.2003.
8. A permission for construction of boundary wall on land bearing Khasra No. 381/200 measuring 1 bigha and 6 biswas in the Revenue Estate of Village Dhaka, Delhi was sought *vide* order dated 28.04.2010. Subsequently, the respondents broke the boundary wall and encroached upon the land of the petitioner and have taken the land of the petitioner within the boundary wall of the land of the respondents. Hence, the present petition.
9. The respondent-DDA was granted substantial number of opportunities to file a counter affidavit. Since the same was not filed, *vide* order dated 20.05.2019, the right of the respondent Nos. 1 to 4 to file counter affidavit was closed. More than four and a half years have elapsed and there is neither any application filed to recall the order nor any reply has been filed.
10. Mr. Poddar, learned senior counsel for the respondents has argued that



the land in question was belonging to the Gram Sabha and was a part of 4 bighas and 3 biswas of the land of Gram Sabha. As per the Khatoni for the year 1983-1984, the land belonging to Gram Sabha is to be maintained by the DDA for the Central Government.

11. It is stated by the learned counsel for the respondent that 1 bigha and 6 biswas of the alleged land of the petitioner falls within this 4 bighas and 3 biswas of the Gram Sabha land.
12. Mr. Poddar, learned senior counsel further states that in view of Section 150(3) of the Land Reforms Act, the land belonging to the Gram Sabha once urbanised, vests with the Central Government who has placed it at the disposal of the DDA. Hence, the Revenue Authority had no jurisdiction in dealing with this 1 bigha and 6 biswas of the land either for mutation or for demarcation.
13. Mr. Poddar, learned senior counsel further places reliance on the judgment of the Coordinate Bench in “***Ruksana Bano and Others vs. Government of NCT of Delhi and Others***” [(2023) SCC OnLine Del 1434] and more particularly paragraphs 24 to 30 which read as under:-

“24. It is undisputed fact that the DDA had issued a notification dated 04.06.2010 under the provisions of Master Plan of Delhi 2021 notifying zonal plan for District South West Delhi, including village Goela Khurd. Thus, when the land in question was covered under the zonal plan issued by the DDA, then the said land cannot be said to be governed by the provisions of DLR Act any longer. The contention on behalf of the respondents that the said area cannot be considered to be urbanised on the said



date as no notification under Section 507 of the Delhi Municipal Corporation Act, 1957 (DMC Act) had been issued, has to be rejected.

25. The matter in question on the aspect of village Goela Khurd having been urbanised upon issuance of notification by the DDA on 04.06.2010, is no longer res integra. This question was considered by this Court in the case of M/s Shri Neelpadmaya Consumer Products Pvt. Ltd. Vs. Sh. Satyabir @ Satbir and Ors. In the said case, this Court has categorically held as follows:

“23. I agree with the argument which is urged on behalf of the plaintiff that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act. This later part of Section 3(13) of the Act does not talk of a notification only under Section 507 of the Delhi Municipal Corporation Act. The requirement of this later part of Section 3(13) of the Act is only that a notification is issued in the Official Gazette to make the land as part of the Delhi town and New Delhi town. Once a notification is issued applying a zonal plan issued pursuant to the master plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation, it has to be held that the lands cease to



be the lands covered under the Act because of issuance of a notification in the Official Gazette results in the lands becoming part of the Delhi town. Additional reasoning on this aspect can be understood from the object and the language found in Section 1 and Sections 3(5) and 3(15) of the Act and which Sections show that once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression land as defined in Section 3(13) of the Act. With humility, I am in complete agreement with the observations made by the learned Single Judge of this Court in the case of Guru Pratap Singh (supra) and which arrives at the same conclusion that once the land ceases to be agricultural, the land ceases to be the subject matter of the Act.

24. I may note that the plaintiff has proved the zonal plan Ex.PW 5/1 and the notification Letter dated 4.6.2010 as Ex.PW 5/2 and these documents clearly show that the entire village Goela Khurd and wherein the suit land is located is the subject matter of the zonal plan issued under the Delhi Development Authority. As per the aforesaid discussion, as also the ratio of the learned Single Judge in Gur Pratap Singh (supra), once the land is the subject matter of a zonal plan issued under Section



11 of the Delhi Development Act, the land is beyond the purview of the Act.....”

