



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

% **Judgment reserved on: 27 May 2024**
Judgment pronounced on: 01 July 2024

+ **W.P.(C) 1643/2011**

SHRI. VISHNU GOPAL VASHISHT Petitioner
Through: **Ms.Kirti Mewar, Advocate.**

versus

DDA Respondents
Through: **Ms. Kritika Gupta and**
Ms.Kamleshwari Pandit,
Advocates.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking reliefs in the nature of *Certiorari* or any other writ, assailing the Impugned communication bearing No. F8 (7)/2010/IL/DDA/34¹ dated 16.07.2010, whereby, the request of the petitioner for allotment of an alternative site for residential purposes has been rejected/turned down by the respondents/DDA².

2. Shorn of unnecessary details, it is the case of the petitioner that his forefathers settled and constructed their residential houses at 13-Kudsiya Ghat, Bela Road, Civil Lines, Delhi-54 (hereinafter referred to as 'Kudsiya Ghat' for brevity) in the year 1930; and in the same

¹Impugned communication

²Delhi Development Authority



year, his grandfather late Sh. Chiranjee Lal established an Akhara/Vyamshala in that area, which came to be known as “Paras Ram Dangal Society” post its registration in 1958. Later in the year 1966, the petitioner-Vishnu Gopal Vashisht was born at the aforementioned address and has been living there since his birth.

3. It is stated that on 25.08.2006, a special notice came to be issued by the respondent/DDA, thereby informing all the residents of Kudsiya Ghat that the said area and other illegally encroached constructions will be demolished as per the Court’s order; and that persons whose names have been enlisted must approach the respondents and present the relevant proof/documents. It is alleged that since the name of the petitioner was not in the list, he tendered all the relevant documents to the two officials from the DDA namely K.P. Malik and J.P. Verma, who conducted a survey on 29.08.2006 and a report was prepared in this regard so as to show that his residence/house was outside the ambit of the so called ‘illegally encroached areas/constructions’ as declared by the respondents/DDA.

4. However, the DDA eventually demolished the residential structures at Kudsiya Ghat including the Akhara and the house of the petitioner on 31.08.2006 and on 07.11.2006, a proposal for Allotment-cum-Demand Letter bearing No. EZ/RB/KG/35-39/04³ was mooted by the respondents to one person namely Ashok Kumar Vashisht, who was also a resident of the Kudsiya Ghat and *vide* this Allotment letter, Ashok Kumar was informed that in order to avail the above allotment/offer, a sum of Rs. 5,000/- has to be paid as earnest money

³Allotment letter



for the land within 10 days along with other relevant documents. The petitioner states that later, this Allotment letter was issued to other residents of Kudsiya Ghat as well.

5. Consequently, the petitioner too preferred a detailed representation dated 09.10.2009 before the Deputy Director, DDA, Land Allocation, New Delhi, highlighting his grievances but in vain. It is stated that another detailed representation dated 11.05.2010 was made by the petitioner before the Hon'ble Lt. Governor stating that his residence is an ancestral property and that he may be allowed to reside in the said area.

6. A bare perusal of the record shows that the Impugned communication was issued by the respondents to the petitioner on 16.07.2010 in response to the second representation dated 11.05.2010, wherein, it was stated that the address of the petitioner in the survey list was different from the one mentioned in other correspondence made by him and that as per the policy, alternative allotment could be made only to the evictees who were in occupation prior to 31.12.1998 and since the petitioner has not produced any document in this regard, he could not be allotted an alternative accommodation.

7. It would be apposite to reproduce the Impugned communication dated 16.07.2010 in this regard, which reads as under:

“Sub:For Alternative plot in lieu of Ghat No 13. Paras Ram Dangal Society

Sir,

Please refer to your letter dated 11/5/2010 on the subject cited above. In the regardit is informed that your address in survey list has been found mentioned as "ParasRam Dangal Society". In other correspondence made by you, your address is 13Paras Ram



Dangal. However as per photocopy of R/C enclosed by you R/C was shown issued on 8/7/2005.

