



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

% **Judgment reserved on : 27 May 2024**
Judgment pronounced on: 16 July 2024

+ W.P.(C) 7135/2019 & CM APPL. 29691/2019, CM APPL. 46141/2019, CM APPL. 7900/2020, CM APPL. 12515/2020, CM APPL. 13960/2020, CM APPL. 22029/2020, CM APPL. 28357/2024

MANGAL & ORS. Petitioners

Through: Mr. Sanjay Kumar, Adv. with
petitioner No.1 in person.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Manika Tripathy, Standing
Counsel with Mr. Ashutosh
Kaushik and Ms. Deeksha L.
Kakar, Advs. for DDA.

Ms. Shobhana Takiar, Standing
Counsel with Mr. Kuljeet
Singh, Ms. Akanksha
Choudhary and Kamleshwari
Pandit NT, Advs. for DDA.

Mr. Anuj P. Agarwala
(DHCLSC for applicant in IA
28357/2024.

Mr. Bhagvan Swarup Shukla,
CGSC with Mr. Vinay Kumar
Shukla, Adv for UOI.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The seven petitioners have instituted the present petition invoking the extraordinary jurisdiction of this Court under Article 226



of the Constitution of India praying *inter alia* for issuance of appropriate writ/directions to prohibit the respondents from taking possession of the agricultural land bearing *Khasra* No. 16/25-31 (Min) 7 to 10 Bigah, situated at Chirage Sumali, near Khureji Khas, Shastri Park, Delhi (*hereinafter referred to as the “subject agricultural land”*) that is claimed to be under their authorised occupation since 1962 by virtue of allotment on a lease basis by the respondent No.2/ Delhi Development Authority (*hereinafter referred to as “DDA”*).

FACTUAL BACKGROUND

2. It is claimed that the predecessors of the petitioners were allotted the said agricultural land *vide* allotment letter dated 01.10.1962 issued by the DDA, in lieu of acquisition of the land of the predecessors of the petitioners which was located in Indraprastha. Thereafter, the predecessors of the petitioners had been in peaceful and uninterrupted cultivating possession of the said agricultural land for about 30 years till ejectment proceedings under the Public Premises (Eviction of the Unauthorised Occupant) Act, 1971 (*hereinafter referred to as “PP Act”*) were initiated against the predecessors by way of a Show Cause Notice (“SCN”) dated 30.01.1991 under Section 4 of the PP Act and thereafter, an eviction order dated 20.08.1991 was passed against them by the concerned Estate Officer.

3. Aggrieved thereof, as many as 26 appeals were filed under Section 9 of the PP Act before the Appellate Authority (Learned Additional District Judge, Delhi), challenging the eviction order dated 20.08.1991 passed by the Estate Officer. Out of the said 26 appeals,



five appeals bearing P.P. Act Case Nos. 355/95, 356/95, 369/95, 370/95 and 374/95 were filed by the respective predecessors of the petitioners herein. The said 26 appeals were eventually allowed by the learned Appellate Authority *vide* a common judgment dated 18.11.1995.

4. Placing heavy reliance on the judgment dated 18.11.1995, it is pointed out that the DDA had examined three witnesses on its behalf and the learned Appellate Court in arriving at such decision, made the following observations:

- a) The petitioner-predecessors retained cultivating possession of the said agricultural land uninterruptedly from 1962 till the ejectment proceedings dated 1991;
- b) None of the petitioner-predecessors were paid any compensation by DDA when their land situated in Indraprastha was acquired by the government;
- c) Plot-wise lease deeds were in fact executed by the predecessors in respect of the said agricultural land which are available in the respective files maintained by the DDA for each khatta and plot forming part of the said agricultural land;
- d) The predecessors had paid lease money in respect of the said agricultural land to the DDA up to 1983-84 and DDA had accepted such payment;
- e) In the show cause notice dated 30.01.1991 as well as the impugned eviction order dated 20.08.1991, it is stated that the predecessors were sought to be evicted from only 2 bighas of the said agricultural land in their possession without mentioning any description or exact location of these 2 bighas.

5. Therefore, on the basis of the abovementioned observations as well as the allotment letter dated 01.10.1962, the petitioners claim that the learned Appellate Authority categorically held that the proposed terms and conditions on which the allotment was made to the petitioner-predecessors in 1962 were binding on both the parties i.e., the DDA and the petitioner-predecessors. The learned Appellate



Authority further noted that the record of the Estate Officer showed that the leases of the predecessors were never cancelled by the DDA before they served the predecessors with the SCN dated 30.01.1991. Even the said SCN dated 30.01.1991 was held to not be in accordance with Section 4 of the PP Act, since no description of the portion of the said agricultural land from which the predecessors were sought to be evicted was mentioned in the said notice.

6. It is thus pointed out that the learned Appellate Authority quashed the impugned eviction order dated 20.08.1991 on the ground that the procedure of ejectment followed by the Estate Officer was “defective” in as much as the SCN dated 30.01.1991 under Section 4 of the PP Act, which was served upon the predecessors of the petitioners by the DDA was “not valid” and the lease of the petitioner-predecessors was not cancelled by the DDA before initiating the eviction proceedings.

