



2024 : DHC : 4285



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on : 8th April, 2024**
Pronounced on: 27th May, 2024

+ RFA 131/2022, CM APPL. 17734/2022 & CM APPL. 17738/2022
BILQUIS Appellant

Through: Mr.S. K Rout, Mr.Aman Mehrotra,
Mr.Ganesh Singh, Mr.Rahul
Kumar and Mr.Vikram Singh,
Advocates

versus

JAMIA MILIA ISLAMIA & ORS. Respondents

Through: Mr.Pritish Sabharwal, Standing
Counsel for JMI

+ RFA 133/2022, CM APPL. 18031/2022 & CM APPL. 18035/2022
NAWAB Appellant

Through: Mr.S. K Rout, Mr.Aman Mehrotra,
Mr.Ganesh Singh, Mr.Rahul
Kumar and Mr.Vikram Singh,
Advocates

versus

JAMIA MILIA ISLAMIA & ORS. Respondents

Through: Mr.Pritish Sabharwal, Standing
Counsel for JMI
Mr.Anupam Srivastava and
Ms.Anushka Bhatnagar, Advocates
for R-3 and 4

+ RFA 134/2022, CM APPL. 18081/2022, CM APPL. 18082/2022,
CM APPL. 18084/2022, CM APPL. 18085/2022 & CM APPL.
18086/2022

ABDUL HAMEED (SINCE DECEASED) THROUGH HIS LRS
..... Appellant

Through: Mr.S. K Rout, Mr.Aman Mehrotra,
Mr.Ganesh Singh, Mr.Rahul
Kumar and Mr.Vikram Singh,
Advocates

versus



2024 : DHC : 4285



JAMIA MILIA ISLAMIA & ORS.

..... Respondents

Through: Mr.Pritish Sabharwal, Standing
Counsel for JMI
Mr.Anupam Srivastava and
Ms.Anushka Bhatnagar, Advocates
for R-3 and 4

+ RFA 154/2022, CM APPL. 18960/2022 & CM APPL. 18964/2022
SHERDIN & ORS. Appellants

Through: Mr.S. K Rout, Mr.Aman Mehrotra,
Mr.Ganesh Singh, Mr.Rahul
Kumar and Mr.Vikram Singh,
Advocates

versus

JAMIA MILIA ISLAMIA & ORS.

..... Respondents

Through: Mr.Pritish Sabharwal, Standing
Counsel for JMI
Mr.Anupam Srivastava and
Ms.Anushka Bhatnagar, Advocates
for R-3 and 4

CORAM:**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH****J U D G M E N T****CHANDRA DHARI SINGH, J.**

1. The present batch of appeals have(has) been filed on behalf of the appellants under Order XLI read with Section 96 of Code of Civil Procedure, 1908 (hereinafter "CPC") against the common impugned judgment dated 23rd January, 2020 passed by the learned Additional District Judge – 06, South – East District, Saket Courts, New Delhi in civil suits bearing CS No. 1704/2018 titled as '*Bilquis v. Jamia Milia Islamia & Ors.*', CS No. 1703/2018 titled as '*Nawab v. Jamia Milia*

RFA 131/2022 & 3 other connected matters

Page 2 of 73



Islamia & Ors., CS No. 1702/2018 titled as '*Abdul Hameed & Ors. v. Jamia Milia Islamia & Ors.*', CS No. 1705/2018 titled as '*Sherdin & Ors. v. Jamia Milia Islamia & Ors.*'.

2. Since the facts as well as the legal issues involved in the present batch of appeals are similar and all the appeals challenge the common impugned judgment passed in the above said civil suits, therefore this Court has culled out the facts and submissions out of the regular first appeal bearing RFA No.131/2022 titled as '*Bilquis v. Jamia Milia Islamia & Ors.*'.

FACTUAL MATRIX

3. The respondent no. 1 namely M/s Jamia Milia Islamia is a central university which initiated eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 against the appellant and others in the year 1977 who allegedly encroached upon the university's property bearing Khasra no. 68 min admeasuring 24 Bighas and 11 Biswas of land in Village Okhla, New Delhi.

4. Thereafter, the concerned Estate Officer adjudicating in the above stated eviction proceedings, passed a consolidated judgement dated 29th March, 2006, ruling in favour of the respondent university holding that the appellant is in illegal an unauthorized occupation of the university's property.

5. In appeal, the District Court upheld the said judgment. The aggrieved parties including the present appellant filed various writ petitions bearing W.P (C) no. 4929, 1930 & 5292 of 2007 challenging the order of the District Court taking the plea of adverse possession and prescription, and also raising a plea that the Estate Officer had no



jurisdiction to pass the eviction order. The above said writ petitions were dismissed by this Court holding that the possession of the said land always continued with the respondent university and the Estate Officer was competent to initiate eviction proceedings, and pass eviction orders.

6. Pursuant to the above, the appellant preferred letters patent appeals bearing LPA No. 117-118 and 120 of 2010 which were dismissed vide judgment dated 14th March, 2011 by the Division Bench of this Court.

7. Furthermore, the eviction order passed by the Estate Officer attained finality when the Hon'ble Supreme Court dismissed the SLP bearing No. 10028/2011 filed by the appellant and others challenging the above said judgment of the Division Bench of this Court.

8. Meanwhile, apprehending dispossession, the appellant along with others filed writ petition bearing W.P (C) no. 735/2012 before this Court which was dismissed as withdrawn. The appellant and others then filed an application apprehending demolition, which was disposed of by this Court holding that the respondent university was entitled to take possession of land admeasuring 24 Bighas and 11 Biswas in Khasra No. 68.

9. Thereafter, the respondent university filed a writ petition bearing W.P (C) No. 9436/2015 before this Court seeking execution of the order of the Estate Officer and the same was disposed of in favour of the respondent university.

10. The appellant along with others, then filed a writ petition bearing W.P (C) No. 745/2016 before this Court seeking directions from this Court to stop the respondent university from dispossessing the appellant and other encroachers. The said petition was disposed of vide order dated



8th March, 2016 holding to the effect that the petitioners (appellant herein) cannot object to the execution of the eviction order.

11. Subsequently, the appellant and others filed another writ petition bearing W.P (C) No. 2263/2016 raising a new plea that the Estate Officer had no jurisdiction to pass the eviction orders under the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. However, this Court passed an order dated 5th September, 2016 dismissing the said petition stating the principle of *res-judicata*.

12. In the interregnum, the demolition was carried out by the respondent and the Government Agencies in July, 2016.

13. The appellant and the others again filed civil suits bearing CS No. 1704/2018 titled as '*Bilquis v. Jamia Milia Islamia & Ors.*', CS No. 1703/2018 titled as '*Nawab v. Jamia Milia Islamia & Ors.*', CS No. 1702/2018 titled as '*Abdul Hameed & Ors. v. Jamia Milia Islamia & Ors.*', CS No. 1705/2018 titled as '*Sherdin & Ors. v. jamia Milia Islamia & Ors.*', seeking declaration, possession, damages and permanent injunction, and the said civil suits are the subject matter of the present batch of appeals.

14. In the civil suits filed by Mr. Nawab, Mr. Bilquish and Mr. Sherdin, the suit property is stated to be 202 sq. yards and the respondent university is stated to have been entitled only to 111, 152 and 155.5 sq. yards respectively, and the respective plaintiffs allege that they had been wrongly dispossessed while carrying out demolition from the entire 202 sq. yards. Further, in the civil suit filed by Mr. Abdul Hamid, suit property is claimed to be 302 sq. yards and he alleges that entitlement of



respondent is 223 sq. yards only and that he has been wrongfully dispossessed of the entire property.

15. All suit properties are alleged to be situated in Khasra No. 68 Min in village Okhla Tehsil, Defence Colony, District South East, New Delhi. Khasra No. 68/3 is in litigation between the State of UP and the Government of NCT of Delhi in a matter before the Hon'ble Supreme Court.

16. Vide the common impugned judgment dated 23rd January, 2020, the above said civil suits were dismissed by the learned Trial Court under Order VII Rule 11 of the CPC due to the lack of cause of action and also under Order XII Rule 6 of the CPC, after taking into consideration the contentions and clarifications given by the defendant, i.e., the respondent University herein, with regard to the status of the property against which the plaintiffs sought relief of declaration.

17. Being aggrieved by the impugned judgment, the appellant has preferred the instant appeal seeking setting aside of the same.

PLEADINGS

18. The written submissions has been filed on behalf of the appellant on 6th November, 2023, relevant portions of which are as follows:

“...1. That as per revenue record (Jamabandi) of the year 1908- 09, the total land in Khasra No. 68 is 125 Bigha and was recorded in name of Sarkar Daulatmadar and possession was given to Agra Canal Department.

2. That in the year 1955, as per true translated copy of the Intkal No. 515, the Govt of U.P. orally gifted land admeasuring 24 Bigha 11 Biswa to Jamia Milia and the same was mutated vide the said Intkal No. 515. Thus, out of



125 Bigha, the gift was in respect of 24 Bigha 11 Biswa Only and rest of land i.e. 100 Bigha 8 Biswa remained with Sarkar Daulatmadar.

3. That thereafter, in the year 1983, vide Award No. 95/ 1983-84 , 24 Bigha 12 Biswa was acquired out of 100 Bigha 6 Biswa of land. Hence, the land which remained as Sarkar Daulatmadar and in possession of the Govt, is 75 Bigha 17 Biswa.

4. That in terms of the above factual position, the respondent No. 1 is entitled for land admeasuring 24 Bigha 11 Biswa which was gifted by U.P. Govt and 24 Bigha 12 Biswa which was acquired through Award, i.e. total land which ought to be in possession of the respondent No. 1 should be only 49 Bigha 03 Biswa Only.

5. That as on today, the respondent No. 1 is in possession of land more than to which it is entitled to as stated above.

6. That in view of the factual position as explained above, the proceedings initiated by the respondent No. 1 under P. P. Act were illegal, malafide and non-est in eyes of law as the respondent No. 1 is claiming more land than to which they are entitled to.

7. That it is submitted that State of U. P. filed a civil suit in the Hon'ble Supreme Court in the year against Govt of NCT of Delhi in the year 2014 when Govt of NCT issued fresh acquisition proceedings for 100 Bigha 8 Biswa in Khasra No. 68 / 3 (1-09) and 68 / 4 (98-19). If that is the position, than it can be safely construed that the acquisition which was carried out in year 1983 was in respect of the land which was gifted in year 1955 as the total area of Khasra No. 68 was 125 Bigha Only. When the acquisition in year 1983 was done for 24 Bigha 12 Biswa , then by no stretch of imagination, the acquisition in year 2014 could be carried



for 100 Bigha 8 Biswa of land. It is not the case that the land got stretched and it can't be.

8. That the Hon'ble Supreme Court has granted stay in respect of the acquisition which was being carried out in respect of 100 Bigha 8 Biswa of land and the same is continuing till date. Meaning thereby, there was no acquisition in respect of Khasra No. 68 and the land which was in possession of respondent No. 1 was only 24 Bigha 12 Biswa and have to confine themselves to the same.

9. That the appellant is sitting over the land since the year 1982-83 which was not acquired for the Planned Development of Delhi. However, the respondents without any reason demolished the properties of the appellant alleging that they are encroachers of the property belonging to the respondent No. 1.

10. That since the appellant were sitting over the properties belonging to them and when the acquisition was initiated in year 2014 , the appellant received notices under Section 9 of the Land Acquisition Act. This establishes the fact that the land over which the appellants were sitting was not acquired land and not the property of the respondent No. 1 but belongs to the Govt. This also demonstrates that the appellants were not the encroachers as alleged by the respondent No. 1. Once it is established that the appellant were not encroachers than, the appellant could not have been forcefully removed without due procedure of law and entitled to compensation.

11. That the appellant left with no other remedy filed a civil suit for adjudication of his right as he is constitutionally protected and cannot be left remediless.

12. That the Ld. Trial Court vide dismissing the suit had relied upon the Estate Officer finding regarding encroachment over their land while the fact is that the



respondent No. 1 is only entitled to 24 Bigha 12 Biswa which was acquired vide award No. 95 / 83-84 dated 24.02.1984 or at the most to 49 Bigha 3 Biswa as the appellants were not encroachers as the land was not acquired as is established by revenue authorities who issued notices to them under Section 9 of the Land Acquisition Act.