26. Hence, the position is clear that a land becomes urbanised not only by way of notification issued under Section 507 of DMC Act, 1957 but also by way of notification by the DDA issuing zonal plan under the Master Plan for areas in question. Once zonal plan has been issued by the DDA under the Master Plan for an area in question, the said lands cease to be lands covered under the DLR Act. Even a notification issued by the Central Government under Section 11 of The Delhi Development Act, 1957 bringing an area within the ambit of a zonal plan of the DDA, has the effect of encompassing such area within the limits of urbanised land. Thus, when village Goela Khurd, wherein the land in question is located, is subject matter of the zonal plan issued by the DDA, the said village stood urbanised and provisions of DLR Act ceased to have any applicability over the said area.

27. This Court in the case of Gur Partap Singh Vs. Union of India & Ors. took note of the fact that by its gazette notification, the DDA amended the Master Plan wherein construction for commercial use was allowed in certain rural zones. Thus, it was held that once such option for construction for commercial use was available, then such land would cease to be agricultural and in that eventuality there was no question of application of DLR Act. Para-19 of the said judgment reads as follows:



“19. This matter can be looked into from another aspect. The notification amending the Master Plan clearly provides that the land in question can be used for the purpose of a motel. Once this option is available and is exercised by owner of the land, the land is no more being used for agricultural purposes. Thus, once the land is elected to be used by the owner for a motel, permission for which has been granted under the amendment to the Master Plan, it no more remains agricultural land under the meaning of Section 3(13) of the Land Reforms Act. For this reason also, there would be no occasion for obtaining any permission. The Land Reforms Act is an enactment for protecting the agricultural use of the land. Once this land itself ceased to be agricultural, there is, really speaking, no question of application of the Land Reforms Act. Needless to say, this is on account of the fact that there is permissible non-agricultural use of a motel in pursuance to the notification of 1995.”

28. In view of the aforesaid, when the land in question ceased to be governed by the DLR Act, the order dated 24.06.2010 passed by the Court of SDM/RA (Najafgarh) under Section 81 of the DLR Act, is clearly without any jurisdiction. As noted hereinabove, the area in question stood converted to urban land with effect from 04.06.2010. Therefore, the SDM/RA had no authority to pass any order under Section 81 of the DLR Act on



24.06.2010.

29. Once a particular area is subject matter of notification under The Delhi Development Act, 1957 by notifying the Master Plan or Zonal Plan, then such land becomes urbanised and is out of the scope of the application of the DLR Act. Resultantly, the jurisdiction of the revenue authority ceases and is ousted.

30. This Court in the case of Sanvik Engineers India Pvt. Ltd. has held in categorical terms that there would remain no legitimate or useful purpose to continue proceedings under Section 81 of the DLR Act, once the operation of the DLR Act over the land has drawn to a close. It has been held that provisions of the DLR Act essentially seek to protect agricultural land from being used for non-agricultural purposes. However, once land becomes urbanised, it does not remain as agricultural land. Therefore, continuance of proceedings under Section 81 of DLR Act after urbanisation of the land, is illogical and without any purpose. Thus, in the case of Sanvik Engineers (Supra), it has been held as follows:

84. Having traversed this distance and upon consideration of the seminal questions which arose in this batch, the court in summation records its conclusions as follows:

“.....

(E) While dealing with matters which would fall within the ambit of Case No. 2, it must be held that once notifications come to be issued under the DMC or the



DDA Acts, they manifest an unequivocal fact of the land becoming urbanised and no longer falling within the sweep of Section 3(13). The court also bears in mind the indubitable fact that Section 81 is primarily concerned with ensuring that rural land is not diverted to uses other than those specified in Section 3(13). If that be the primary and solitary objective of Section 81, as this Court duly recognises it to be, it would be wholly illogical and incongruous to require the owner or the occupier to restore the land to its agricultural state even though the surrounding area may have become totally urbanised.

(F) Where proceedings have merely reached the stage of initiation or a conditional order having been passed, they must be held liable to be dropped or closed. There would remain no legitimate or useful purpose to continue those proceedings once the aforesaid factual position comes to hold the field. Once the operation of the DLR over the land has drawn to a close, there can be no justification to hold that the proceedings under Section 81 which remain at an inchoate stage and a final order of vesting yet to be passed, to be continued and the occupier compelled to restore the land to its agricultural state.

(G) The fact that action under Sections 81 and 82 had commenced based on an infraction which occurred prior to the issuance of the notifications under the DMC or the DDA Acts would not constitute a valid ground for



continuance of those proceedings bearing in mind the purpose and intent of the twin provisions of the DLR. The provisions essentially seek to protect agricultural land from being diverted to uses other than those sanctioned and contemplated under that enactment. It would thus be wholly illogical to sanction continuance of those proceedings and turn a blind eye to the topographical transformation of the entire area which may have come about in the meanwhile.””.