7. It is also pointed out that additionally, the learned Appellate Authority also held that since the predecessors of the petitioners were in peaceful and uninterrupted cultivating possession of the said agricultural land for about 30 years, they cannot be said to be in unauthorised occupation of the said agricultural land within the meaning of Section 2(g) of the PP Act. Accordingly, the learned Appellate Authority also directed the DDA to restore possession of the said agricultural land to the predecessors of the petitioners, if taken, during the pendency of such appeal.

8. The grievance of the petitioners is that since April 2019, in total contravention of the order of the learned Appellate Authority dated



18.11.1995, the officials of respondent No. 2/DDA and respondent No. 3/PWD have been illegally interfering in the peaceful and lawful possession of the petitioners over the said agricultural land by frequently visiting the site along with cranes and soil trucks, thereby raising a strong apprehension in the mind of the petitioners that they would be dispossessed from the said agricultural land at the hands of the respondents in an arbitrary and unlawful manner.

9. In the said backdrop, the petitioners have filed the present petition with the following prayers:

- a) Writ/order/direction/instruction in the nature of Prohibition thereby Prohibiting the respondents from taking the Possession of the Agricultural Land of 7 to 10 Bigah of the land in Possession of the each of the petitioners in Khasra No. 16 (Min) 7 to 10 Bigah in situated at Chirage Sumali (near Khureji Khas), Delhi.
- b) further seeking the writ in nature of Prohibition thereby Prohibiting the respondents, their agents, servants and employees from entering in the property of the petitioners
- c) further seeking the nature of prohibition thereby prohibiting the respondents, their agents, servants and employees from causing any kind of hindrance, obstructions, interference in the peaceful enjoyment and use of the land of the petitioners.
- d) To grant any other relief which this Hon'ble court deem fit and proper in the facts and circumstances of the present case and also in the interest of justice.
- e) cost of the present petition may also be awarded.

PROCEEDINGS BEFORE THIS COURT

10. When the present writ petition was initially entertained, this Court passed an interim order dated 21.10.2019 in CM No. 46141/2019 whereby all parties were directed to maintain *status quo* with respect to the possession of said agricultural land, which order was subsequently varied *vide* order dated 13.01.2019 and the *status*



quo passed on 21.10.2019 was restricted to Plot No. 26 of the said agricultural land.

11. It is further borne out from the record that this court *vide* order dated 26.11.2019 had directed the petitioners to file title documents, if any, in support of their claims, as well as a site plan showing the exact location of the 7 to 10 Bighas of agricultural land in question since the Chirage Sumali area comprises of almost 1081 Bighas and 09 Biswas. In response thereto, the petitioners placed on record a site plan and the allotment letter dated 01.10.1962.

12. It is also pertinent to mention that this court *vide* order dated 28.01.2020 had directed a joint site inspection of the said agricultural land, upon which the position that emerged was that plot No. 26 in the said agricultural land had admittedly been taken over by respondent No. 3/PWD *vide* allotment letter dated 26.08.2019 issued by respondent No. 2/DDA in favour of respondent No. 3/PWD for the construction of a slip road, in the larger public interest.

13. *Vide* order dated 09.02.2024 passed by this Court upon an application filed by the petitioners, 'The Cabinet Secretary to the Union of India' was deleted as respondent No.1 from the array of parties in the present petition and the 'Ministry of Housing and Urban Affairs' was impleaded as respondent No. 1 in its place. Thereafter, respondent No. 1/Ministry of Housing and Urban Affairs filed a short affidavit dated 08.03.2024, wherein it is stated that the respondent No. 1 has no direct role in the instant petition and is only participating in the proceedings in the capacity of a *proforma* party.



14. To cut the long story short, respondent No. 2/DDA has filed multiple affidavits and applications and the consistent stand of the DDA emerging from these pleadings is as follows:

- a) The said agricultural land is shown as 'government land' in the revenue record in the nature of *Jamabandi* for the year 1973-74 and was among the four villages that were placed at the disposal of the Delhi Improvement Trust (erstwhile respondent no.2/DDA) vide Nazul Agreement dated 31.03.1937. Therefore, the said agricultural land is a "public premises" and the right over such land vests solely in the Respondent No.2/DDA.
- b) The petitioners are rank encroachers who upon being evicted from Indraprastha Estate, were then allotted the said agricultural land by the DDA on humanitarian grounds for cultivation on a temporary lease-basis of only one year that expired in 1964. After 1964, the DDA never executed any license deed in favour of the petitioners. Moreover, the petitioners have failed to produce any title documents in respect of the said agricultural land which confirms that they have no title or authority to remain on the said agricultural land and are only possessing such land in the capacity of unauthorised cultivators. Thus, they have no right to sue the true owner i.e. DDA or to be served any show cause notice by the DDA.
- c) The said agricultural land was allotted to Respondent No.3/ PWD vide letter dated 26.08.2019 for the public purpose of constructing a slip road for the convenience of the larger public and easement of traffic. The construction of the said project stood completed on 30.09.2020 during the pendency of the present petition and a portion of the agricultural land in question has been utilised in the said construction project.
- d) The said agricultural land is located on the demarcated Yamuna floodplains where eco-restoration plantation is to be undertaken by the DDA as a part of a public project namely 'Restoration and Rejuvenation of River Yamuna Project'. Further, the hon'ble National Green Tribunal in the case of "*Manoj Misra V. Union of India & Ors*¹" has vide judgment dated 13.01.2015 prohibited the cultivation of any edible crops/ fodder on the Yamuna floodplains in an effort to remove pollution from the River Yamuna. Furthermore, the DDA has been taking steps to remove all encroachments from the Yamuna floodplains upon the directions given by the Lt. Governor in the High Level Committee Meeting dated 14.03.2023 that has been constituted by the Hon'ble NGT to

¹ OA No.6 of 2012 before the NGT



monitor the said 'Restoration and Rejuvenation of River Yamuna Project'.

ARGUMENTS ADVANCED AT THE BAR:

15. Learned Counsel appearing for the petitioners has submitted that the petitioners, through their predecessors, have been in authorised possession of the said agricultural land since 1962 and has placed reliance on the order dated 18.11.1995 passed by the learned Appellate Authority under the PP Act, vitiating the ejectment proceedings moved against the petitioners in 1991 by the DDA.

16. Controverting the aforesaid submissions, learned Counsel appearing for the DDA has argued that the petitioners have no *locus* to file the present petition since possession of the said agricultural land is still with the petitioners. Learned Counsel also contended that the petitioners are encroaching upon the said agricultural land situated on the Yamuna floodplains without due authority, since cultivation rights over the said agricultural land were vested with them for humanitarian reasons by the DDA for a temporary period of only one year and such period stood expired in 1965. It is contended that ever since then, the petitioners have been trespassing on government land and are a hindrance to the projects being undertaken by the DDA and PWD under the orders of the Supreme Court, the National Green Tribunal ("*NGT*") as well as this Court, for the purpose of restoring the ecological balance of the Yamuna floodplains. In support of her contentions, learned Counsel has relied upon a catena of judgments including **Shakarpur Slum Union v. DDA², Vaishali (Minor)**

² 2022 SCC Online Del 2336.



(Through Next Friend Mrs. Sita Devi) v. Union of India³,
Kasturba Nagar Residents Welfare Association v. Govt. NCT of
Delhi⁴, and Abdul Shakeel v. DDA⁵.

ANALYSIS AND DECISION

17. I have given my thoughtful consideration to the submissions advanced by the learned Counsels for the rival parties at the Bar. I have also meticulously gone through the record of this matter and the case law relied upon by the parties.

18. At the outset, the petitioners have no case whatsoever for issuance of any prerogative writs in their favour and against the respondents. First things first, it would be apposite to take into consideration the real import of the allotment letter dated 01.10.1962 relied upon by the petitioners, which is as under: -

“DELHI DEVELOPMENT AUTHORITY

Regal Buildings

NO: L.6(22)/62

New Delhi-1, the 1-10-1962.

From

The Executive Officer,
Delhi Development Authority.

To,

Shri Jagpat Ram S/o Khedu
Inderprastha Gates
New Delhi.

Subject: Allotment of Nazul Agricultural land in khattewal,
Chiragah Shumali for agricultural purposes.

Dear Sir,

Reference your application dated Nil for allotment of agricultural land in lieu of your land in the Inderpat estate which was acquired by the Delhi Administration for the Power House.

³ SPECIAL LEAVE TO APPEAL (C) - 9300/2023 and LPA No. 271/2022.

⁴ SLP. (C) - 11246/2023.

⁵ 2013 SCC Online Del 1284



I am directed to inform you that the Authority has decided to allot you plot No. 26 khasra No. 16 measuring 10 bigha 5 biswas in its Khattewala area, Chiragah Shumali estate for agricultural purposes for current year ending on 15.06.63 in the first instance on payment of rent of Rs. 5.91 NP. In advance on the terms & conditions mentioned in the enclosed lease-deed form.

Please communicate your acceptance to the same and execute the lease-deed at your cost within a week of the receipt of this letter failing which this offer of allotment is liable to be withdrawn.

Yours faithfully,

End:- Lease-deed form.

(H.K.Lal)
Executive Officer,
Delhi Development Authority.
28/9/63

19. A careful perusal of the aforesaid letter would show that it speaks about a piece of land situated in Indraprastha Estate belonging to the predecessors of the petitioners and having been acquired. As would be demonstrated hereinafter, no land of the predecessors-in-interest of the petitioners was ever acquired. A bare perusal of the above letter dated 01.10.1962 would show that land bearing No. 26, *Khasra* No. 16 measuring 10 *bigha* 5 *biswas* was allotted for agricultural purposes for the then prevailing year, effective till 15.06.1963 subject to payment of rent. The addressee was supposed to communicate his acceptance. There is nothing on the record to suggest that acceptance was ever given or the term of allotment was complied with by payment of rent. There is no rent receipt filed or relied upon by the petitioners. There is no evidence to show that the right to cultivate the land was extended to the petitioners on a yearly basis subsequently or that any rent was paid by the petitioners.