13. That the Ld. Trial Court while dismissing the suit had observed that in between Khasra No. 68/3 and Kh No. 68/4, there is chunk of Kh No. 68/1 and demolition was carried out in those Kh. Nos. and not 68/3. The Ld Trial Court failed to appreciate that the respondents are entitled to 24 Bigha 12 Biswa only and also failed to appreciate that the appellants were in possession of 68/3 as is reflected from the notices issued under Section 9 of LA Act but not considered by the Trial Court.

14. That the Ld. Trial Court failed to appreciate that there is stay of acquisition in respect of 100 Bigha 8 Biswa. Hence, in order to settle the boundaries for 24 Bigha 12 Biswa which was acquired vide Award 95/ 1983-84, the respondent No. 1 have to get the demarcation done through revenue authorities respondent No. 2 and 3 and merely cannot say that the demolition was done in 68/2. No notice of demarcation was never served upon the appellants.

15. That the trial court failed to appreciate that non filing of the site plan does not invalidate the suit as the same is an inadvertent mistake which could be corrected before leading evidence. However, the Trial Court before leading evidence in matter came to conclusion that they have failed to identify their property.

16. That the trial court failed to appreciate that in order to do justice to the parties, evidence is required to be taken and for that purpose the respondents had to prove that they are entitled to possession of the said portion of land in respect of which notices were issued under Section 9 of the LA Act. The



demarcation of the land would have settled the boundaries of the appellant property and the respondents property...”

19. Additional written submissions dated 10th April, 2024 filed on behalf of the appellant is on record.

20. The respondent no. 1 has filed its written submissions dated 13th April, 2024 refuting the case of the appellant. Relevant paragraphs of the same are as under:

“...1. That the Present appeal filed by the appellant is liable to be dismissed on the ground of Concealment of facts from this Hon'ble Court and Principles of Res- Judicata. It is submitted to this Hon'ble Court that the appellant well aware of the facts and records of the previous Round of Litigations filed the present suit with malafide intention in order to unnecessarily harass the Defendant University, which is a well-known and reputed Central University and is being funded by the Government of India through MHRD.

2. That the Present appeal is bad in law and barred by the principles of Res- Judicata and liable to be dismissed with a heavy cost. The appellant is trying to unearth issues that have been settled and have attained finality being backed by the Order of the Hon'ble Supreme Court of India.

3. That it is submitted to this Hon'ble Court that the Respondent University initiated Eviction Proceedings in the year 1997 against 104 encroachers that were encroaching on the Respondent University's property. It is further submitted that the Ld. Estate officer while deciding the matter, issued a list of encroachers on Khasra No.68 measuring 24 Bighas & 11 Biswas which is the property of the Respondent University. The appellant or their predecessors were encroaching on the land given by the Government of Uttar Pradesh to the Respondent University.



4. It is submitted that the Estate Officer after perusing the documents and after considering the arguments held that **"I find that there is nothing on record or in possession of the Respondents to prove their stand of ownership and lack of production of any credible evidence in support does not justify their claim over the land in dispute being lawful and legal. Whereas, from the documentary and oral evidence led by Jamia, it is categorically proved that the premier in dispute falls in the land meaning 24 bighar & 11 Biswas of Kharra No. 68 Min which is owned by the University and that the Respondents are in illegal and unauthorized occupation of the same."**

5. It is submitted that the appellant on being aggrieved by the order of the Estate Officer dated 29.03.2006 preferred an appeal in the Court of Additional District Judge. The Hon'ble District Court upheld the Order passed by the Ld. Estate Officer and dismissed the appeal. The Appellant on not being unsatisfied with the order of the Hon'ble District Court filed Civil Writ Petitions bearing No. 49929, 4930 & 5292 of 2007 taking a plea of Adverse Possession and prescription and also raising a plea that the Estate Officer had no jurisdiction to pass eviction order.

6. It is submitted that the Ld. Single Judge while dismissing the plea of the appellant in the writ petition, this Hon'ble Court held that **"the Possession of the land always continued with the Respondent University and did not vest with the Central Government under section 16 or 17(2) of the Land Acquisition Act, 1984 and accordingly the Estate Officer was competent to initiate eviction proceedings and pass eviction orders."** The Ld. Single Judge of the Hon'ble High Court of Delhi, further held **"The Petitioners have not established that the Central Government as per records had taken possession, actual or symbolic of the property. In these circumstances it is not possible to accept the contentions of the Petitioners that possession of the Land**



was taken over by the Central Government and land was not property of the Respondent University."

7. It is submitted that the appellant even after getting dismissed by the Ld. Single Judge of the Hon'ble High Court preferred a Letters Patent Appeals bearing no. 117,118 and 120 of 2010. The appellant relied upon the possession report before the Hon'ble Division Bench of this court. The Hon'ble Division bench noted in the Judgement dated 14/03/2011 that "we find that a large number of person are attempting to use the same very possession report dt. 25.1.1953 to justify their occupation of the land belonging to Jamia Millia Islamia. 11 Writ Petitions of various dates filed by various persons, the lead matter being W.P.O No. 37772/2002 Mohd. Shamim vs Jamia Millia Islamia & Anr was dismissed by a learned single Judge on 31.08.2004". Finally deciding on the matter the Ld. Division bench held that " in what manner have the Appellants have asserted title, what acts have been done by them to assert title, none have been pleaded and indeed none exist..... we find no merit in the appeals which are dismissed."

8. It is submitted that the appellant aggrieved by the order of the Division Bench preferred an appeal to the Hon'ble Supreme Court of India through SLP No. 10028/2011 which was also dismissed by the Hon'ble Supreme Court.

9. That it is pertinent to mention here that the Respondent University followed all due procedures while evicting the appellant who was an illegal occupant on the property of the Respondent University i.e. Khasra 68 min admeasuring 24 bighas 11 Biswas.

10. That the Respondent University filed a Writ Petition in the Hon'ble High Court of Delhi bearing no. 9436/2015 for executing the order of the Estate officer. While disposing of the Writ Petition, the Hon'ble High Court of Delhi noted down in the Order dated 19.01.2016 in the above-named



Writ Petition that the Respondent University will be provided all necessary police force to execute the order of the Estate Officer.

11. It is pertinent to mention here that the appellant and several other encroachers preferred a Writ Petition bearing no. 745/2016 to stop the Respondent University from dispossessing the appellant and other encroachers, the Ld. Single Judge held that "Eviction order passed by the estate officer has attained finality. It is further submitted that demarcation of the subject land was done during the proceedings before the Estate officer, in as much as same as already been noted in Para 6 of the Writ Petition bearing no. 4929/2007 decided on 22 January 2010. It is further submitted that the eviction orders are being executed in respect of the 24 Bighas 11 Biswas of Land forming part of the Khasra No. 68 in Village Okhla, New Delhi in terms of the demarcation report".

12. That the appellant and other encroachers desperate to stop the respondent University filed another Writ Petition bearing No. 2263/2016 raising a new plea that the Order passed by the Estate Officer under the Public Premises Act 1971 was without Jurisdiction. The Hon'ble Court while disposing of the Writ Petition in its order dated 05.09.2016 held "The order of the Single Judge was assailed in LPA No. 117/2010. On 14.03.2011, the order passed by the Single Judge was upheld. The claim for adverse possession and title by prescription had again been rejected. The last Court in SLP (C) No.9872/2011 on 29.07.2011 had refused to interfere with the order of the High Court. All this is matter of record. The hierarchy of Courts right up to the Supreme Court on the case of the petitioners setting up a claim by adverse possession had been rejected. At the cost of repetition, this litigation has progress from the year 2006 up to 2011 when the order was finally passed before the Supreme Court. The petitioners were not satisfied with this long drawn out process. They chose to file the present writ



petition which was in March, 2016 Arguments have been addressed in detail and a large part of the precious time of this Court has been wasted in hearing and considering the submissions of the learned counsel for the petitioners. This Court notes with pain that this aspect which is now sought to be pleaded is implicitly covered by his earlier round of litigation which had also challenged the order of Estate Officer dated 29.03.2006 and which at the cost of repetition was endorsed not only by the Additional District Judge, Single Judge of this Court, Division Bench of this Court but again by the Apex Court. This round of litigation has culminated in the year 2011. The second round of litigation has started in 2016 assailing the same order of the Estate Officer dated 29.03.2006. The principle of res-judicata and constructive res-judicata as contained in Section 11 (Explanation IV) of the Code of Civil Procedure is clearly applicable in the instant case. Section 11 clearly states that an argument which could have been raised and which was not raised at the relevant time is impliedly barred. The principle of resjudicata is applicable in a Writ Court also. This petition is nothing but an abuse of the process of the Court. It is a wastage of the precious time of this Court. Dismissed with costs quantified at Rs.25,000/-." It is clearly evident in the light of the contentions raised above that the appellant and similar encroachers have filed vexatious Suit/ Writs which is nothing but an abuse of process further causing harassment to the Respondent University.

13. It submitted that the appellant and other encroachers again filed a suit for declaration, Possession, Damages, and permanent injunction against the Respondent University and the LD. A.D.J dismissed the suit and held that "There is absolutely no merit in the plaint and no cause of action on the basis of the averments and the documents filed along with the plaint as well as the documents filed subsequently and after taking note of the averments in the written submissions. The suit is accordingly held to be without



cause of action under order 7 rule 11 CPC on the basis of the plaint and the admitted documents filed by the plaintiff himself including the aforesaid demarcation plan on record. The suit is liable to dismissed under order 12 rule 6 CPC also taking note of the contentious and clarifications given by the defendant supported with the documents. The suit stands dismissed accordingly.” Hence the present appeal before this Hon'ble court.

14. That it is submitted to this Hon'ble Court that the Plaintiff is trying to disturb a settled issue that has attained finality by bringing mala fide cases into the process and further causing abuse of the process of law. Further, a lot of Government Money is being spent to defend such false suits/ Writs as stated above Respondent University is a Central University which funded by the Central Government.

15. It is submitted that the demarcation report has been placed before the Court where it was stated that the subject property belongs to the University Jamia Millia Islamia. It is further submitted that the demarcation report was never challenged by the appellant at any point in time, therefore it is an undisputed fact that the subject property belongs to Jamia Millia Islamia University.

17.... It is submitted that there was no cause of action to conduct a trial, there is nothing on record to show that any issues are made out to conduct the trial prima facie and therefore the suit was dismissed rightly by the Ld. Trial court.

18. It is therefore requested that the present appeal is liable to be dismissed on account of the principle of res- judicata and it is prayed to this Hon'ble Court that a heavy cost should be imposed on the appellant for filing such suits and appeals before this Hon'ble Court and wasting precious time of this Hon'ble Court which otherwise could have been utilized towards meetings the end of Justice...”



SUBMISSIONS

(on behalf of the appellant)

21. Learned counsel appearing on behalf of the appellant submitted that the impugned judgment is bad in law as the same has been filed without taking into consideration the entire facts and circumstances of the case.

22. It is submitted that as per the revenue records (jamabandi) of the year 1908-09, the total land in Khasra No. 68 admeasures to 125 Bigha and was recorded in name of 'Sarkar Daulatmadar', and the possession was given to the Agra Canal Department.

23. It is submitted that in the year 1955, as per the true translated copy of the Intkal No. 515, the Government of U.P. orally gifted the aforesaid land admeasuring 24 Bigha and 11 Biswa to the respondent and the same was mutated vide the said Intkal. Thus, out of 125 Bigha, the gift was in respect of only 24 Bigha 11 Biswa and rest of the land i.e., 100 Bigha 8 Biswa remained with Sarkar Daulatmadar.

24. It is submitted that thereafter, in the year 1983, vide an Award dated 24th February, 1984 bearing No. 95/1983-84, another 24 Bigha 12 Biswa was acquired out of 100 Bigha 6 Biswa of land by the respondent university. Hence, the land which remained as Sarkar Daulatmadar and in possession of the Government was 75 Bigha 17 Biswa.

25. It is submitted that in terms of the above factual position, the respondent university is entitled for land admeasuring 24 Bigha 11 Biswa which was gifted to it by the U.P. Government and 24 Bigha 12 Biswa which was acquired through an Award under the Land Acquisition Act,



1894, i.e. total land which ought to be in possession of the respondent should be only 49 Bigha 3 Biswa.

26. It is submitted that as stated above, as of today, the respondent university is in possession of land more than to which it is entitled to. Further, in view of the factual position as explained above, the proceedings initiated by the respondent university under Public Premises (Eviction of Unauthorised Occupants) Act, 1958 were illegal, *mala fide* and *non-est* in the eyes of law as the respondent university is claiming more land than to which they are entitled to.