As per policy alternative allotment could be made only to the evictees who were in occupation prior to 31/12/1998. Since you have not produced any document showing your existence prior to 1998, your request for alternative allotment could not be acceded to.”

8. The petitioner, in support of his arguments, cited the order dated 28.05.2009 of this Court in an earlier contempt petition bearing No. CONT.CAS.(C) No. 65/2008 wherein, this court directed that the petitioner may carry on the activity of the running Akhara on the existing land provided no disturbance is caused to the ecology of the river Yamuna.

9. Further, *vide* order dated 08.12.2005, this court appointed ‘Usha Mehra Committee’ headed by a former judge of this Court i.e. Justice Usha Mehra, which was later known by the name ‘The Yamuna-Removal of Encroachment Monitoring Committee’ with the sole aim to monitor the removal of encroachments on both sides of Yamuna River banks. The said committee submitted its 7th Report before this Court wherein it gave detailed observations with regard to the Kudsiya Ghat area.

10. In the present writ petition before this Court, the petitioner assails the Impugned communication dated 16.07.2010 *inter alia* on the grounds that the respondent being a State under Article 12 of the Constitution of India should have acted in a just and fair manner as the petitioner has submitted all the relevant documents to substantiate his claim that he was a resident of Kudsiya Ghat. Additionally, another objection is raised stating that the respondents have not accepted the



earnest money from the petitioner despite the fact that several other residents of Kudsiya Ghat have given the earnest money and the same was accepted by the respondents without any objection. Hence, the present writ is instituted, wherein the following reliefs are sought:

- i) Issue a writ of, certiorari or any other writ/order/direction, on behalf of the petitioner and against the respondent with the prayer that the impugned Communication bearing No. F.No. F 8 (7)/2010/IL/DDA/34 dated 16.7.2010 be quashed and set-aside, whereby the claim of the petitioner for allotment of alternative plot came to be rejected.
- ii) Issue a writ of mandamus or any other writ/order/direction, on behalf of the petitioner and against the respondent with the prayer to direct the respondent to receive and accept the above referred earnest money from the petitioner and thereafter to allot a suitable alternative ; plot to the petitioner or in the alternative issue a writ of mandamus or any other writ/order/direction, on behalf of the petitioner and against the respondent with the prayer to direct the respondent to allow the petitioner to repair, and reconstruct his residential house at the place where it existed prior to its demolition on 31.08.2006 i.e., 13-Kudsiya Ghat, Bela Road, Civil Lines, Delhi-54 ;
- iii) Award costs of the present litigation in favour of the petitioner and against the respondent;

11. Notice of the present writ petition was issued to the respondent/DDA and a short counter affidavit was filed on its behalf by Sh.Satnam Singh, Director (Land and Management), DDA dated 14.02.2012 which *inter alia* brings out that the area was surveyed as per the terms of the policy and it was found that there was no *jhuggi* at the site but one Paras Ram Dangal Society office, which site was being used for commercial purposes, and therefore, as per the policy, the commercial *jhuggis* were not covered under the scheme of Alternative Allotment of Plot. It was stated that the case of the petitioner is entirely different from the case of Ashok Kumar, who



was found eligible but did not make any payment, and therefore, his allotment was cancelled.

ANALYSIS AND DECISION:

12. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the private parties to the bar and on perusal of the relevant records, unhesitatingly, this Court finds that the present writ petition is bereft of any merits.

13. First things first, there is placed on the record no documents substantiating the fact that the ancestors of the petitioner had any right, title or interest in the subject premises. Secondly, learned counsel for the DDA rightly referred to the notification bearing No.F2(1)2001/LMC/PLA/80 issued by the DDA containing the policy “guidelines for relocation of *jhuggi* clusters in Delhi”, a bare perusal whereof would show that a process for identifying the *jhuggi jhopi* (hereinafter, ‘JJ’) clusters was initiated at the site as also to consider the allotment of alternative plots subject to the condition that such JJ clusters or slum dwellers were found to be in possession of documents evidencing their existence prior to 31.01.1990 or post 1990 but before 31.12.1998 till the date of removal.