20. Further, the copy of the *jamabandi* for the year 1973-74 would show that the Government i.e., *Sarkar Daulat Madar* was shown as the owner of the subject agricultural land while showing the name of the cultivator to be “Jagpat S/o Mr. Khabdu non-ancestor” meaning thereby that the owner/landlord was the government. Likewise, *khasra girdawari* as on 15.10.1975 showed the cultivator to be “Jagpat S/o Khabdu non-ancestor” and the owner/landlord was recorded as the government. The same position stood with regard to the subject agricultural land as on 13.04.1977, 21.04.1978 and 04.06.1987. If the assertion of the petitioners No. 5, 6, 7, 8 and 9 is believed, they were cultivating the land from 15.10.1975 to 04.06.1987, and thereafter, there is no document suggesting that the subject agricultural land was ever cultivated by the petitioners.

21. It is pertinent to mention here that in the counter affidavit filed by Mr. R.K. Sharma, Deputy Director (LM), DDA dated 19.02.2020, it was brought to the fore that the predecessors-in-interest of the petitioners were unauthorized encroachers upon the government land in the Indraprastha Estate and it was only on humanitarian grounds that 32 cultivators/encroachers were given land for cultivation on the basis of a ‘temporary lease for one year’ in *Chiragha Shumali* in the year 1962. In the said counter affidavit, it is also deposed as under:

“That the petitioners were earlier encroacher on the Government land in Indraprastha Estate. During 1962 these unauthorized encroachers were evicted from Indraprastha Estate for construction of Rajghat Power House. Considering the humanitarian ground the 32 cultivators/encroachers were given land for cultivation only on the basis of **temporary lease for one year** in *Chiragha Shumali* in the year 1962. It is submitted that the petitioners were unauthorized



squatters/encroachers on the government land in Indraprastha Estate.”

22. It is further deposed *vide* paragraph (8) of the said affidavit that respondent/DDA resumed the possession of the subject agricultural land on 12.09.1991 for construction of a road connecting Kashmere Gate Bridge to GT Road Shahdara and for plantation after the eviction order was passed by the Estate Officer. It was submitted that some of the land has already been used for construction of the road and some of the land has been unauthorizedly encroached upon by the petitioners/encroachers at present. As a matter of fact, the petitioners have neither placed on the record any documents giving details as to their land or properties at Indraprastha Estate that was acquired nor any details have been supplied as to any award passed under the Land Acquisition Act.

23. At this juncture it would be expedient to go through the judgment dated 18.11.1995 passed by the learned ADJ, Delhi whereby some of the parties including the so-called predecessors-in-interest had assailed the eviction order dated 28.08.1991 passed by the Estate Officer, DDA with respect to agricultural land in *Khasra* No. 16 min situated at *Chiragha Shumali* near Khureji Khas, Delhi. Incidentally, one Jagpat Ram was also one of the appellants in the batch of appeals filed, his appeal bearing No. 369/1995. Learned ADJ, Delhi recorded that each of 26 appellants had been allotted 10 bighas of land for cultivation and the SCN dated 30.01.1991 under Section 4 of the PP Act was issued. It would be apposite to reproduce the relevant portions of the judgment, which go as under:



“9. It is admitted case of the DDA that each of the above named Appellants was offered 7 to 10 bighas of agricultural, land in village Chiragha, Sumeli (Near Khuraji Khas) Delhi, vide letter dated 01.10.1962 (Ex.PW-2/1) in lieu of their land at Indraprastha acquired by the Govt. for constructing a power house in 1962. The contention of the DDA is that none of the Appellants had accepted the offer given to them by the DDA vide its letter dated 01.10.1962 for allotting the land to them in lieu of their acquired land. This contention of the DDA has no merit at all because it is admitted case of the DDA that all the above named Appellants came in possession of 7 to 10 bighas of land in 1962 and that it retained in their cultivating possession uninterruptedly since 1962 till ejectment proceedings under P.P. Act were initiated against them. It is also not disputed by the DDA that none of the Appellants was paid any compensation for their land acquired by the Govt. for constructing a Power House in lieu of which land in question was allotted to them. The DDA had examined three witnesses before the Estate officer and they are Sh. Suresh Kumar Halka Patwari, Sh. M.R. Sharma Supot. Land branch of the DDA and Sh. Shamim Ahmad, Deputy Director, land. Sh. Suresh Kumar Halka Patwari admitted in his cross examination that each of the Appellants is in occupation of 7 to 10 bighas of the land which was measured by him at site. He further admitted that each of the Appellants is ploughing and sowing his land in question. Sh. M. R. Sharma, Sudt. Land branch of the DDA has admitted in his cross-examination that lease deed in respect of the land in question executed by the Appellants is available in the file of each of them. Mr. Sharma also stated on oath that the land in question was offered for allotment to the Appellants vide letter Ex.PW-2/1 on certain terms and conditions mentioned in the letter. Sh. Shamim Ahmad, Deputy Director (lands) has stated in his in chief that all the Appellants had paid lease money in respect of the land in question to the DDA upto 1983-84. He admitted in his cross examination that each of the Appellants is in possession of a separate Khattas and the plot number of each of them is mentioned on their file cover. It is evident from the statement of all the three witnesses examined on behalf of the DDA before the Estate officer that the Appellants were allotted lands measuring 7 to 10 bighas in lieu of their land at Indraprastha acquired for constructing the power house. The terms and conditions contained in the lease proforma sent by the DDA to the Appellants alongwith allotment letter dated 01.10.1962 and since 1962 DDA admittedly accepted the lease money from them till 1983-84 as is evident from the statement of Shamim Ahmed, Deputy Director (Lands). This shows that the proposed terms and conditions on which the