27. It is submitted that the Government of U. P. filed an original Suit bearing No. 2 of 2014 before the Hon'ble Supreme Court in the year 2014 against the Government of NCT of Delhi when the Government of NCT of Delhi issued fresh acquisition proceedings for 100 Bigha 8 Biswa in Khasra No. 68/3 (1-09) and 68/4 (98-19). If that is the position then the acquisition which was carried out in the year 1983 was in respect of the land which was gifted in the year 1955 as the total area of Khasra No. 68 was only 125 Bigha. Moreover, when the acquisition in year 1983 was done for another 24 Bigha 12 Biswa, then, by no stretch of imagination, the acquisition in the year 2014 could be carried for 100 Bigha 8 Biswa of land.

28. It is submitted that the Hon'ble Supreme Court has granted stay in respect of the acquisition which was being carried out in respect of 100 Bigha 8 Biswa of land and the same is continuing till date, meaning thereby, there was no acquisition in respect of Khasra No. 68 and the land which was in possession of respondent university was only 24 Bigha 12 Biswa and have to confine themselves to the same.



29. It is submitted that the appellant is in occupation of the land since the year 1982-83 which was not acquired for the planned development of Delhi. However, without assigning any reason, the respondents demolished the properties of the appellant alleging that they are encroachers of the property belonging to the respondent university.

30. It is submitted that since the appellant was in occupation of the properties belonging to him and when the acquisition was initiated in the year 2014, the appellant received notices under Section 9 of the Land Acquisition Act, 1894. This establishes the fact that the land over which the appellant was sitting was not an acquired land and not the property of the respondent university but belongs to the Government of NCT of Delhi. This also demonstrates that the appellant was not the encroacher as alleged by the respondent university. Once it is established that the appellant was not an encroacher then the appellant could not have been forcefully removed him from possession without due procedure of law and therefore, is entitled to compensation.

31. It is submitted that the appellant, left with no other remedy, filed a civil suit for adjudication of his right as he is constitutionally protected and cannot be left remediless.

32. It is submitted that the learned Trial Court whilst dismissing the appellant's civil suit had relied upon the findings of the Estate Officer regarding the encroachment over their land whereas the fact is that the respondent university is only entitled to 24 Bigha 12 Biswa which was acquired vide award No. 95/83-84 dated 24th February, 1984 or at the most to 49 Bigha 3 Biswa as the appellant was not the encroacher since the land was not acquired.



33. It is submitted that while dismissing the suit, the learned Trial Court had observed that in between Khasra No. 68/3 and Khasra No. 68/4, there is a chunk of Khasra No. 68/1 and the demolition was carried out in those Khasra Nos. and not Khasra No.68/3. The learned Trial Court failed to appreciate that the respondents are entitled to only 24 Bigha 12 Biswa and also failed to appreciate that the appellant was in possession of Khasra No. 68/3 as is reflected from the notices issued under Section 9 of the Land Acquisition Act, 1894.

34. It is submitted that the learned Trial Court failed to appreciate that there is stay of acquisition in respect of 100 Bigha 8 Biswa. Hence, in order to settle the boundaries for 24 Bigha 12 Biswa which was acquired vide Award bearing No. 95/1983-84, the respondent university has to get the demarcation done through the revenue authorities and cannot merely say that the demolition was done in Khasra No. 68/2. Further, no notice of demarcation was ever served upon the appellant.

35. It is submitted that the learned Trial Court failed to appreciate that non filing of the site plan does not invalidate the suit as the same is an inadvertent mistake which could be corrected before leading evidence. However, the learned Trial Court came to the conclusion that they have failed to identify their property before leading the evidence and the same is bad in law.

36. It is submitted that the learned Trial Court failed to appreciate that in order to do justice to the parties, evidence is required to be taken and for that purpose, the respondent university had to prove that they are entitled to possession of the said portion of land in respect of which notices were issued under Section 9 of the Land Acquisition Act, 1894.



37. It is submitted that the appellant could not be faulted for the land not having been portioned and identified prior to demolition by the respondents.

38. It is submitted that the learned Trial Court wrongly allowed the application of the respondent university under Order XII Rule 6 of the CPC even though the suit is not hit by *res judicata* and no reasons were given for the said determination.

39. It is submitted that the appellant has obtained information on 28th November, 2023 under the Right to Information Act, 2005 wherein the respondent university had provided a copy of Minutes of Meeting (Regulation No. 5) of Majlis-Muntazimah (Executive Council) held on 31st May, 2004.

40. It is further submitted that in the said Minutes of Meeting, it was clearly recorded that for out of court settlement, the Jamia's land falling in Khasra No. 68, which was in dispute with one Mr. Wali Mohammed, was agreed to be exchanged with the land bearing Khasra No. 127 (Lal Dora) owned by the respondent university by virtue of wakf. This shows that there was existence of the property of many persons which has been illegally demolished.

41. It is submitted that the appellant has also obtained information dated 12th January, 2024 under Right to Information Act, 2005 concerning Award bearing No. 95/1983-84 wherein it is clearly recorded that Khasra No. 68/1 (4-01), 68/2 (20-11) was acquired by the Government of NCT of Delhi, and possession of Khasra No. 68/2 min (13-2) was handed over on 14th March, 1984.



42. It is submitted that as per the Award bearing No. 09/14-15, though Khasra No. 68/ 3(1-09) and 68/4 (98-19) were notified but the same were not considered in the said Award due to the *status quo* order passed in the original Suit No. 2 of 2014. It is further submitted that the Government of NCT of Delhi has issued notices to the appellant under Section 9 in respect of the said notification as the appellant was sitting in the said land.

43. It is further submitted that Order VII Rule 3 of the CPC does not require any particular plot number to be provided with the plaint with respect to the property constituting the subject matter. Reliance is placed upon order dated 10th October, 2022 passed by the Coordinate Bench of this Court in *Azad Singh v. Priya Vart Tyagi*¹.

44. Therefore, in view of the foregoing submissions, it is submitted that the instant appeal may be allowed and the impugned judgment be set aside.

(on behalf of the respondents)

45. *Per Contra*, learned counsel appearing on behalf of the respondent university vehemently opposed the present appeal submitting to the effect that the same is liable to be dismissed on the grounds of concealment of facts and principles of *res judicata*.

46. Learned counsel appearing on behalf of the respondent university submitted that the appellant was well aware of the previous rounds of litigation and yet filed the aforesaid civil suit with *mala fide* intentions to harass the respondent.

47. It is submitted that the issue being adjudicated upon has attained

¹ CM(M) 1058/2022, order dated 10th October, 2022



finality before the Hon'ble Supreme Court of India and is thus, barred by the principle of *res judicata*.

48. It is further submitted that the respondent university followed the due procedure while evicting the appellant who was an illegal occupant on the property of the University, i.e, Khasra No. 68 min.

49. It is submitted that the demarcation report states that the subject property belongs to the respondent university and the said report was never challenged by the appellant at any point of time during the various rounds of litigation.

50. It is submitted that the respondent university initiated eviction proceedings in the year 1997 against 104 encroachers that were encroaching on the respondent university's property. It is further submitted that the Estate officer, while deciding the matter, issued a list of encroachers on Khasra No.68 admeasuring 24 Bighas and 11 Biswas which is the property of the respondent university. The appellant or their predecessors were encroaching on the land given by the Government of Uttar Pradesh to the respondent university.

51. It is submitted that the Estate Officer after perusing the documents and after considering the arguments held that *"I find that there is nothing on record or in possession of the Respondents to prove their stand of ownership and lack of production of any credible evidence in support does not justify their claim over the land in dispute being lawful and legal. Whereas, from the documentary and oral evidence led by Jamia, it is categorically proved that the premises in dispute falls in the land meaning 24 Bigha & 11 Biswas of Khasra No. 68 Min which is owned by the University and that the Respondents are in illegal and unauthorized*



occupation of the same."

52. It is submitted that the appellant is trying to disturb a settled issue that has attained finality by bringing *mala fide* cases into the process and further causing abuse of the process of law. Further, a lot of government money is being spent to defend such false suits/writs as the respondent university is a central university funded by the central government.

53. It is submitted that the demarcation report had been placed before the learned Trial Court wherein it was stated that the subject property belongs to the Jamia Millia Islamia University. It is further submitted that the demarcation report was never challenged by the appellant at any point of time, therefore, it is an undisputed fact that the subject property belongs to Jamia Millia Islamia University.

54. In light of the foregoing submissions, it is submitted that the instant appeal may be dismissed with costs.

SCHEME OF THE ACT

55. The issues in the instant appeal pertain to the applicability of doctrine of *res judicata* and to determine whether there exists any cause of action in the plaint filed by the appellant before the learned Trial Court. In order to understand the jurisprudence behind the same, this Court deems it imperative to state the settled position of law.

56. The doctrine of *res judicata* has played a pivotal role in guiding the judicial system. The said doctrine implies that no Court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently



raised, and has been heard and finally decided by such Court. The principle of *res judicata* is embodied in Section 11 of the CPC. The relevant portion of the said provision is as under:

“...11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right



shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.].”

57. Section 11 of the CPC envisages the doctrine of *res judicata* or the rule of inclusiveness of a judgment, as to the points decided either of facts, or of law, or of fact and law in every subsequent suit between the same parties. The said doctrine is based on the below mentioned roman maxims:

- a. *Nemo debet bis vexari pro una et eadem causa* – no man should be vexed twice for the same cause;
- b. *interest reipublicae ut sit finis litium* – it is in the interest of the State that there should be an end to a litigation;
- c. *res judicata pro veritate occipitur* – a judicial decision must be accepted as correct.

58. The aforesaid doctrine puts an end to the judicial process, prohibiting subsequent appeals, new proceedings and disputing clearly



established facts. In ***Canara Bank v. N.G. Subbaraya Setty***², the Hon'ble Supreme Court, while reiterating the interpretation doctrine of *res judicata* made in an earlier judgment titled ***Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy***³, enunciated the scope and applicability of *res judicata*. The following was observed:

“...5. *Res judicata* is, thus, a doctrine of fundamental importance in our legal system, though it is stated to belong to the realm of procedural law, being statutorily embodied in Section 11 of the Code of Civil Procedure, 1908. However, it is not a mere technical doctrine, but it is fundamental in our legal system that there be an end to all litigation, this being the public policy of Indian law. The obverse side of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the court takes place. However, there are certain notable exceptions to the application of the doctrine. One well-known exception is that the doctrine cannot impart finality to an erroneous decision on the jurisdiction of a court. Likewise, an erroneous judgment on a question of law, which sanctions something that is illegal, also cannot be allowed to operate as *res judicata*. This case is concerned with the application of the last mentioned exception to the rule of *res judicata*. The brief facts necessary to appreciate the applicability of the said exception to the doctrine of *res judicata* are as follows. In the present case, Respondent 1 availed a credit facility from the petitioner Bank sometime in 2001. Respondent 2, his son, stood as a guarantor for repayment of the said facility. As Respondent 1 defaulted in repayment of a sum of Rs 53,49,970.22, the petitioner Bank filed OA No. 440 of 2002 before the DRT, Bangalore, against Respondents 1 and 2. Respondent 1, in order to repay the dues of the Bank, signed an assignment deed dated 8-10-2003 with the Chief Manager, Basavanagudi Branch, Bangalore for assignment

² (2018) 16 SCC 228

³ (1970) 1 SCC 613



of the trade mark “EENADU” in respect of agarbathis (incense sticks) on certain terms and conditions.

24. If the period of limitation for filing an appeal has not yet expired or has just expired, the court hearing the second proceeding can very well ask the party who has lost the first round whether he intends to appeal the aforesaid judgment. If the answer is yes, then it would be prudent to first adjourn the second proceeding and then stay the aforesaid proceedings, after the appeal has been filed, to await the outcome of the appeal in the first proceeding. If, however, a sufficiently long period has elapsed after limitation has expired, and no appeal has yet been filed in the first proceeding, the court hearing the second proceeding would be justified in treating the first proceeding as res judicata. No hard-and-fast rule can be applied. The entire fact circumstance in each case must be looked at before deciding whether to proceed with the second proceeding on the basis of res judicata or to adjourn and/or stay the second proceeding to await the outcome in the first proceeding. Many factors have to be considered before exercising this discretion — for example, the fact that the appeal against the first judgment is grossly belated; or that the said appeal would, in the ordinary course, be heard after many years in the first proceeding; or, the fact that third-party rights have intervened, thereby making it unlikely that delay would be condoned in the appeal in the first proceeding. As has been stated, the judicious use of the weapon of stay would, in many cases, obviate a court of first instance in the second proceeding treating a matter as res judicata only to find that by the time the appeal has reached the hearing stage against the said judgment in the second proceeding, the res becomes sub judice again because of condonation of delay and the consequent hearing of the appeal in the first proceeding. This would result in setting aside the trial court judgment in the second proceeding, and a de novo hearing on merits in the second proceeding commencing on remand, thereby



wasting the court's time and dragging the parties into a second round of litigation on the merits of the case.