14. Evidently, the policy applicable to JJ dwellers was actually applicable to residential plots for a *limited period of five years* and it was specifically stipulated *vide* clause (6) of the eligibility conditions that ‘no alternative plot shall be given for commercial JJ dwellers. While the petitioner claims that pursuant to the proposal on 07.11.2006, he preferred a representation on 09.10.2009 and later, another representation on 11.05.2010 and submitted the relevant



documents in the nature of copies of income tax, property tax, passports, electricity bills, election cards, ration cards, a careful perusal of such documents placed on the record would show that each of such documents is in the name of Sh. Paras Ram S/o Sh.Chiranjil Lal.

15. Indeed, such documents are apparently prior to the cut of date i.e. 31.12.1998, but at the same time, the impugned communication by the DDA dated 16.07.2010 cannot be faulted on any legal grounds since it rightly informed that the survey found the existence of Paras Ram Dangal Society at the site and the subject property viz., 13, Paras Ram Dangal as claimed by the petitioner, was nowhere to be seen.

16. Incidentally, at this juncture, it would be apposite to point out that another writ petition bearing WP(C) No.1980/2023 had been instituted by the petitioner titled ‘Paras Ram Dangal Society v. Estate Officer IV, DDA’, wherein, as per the case of the present petitioner, a wrestling ground/*Akhada* was being run since 1932, which was founded by Late Guru Chiranjilal. The said writ petition wherein the legal rights and interest were claimed by the petitioner society, came to be dismissed by this Court *vide* a detailed judgment dated 27.05.2024. It would be apposite to reproduce the germane observations in the cited judgment, which goes as under :

“34. Be that as it may, the issue is as to what was the status of the petitioner society with respect to property in question? In view of the affidavit of the DDA dated 20.12.2017, the respondent/DDA is estopped from challenging the letter dated 03.03.1988 (P-8). However, that does not help the petitioner society in any manner. Section 2(g) of the PP Act clearly provides that “unauthorized occupant” is a person who is occupying public premises without authority of such authorization, and it includes any person



continuing to occupy any public premises after authority to occupy such premises has expired or has been determined for any reason whatsoever.

35. At this juncture, it would be apposite to refer to the relevant Court orders passed in the long history of litigation between the parties. In WP(C) 2112/2006 this Court opined that in view of the fact that petitioner society is using the land in question for running an Akhara and churning out wrestlers, the DDA should frame some policy. No such policy has been framed, but again it is a policy decision to be taken by the respondent. The next is the order in CONT CAS (C) 65/2008 dated 28.05.2009 (P-13), that reads as under:-

“After having considered the affidavit filed today which is taken on record, we are satisfied that the temporary constructions permitted to be built by the petitioner would during the pendency of the main writ petition be sufficient to protect the interest of the petitioner particularly taking into about the fact that the other constructions in the vicinity are of a more prominent nature. Accordingly, on the terms the petitioner has indicated in the affidavit dated 28th May 2009 the petitioner may carry on the activity indicated therein subject to the final result of the writ petition. This order has to be read in light of the order dated 2nd March 2009 which permitted the running of the Akhaara on the existing land so as not to disturb the ecology of the river Yamuna. It is made clear that the petitioner will not plead any vested rights and interest with regard to the erected structure and the land.

The contempt petition stands disposed of.”

36. The aforesaid order clearly shows that the petitioner society was given a directive not to disturb the ecology while using and occupying the land in question and it was clearly provided by this Court that no vested rights shall be claimed regarding the erected structure and the land. It would not be out of place to indicate that merely because the petitioner society is engaged in some public beneficial activities, such as nurturing young wrestlers, that by itself would not create a vested right in it to continue to use and occupy the public premises in question. If such a plea is allowed, any ingenious person could just seize some public space or property, and commence some activity having an aspect of public welfare or benevolence, and thus, may claim vested possessory rights. Such a plea, if allowed would lead to disastrous consequences and certainly not in public interest.