allotment was made, were binding on both the parties to the contract.

10. In this case the land which was allotted by the DDA to the Appellant is nazul land and in of provisions contained in section 22 of the DDA Act read with section 2(e) and section 4(1) of the P.P. Act the premises in question in my opinion is a public premises and I do not agree with the contention of the Appellant's counsel that the premises in question is not a public premises.

11. The only question that now remains for consideration is that whether the Appellants were in unauthorized occupation of the land in question from which they were sought to be evicted by taking recourse to the provisions of PP Act. It is not disputed that each of the Appellants was allotted 7 to 10 bighas of the land and vide show cause notice dated 30.01.1991 the Appellants were described as unauthorized occupants only in respect of 2 bighas of land out of the total area of 7 to 10 bighas allotted to them. I fail to understand how the Appellants can be said to be in unauthorized occupation with regard to a part of the land and authorised occupants with regard to the remaining. No explanation in this regard could be given by the Respondent's counsel. I am of the opinion that the lease of the Appellants could have been determined by the DDA only in case of failure of any of the terms contained in the lease profoma. Record of the Estate officer shows that the lease of the Appellants was never cancelled by the DDA before they were served with the show cause notice dated 30.1.1994 U/s 4 of the PP Act. No reason whatsoever has been given in the aforesaid show cause notice as to how the Appellants became unauthorised occupants in respect of a part of the land allotted to them, in lieu of their acquired land. The Appellants had remained in uninterrupted cultivating possession of the land allotted to them for a period of about 30 years what they were served with a show cause notice dated 30.01.1991 U/s 4 of the PP Act. This goes to show that the lease of the land was not for a fixed period. Thus, none of the Appellants can be said to be in unauthorised occupation of the land in question within the meaning of section 2(g) of the PP Act.

12. In this case, even the show cause notice dated 30.01.1991 given by the Estate Officer to the Appellants was not in accordance with law. No description of land from which all the aforesaid Appellants were sought to be evicted has been given either in the show cause notice or in the impugned eviction order dated 20.08.91 passed by the Estate officer against them. It is admitted by Sh. Suresh Kumar Halqa Patwari in his statement that the area of Khasra No.16 min is comprised of 1081 bighas and 9 biswas and he further stated in his statement that a separate plot, number was



given in respect of the land allotted to each of the Appellants. In AKS Sh. Suresh Kumar Halqa Patwari could not tell when asked in his cross examination as to what these numbers indicate. In show cause notice as well as in the impugned eviction orders it is only mentioned that the Appellants were sought to be evicted from 2 bighas of land in their possession without mentioning the description and location of the said 2 bighas of land sought to be recovered from them. Thus, I find that the show cause notice sent to the Appellants was not in conformity with the provisions of section 4 of the PP Act, and therefore, no eviction order could have been passed by the Estate officer on the basis of the said show cause.

13. The argument of the learned counsel for the DDA that the Appellants were sought to be evicted from the land in question because the said land was urgently required for impleamentation of free plantation scheme of Govt. of India seems to have no force in the eyes of law. Firstly no such reason has been given in the show cause notice sent to the Appellants and further more I do not find any circular/or govt. scheme in this regard, in the file of the Estate officer which may support the aforesaid argument of Mr. Goel.

14. Article 300 A of the Constitution of India clearly provides that no person can be deprived of his property save by authority of law. In this case, I have found that the procedure for ejectment of the Appellants followed by the Estate officer was defective in as much as no valid show cause notice was given by him and further more the authority by which the Appellants came in possession of the land in question way back in 1962 was not determined before initiating eviction proceedings against them under the provisions of Public premises (Eviction of Unauthorised occupants) Act, 1971.