26. In Mathura Prasad [Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613] , a question arose as to whether an erroneous judgment on the jurisdiction of the Small Cause Court in relation to a proceeding arising out of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 would be res judicata. The view [Dossibai N.B. Jeejeebhoy v. Hingoo Manohar Missar Civil Revision Application No. 233 of 1955, decided on 28-9-1955 (Bom)] expressed by the High Court was overruled in Dossibai N.B. Jeejeebhoy v. Khemchand Gorumal [Dossibai N.B. Jeejeebhoy v. Khemchand Gorumal, (1962) 3 SCR 928 : AIR 1966 SC 1939] by this Court in 1962, by which time the trial Judge and the High Court of Bombay rejected an application filed by the appellant for an order determining standard rent of the premises. This Court laid down: (Mathura Prasad case [Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613] , SCC pp. 617-18, paras 5-11)

“5. But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent court on a matter in issue may be res judicata in another proceeding between the same parties: the “matter in issue” may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be re-opened between



them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties: Tarini Charan Bhattacharya case [Tarini Charan Bhattacharya v. Kedar Nath Haldar, 1928 SCC OnLine Cal 172 : AIR 1928 Cal 777] . It is obvious that the matter in issue in a subsequent proceeding is not the



same as in the previous proceeding, because the law interpreted is different.

8. In a case relating to levy of tax a decision valuing property or determining liability to tax in a different taxable period or event is binding only in that period or event, and is not binding in the subsequent years, and therefore the rule of res judicata has no application: See Broken Hill Proprietary Co. Ltd. v. Municipal Council of Broken Hill [Broken Hill Proprietary Co. Ltd. v. Municipal Council of Broken Hill, 1926 AC 94 (PC)] .

9. A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. Rankin, C.J., observed in Tarini Charan Bhattacharya case [Tarini Charan Bhattacharya v. Kedar Nath Haldar, 1928 SCC OnLine Cal 172 : AIR 1928 Cal 777] : (SCC OnLine Cal)

‘... The object of the doctrine of res judicata is not to fasten upon parties special principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend; and to prevent this ascertainment from becoming nugatory by precluding the parties from reopening or recontesting that which has been finally decided.’

10. A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.



11. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression “the matter in issue” in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.”

(emphasis supplied)...

59. Upon perusal of the above extracts of the judgment, it is made out that in determining the question of application of the rule of *res judicata*, the Court does not have to be concerned with the correctness or illegality of the earlier judgment, rather, the Courts are supposed to look into the matter in issue. It is to be determined that if the issue is purely of facts which has been decided in an earlier proceeding by a competent Court,



then in a subsequent litigation between the same parties, the said issue would be regarded as finally decided and cannot be reopened.

60. It is also observed by this Court that during the course of concluding the applicability of doctrine of *res judicata*, a mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. However, if the decision is on a question of law, i.e., the interpretation of a statute, it will be *res judicata* in a subsequent proceeding between the same parties where the cause of action is the same, for the expression ‘the matter in issue’ in Section 11 of the CPC means the issue litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Yet, it is pertinent to mention here that the law settled by the Hon’ble Supreme Court also states that if the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, the party affected shall not be precluded from challenging the validity of that order under the doctrine of *res judicata*, as the rule of procedure cannot supersede the law of the land.

61. Further, the Hon’ble Supreme Court in ***Prem Kishore v. Brahm Prakash***⁴ analysed cases dealing with rejection of plaint on grounds of *res judicata* and culled out the principles that a Court is required to keep in mind before deciding an application under Order VII Rule 11(d) which talks about rejection of a plaint being barred by the law. The relevant portion is reproduced herewith:

⁴ 2023 SCC OnLine SC 356



“..37. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) of the CPC can be summarized as follows:—

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the ‘previous suit’ is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the ‘previous suit’, such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused...”

62. The provision under Order VII Rule 11 of the CPC provide for rejection of a plaint. The scope of judicial inquiry in an application under Order VII Rule 11 of the CPC is very limited to examining the statement in the plaint. Under Order VII Rule 11 of the CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not



corrected within the time as fixed by the Court, where insufficient Court fee is paid and the additional Court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of the CPC would be on consideration of the principles laid down by the said provision and the Hon'ble Supreme Court.

63. In *T. Arivandandam v. T.V. Satyapal*⁵, the Hon'ble Supreme Court enunciated upon the aspect of rejection of the plaint and observed that if on a meaningful, not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under Order VII Rule 11 of the CPC to adjudicate upon the grounds mentioned therein. The provision concerning dismissal of a suit on the basis of cause of action is enshrined under sub-section (a) which states that the plaint shall be rejected where it does not disclose a cause of action. In *T. Arivandandam v. T.V. Satyapal*, (*Supra*), the Hon'ble Supreme Court has succinctly elaborated upon the duty of a Court under Order VII Rule 11 of the CPC especially when clever drafting has created an illusion of there being a cause of action. The relevant extract is reproduced herewith:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned

⁵ (1977) 4 SCC 467



Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi: “It is dangerous to be too good.”..”

64. It is well settled that the Court, while deciding such an application, must have due regard only to the statements made in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement.

65. Since the relevant provision of law has been discussed in the preceding paragraphs, this Court shall now proceed to decide the disputes raised in the instant petition.

ANALYSIS AND FINDINGS

66. The matter was heard at length with arguments advanced by the learned counsel on both the sides. This Court has perused the entire material on record and has also considered the factual scenario of the matter, judicial pronouncements relied upon by the parties and pleadings presented by the learned counsel for the parties.



67. It is the case of the appellant that the learned Trial Court erred in passing the impugned judgment where the civil suit filed by him seeking declaration, possession, damages and permanent injunction was dismissed under Order VII Rule 11 of the CPC for lack of cause of action as well as for admissions made by the respondent under order XII Rule 6 of the CPC. It has been submitted that as per the revenue records, i.e., the jamabandi of the year 1908-09, the total land in Khasra No. 68 adm. 125 Bighas was recorded in the name of 'Sarkar Daulatmadar' and the possession was given to the Agra Canal Department. Thereafter, in the year 1955, the Government of U.P. orally gifted the aforesaid land admeasuring 24 Bigha and 11 Biswa to the respondent and the same was mutated vide the said Intkal. Thus, out of 125 Bigha, the gift was in respect of only 24 Bigha 11 Biswa and rest of the land i.e., 100 Bigha 8 Biswa remained with Sarkar Daulatmadar.

68. It has been further submitted that in the year 1983, *vide* an Award dated 24th February, 1984 bearing No. 95/1983-84, another 24 Bigha 12 Biswa was acquired out of 100 Bigha 6 Biswa of land by the respondent university. Hence, the land which remained as Sarkar Daulatmadar and in possession of the Government was 75 Bigha 17 Biswa.

69. Therefore, in terms of the above factual position, the respondent university is merely entitled for land admeasuring 24 Bigha 11 Biswa which was gifted to it by the U.P. Government and 24 Bigha 12 Biswa which was acquired through the above said Award, i.e. total land which ought to be in possession of the respondent should be only 49 Bigha 3 Biswa. Furthermore, the respondent university, being in possession of the land more than to what it is entitled to, is bad in law, and thus,



proceedings initiated by the respondent university under Public Premises (Eviction of Unauthorised Occupants) Act, 1958 were illegal and *mala fide*.

70. At last, it has been submitted on behalf of the appellant that the learned Trial Court wrongly dismissed the civil suit due to lack of cause of action as Order VII Rule 3 of the CPC does not require any particular plot number to be provided with the plaint with respect to the property constituting the subject matter. In view of the above contentions, the appellant prays that the impugned judgment may be set aside.

71. In rival submissions, the respondent no. 1 vehemently opposed the instant appeal submitting to the effect that the appellant, well aware of the facts and records of the previous round of litigations, filed the present suit with *mala fide* intentions in order to unnecessarily harass the respondent university. The appellant is trying to unearth issues that have been settled and have attained finality being backed by the order of the Hon'ble Supreme Court. The respondent contends that the present appeal may be dismissed at the threshold since the same is barred by the doctrine of *res judicata*.

72. At this stage, it is imperative to peruse the impugned judgment. The relevant paragraphs of the impugned common judgment are as follows:

“...1. Vide this common judgment, the suit for declaration, possession, damages and permanent injunction filed by the plaintiff against the defendants, is being disposed.

2. Arguments was heard in this case on the aspect of there being no cause of action in favour of plaintiffs in view of two



series of litigations by the plaintiffs. There are four connected suits raising same point and counsel for the plaintiff tendered his arguments and also filed written submissions in the suit of Nawab Vs. Jamia Milia Islamia and Drs and submitted that his arguments in respect of all the four suits remain the same. By this common order all the four suits are being decided on the point of cause of action.

3. In the suits of Nawab, Bilquish and Sherdin, the suit property is stated to be (04) biswa i.e. 202 sq. yards in each of the three suits and defendant is stated to have been entitled only to 111, 152 and 155.5 Sq yards respectively but had dispossessed them while carrying out demolition from the entire 202 Sq. yards and therefore they filed the suit seeking declaration as to wrongful dispossession from the balance area which will come to 91 sq. yards, 50 sq. yards and 46.5 sq. yards respectively in these suits. So far the suit of Abdul Hamid is concerned plaintiff in that suit claimed his ownership of 06 Biswa i.e. 302 sq. yards and entitlement of Jamia Milia Islamia to 223 sq yards only and accordingly by inference alleged wrongful dispossession from 79 sq. yards at the time of carrying out demolition by Jamia Milia. They all alleged that their suit property is situated in Khasra no. 68 Min in village Okhla Tehsil Defence Colony District South East New Delhi.

4. It is important to note that there has been one series of litigation through the proceedings of the Estate Officer and another through various writ petition and both attained finality till Hon'ble Supreme Court. It is also important to note that the plea of plaintiffs for demarcation before carrying out demolition by Jamia milia and taking possession accordingly was rejected by Hon'ble High Court of Delhi vide order dated 07.11.2012.

5. During course of arguments, it was submitted by the counsel for the defendant no. 1 that plaintiff has no where stated as to in which part of Khasra number the alleged land



was falling. Filing of writ petition by State of UP, grant of status quo in the same by the Hon'ble supreme court, withdrawal of the said writ petition and filing of the suit by State of UP against government of NCT of Delhi before Supreme Court was mentioned, during arguments. Various contentions of plaintiff including land being Shamlat Deh, owner being Government of UP not Jamia Milia were negated. Contention of they being stating in land of Jamia Milia was also negated.

6. It is important to note that the suit by State of UP related to Khasra No. 67/2, 68/3 and 68/4. Counsel for the parties were heard on this aspect on 03.07.2019 and the respective submissions were recorded. In the said suit, the contempt petition was filed by the plaintiff herein alleging taking over possession of the suit land of the present suit but the same was dismissed vide order dated 05.01.2018. It was submitted by the counsel for the defendant no. 1 that Hon'ble Supreme Court was satisfied that claim of Jamia Milia pertains to Khasra No. 68/ 2 in which the stay was not granted by the Hon'ble Supreme Court and suit before Hon'ble Supreme Court filed by the State of UP against Government of NCT related to Khasra No. 67/2, 68/3 and 68/ 4 only. On inquiry, counsel for the plaintiff submitted that plaintiff was presently not in possession of any land and he was pressing his claim beyond 111, 152, 155.5 and 223 square yards in the respective cases of plaintiff(s) as noted above as he could not claim 111, 152. 155.5 and 223 square yards in view of finality having been attained in respect of the same.

7. Receiving of notice of compensation in respect of acquisition of land is raised in support of the area being four biswa ie. 202 sq. yards or 6 biswa i.e. 302 sq. yards as noted above.

This is blatant attempt to raise the issues where none exists.



8. It is important to note that nothing was stated in the plaint as to the alleged portion falling in Khasra No. 68/1, 68/2, 68/3 and 68/4 or any further division thereof and it was simply stated in the plaint that it is falling in Khasra No. 68 Min. but the written submissions filed by the counsel for the plaintiff on page no. 3 stated that plaintiffs was not in unauthorized possession of any portion of land in 24 Bigha . 11 Bishwa when the demolition of his house took place on July 2016 and the demolition which took place was in Khasra no. 68/3 where the plaintiff had his house and that the area of land was 1 bigha and 9 biswaha in Khasra No. 68/3.

