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

+ **W.P.(C) 2573/2024 & CM APPL. 10585-10586/2024**

CHETAN RANA

..... Petitioner

Through: Mr. Vijay Datt Gahtori, Mr. Akhil Gupta, Advocates along with petitioner in person (M:7011269984, email:gahtorivijay@gmail.com)

versus

DELHI DEVELOPMENT AUTHORITY & ORS. .. Respondents

Through: Ms. Prabhsahay Kaur, SC-DDA with Mr. Bir Inder Singh Gurm, Ms. Pragati Singh, Advocates for DDA (M:8171798389, email:sahayk@gmail.com)
Mr. Alok Kumar, SC with Mr. Varun Chandiok, Ms. Anubhi Goyal, Advocates for R-2
Ms. Aakriti Garg, Advocate for Mr. Parvinder Chauhan, Advocate for DUSIB (M:8077154576)
Mr. Tushar Sannu, Advocate for GNCTD with Mr. Manoviraj Singh, Advocates for R-4 alongwith Mr. Ghanshyam, SI

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Date of Decision: 21st February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)



CM APPL. 10586/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 2573/2024 & CM APPL. 10585/2024

3. The present petition has been filed by the petitioner seeking quashing of the order dated 03rd February, 2024 issued by the respondent no.1- Delhi Development Authority (“DDA”). There is further prayer for directions to the respondent nos. 1 to 4 to not harass or disturb the peaceful possession of the property of the petitioner.
4. Learned counsel appearing for the petitioner submits that the petitioner is the absolute owner and in possession of property in question, i.e., Khasra No. 12/24, Village Shahbad Daulatpur, Delhi. He submits that the aforesaid property was purchased by the petitioner by way of General Power of Attorney dated 29th January, 2024, Sale Agreement dated 02nd January, 2024, Affidavit dated 02nd January, 2024, Receipt dated 02nd January, 2024 and Possession Letter dated 02nd January, 2024.
5. It is further the case of the petitioner that the aforesaid property was purchased by the petitioner from one Sh. Priyanshu Jain, who had purchased the same from one Smt. Namita Devi vide General Power of Attorney dated 08th December, 2023, Sale Agreement dated 08th December 2023, Affidavit dated 08th December 2023, Receipt dated 08th December 2023, possession letter dated 08th December 2023 and Will dated 08th December 2023.
6. It is further submitted that the property is secured through Khasra Khatauni and its Register is maintained properly with the appropriate



departments.

7. Learned counsel for petitioner submits that on 16th February, 2024, respondent no. 4, through its personnel, appeared at the aforesaid private property of the petitioner and the petitioner was asked to surrender the property. Thus, the present petition has been filed on the ground that the respondent- DDA cannot take over the private property of the petitioner.

8. Further, learned counsel for petitioner raises the contention that the notice dated 03rd February, 2024 issued by the DDA is illegal. He submits that no Principles of Natural Justice have been followed and no hearing or Show Cause Notice has been issued to the petitioner before issuance of the aforesaid notice.

9. Per contra, learned Standing Counsel for DDA, who appears on advance notice, submits that Khasra No. 12/24, Village Shahbad Daulatpur, Delhi has already been acquired by way of *Award no. 29/2002-03*. She has handed over a copy of the aforesaid acquisition Award to this Court to submit that the aforesaid khasra number, as claimed by the petitioner as his private property, already stands acquired. She has also handed over a copy of Possession Proceedings, i.e., '*Kabza Karyawahi*' to show that vacant and physical possession of the land in question, had already been taken over by the Land Acquisition Collector and handed over to DDA. The aforesaid documents, viz., *Award No. 29/2002-03* and *Kabza Karyawahi*, are taken on record.

10. Learned counsel for DDA also submits that since the aforesaid land is an acquired land and is land of the DDA, petitioner has no legal right to occupy the same. She further submits that no notice is required



to remove any encroachment from the public land. Therefore, she submits that the contention on behalf of the petitioner in this regard is totally misplaced.

11. She submits that the petitioner being an unauthorized occupant of the public land, has no right to continue in possession of the land in question.