15. On a close scrutiny of the entire matter, I have found that the learned Estate officer has totally ignored the evidence on record as he has not discussed at all the evidence produced by the parties while passing the impugned order. It appears that the impugned orders have been passed by the Estate officer in a mechanical manner and lacks for proper application of judicial mind.

16. I am therefore, of the opinion that the impugned order passed by the Estate officer cannot be sustained in the eyes of law and are hereby quashed.

17. The matter does not rest here. It was argued by Mr. Goel that the DDA had already taken possession of the land in question from the matter according to him the present appeals contention of Mr. Goel. It will be relevant to mention here that my learned predecessor, vide order dated 12.09.91 had directed the parties to maintain status quo and had also appointed a local commissioner to submit a report regarding possession at site. The learned local



commissioner inspected the site on 12.09.1991 itself and gave his report that there was no standing crop, no rose garden, no garden and no tubewell on land mark Bin the rough site plan prepared by him and he also reported that DDA had grown some 20 odd plants in a small portion of the land mark "B". It was further reported by the local commissioner that he was informed by the officials of the DDA at the time of inspection that it had taken possession of land mark "B" in the site plan in the morning of 12.9.91 itself. The Appellants have, however, submitted that they still continue to be in possession of 'the land in question except that the DDA had shown some 20 odd plants on 12.09.1991 in a small portion of land mark "B". I do not consider it necessary to go into the question as to whether the DDA had taken possession or not because the impugned eviction orders passed by the Estate officer have already been quashed by me hereinabove. Even if it be assumed that the DDA had taken possession of the land in question, still it is bound to restore the possession to the Appellants because, if at all, the possession was taken by it during the pendency of the present Appeal and doctrine of lis pendence squarely applied in the facts and circumstances of the present case. My this view is supported by a judgment of the Hon'ble Supreme Court in M/s Wire Netting Stores and another Vs. The Delhi Development Authority and others. 1969(3) SCC 415. I, therefore, direct that in case DDA has already taken possession of the land in question from the Appellants, then it should restore the possession to them forthwith.

18. In view of my aforesaid discussion, the impugned eviction orders dated 20.08.91 passed by the Estate Officer against the Appellants are hereby quashed and the appeals are allowed. In the peculiar circumstances of the case, parties are left to bear their own costs. An attested photo copy of this judgment be kept in the files of each of the above appeals which have been disposed of by this common judgment. Record of the Estate officer be sent back and appeal files be sent to record room."

24. Although the aforesaid order dated 18.11.1995 was not challenged by the DDA, the findings recorded in the said judgment arise out of *summary proceedings* under the PP Act and it has no binding effect when it comes to ascertaining the title of the parties to the subject agricultural land as also the status of the petitioners claiming possessory rights for cultivation on the same.



Unhesitatingly, the judgment dated 18.11.1995 was passed on the incorrect premise that the appellants had any right or interest in the property in question. As discussed hereinbefore, no lease was ever executed in favour of the predecessors of the petitioners or for that matter, the petitioners, and they were allowed to cultivate the land on an year to year basis, for which evidently no rent was even paid by them.

25. At the cost of repetition, the petitioners have produced no documents in support of their claims, which only fortifies the stand of the DDA that their forefathers/predecessors were rank trespassers in respect of the property at Indraprastha Estate, from which land they were uprooted for setting up of the Indraprastha Power Station way back in the year 1962. Therefore, being rank trespassers and in occupation of some land situated at Indraprastha Estate without any right, title or interest, the same never entitled them to any compensation and the government only allowed them to cultivate the land in question on humanitarian grounds.

26. Be that as it may, the impugned judgment dated 18.11.1995 also reflects that it was the consistent stand of the DDA that the possession of the land had already been taken over by it. Such a position assumes significance when we find that the subject agricultural land falls under 'Zone O' of the Yamuna river bed, and the said area has been the subject of detailed discussions and directions for monitoring and development of Yamuna river bed and plains. Cognizance of the Yamuna pollution was first taken *Suo moto* by the Supreme Court in the year 1994 in WP (C) No. 725/1994 titled "**In Re: News Item**



Published In Hindustan Times Titled “And Quiet Flows The Maily Yamuna⁶”. *Vide* order dated 4.8.2004, the Supreme Court constituted a committee headed by the Secretary, Urban Development, Government of India, to oversee the measures to be necessarily taken for the rejuvenation of Yamuna River. Thereafter, *vide* order dated 10.10.2012, it was noted that despite continuous monitoring by the Supreme Court for 18 years, there remained a high level of faecal coliform (FC) and BOD. Accordingly, the Supreme Court directed that ‘C’ category quality of water be achieved by preventing industrial/domestic pollution **and all encroachments at least up to 300 meters on both sides of the river be removed.** It transpires from the record that the aforesaid matter remained pending before the Supreme Court from 1994 till 2017, when it was finally transferred to the National Green Tribunal *vide* order dated 24.04.2017 by the Supreme Court in light of its decision in *MC Mehta v. Union of India*.