Reference to that aspect clearly reflects that land if any of plaintiff on such documentary claim belonged to the Khasra Number different from Khasra No. 68/2 where demolition was carried out and factum of unauthorized occupation to the extent of 111 sq. yards, 152 sq. 155.5 sq yards and 223 sq yards in respect of the cases of Nawab, Bilquis, Sherdin and Abdul Hameed respectively was noted by the Ld. Estate Officer and the said aspect attained finality upto the Supreme Court but taking benefit of reference in the notice for compensation to four biswa i.e., 202 sq yards or 6 biswa ie. 302 sq. yards plaintiff mischievously are alleging dispossession from the land more than what Jamia Milia was entitled to.

9. It is important to note that Khasra No. 68/3 is in litigation between State of UP and Government of NCT in the suit filed by state of UP before Hon'ble Supreme Court of India along with Khasra NO. 67/ 2 and Khasra No. 68/4.

10. During course of the arguments, demarcation plan (Superimpose Survey plan on Khasra Plan) which related to total station survey for Khasra No. 67, 68 at Okhla, New Delhi filed on record by the counsel for the plaintiff was referred. It is important to note that Khasra No. 68/3 comes on the top, below that is Khasra No. 68/1, below 68/1 on left hand side alongwith the road is Khasra No. 68/2 and on the



other side is Khasra No. 68/4/1 and below that, is Khasra No. 68/4/2. This clearly shows that Khasra No. 68/2 and 68/3 are not continuous/ contiguous and there is the entire chunk of four bigha one bishwa of Khasra no. 68/1 between Khasra No. 68/3 and 68/2, so there is no question of defendant, Jamia Millia Islamia having carried out the "demolition of the excess area of plaintiff as demolition was argued to have been carried out in 68/ 2 and its boundary was lying with 68/1 and 68/4 and the possibility, if any, of intrusion while carrying out demolition would be in those Khasras i.e. Khasra no. 68 /1 and 68/ 4 and there is no occasion for any demolition in Khasra No. 68/3 for which even stay is operating.

11. Not only that the plaintiff did not state in which Khasra Number his house was, but also did not state about the dimension of his houses and its boundaries.

12. It is for the plaintiff to have known these details and to have raised these aspects in detail in earlier proceedings also before demolition was carried out by the Jamia Millia Islamia, of the same for removal of the alleged encroachment after finality of finding of the Estate Officer of Jamia Millia Islamia upto Hon'ble Supreme Court of India.

13. Merely stating that on the basis of reference in some document, his area will be 'X' and encroachment was found to be for area 'Y' which is less than 'X' and therefore area 'X -Y', has to be with him will not suffice. This logic ignores the fact that whether the actual area was 'X' or 'Y' and merely because on some paper it remained 'X', plaintiff cannot claim to be entitled for possession of 'X' - 'Y' i.e. the remaining area.

14. It also ignores the fact whether plaintiff(s) on the basis of some documents in respect of some portion of land is (are) sitting at different portion of land and it is therefore only that he (they) did not furnish such details as to its exact



location vis-a-viz 68 II or 68/2 or 681 3 or 68/4 and did not furnish even such scale site plan come forward.

15. It was for the plaintiff in the earlier litigation to aver to, essentially establish, by filing scaled site plain with detailed dimension and boundaries that the actual area in his possession was 'X' and encroachment was only in respect of 'Y'.

16. Far more easier for plaintiff was to have handed over the encroached area be demolished on his own and retaining the alleged excess area with him.

17. Juxtaposing such scaled Site plan on demarcation plan/superimpose survey plan or any other document forming basis of finding of encroachment of 'X' area and clarifying portion of alleged excess area by filing such site plan for not getting it demolished was necessary. Not doing so is not only fatal to the case set up in the plaint in as much as it is lacking material cause of action but is reflecting of malafide intent of plaintiff in raking up the same issue again and again without anything material being put forth at any point of time.

18. Instead of doing so, plaintiff(s) unsuccessfully tried to stall the process of carrying out demolition by seeking demarcation which was rejected by Hon'ble High Court.

It is with evil design that the plaintiff is raking up frivolous claim and stating in written arguments that his portion is falling in Khasra No. 68/3 knowing that he cannot claim it if it falls in Khasra No. 68/2 or 68/1 pertaining to Jamia Milia.

19. There is absolutely no merit in the plaint and no cause of action on the basis of the averments and the documents filed alongwith the plaint as well as the documents filed subsequently and after taking note of the averments in the



written submissions. The suit is accordingly held to be without cause of action under order 7 rule 11 CPC on the basis of plaint and the admitted documents filed by plaintiff himself including the aforesaid demarcation plan on record. The suit is liable to dismissed under order 12 rule 6 CPC also taking note of the contentious and clarifications given by the defendant supported with the documents. The suit stands dismissed accordingly....”

73. Upon perusal of the same, it is made out that four connected suits were dismissed by the learned Trial Court due to want of cause of action in view of the two series of litigation by the appellants having attained finality. The learned Court below observed that there is no question of defendant, i.e., the respondent university having carried out the demolition of the excess area as the said demolition was carried out in Khasra No. 68/2, which is contiguous to Khasra Nos. 68/1 and 68/4. Hence, it was observed that Khasra No. 68/2 and 68/3 are not contiguous as per the report.

74. It was further observed by the learned Trial Court that it was for the plaintiff, i.e., the appellant herein to establish that the area was in their possession by filing scaled site plan with detailed dimensions and boundaries, especially when the plaint did not advert to any specific portion of Khasra 68 Min.

75. The learned Court below then observed that the appellants are raking up frivolous claims without bringing forth anything on record to justify that they were entitled to the excess portion that the respondent herein is said to have wrongly acquired.

76. The precise submissions of the appellants before the learned Court below were that they had been evicted from the entire plot by respondent



university whereas the encroachment was only partial and hence, the possession is liable to be restored for the remaining portion. However, the learned Trial Court referred to the extracts of the plaint that stated the cause of action and found that the same do not make out any case as alleged by the plaintiffs therein. The relevant extracts of the plaint concerning the cause of action are as follows:

“(i) That the cause of action arose on July, 2016 when the defendants carried out the demolition and dispossessed the Plaintiff from the entire land area admeasuring (0-4) biswas i.e. 202 square yards.

(ii) That the cause of action is still continuing as the defendants have failed to restore back the remaining 50 square yards of land or to compensate the plaintiff for the loss caused to the property of the plaintiff.

(iii) That the cause of action has arisen as the defendants failed to appreciate the fact that the land in question was under acquisition and the LAC has admitted the possession of the plaintiff.

(iv) That the cause of action is still continuing as the defendants have failed to compensate to the plaintiff for the loss caused to the property of the plaintiff....”

77. The learned Court below observed that it was for the appellants to establish that the area was in their possession by filing a scaled site plan with detailed dimensions and boundaries especially when the plaint did not advert to any specific portion of Khasra 68 Min.

78. In light of the above findings, the learned Trial Court held the suit to be without cause of action and dismissed the same under Order VII Rule 11 of the CPC and Order XII Rule 6 of the CPC.



79. In the instant batch of appeals, the respondent University has raised a preliminary objection to the effect that all the appeals are barred by the doctrine of *res judicata* and therefore, the same may be dismissed

80. At this juncture, it is appropriate to look at the *lis* between the parties to see if the principle of *res judicata* will be applicable to the case of the parties herein, with reference to the issues *qua* the property in question.

81. In order to do the same, this Court finds it prudent to refer to the order dated 29th March, 2006 passed by the Estate Officer; order dated 22nd January, 2010 passed in W.P (C) no. 4929/2007, 4930/2007 and 5292/2007; order dated 14th March, 2011 passed in LPA No. 117/118 and 120/2010; order dated 29th July, 2011 passed in SLP (C) no. 10028/2011; order dated 7th November, 2012 passed in W.P (C) no. 735/2012; order dated 19th January, 2016 passed in W.P (C) no. 9436/2015; order dated 8th March, 2016 passed in W.P (C) no. 745/2016 and order dated 5th September, 2016 passed in W.P (C) no. 2263/2016.

82. Relevant extracts of Estate Officer's Order dated 29th March, 2006 vide which the appellants/encroachers were evicted is as under:

“...Mr Mohd Imran, Asstt Registrar (Property) deposed as Jamia's witness (PW-2) and filed an affidavit by way of Examination-in-Chief (Exhibit PW-2/A). The deponent stated that Shri AMohd alias Leelu, Shri Ghayasuddin, Shri Mawasi, Shri Ghulam Mohd & Sirajuddin, Shri Rashidan, Shri Kallu, Shri Sherdin & Subadin, Shri Rehmani, Akhara through Qamul Islam alias Sirajuddin, Shri Chandu, Shri Gulsheri, Shri Zahoor, Shri Nawab, Shri Sharfuddin, Smt Wahidan, Shri Ashu, Shri Umardin, Shri Ballu, Shri Babuddin, Smt Alma, Shri Juma, Shri Najjar, Shri Shahabuddin, Shri Shahabuddin, Shri Mohd Rais, Shri



Rashid and Shri Deenu are in unauthorized occupation of the Public Premises as shown in Exhibits PW-2/1 to PW-2/27 falling in 24 Bighas & 11 Biswas of Khasra No. 68, Village Okhla which is owned by Jamia. This land was given to Jamia by the U.P. Govt vide Govt Grant Letter dated 14.11.1950 alongwith the Schedule/Plan, a copy of which is marked as Exhibit PW-2/28. After the transfer of the said land, the name of Jamia was duly entered in the Revenue Records and the "Mutation" was carried out vide No. 515. The copies of Jamabandi, KhasraGirdawari and Mutation are marked as Exhibit PW-2/29, Exhibit PW-2/30 and Exhibit PW-2/30 respectively. The Aks Shajra of village Okhla is marked as Exhibit PW-2/33. The said land was acquired by the Govt but since the part of it measuring 11 Bighas & 2 Biswas was built-up possession of 13 Bighas & 9 Biswas of the land could only be taken by the LAC. Even the possession of land measuring 13 Bighas & 9 Biswas which had been taken over by the LAC was restored to Jamia by the DDA on 19.11.1999. The letter issued by the DDA in this regard is marked as Exhibit PW-2/34 and the possession letter is marked as Exhibit PW-2/35. The Aks Shajra annexed with the possession letter is marked as Exhibit PW-2/36 and Exhibit PW-2/37. proceedings the Hon'ble High Court of Delhi in Civil Writ Petition No.3772/2002 had directed vide se documents clearly established the absolute ownership of the university on the land measuring 24 Bighas & 11 Biswas falling in Khasra No. 68 min. During the pendency of the present Order dated 7.7.2004 to the Revenue Department to carry out the demarcation of Khasra No. 68 because the persons facing the eviction proceedings under the P.P. Act were raising objection that the said khasra had not benduly demarcated. Under the above said order of the Hon'ble High Court, the demarcation report was prepared by the District Commissioner, District South Delhi. A photocopy of the demarcation report is marked as Exhibit PW-2/38. Thus, the objection raised by the respondents that the land in dispute has not been demarcated stands nullified. The deponent has emphasized that the disputed premises was



duly demarcated in 1950 when the same was gifted as Govt Grant to Jamia then demarcation was again carried out before the mutation, it was also carried out when DD.. handed-over the possession of the part of the land to Jamia and now it has been carried out again by the Revenue Department under the orders of the Hon'ble High Court of Delhi. A copy of the final order dated 31.6.2004 passed by the High Court of Delhi in the above mentioned Writ Petition is marked as Exhibit PW-2/39 vide which the petition of the objectors who were occupying the Jamia's land in Khasra No. 68 measuring 24 Bighas & 11 Biswas, Village Okhla, New Delhi was dismissed. The deponent has also stated that the petitioner in the aforesaid Writ Petition, also filed a Review Application seeking review of the order passed by the Hon'ble High Court on the basis of an alleged "Possession Report" of Plot-B handed over to Jamia by U.P. Govt at the time of execution of the gift deed. The petitioners contended that since according to this document when possession of the land was handed-over by U.P. Govt to Jamia, some portion of land was not physically handed-over though it formed the part of the agreement by which the rights of the land was transferred. The Hon'ble High Court has held that since the petitioners were in occupation of the land without any authority of law, the alleged possession report will not change the merits of the decision and dismissed the review petition. A copy of the order dated 24.11.2004 is marked as Exhibit PW-2/40. Consequent to the Hon'ble High Court of Delhi's order, the unauthorized occupants were evicted with the help of police and possession of the encroached land was taken over by Jamia. In the present case, the respondents are also relying on the above possession report and in view of the orders passed by the Hon'ble High Court and in view of the fact that the respondents are denying that they are in occupation of any portion of Jamia and measuring 24 Bighas & 11 Biswas in Khasra No. 68, the respondents cannot derive any advantage out of the same. The respondents have no right or title over the land in their possession and the same falls in the area