12. I have heard learned counsel for the parties and have perused the record, as well as the documents handed over by learned counsel for the DDA during the course of hearing.

13. At the outset, this Court notes the contention made by learned Standing Counsel for DDA that Khasra No. 12/24, Village Shahbad Daulatpur, Delhi, already stands acquired. Once acquisition of land has taken place and physical possession has already been taken over, there is no question of any private person having any right with respect to the land in question. After acquisition of the land, when physical possession is taken over by the Government, the same vests absolutely and finally with the Government and any right of any private person stands extinguished.

14. Further, law in this regard is settled that when the State has acquired the land and Award has been passed, land vests in the Government free from all encumbrances. Any person retaining the possession thereafter, has to be treated as a trespasser, and has no right to possess the land. Not only the possession with respect to the acquired land vests in the Government, but all other encumbrances are also removed forthwith.

15. Thus, Supreme Court in the case of *Land and Building*



Department Through Secretary and Another Versus Attro Devi and Others, 2023 SCC OnLine SC 396, has categorically held that as follows:

“xxx xxx xxx

12. The issue as to what is meant by “possession of the land by the State after its acquisition” has also been considered by Constitution Bench of Hon'ble Supreme Court in Indore Development Authority's case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

*“244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. **When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.***

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). As a



matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner."

(Emphasis Supplied)

xxx xxx xxx"



16. This Court also notes that in the present case the only contention raised by the petitioner is that the petitioner has purchased the land in question for valuable consideration. However, such contention of the petitioner is liable to be rejected, as any purchase of public land is non-est in the eyes of law. Thus, Supreme Court in the case of ***Premji Ratansey Shah and Others Versus Union of India and Others, (1994) 5 SCC 547*** has held as follows:

“xxx xxx xxx

4. It is seen that in a suit as originally framed, they sought for a declaration that the award made in respect of the land was void, inoperative and does not bind the petitioners. But that relief had been given up. Thereby, the title of the land of the railways have not been questioned. With the award made under Section 30, the vendors of the petitioners got themselves bound by the above award under Section 12 of the Act. It is also seen that the two awards had become final and possession was delivered to the railways by the Land Acquisition Officer on 24-2-1960. Thus Defendants 3 and 4 had no ghost of right, title or interest in the lands acquired from the original owner Maibai. The said sale is a void sale and the petitioners, therefore, cannot derive any interest under the agreement of sale to resist the possession of the lawful owner nor could the declaration sought for be given. The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should



not be an excuse to claim injunction against true owner.

xxx xxx xxx”

(Emphasis Supplied)

17. The Division Bench of this Court in the case of ***Rajinder Kakkar Versus Delhi Development Authority, 1994(28) DRJ 133 (DB)*** has categorically held that no person can have any legal title to land which vests with the Government. Further, if there is encroachment by persons on land without permission from the Government, then such persons do not have any vested right over such land. Thus, it has been held as follows:

“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 specially 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.

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20. Another cardinal principle which has to be followed in a writ jurisdiction is that the petitioners must come to the Court with clean hands. Is such the case here? The answer is no. The following facts speak for themselves:

1. The petitioners have no legal title to the land;
2. The land vests with the Central Government and is a public property;
3. There is encroachment by the petitioners on the land without permission from the Government;
4. Construction has been raised on public land without submitting any building plans;
5. According to the Master Plan no construction can be raised on the land in question because this is a green area;
6. Before seeking the transfer of land 'No Objection Certificate' was not obtained and the provisions of the Delhi Land (restriction of transfer) Act, 1972 were not complied with.

21. The conduct of the petitioners is such that they are not entitled to any relief from this Court. Even if it be assumed that a show cause notice had to be issued under Section 30 of the Delhi Development Act before any demolition could be effected and non-issuance of the show cause notice has resulted in the breach of law, nevertheless no relief can be granted to the petitioners because of the irregularities which have been committed by the respondents. The respondents are entitled to regain possession of land which belongs to them and which has been encroached upon and the petitioners cannot be allowed to take advantage of their own wrong. It is possible that the petitioners may be innocent victims of land mafia but be that as it



may, the petitioners should have known that in law this land vested in the Central Government and they should not have purchased the same in small parcels and then raise construction without following any building bye-laws. This is not a case where poor houseless people have put up shelters for themselves for their residence. Here is a case where public land has been encroached upon and is sought to be used for erecting structures for commercial use.