27. However, in the interregnum, the issue of Yamuna Pollution had already come up for consideration before the NGT in OA No. 06/2012 and OA No. 300/2013 titled “**Manoj Mishra vs. Union of India⁷**”. By Order dated 13.01.2015, the NGT passed directions, *inter alia*, to the DDA to demarcate the Yamuna Floodplain area and **further directed the DDA to take steps to repossess those areas being part of the floodplains that were under unauthorised and illegal occupation of any person or body.** In addition, the NGT

⁶ (2012) 13 SCC 736

⁷ 2015 SCC Online NGT 840



passed orders prohibiting the cultivation of any edible crops or fodder on the floodplains till the Yamuna was declared pollution-free. Furthermore, the NGT constituted a ‘Principal Committee’ and at a later stage, a ‘Yamuna Monitoring Committee’, to oversee the progress made by the governmental departments in compliance of such directions.

28. Subsequent thereto, *vide* order dated 02.09.2014 in WP No. 888/1996 titled “**Almitra H. Patel Vs. Union of India**”, the Supreme Court remitted the issue of solid waste management to the NGT. Accordingly, the Chief Secretaries of all States/UTs were required to appear in person before the NGT and were directed to ensure that no untreated effluent/waste is discharged/dumped in water bodies/rivers. Based on the “polluter pays” principle, the Tribunal also levied compensation @ Rs. 2 crores per MLD on States/UTs for gap in generation and treatment of sewage.

29. Thereafter, *vide* judgment dated 22.02.2017, the Supreme Court in WP(C) No. 375/2012 titled “**Paryavaran Suraksha Samiti & Anr. v. Union of India**⁸” observed that the States are under a constitutional obligation to prevent water/river pollution, by virtue of Article 243 W, 243X and 243Y, read with entry 6 of the 12th Schedule to the Constitution of India. Further, the Supreme Court directed setting up of pollution-control devices called “common effluent treatment plants”, within three years from the date of judgment i.e., 22.02.2017, in cities, towns and villages that discharge industrial pollutants and sewer directly into rivers and water bodies, failing which the

⁸(2017) 5 SCC 326



concerned Secretaries to the Government would be prosecuted. Additionally, the NGT was directed to take steps to implement the judgment.

30. The NGT in OA No. 622/2012 titled “**Jagdev v. Lieutenant Governor of Delhi**⁹”, *vide* order dated 17.10.2019, observed that the floodplains of Yamuna River cannot be allowed to be occupied by *jhuggi* dwellers as such occupation may damage the ecology of the River and accordingly, directed that the floodplains be kept free of encroachments in order to protect the ecology of the Yamuna.

31. The Supreme Court in Civil Appeal No. 3465/2022 titled “**Nizamuddin West Association vs. Union of India**¹⁰”, *vide* order dated 21.10.2022, directed the NGT to monitor the compliance of the orders passed by the NGT in *Manoj Mishra vs. Union of India & Ors.* and subsequent orders issued by the NGT pertaining to the cleaning of the Yamuna River.

32. The subject matter i.e., Yamuna Rejuvenation Plan came to be taken up by the NGT in OA No. 21/2023 titled “**Ashwani Yadav v. Government of NCT of Delhi**¹¹”, and upon highlighting the lack of progress in controlling the pollution of the river Yamuna, the NGT *vide* Order dated 09.01.2023, constituted a High Level Committee (“**HLC**”) of the concerned authorities in Delhi, to be headed by the Lt. Governor, to take stock of the pollution in Yamuna with regard to the directions passed by the NGT, the extent of compliance as well as non-compliance, proposed remedial action plan for compliance of

⁹2019 SCC OnLine NGT 170

¹⁰2022 SCC OnLine SC 1811

¹¹2023 SCC OnLine NGT 25



orders, sources of funding, accountability for past failures, methodology for execution of the Yamuna Rejuvenation and restoration projects, as well as timelines consistent with the spirit of orders of the Supreme Court and NGT.

33. Consequently, the High-Level Committee held its first meeting on 20.01.2023 where an action plan was proposed for the purpose of monitoring important parameters for rejuvenation of river Yamuna as well as removal of all encroachments/dhobi ghats in the floodplains area, wherein the DDA and PWD were called upon to repossess the floodplains area and undertake a major plantation drive in the vulnerable stretches of the floodplains. Thereafter, the High Level Committee held subsequent meetings wherein the projects undertaken by the DDA for the restoration and rejuvenation of floodplains including removal of encroachments were discussed in detail and *inter alia* directions were passed by the Lt. Governor to the DDA to take regular action for identifying and removing encroachments on floodplains besides taking steps for expeditious disposal of all cases pertaining to encroachments in the floodplains pending before this court.

34. Avoiding a long academic discussion, it would be pertinent to refer to a recent judgment by a Division Bench of this Court in the case of **Court on its own motion v. Union of India**¹², wherein the following directions were passed for restoration and rejuvenation of the Yamuna River Flood Plains :

¹² WP(C) No.7594/2018 and 9617/2022 decided on 08.04.2024



“20. DDA in coordination with all concerned agencies is hereby directed to ensure removal of encroachments from Yamuna River Flood Plains. Delhi Police shall provide necessary force to the DDA as and when requested, to maintain law and order during such encroachment removal drives to remove encroachment from Yamuna Flood Plains.