owned by Jamia in khasra No. 68 min as such they are unauthorized occupants and needs to be evicted. During the cross-examination, the deponent stated that the University is in possession of Jamabandi of 1961 and 1984. When asked why Jamabandi after 1984 has not been obtained, the deponent replied that need is not felt to obtain the same of later years. Jamia has KhasraGirdawari of 1980-81 and of the subsequent years. On being questioned, the witness replied that he is not in a position to comment whether the premises shown in Exhibit PW-2/5 is the same against which Jamia had filed a suit against Nazruddin. in 1971. Volunteered, at present Smt Rashidan is in possession of Jamia's land and notice has been issued for Exhibit PW-2/5. SmtRashidan is the wife of Nazruddin. Exhibit RW-14/P-4, pertains to the suit filed by Jamia against Shri Nazruddin. When the site plan marked Exhibit PW-2/1 which was part of Exhibit RW-14/P-4 and the site plan Exhibit PW-2/5 were shown together and the deponent was asked to compare and comment, he stated though the boundaries in both the site plans are the same but their measurements are different. The deponent also mentioned that Jamia's land was encroached sometime in 1980-81 and the property guards restrained the encroachers by checking them and filing complaints with Police but admitted not having filed any police complaint in the court. Jamia had prepared a list of 107 encroachers in 1996 which is with the University. The name of Mukandi was also there and his case has been decided. Mukandi's house was adjacent to Nazru/Rashidan. The demarcation of Khasra No. 68 was done four times. On being questioned, the deponent replied that without having carried out demarcation it was not possible to gift the land, mutate it on Jamia's name and restore the possession of the land to Jamia in 1999. There was no possession report with the Govt Grant letter and the land handed-over to Jamia was shown as Plot 'A' & 'B' in the Schedule and the boundaries were shown in Aks Shajra. At the time of Govt Grant there were no encroachments on this land. Though the site plans Exhibit PW-2/1 to PW-2/27 were not prepared in his presence but he



is well aware of them and these were verified from revenue officials. The witness against stressed that there were no encroachments at the time the Govt Grant was made in 1950. The deponent denied that there was a list of encroachers with the Govt Grant letter and Jamia did not produce the same intentionally as the names of present objectors appear in the same. The deponent admitted that there are encroachments existing on the portion of Khasra No. 68 owned by the Central Govt. The witness did not subscribe to the view that staff quarters of U.P. Govt. Irrigation Deptt are on the land gifted to Jamia. When persistently asked that Staff Quarters of Irrigation Deptt have never been demarcated the witness replied that whole of Khasra No. 68 has been demarcated many times and the latest demarcation was done on the orders of the Hon'ble High Court of Delhi in 2004 and the same has been in respect of entire area of 125 Bighas of Khasra No. 68. The witness was not aware whether the present objectors were served with notice prior to demarcation in 2004 but stated that some of them were present at the time of demarcation as the deponent himself was there and had seen them. The revenue officials had carried out the demarcation which was also signed by the petitioners who had sought the demarcation of Khasra No. 68. The KhasraGirdawari Exhibit PW-2/30 is correct which shows Jamia in occupation of Khasra No. 68 (24 Bighas & 11 Biswas). The P.P. Act proceedings have been initiated against encroachers occupying about 5 Bighas of Jamia's land in Khasra No. 68. The witness did not agree that the objectors have now become the owners by way of adverse possession as they were in occupation of their premises ever prior to the Govt Grant. The deponent also did not agree that name of Jamia recorded in respect of land or the mutation entry in the name of Jamia recorded in respect of land or the mutation entry in the name of Jamia does not pertain to land under the occupation of the objectors. It is correct that the land which is under occupation of the objectors was not restored to Jamia by the DDA after the acquisition Volunteered, as



possession of the same was never taken-over by the DDA at any point of time. The witness did not agree that Jamia never claimed the ownership of land in dispute earlier.

Both the parties agreed to file written arguments and the same were filed.

During the final arguments, the learned counsel for the respondent emphasized the premises in possession of the respondents fall in that portion of Khasra No. 68 which measures 89 Bighas & 2 Biswas and is shown in the narnae of Govt of India. The premises have been inherited from their ancestors who were in occupation of the same even prior to 1950 when the land was gifted to Jamia by the U.P. Govt. The learned counsel for the respondents has also highlighted the "Possession Report" according to which the land in possession of various occupants was not handed-over by the Agra Canal Deptt to Jamia and as such the University never acquired the right of its ownership. Besides, the counsel stressed, the respondents have become owners of the premises in their possession by law of limitation (Adverse possession). The respondents are not unauthorized occupants and Jamia cannot claim the land in their possession.

The learned counsel for the petitioner University drew attention of the court to the Govt Grant letter, Jamabandi, Khasra Girdawari, Aks Shizra of village Okhla, Aks Shizra Bandobasti and Mutation carried out vide No. 515 and Naksha Nazri filed by Jamia which are valid proofs of ownership of land measuring 24 Bighas & 11 Biswas of Khasra No. 68 which was gifted to Jamia by the U.P. Govt. The petitioner's counsel was emphatic that the respondents have failed to show any document in support of their claim of long possession dating back to 1950, thus were unable to prove their adverse possession. The demarcation of Khasra No. 68 has also been carried out on orders of Hon'ble High Court of Delhi and report prepared and presented before the



said court. Jamia's counsel also drew attention of the court to Civil Writ Petition No. 3772/2002 and Order of the Hon'ble High Court dated 7.7.2004 dismissing the said Writ Petition and also to the Review Application seeking review of the order dated 24.11.2004. This clearly shows that the respondents are in unauthorized occupation of land in Khasra No. 68 which is owned by Jamia.

Having carefully examined the documents, the evidence and the arguments and after having given my thoughtful consideration to submissions made on behalf of both the parties, I am decidedly of the opinion that the respondents have failed to produce any documentary evidence to prove their lawful possession over the premises in dispute. While the respondents have claimed that the disputed premises in their possession are located in 89 Bighas and 2 Biswas portion of Khasra No. 68 recorded in the name of Govt of India, the two independent witnesses who deposed on behalf of them, have stated that the land in possession of the respondents is "Shamlatdeh" and thus they are the owners of the same. In reality no "Shamlatdeh" exists in Khasra No. 68. All site plans pertaining to the disputed premises filed by Jamia have been testified by the respondents. The respondents have also not been able to establish the fact that their ancestors were in possession of the premises in question since 1950 and thus have failed to substantiate the pleading of adverse possession by evidence. Besides, the respondents do not become owners of the property illegally and unauthorizedly possessed. The mere fact that the respondents are in uninterrupted possession for several years and in that way have acquire absolute right and title is not enough to raise such a plea. Long possession is not necessarily adverse possession. In this connection, Hon'ble High Court of Delhi, Judgement DRJ 1992(24) 532 refers. In yet another judgement reported as 2000 (56) DRJ (SUPPL) 662, the Hon'ble Delhi High Court has held that claim of adverse possession for period of over 30 years was not proved in evidence and in such a case Hon'ble Court upheld



the eviction order passed under the P.P. Act. The Hon'ble High Court of Delhi, vide 1995(33) DRU 371, has held the burden of showing that the occupant is an authorized occupant of the premises is on the occupant. In CM(M) No.335/98, it was held by the Hon'ble Delhi High Court that the Jamia is the owner of land 24 Bighas & 11 Biswas falling in Khasra No. 68, Village Okhla, New Delhi and the same is a public premises falling in the portion of land of Jamia was upheld. The latest demarcation report filed by Jamia clearly shows that the disputed premises occupied by the respondents are located within the boundaries of land measuring 24 Bighas & 11 Biswas of Khasra No. 68 min owned by the University. As desired by the Hon'ble High Court of Delhi, the possession report dated 25.1.1953 filed by the respondent was also considered at the time of disposal of the case. The detailed examination of this document revealed that the names of the alleged encroachers and the exact location of each part of the Plot 'B' cannot be determined. Time period of more than two years between the preparation of the alleged possession report and the mutation order provides ample indication to suggest that the alleged encroachers had been removed before the mutation was carried out on 23.08.1955. Therefore, there is no legal sanctity of this document and the respondents have placed misconceived reliance on the same. During the pendency of the present proceedings the Hon'ble High Court of Delhi in Civil Writ No. 3772/02 titled as "Mohd Shamim Vs Jamia Millia Islamia & Another" alongwith bunch of various other writ petitions directed the Tehsildar attached with SDM, Saket to carry out the demarcation of Khasra No. 68. The petitioners had claimed that Jamia Millia Islamia is not competent to initiate the proceedings against them since the land under their occupation belongs to the U.P. Govt and not to the university. After considering the latest demarcation report filed by the Tehsildar before the said Hon'ble High Court, the court came to the conclusion that the demarcation has been correctly carried out at the site and that the petitioners



have been sitting on the land of the Jamia. The Hon'ble High Court of Delhi has held vide its judgement dated 31.08.2004 that, "the petitioners are raising these objections even though they are encroachers on the land and have no title deeds. In fact, there could not have been any title deeds since the khasra in question was owned by U.P. Govt and the part of it was given to the respondent university. The petitioners are seeking to continue the unauthorised possession only on the plea that they are enrichers on the land of the UP Government and not of the respondent university and thus Estate Officer of the respondent cannot have any jurisdiction in the matter.

I find that there is nothing on record or in possession of the respondents to prove their stand of ownership and lack of production of any credible evidence in support does not justify their claim over the land in dispute being lawful and legal. Whereas, from the documentary and oral evidence led by Jamia, it is categorically proved that the premises in dispute fall in the land measuring 24 Bighas & 11 Biswas of Khasra No. 68 min which is owned by the University and that the respondents are in illegal and unauthorized occupation of the same.

Now, therefore, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, I hereby order that the respondents namely Shri Ali Mohd alias Leelu, Shri Ghayasuddin, Shri Mawasi, Shri Ghulam Mohd. & Sirajuddin, Smt. Rashidan, Shri Kallu, Shri Sherdin&Subadin, Smt. Rehmani, Akhara through Qamrul Islam alias Chanda, Shri Gulshan, Shri Zahoor, Shri Nawab, Shri Sharfuddin, Smt. Wahidan, Shri Ashu, Shri Umardin, Shri Ballu, Shri Babuddin, Smt. Alma, Shri Juma, Shri Najjar, Shri Shahabuddin, Shri Shahabuddin, Shri Mohd. Rais, Shri Rashid and Shri ,.:' Deenu and all persons who may be in occupation of the said premises or any part thereof more particularly described in the Schedule below,



to vacate the same within 30 days of the date of publication of this order. In the event of their refusal or failure to comply with this order within the period specified above, the said respondents and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary...”

83. Upon perusal of the above extracts of the order dated 22nd January, 2006, it is made out that the respondent university had filed a suit for eviction of the appellant along with others from the suit property. In the case presented, one Mr. Mohd Imran, the Assistant Registrar (Property) at Jamia Millia Islamia, testified as a witness (PW-2) and tendered an affidavit as part of his Examination-in-Chief (Exhibit PW-2/A).

84. He asserted that numerous individuals, including Shri Ali Mohd alias Leelu and others, were occupying public premises unlawfully within Khasra No. 68, Village Okhla, owned by Jamia Millia Islamia. This land was granted to Jamia Milia Islamia by the Government of Uttar Pradesh on 14th November, 1950, as per the Government Grant Letter (Exhibit PW-2/28).

85. It was further asserted by the respondent university that the transfer of ownership was duly recorded in the Revenue Records under Mutation No. 515 and the said assertion was supported with the documents marked as Exhibits PW-2/29 to PW-2/37. The respondent university further stated that the land, which was partially built-up, was initially acquired by the government, but the Delhi Development Authority restored the possession of 13 Bighas & 9 Biswas to Jamia in the year 1999 and in a Civil Writ Petition bearing No.3772/2002, the High Court of Delhi ordered the demarcation of the disputed Khasra No. 68, confirming



Jamia's ownership over 24 Bighas and 11 Biswas.