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28. At the cost of repetition it may be stated that the petitioners have not complied with any provision of any law and, having taken the law in their own hands and constructed unauthorised buildings, cannot now be heard to complain about the alleged violation of law by the respondents.

xxx xxx xxx”

(Emphasis Supplied)

18. As regards the contention of the petitioner with respect to no Show Cause Notice having been issued to him, this Court in the case of ***B.R. Anand Versus DDA & Ors., 2005 SCC OnLine Del 910*** has categorically held that a trespasser on Government land is not entitled to any Show Cause Notice before he is removed. Thus, it has been held as follows:

“xxx xxx xxx

22. A trespasser on Government land would not be entitled to any show cause notice before he is removed from the public site. Hearing is to be granted to a person before a decision is taken or an action is taken which affects his valuable rights. If there is no right, question of the same being affected by non-grant of a hearing does not arise. The right and the remedy are given uno flatu, and one cannot be disassociated from the other. No one has a right to trespass on Government land. No statute was shown which requires show-cause notice to be given to a trespasser before he is removed. Common Law principle of right to be heard is not attracted as no right is being infringed.

xxx xxx xxx”

(Emphasis Supplied)

19. A perusal of the aforesaid clearly shows that the petitioner being a



trespasser on Government land is not entitled to any Show Cause Notice before any action for removal of encroachment is to be taken by the Government authority.

20. The only prayer made in the present petition is with respect to seeking quashing of the order dated 03rd February, 2024 issued by respondent no.1- DDA and not to disturb the possession of the petitioner.

21. The order dated 03rd February, 2024 issued by the DDA reads as under:

*“To,
Station House Officer
Police Station, Shahbad Dairy
Prahaldpur Bangar, Delhi*

Sub: Re-fixing of demolition programme for removal of unauthorized constructions/illegal encroachment from khasra No. 12//24 min, Village Shahbad Daulatpur, Near Prakash Vihar (Extn.)-II, Sector-27, Rohini.

Ref: F2(1)Misc/EE/RMD-1/DDA/57 dated 16/01/2024.

*In reference to above cited subject, a demolition programme was re-fixed on **29/01/2024 at 11:00 AM** for removal of unauthorized constructions/illegal encroachment from khasra No. 12/24 min, Village Shahbad Daulatpur, Near Prakash Vihar (Extn.)-II, Sector-27, Rohini. But due to non availability of outer Police force, the said demolition programme has been deferred.*

*In this connection, the demolition programme has been rescheduled for date **26/02/2024 at 11:00 AM**. Therefore, it is requested to provide sufficient Outer Police force (50 Nos. approx.) including Ladies Police to maintain law & order during the said operation. The meeting point shall be Police Station Shahbad Dairy at **10:30 AM**.*

Executive Engineer”

22. The aforesaid order issued by the DDA clearly shows that the DDA has fixed demolition programme for the purposes of removing the



unauthorized construction and illegal encroachment from Khasra No. 12/24, Village Shahbad Daulatpur, Delhi.

23. Considering the aforesaid detailed discussion, no illegality is found in the order dated 03rd February, 2024 issued by the DDA. The DDA has every right and authority to take action for removal of unauthorized construction and illegal encroachment from the land under its jurisdiction. It may also be noted that merely because there is an unauthorized construction or encroachment on public land, the same does not connote that the Government has ceased to have possession of the same. The Government retains the possession of the land, which has been duly taken over by the Government pursuant to an acquisition Award.

24. No legal or vested right accrues in favour of the petitioner by virtue of any encroachment on the public land. Therefore, the petitioner cannot be said to be in any peaceful possession of the land in question, which is a Government Land.

25. Accordingly, no merit is found in the present petition and the same is dismissed along with pending application.

26. Needless to state that the petitioner has liberty to seek appropriate legal remedies against the persons from whom he had purchased the property in question, situated on Government land.

MINI PUSHKARNA, J

FEBRUARY 21, 2024

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