14. Mr. Poddar, learned senior counsel further draws my attention to a judgment of the Hon’ble Supreme Court in Civil Appeal 7210 of 2011 titled as “**P. Kishore Kumar vs. Vittal K. Patkar**” [(2023) INSC 1009] and more particularly paragraphs 12 to 15 and 18 which read as under:-

“12.This Court in Sawarni vs. Inder Kaur and Ors. held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

13.This was further affirmed in Balwant Singh & Ors vs. Daulat Singh (Dead) by LRs and Ors. wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

14.In Jitendra Singh vs. State of Madhya Pradesh and Ors., this Court after considering a catena of judgments, reiterated



the principle of law as follows:

*"6. ***mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose."*

15. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil vs. Ramchandra Nago Patil (Dead) by LRs. and Ors. wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary.

18. It is settled law that a vendor cannot transfer a title to the vendee better than he himself possesses, the principle arising from the maxim nemo dat quod non habet, i.e., "no one can confer a better title than what he himself has". In the present case, the plaintiff's vendor having been denied the right of title in the land by the Commissioner's order, could not have conveyed the same to her vendee."

15. I have heard learned counsels for the parties.
16. Admittedly, when the challenge was made on 10.02.1999 to the acquisition proceedings, the DDA was a party and also appeared before the Court.
17. No objection was raised at that time that the land in question belonged to Gram Sabha or that the revenue authorities had no jurisdiction to deal with the matter.



18. In the present case, the writ is of the year 2017 and for 2 years, no reply was filed by the DDA. Thereafter, 4 years have elapsed and still no reply has been filed by the DDA.
19. The objections made by the learned senior counsel are purely verbal and without any supporting affidavit.
20. Be that as it may, the fact remains that the acquisition proceedings were quashed by the Division Bench, thereupon the Revenue Authority granted permission for sale of the land and thereafter, the sale deed was duly executed and registered in favour of the petitioner. The orders were challenged and the challenge was also dismissed.
21. Subsequently, the Revenue Authority also demarcated the property of the petitioner and thereupon permitted construction of a boundary wall.
22. At no point in time, there has been any objection or anything in writing to demonstrate that the entire action of the Revenue Authority was illegal and that the land in question belongs to Gram Sabha and the Revenue Authority had no jurisdiction to deal with the land in question.
23. I am in agreement with the contention of Mr. Dahiya, learned counsel for the petitioner that the 1 bigha and 6 biswas of the land of the petitioner may not be the land in 4 bighas and 3 biswas belonging to the Gram Sabha as there is no document placed before me to suggest the same.
24. The judgment of ***Ruksana Bano*** (supra) is distinguishable as in the present case, there are documents to show the ownership in favour of the petitioner while in the judgement of ***Ruksana Bano*** (supra), there were no documents to show the ownership. Paragraph 20 of the said judgment reads as under:-



“20. It is submitted that the petitioners have not filed any authentic title documents before this Court. There is no entry of record found in the revenue record with respect to the alleged GPAs in favour of the petitioners. It is submitted that on the directions of respondent No.4, the revenue staff took possession of the land in question and handed over the same to BDO (SW). Subsequently, letter dated 13.10.2015 of Director (Panchayat) of GNCTD of Delhi was issued to the Director, Directorate of Education, GNCTD regarding allotment of Gaon Sabha land measuring 15 bigha 18 biswa bearing khasra Nos. 24/6/1/2 (0-18), 15/2 (1-12), 25/10/1 (0-15), 25/11 (4-16), 12 (1-14), 25/20/1 (0-8) and 20/2 (3-18) of village Goela Khurd to the Education Department of GNCTD for opening of a Government school.”

25. Hence, the reliance on the aforesaid judgment is misplaced.
26. The judgment of **P. Kishore Kumar** (supra) also does not offer substantive assistance to the case of the respondent. In the said judgement, the Court was of the view that *that “a vendor cannot transfer a title to the vendee better than he himself possesses, the principle arising from the maxim nemo dat quod non habet, i.e., “no one can confer a better title than what he himself has.”* However, in the present case, the petitioner has a duly registered sale deed in his favour. The land of the petitioner has been demarcated and there is also permission for construction of a boundary wall by the Revenue Authorities.
27. In addition, there are records with regard to the ownership of the



property of the petitioner as well as his predecessors.

28. For the reasons noted hereinabove, the present writ petition is allowed and a writ of mandamus is issued to restore lawful and peaceful possession of the land measuring 1 bigha and 6 biswas in Khasra No. 381/200 to the petitioner.
29. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

DECEMBER 11, 2023 / (MS)

Click here to check corrigendum, if any