86. During the cross-examination, Mr. Imran stated that Jamia possessed Jamabandi records from the year 1961 and 1984, and Khasra Girdawari from the year 1980-81 onwards, which show Jamia's continuous occupation of Khasra No. 68. He denied the allegations that there was a list of encroachers accompanying the government grant, stating that no such list was intentionally withheld. He emphasized that the land had been demarcated multiple times, including under the High Court's orders in the year 2004, and maintained that no staff quarters of the U.P. Government's Irrigation Department existed on Jamia's land. The witness clarified that the land under the unauthorized occupants' possession was not restored by the DDA because it had never been taken over. He denied that the respondents' occupation constituted adverse possession, asserting that Jamia consistently claimed ownership over the disputed land.

87. Thereafter, both the parties, i.e., the encroachers as well as the university filed their written arguments. The respondents' (encroachers/appellants) counsel argued that their clients' premises fell within an area owned by the Government of India, inherited from their ancestors who occupied it before the year 1950. They contended that the land in their possession was not handed over to Jamia and that they had acquired ownership through adverse possession. Conversely, Jamia's counsel highlighted various documents, including the Government Grant Letter, Jamabandi, Khasra Girdawari, and other records, proving Jamia's ownership of 24 Bighas & 11 Biswas. They argued that the respondents failed to demonstrate any documentary evidence supporting their claim of



long-term possession or adverse possession.

88. After considering all evidence and arguments, the Estate Officer concluded that the respondents/appellants could not prove lawful possession or adverse possession of the disputed premises. The demarcation reports and various records confirmed that the land in dispute fell within the boundaries of Jamia's property.

89. Consequently, the presiding officer ordered the respondents to vacate the premises within 30 days, failing which they would be evicted by force if necessary.

90. The above said order of Estate Officer was challenged by the present appellants along with other encroachers before a Civil Court which dismissed the appellants' claim vide order dated 6th July, 2007 and the said order of the Civil Court was also challenged in W.P (C) No. 4929/2007, 4930/2007 and 5292/2007 before this Court wherein order dated 22nd January, 2010 was passed dismissing the above petitions, relevant extracts of which are as under:

"..10. Learned counsel for the petitioners submitted that eviction proceedings were initiated in the year 1997 and as the land was denotified under the Land Acquisition Act in 1999, it is submitted that proceedings before the Estate Officer under the Act at the time of initiation were void and without jurisdiction. It is submitted that the land in question was not "public premises" under the Act. A similar contention has been considered by a learned Single Judge of this Court in C.M.(M) Nos. 335-336/1988 titled Shri Abdul Hannan (decd.) through LRs versus Shri S.N, Aggarwal & another decided on 23rd April, 2001. Learned Single judge referred to Sections 16 and 17 of the Land Acquisition Act, 1894 and after referring to several judgments held that till possession of the land is taken by the Government/State, the



title of the land continues to vest with the original owner. After examining the facts it was held that the possession of the land always continued with the respondent-University and did not vest with the Central Government.

11. In view of the aforesaid discussion, I do not find any merit in the present Writ Petitions. Learned counsel for the petitioners submits that due to extreme cold weather in Delhi, interim protection may be granted to the petitioners for some time. Learned counsel for the respondent-University fairly states that they shall not take any coercive steps to execute the orders passed by the Estate Officer and upheld by the learned Additional District judge for a period of one month...”

91. A perusal of the above shows that the petitioners in W.P (C) No. 4929/2007, 4930/2007 and 5292/2007, i.e., the present appellants along with the others had challenged the order dated 6th July 2007 passed by the Additional District Judge, and the Estate Officer's decision under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was upheld leading to dismissal of the writs filed by the petitioners. The petitioners therein contended that they had become the owners of the land through adverse possession, having constructed buildings on it.

92. Both the Estate Officer and the Additional District Judge extensively examined this claim. Whilst adjudicating, it was observed that for adverse possession to be valid, the claimant must show continuous, exclusive, open, and hostile possession against the true owner for over 12 years. However, possession alone does not suffice if it is permissive or without an intent to possess. The Courts held that the petitioners failed to demonstrate the necessary hostile intent or animus required for adverse possession, as they initially claimed title through



inheritance rather than acknowledging another party as the true owner. The onus was on the petitioners to prove their occupation was hostile to the true owner, but they failed to do so. They had initially claimed to hold the land through inheritance, inconsistent with their later claim of adverse possession. For a valid adverse possession claim, it must be shown that the true owner knew of the hostile possession for the entire statutory period.

93. The university, on the other hand, provided a registered gift deed dated 14th November 1950, stating the transfer of the land to them, while the petitioners could not produce any document proving their title.

94. It was noted that in a previous case (Writ Petition (C) No. 3772/2002), the Court had already addressed the issue of land demarcation and upheld the eviction orders against other occupants of the same land. The demarcation report, accepted by the Court, confirmed that the land occupied by the petitioners was part of the 24 bighas and 11 Biswas transferred to the university. The petitioners' claim that the notice under Section 4 of the above said Act was void due to lack of specific area details was rejected based on this demarcation. The petitioners also referred to a civil suit from the year 1980, which was withdrawn in the year 1985, arguing that the university had admitted their possession since the year 1971. However, the above said argument of the encroachers was dismissed, as the Appellate Court had overturned the Trial Court's decision that allowed the possession claim, and the university's subsequent legal actions were consistent with their ownership claim. The university had initially dropped proceedings due to a land acquisition



award, which was later de-notified, making their continued possession and eviction actions valid.

95. The petitioners' arguments with respect to the applicability of *res judicata* and Order II Rule 2 of the CPC were dismissed, as the previous suits were not decided on merits and the relevant legal context had changed after the university became a Central University in the year 1998. Their contention that the eviction proceedings initiated in the year 1997 were void was also rejected. The Court confirmed that possession was never transferred to the government under the Land Acquisition Act, 1894 so the land remained university's property, and the Estate Officer was within jurisdiction to initiate eviction.

96. The Court, finding no merit in the petitions, dismissed the same. However, based on a fair concession by the respondent-University's counsel, it granted interim protection against eviction for one month due to the severe cold weather in Delhi.

97. The above said order dated 22nd January, 2010 was challenged in LPA No. 117/118 and 120/2010 and the Division Bench of this Court dismissed the same vide order dated 14th March, 2011, relevant extracts of the same are as follows:

"..21. It is true that proceedings were initiated under the PP Act in the year 1997, but relevant would it be to state that post 1970, till the year 1980, it was the appellants who had, under Court orders prevented Jamia Milia Islamia to regain possession and thus the appellants cannot claim benefit of said period. In the year 1988 Jamia Milia Islamia was declared a Central University. We do not go into the issue whether period of adverse possession qua the immovable property of Jamia Milia would be 30 years or 12 years, but



would simply highlight the fact that there is no evidence that after the appellants lost on the issue of title, they did any act asserting title to the subject land. We highlight that mere reiteration of possession is neither here nor there. It assumes importance to note that the appellants have simply opened the doors of their houses to trespass upon abutting land belonging to Jamia Milia Islamia, possession whereof is being sought to be recovered by Jamia Milia Islamia. As per the appellants, a fact brought out in para 8 of the reply filed to the eviction notice, the land in dispute is vacant land abutting their houses.

22. In what manner have the appellants asserted title; what acts have been done by them to assert title, none have been pleaded and indeed none exists.

23. It is a simple case of an owner of a building putting a hedge or a boundary wall on the abutting land and probably putting a chair or two thereon to bask in the sun. We doubt whether this would constitute an act of hostile title.

24. An issue of adverse possession is a blended question of fact and law and we find that the learned Single Judge has decided the issue within the confines of writ jurisdiction.

25. We find no merit in the appeals which are dismissed...”

98. The order of the Estate Officer was upheld even by the Hon’ble Supreme Court vide order dated 29th July, 2011 passed in SLP (C) No. 10028/2011, relevant extracts of which are as under:

“..7. In view of the aforesaid, directions sought in this application are not required to be issued as eviction order has been passed in earlier round of litigation while relying upon demarcation of subject land, which has attained finality and the factum of demarcation of subject land already stands noted in paragraph No. 6 in W.P.(C) o.



4929/2007 decided on 22nd January, 2010 upholding eviction order against occupants on the subject land. Accordingly, this application is disposed of while making it clear that respondents are entitled to take possession of 24 Bighas 11 Biswas land from Khasra No. 68 in Village – Okhla, New Delhi, as eviction proceedings in respect of the aforesaid land has attained finality..”

99. Subsequently, the appellants filed another writ petition bearing W.P (C) No. 735/2012 before this Court apprehending that the university would initiate execution proceedings which would result in eviction and demolition and this Court, vide order dated 7th November, 2012, upheld the directions of eviction and observed as under:

“...1. Writ petition of applicants/ petitioners was withdrawn by them on 14th February, 2012, as the first respondent had stated that applicants/petitioners are not occupying 24 bighas and 11 biswas of land in Khasra No. 68 of Village- Okhla, New Delhi (hereinafter referred to as subject land). Apprehending that respondents in pursuance to execution of Estate Officer’s order in respect of subject land, knowingly or unknowingly may wrongly demolish the construction over applicant’s/petitioner’s land and take its possession, the instant application has been filed to seek a direction to respondents to first earmark the land on which possession is being sought to be taken by respondents in pursuance to Notice of 27th October, 2012.

3. It is the case of applicants/petitioners that they had received Notices under Section 9 of Land Acquisition Act, 1891 (Annexures- P-8 to P-11) of October, 2011, which obviously indicates that possession of applicants/petitioners in Khasra No. 68 is on the area in this Khasra number which is subject matter of acquisition and applicants/ petitioners



cannot possibly be on the portion of Khasra No. 68 in respect of which eviction proceedings have attained finality.

4. It is the assertion of learned counsel for first respondent that even if applicants/petitioners are found to be in possession of any portion of subject land, the portion of Khasra No. 68, in respect of which eviction proceedings have attained finality, still they are not entitled to any kind of protection now in these proceedings.

5. According to learned counsel for applicants/ petitioners, the instant application has been filed only to ensure that respondents while taking possession of the subject land in Khasra No. 68, they do not dislodge the applicants/ petitioners from the portion of Khasra No. 68, in respect of which acquisition proceedings is sub-judice.

6. At this stage, learned counsel for first respondent maintains that there is no question of respondents taking possession of land measuring 1 Bigha and 9 Biswas in Khasra No. 68/3 and 98 Bighas and 19 Biswas of land in Khasra No. 68/4, as the same is subject matter of acquisition, while drawing attention to paragraph No.11 of its Affidavit of 13th February, 2012, which is as under:-

.....

7. In view of aforesaid, directions sought in this application are not required to be issued as eviction order has been passed in earlier round of litigation while relying upon demarcation of subject land, which has attained finality and the factum of demarcation of subject land already stands noted in paragraph No. 6 in W.P.(C) No. 4929/2007 decided on 22nd January, 2010 upholding eviction order against occupants on the subject land. Accordingly, this application is disposed of while making it clear that respondents are entitled to take possession of 24 Bighas 11 Biswas of land from Khasra No. 68 in Village- Okhla, New Delhi, as eviction proceedings in respect of the aforesaid land has attained finality...”



100. Perusal of the above states that the petitioners therein, i.e., the appellants herein along with the others, filed a petition seeking directions to the respondent university and government authorities to clearly mark the land subject to possession, as per the notice dated 27th October, 2012, to prevent wrongful demolition of constructions on their alleged land. This apprehension had arisen from the possibility that the respondents might mistakenly demolish their buildings during the execution of the Estate Officer's order regarding the disputed land.

101. In response, the learned counsel for the first respondent highlighted paragraph 11 of the respondent's clarificatory affidavit dated 13th February, 2012. This paragraph emphasized that the acquisition process for 214 Bighas and 19 Biswas of land in Khasra Nos. 67/2, 68/3, and 68/4 in Village Okhla, New Delhi, was suspended due to the Hon'ble Supreme Court's order dated 18th November, 2011.

102. The petitioners therein argued that they had received notices under Section 9 of the Land Acquisition Act, 1894, in October, 2011, indicating their possession in Khasra No. 68. They claimed that this area was under acquisition, and thus, they could not be in the portion of Khasra No. 68 where eviction proceedings had concluded. The respondents (including the university), however, maintained that even if the petitioners therein were occupying a portion of the land, they were not entitled to protection since eviction proceedings for the relevant portion had been finalized.