37. It is pertinent to mention that the committee constituted by this Court comprising of Hon’ble Ms. Justice Usha Mehra, Retired



Judge, Hon'ble High Court of Delhi and Shri S.M. Aggarwal, ADJ (Retired), vide its report dated on 04.09.2006, inter-alia, explicitly determined that the occupation by the petitioner society was grossly unauthorized, as observed in the following terms: -

“In view of the aforesaid I am of the considered opinion that the structure on government land in occupation of the applicant society has to be demolished and taken possession of by the DDA for the development of the Yamuna River Water Front as directed by the Hon'ble High Court vide various orders passed in WP(C) Nos 211/2002 and 689/2004 and therefore the request of the area MP and the Central Government Minister made to the Hon'ble Chairperson vide D.O letter for permitting the society to remain in possession cannot be acceded to, particularly when all buildings and structures raised at adjoining ghats have already been demolished by the DDA on 31.09.2006.”

38. Such factual aspects were not set aside or interfered by this Court in proceedings arising out of WP(C) No. 2112/2002. Even the petitioner did not contest the factual conclusions of the Committee at any juncture. Thus, even on merits, the petitioner has no cause or reason for instituting the proceedings for re-declaration that the petitioner society was not an unauthorized occupant of the public land/encroacher/trespasser. It would not be out of place to indicate that the land in question falls under the Zonal Development Plan for Zone- 'O' as approved by the Ministry of Urban Development⁴. Further, the Master Plan Delhi-2021 also envisages rejuvenation of river Yamuna through number of measures including ensuring adequate flow in river by release of water by riparian states, refurbishment of trunk sewers, treatment of drains, sewerage of unsewered areas, treatment of industrial effluent, recycling of treated effluent and removal of coliforms at Sewage Treatment Plants besides creating ecological balance by planting trees. The land in dispute is meant for larger public interest and the petitioner society cannot claim any vested rights therein to continue to occupy and use the same.”

17. In said view of the analogous matter, reverting back to the instant writ petition, the petitioner cleverly seeks to re-assert certain

⁴The Zonal Development Plan for Zone 'O' has been approved by Ministry of Urban Development, vide letter No. K-12011/23/2009- DDIB dated the 8th March, 2010 under Section 9(2) of DD Act, 1957 and notified under section 11 by DDA on 10.08.2010



rights or interest in respect of same property that was the subject matter of earlier proceedings as referred hereinabove. There is absolute merit in the plea advanced by the learned counsel for the DDA that the site canvassed by the petitioner to be his property was not a JJ cluster and since an *Akhada* was being run, which was for non-residential purposes, the petitioner was not *per se* entitled to any alternate allotment of a plot.

18. Intriguingly, learned counsel for the DDA also referred to the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 by the DUSIB⁵, Ref No.D-232/DD(Reh.) HQ/2016 dated 14.06.2016, a bare perusal of which would show that the scheme for relocation was never applicable to JJ clusters or slum dwellers, who had been occupying the public land for non-residential purposes. What finally nails the case of the petitioner is that there is averred no details as to the area or measurements of the subject property in the present writ petition although in the other writ petition bearing WP(C) No.1980/2023, certain specifics were given. No reliance is placed on any revenue record so as to suggest continuous occupation of the property No. 13, Kudsiya Ghat, Bela Road, Civil Lines, Delhi-54. There is no reliance on any title deed and mere possession of the subject property over which some structure existed, that stood demolished on 31.08.2006, does not *per se* create any legal right.

19. It goes without saying that the subject property falls within the 'O' zone as per the Zonal Development Plan, approved by the Ministry of Urban Development falling within the area of Yamuna

⁵Delhi Urban Shelter Improvement Board



River plains, which project is under development in terms of several directions passed by the Supreme Court and even this Court. Thus, there is no legal foundation to institute the writ petition and it is but obvious that the petitioner, by hook or by crook, is hell bent in creating a legal right or interest in his favour, which does not exist.

20. In view of the aforesaid discussion, the present writ petition is hereby dismissed with Costs of Rs.50,000/- on the petitioner for wasting the precious judicial time of this Court by filing the present petition on grounds that are frivolous on the face of it.

DHARMESH SHARMA, J.

JULY 01, 2024

Sadiq/VLD