21. Further, DDA shall submit an action taken report on development of ten bio-diversity parks / wetland areas in Yamuna River Flood Plain including an action plan with timelines for completion of pending projects. Cities and Towns around India, which have been developed along rivers, are doing horticulture and green development of river fronts for their citizens as symbols of urban pride.

22. DDA shall explore green horticultural development of river fronts and recreational zones with public amenities to increase public participation and awareness about rejuvenation of River Yamuna in accordance with extant guidelines.

23. It is necessary to do green development of the banks of the Yamuna as wetlands and public spaces, parks for open green spaces, access to civic amenities, zones of entertainment or playgrounds for the children. This will lead to buy-in by the common citizen, a sense of ownership and consequent pressures on the authorities to ensure maintenance. All this will go hand in hand with ecological restoration, maintenance, and protection of the flood plains.

24. A large number of religious devotees pray at different locations, discharging solid waste in the river water, adding to an already serious problem. Recognising this need of the residents of the State, DDA should construct select number of ghats or platforms on stilts along the riverbank, for such purposes to ensure that the devotees get space and the authorities are able to deal with the challenge of waste scientifically.”

35. The sum and substance of the matter is that the land in question falls under the Zonal Development Plan for Zone- ‘O’ as approved by the Ministry of Urban Development¹³. Further, the Master Plan Delhi-2021 also envisages rejuvenation of river Yamuna through a number

¹³ The 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



of measures including ensuring adequate flow in the 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 an ecological balance by planting trees. The land in dispute is meant for larger public interest and the petitioners cannot claim any vested rights therein to continue to use and occupy the same for cultivation.

36. The position of the subject agricultural land is exemplified in the affidavit of Mr. Rakesh Kumar, Deputy Director (Land Management), DDA dated 31.08.2023, wherein it is brought out that:

“7. It is further submitted that the Yamuna River river bed on both sides of river Yamuna falls in four villages which are Bela, Inderpat, Chiragah Janubi and Chiragah Shumali and all the aforesaid villages were placed at the disposal of DIT (erstwhile DDA) vide Nazul Agreement dated 31.03.1937. The respondent No.1/DDA has the right to protect its land from any form of encroachment. Furthermore, the subject land is a part of “O Zone” of the MPD-2021 (Master Plan of Delhi), which are the 1 in 25 years floodplains, on which any activity whether commercial/residential/agricultural is illegal and is completely banned.

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13. That it is further submitted that the land which is being blatantly encroached by the Petitioners is a part of the Public Project of ‘Restoration and Rejuvenation of River Yamuna Project’ which involves the development and construction of ‘**Yamuna Vanasthali**’. This project is being under taken by the Respondent/DDA on 236 Hectares of land, with the following objects and aims:

- i. Firstly, by protection of floodplains – by demarcation of the Yamuna floodplains and repossession of the floodplains under encroachment;
- ii. Secondly, by restoration of the wetlands – by deepening and enlarging the existing depressions and creation of wetlands;



iii. Thirdly, by attempting to build a connect for the general public with the Yamuna River – by means of providing public spaces connected with kaccha pathways, cycle tracks and seating areas in the Greenways, for recreation of public at large.

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14. Phase 1 of the Project of “Yamuna Vanasthali” has been undertaken at an estimated cost of more than Rupees Twenty Crores, of which tenders for a sum of more than Rupees Eleven Crores have already been awarded for civil and horticulture work. More than 85% of the estimated work, including construction of pathways, cycle tracks, water body, gates and entrance plaza stand completed as on date, and remaining is held up due to encroachments, including by the Petitioners under the present Petition.”

37. In view of the foregoing discussion, this Court has no hesitation in holding that the petitioners have no legal right to claim possession and right to cultivation over the subject agricultural land. The petitioners are not even able to demonstrate as to how much land is now left or remains unused, which they claim to keep occupying for cultivation. The photographs placed on the record coupled with the joint inspection report by the concerned officials bring out that no cultivation is taking place at the site. The subject agricultural land although described as ‘agricultural land’ is plainly encompassed in the Yamuna River bed areas and it is required to be rid of encroachments, in the larger public interest in terms of directions passed by the Supreme Court and the NGT besides this Court in an umpteen number of cases, some of which have been referred hereinabove. It is also deposed in the affidavit by Mr. Rakesh Kumar dated 31.08.2023 that 85% of the construction work of the project road in the area is complete but the remaining work is held up due to interference on the part of the petitioners.



38. Resultantly, the instant Writ Petition is dismissed with costs of Rs. 10,000/- imposed on each of the petitioners, which be paid to the respondent/DDA.

39. All the pending applications also stand disposed off.

DHARMESH SHARMA, J.

JULY 16, 2024
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