103. The petitioners' counsel clarified that the application was filed to ensure that the respondents did not evict them from portions of Khasra No. 68 which is still under judicial consideration. The respondent's counsel drawing attention again to paragraph 11 of their affidavit



confirmed that no action would be taken on the land currently under acquisition. This paragraph clarified the status and differentiation of the land areas involving 1 Bigha 9 Biswas in Khasra No. 68/3 and 98 Bighas 19 Biswas in Khasra No. 68/4 were under acquisition, while the 24 Bighas 11 Biswas donated to the respondent university in the year 1950 was separate and was subject to ongoing possession processes following the dismissal of related SLPs.

104. The Court, recognizing the demarcation already undertaken and finalized in previous litigation, concluded that no new directions were necessary. The eviction order from earlier litigation was upheld, confirming the respondents' right to take possession of the 24 Bighas 11 Biswas of land in Khasra No. 68, Village Okhla, as eviction proceedings had been finalized. Thus, the petition was disposed of, reaffirming the respondent university's right to the land specified in the eviction order.

105. Thereafter, vide order dated 19th January, 2016 passed in W.P (C) no. 9436/2015, this Court directed the government authorities to ensure police assistance for the facilitation of execution of the eviction order. Relevant portion is as follows:

"..Learned counsel for respondent nos. 2 to 4 on instructions, submits that police assistance would be provided to the Estate Officer to facilitate him to execute the order dated 29th March, 2005 immediately on receipt of intimation from him. Accordingly, it is agreed that the Estate Officer shall intimate the date and time to the SHO of concerned police station, when he will be executing the order. On receipt of such information SHO of the concerned police Station shall provide all necessary police force to the Estate Officer to enable him to execute the order.



*Writ petition is disposed of in the above terms.
Miscellaneous application is disposed of as infructuous...”*

106. In the interregnum, the appellants herein, along with the others, filed another writ petition bearing W.P (C) no. 745/2016 before this Court praying that their peaceful enjoyment may not be disturbed in pursuance of their peaceful enjoyment. Relevant extracts of the order dated 8th March, 2016 is reproduced herein below:

“..By this writ petition under Article 226 of the Constitution of India, petitioners have prayed that the respondents be directed not to disturb the peaceful enjoyment of their property, in pursuance of execution of eviction order dated 29th March, 2006 passed under THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971. Learned counsel for the respondent no.5 has appeared on service of advance notice. He submits that 24 Bighas 11 Biswas of land forming part of Khasra No. 68 in Village Okhla, New Delhi belongs to respondent no. 1. He further submits that the eviction order has already been passed by the Estate Officer in respect of the said land. Writ petition as well as special leave petition against the eviction order have already been dismissed. Eviction order passed by the Estate Officer has attained finality. It is further submitted that demarcation of the subject land was done during the proceedings before the Estate Officer, inasmuch as, the same has already been noted in para 6 of the writ petition bearing W.P. (C) No. 4929/2007 decided on 22nd January, 2020. It is further submitted that eviction orders are being executed in respect of 24 Bighas 11 Biswas of land forming part of Khasra No. 68 in Village Okhla, New Delhi in terms of the demarcation report. In these facts, in my view, petitioners cannot object to the execution of the eviction order in terms of the demarcation report...”



107. Upon a bare perusal of the above, it is revealed that the petitioners, i.e., the appellants herein along with the others sought to prevent the respondent university from disturbing their peaceful enjoyment of the property, following the execution of an eviction order dated 29th March, 2006, issued under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Court found that the petitioners' objections to the execution of the eviction order were unfounded. The eviction order, supported by the finality of the legal proceedings and the clear demarcation report, justified the respondents' actions. Thus, the petitioners' plea to prevent disturbance of their property were rejected against the legal and procedural validity of the eviction order and its execution.

108. Thereafter, the petitioners, i.e., the appellants herein along the others filed writ petition bearing W.P (C) No. 2263/2016 before this Court taking a fresh plea that the Estate Officer did not have the jurisdiction to pass the eviction order. The Court passed an order dated 5th September, 2016, dismissed the said petition. Relevant portion is as under:

“..The argument which has vehemently been urged before this Court today is that the ground now taken which is the ground that the Estate Officer lacks jurisdiction had not been pleaded earlier made. Arguments have been addressed in detail and a large part of the precious time of this Court has been wasted in hearing and considering the submissions of the learned counsel for the petitioners.

This Court notes with pain that this aspect which is now sought to be pleaded is implicitly covered by his earlier round of litigation which had also challenged the order of



Estate Officer dated 29.03.2006 and which at the cost of re-repetition was endorsed not only by the Additional District Judge, Single Judge of this Court, Division Bench of this Court but again by the Apex Court. This round of litigation has culminated in the year 2011. The second round of litigation has started in 2016 assailing the same order of the Estate Officer dated 29.03.2006. The principle of res-judicata and constructive res-judicata as contained in Section 11 (Explanation IV) of the Code of Civil Procedure is clearly applicable in the instant case. Section 11 clearly states that an argument which could have been raised and which was not raised at the relevant time is impliedly barred. The principle of res-judicata is applicable in a Writ Court also. This petition is nothing but an abuse of the process of the Court. It is a wastage of the precious time of this Court...”

109. Upon perusal of the above, it is made out that the three petitioners before the Court contended that the eviction order passed by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 on 29th March, 2006, was beyond the Estate Officer's jurisdiction. They argued that since this initial order was without jurisdiction, all subsequent orders, including those by the Appellate Body (Additional District Judge) passed on 6th July, 2007, the Single Judge of the High Court of Delhi in W.P. (C) No. 4949/2007 on 22nd January, 2010, the Division Bench of this Court in LPA No.117/2010 on 14th March, 2011, and the Hon'ble Supreme Court in SLP (C) No. 9872/2011 on 29th July, 2011, are null and void.

110. It was observed by the Court adjudicating petition bearing W.P (C) no. 2263/2016 that the record shows that the Estate Officer's order directed the eviction of the petitioners from Khasra No. 68, PS Jamia



Nagar, Okhla Village, New Delhi, deeming it public premises under the statute. This order made under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was upheld by the Additional District Judge on 6th July, 2007, who found no merit in the petitioners' claims of adverse and hostile possession. The High Court also rejected their claims in W.P. (C) Nos. 4929/2007, 4930/2007 & 5292/2007, and this rejection was confirmed by the Division Bench in LPA No. 117/2010 and the Hon'ble Supreme Court in SLP (C) No. 9872/2011.

111. Further, the petitioners, i.e., the appellants herein along with the others filed the writ petition bearing W.P (C) No. 2263/2016 in March 2016, after their previous litigation concluded in the year 2011. During these proceedings, they sought a stay on the execution of the eviction order, arguing under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013. However, this argument was withdrawn on 31st May, 2016. Despite this, the petitioners raised the same argument again, which the Court rejected, noting that the land in question had been de-notified in the year 1999, making the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 inapplicable.

112. It was also observed by the Court that the petitioners therein now argue that the Estate Officer's jurisdictional issue was not previously raised. The Court dismissed the said argument observing that this aspect had been implicitly covered in earlier litigations, which had affirmed the Estate Officer's order. The Court emphasized the principle of *res judicata*, which bars re-litigation of issues that could have been raised earlier. This principle, also applicable in writ petitions, suggests that the petitioners'



current arguments are barred since they were not raised during the initial litigation stages.

113. The Court expressed frustration with the petitioners' repeated litigation, describing it as an abuse of the judicial process and a waste of the Court's time. Consequently, the petition was dismissed with costs of Rs.25,000/-, reflecting the Court's disapproval of the petitioners' persistent and redundant legal challenges.

114. This Court is of the view that *res judicata* operates *in personam*, i.e., the matter in issue between the same parties in the former litigation. The law of *res judicata* concerns the same matter, where the correctness of the decision is normally immaterial and it does not matter whether the previous decision was right or wrong, unless the erroneous determination relates to the jurisdictional error.

115. *Firstly*, it is apposite to mention that order dated 29th March, 2006 passed by the Estate Officer mentions that the respondents therein (appellants in the instant appeal) had failed to produce any documentary evidence to prove their lawful possession over the disputed premises. *Secondly*, the plea of adverse possession was also rejected as the appellants were unable to substantiate possession by their ancestors. *Thirdly*, the Estate Officer refused to rely on the possession report dated 25th January, 1953, filed by the appellants as the exact names and locations of the plots could not be determined from its reading.

116. Being aggrieved by the above said order of the Estate Officer, the appellants preferred an appeal in the Court of Additional District Judge and the same was dismissed. Thereafter, the appeal was again dismissed by the Single Bench and Division Bench of this Court. It was further



appealed in the Hon'ble Supreme Court and the Hon'ble Court too was inclined to dismiss the appeal. Further, *vide* judgement dated 31st August, 2004, the Predecessor Bench of this Court had also observed that the appellants are encroachers on the land owned by the respondent university and have no title deeds to justify their possession.

117. Therefore, this Court is of the considered view that adjudication of the afore mentioned civil suits filed before the learned Trial Court would inevitably require it to first determine whether the appellants had any legal entitlement to the land in the first place, a question which has already attained finality before the Hon'ble Supreme Court *via* a series of litigation. This is also evident from the fact that the appellants have claimed for the issuance of a decree to declare that they were in possession of land measuring 202 sq. yards and that they have been wrongly dispossessed from land beyond 152 sq. yards, a distinction that has not been made by the Estate Officer by terming the entire possession illegal and holding that Khasra No. 68 Min (within which the appellants are claiming possession) vests with the University.

118. Applying the settled law concerning Order VII Rule 11 of the CPC to the facts at hand, this Court is of the considered opinion that even if the averments made in the plaint in its entirety are held to be correct, the appellant would not be entitled to a decree due to the principle of *res judicata* because the question concerning ownership and demarcation as well as the demolition has already attained finality.

119. Therefore, this Court is inclined to hold that the aforementioned civil suits as well as the instant batch of appeals are an attempt to evade



the application of *res judicata* by indirectly praying for the same relief that it did in the previous series of litigation.

120. This Court has given a careful consideration to the averments of the appellant and the respondent university and after considering the same, it is of the opinion that, in the disguise of suit for declaration, possession, damages and permanent injunction, the appellant is re-agitating the settled questions of facts as well as law by advancing contentions which have already been made before various forum of law numerous times. The issues raised in the aforementioned civil suits are a perfect example of how principle of *res judicata* is applicable in cases where the parties attempt to agitate already settled issues among the same parties.

CONCLUSION

121. This Court is of the view that the appellants have been unable to put forth any propositions to make out a case in their favour and this Court is inclined to uphold the preliminary objection taken by the respondent university that the grievances raised by the appellants are barred by the doctrine of *res judicata*.

122. This Court has given a detailed scrutiny to each of the contentions of the parties and has delved into the annexures filed on record, and upon perusal of the same, it is held that the issues which the appellants are agitating by way of the civil suits filed before the learned Trial Court as well as the instant appeals is barred under the doctrine of *res judicata*. Therefore, the appellants cannot be permitted to re-agitate the settled questions of law and facts as there is no illegality if any kind thereto.



123. It is observed by this Court that there is nothing on record to show that at any stage in the previous rounds of litigation that the *lis* between the parties was without argument and applying the settled law. Furthermore, the appellant has failed to show that the previous Courts including the Estate Officer, Civil Courts as well as this Court lacked the jurisdiction in passing any order. Therefore, the present case does not fall within the exclusion clause of the principle of *res judicata* where illegality in an earlier proceeding allows the latter Court to adjudicate the settled issues.

124. This Court is of the considered view that the learned Trial Court passed the impugned judgment after taking into account all the facts and circumstances as well as the settled position of law, and in the opinion of this Court, the impugned judgment is well reasoned.

125. In light of the above observations, it is held that there is no illegality in the impugned judgment and the appellants have been unable to show any question of law arising therein which merits the interference of this Court under its appellate jurisdiction.

126. Therefore, the impugned common judgment dated 23rd January, 2020 passed by the learned Additional District Judge – 06, South – East District, Saket Courts, New Delhi in civil suits bearing CS No. 1704/2018 titled as '*Bilquis v. Jamia Milia Islamia & Ors.*', CS No. 1703/2018 titled as '*Nawab v. Jamia Milia Islamia & Ors.*', CS No. 1702/2018 titled as '*Abdul Hameed & Ors. v. Jamia Milia Islamia & Ors.*', CS No. 1705/2018 titled as '*Sherdin & Ors. v. jamia Milia Islamia & Ors.*' is upheld.



2024:DHC:4285



127. In view of the foregoing discussions on facts as well as law, the present batch of appeals is liable to be dismissed being devoid of any merits.

128. Accordingly, the instant batch of Appeals stand dismissed along with the pending applications, if any.

129. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 27, 2024
DY/RYP/AV