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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 14877/2023, CM APPL. 59224/2023, CM APPL. 60698/2023 & CM APPL. 11523/2024****KUNAL KUMAR**

..... Petitioner

Through: Mr. Ashish Kapur & Mr. Anmol  
Kapur, Advs.  
M: 9811166800  
Email: [ashishkapur07@gmail.com](mailto:ashishkapur07@gmail.com)

versus

**GOVT OF NCT DELHI & ORS.**

..... Respondents

Through: Ms. Mehak Nakra, ASC (Civil) with  
Ms. Aditi Kapoor & Mr. Devansh,  
Advs. for GNCTD.  
M: 9871144582  
Email: [advmeahaknakra@gmail.com](mailto:advmeahaknakra@gmail.com)  
Ms. Shobhana Takiar, SC with Mr.  
Kuljeet Singh and Mr. Akshay Pratap  
Singh, Advocates for respondent/  
DDA.  
M: 9810962950  
Email: [shobhana\\_takiar@yahoo.com](mailto:shobhana_takiar@yahoo.com)  
[gaganmeet3@gmail.com](mailto:gaganmeet3@gmail.com)  
Ms. Badar Mahmood with  
Mr. Ammar Ahmad, Advocates for  
respondent/MCD.

**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****16.04.2024****MINI PUSHKARNA, J:**1. The present petition has been filed *inter alia* seeking directions to the



respondents to restrain them from carrying out demolition action at property bearing No. 30, Khasra No. 403/404/405/406/424, having 20 Kanals of land at Gaushala Road, Satbari, Mehrauli, New Delhi (“subject property/land”), from where the petitioner has been running a dog and animal shelter under the name and style of ‘Sai Jeev Ashram’.

2. The facts in brief as canvassed by the petitioner are as follows:

2.1 Petitioner is in occupation of the subject property, which comprises of rooms, sheds and shelter home for stray dogs and animals. The petitioner is running a shelter for stray dogs and animals from the subject property through a Trust, namely, Sai Jeev Ashram Trust.

2.2 The said Trust was started by his late father, Sh. Vishwant Kumar in the year 2003. He had occupied the subject property pursuant to Rent Agreement with its original owners, i.e., Sh. Jai Singh and Sh. Gaurav Dagar. Upon his demise, the petitioner stepped into his shoes and has been operating the Trust being the legal heir.

2.3 It is the case of the petitioner that the respondents without serving and adhering to the legal process of demolition, under the guise to widen the road, sought to take demolition action in the subject property under occupation of the petitioner.

2.4 The original owners of the subject property, i.e., Sh. Jai Singh and Sh. Gaurav Dagar filed a suit for recovery of possession, being *Civil Suit No. 593241/2016*, which was dismissed by judgment dated 30<sup>th</sup> September, 2019. The said judgment has been challenged by the owners of the subject property in appeal being *RCA No. 50/2019*, which is pending before the court of learned Additional District Judge (South District), Saket Courts, New Delhi.



2.5 On 10<sup>th</sup> November, 2023, the concerned Sub-Divisional Magistrate (“SDM”), District Magistrate (“DM”), Patwari and other officials of the area visited the area with police force and demolished structure near the subject property. They also visited the property of the petitioner and threatened to demolish the subject property. Thus, the present petition has been filed for restraining the respondents from carrying out any demolition on the subject property on the premise that any demolition sought to be taken without giving proper hearing to the petitioner, is illegal and arbitrary.

3. Learned counsel appearing for the petitioner submitted that the petitioner was occupying the subject property legally, being tenant in the said property. The subject property is a private property and, therefore, no action for demolition of the same can be taken by the respondents.

3.1 He further submitted that the petitioner being tenant in the property does not have the required documents of ownership of the subject property. The petitioner had requested the original land owners to provide him copy of the title documents, but they have not supplied any documents to the petitioner. In absence thereof, the petitioner herein may be granted some more time to collect the title documents of the subject property.

3.2 It is further submitted that the petitioner has already vacated the portion of the property which was falling in the alignment of the road. Therefore, the requirement of the respondents for widening the road in question stands satisfied.

3.3 In support of his submissions, learned counsel for the petitioner has relied upon the judgment dated 08<sup>th</sup> November, 2023 passed by Division Bench of this Court in *W.P.(C) No. 840/2023*, in the case of ***Dargha Najeebuddin Firdousi Versus Delhi Development Authority and Another.***



4. Per contra, learned counsel appearing for the respondents submitted that the land in question is an acquired land and the occupation of the petitioner is in the nature of an encroachment. Attention of this Court has been drawn to the Acquisition Award and possession proceedings placed on record, to show that the subject land has been acquired and physical possession of the same has been duly taken over.

4.1 Learned counsels appearing for respondents have further drawn the attention of this Court to the judgment dated 30<sup>th</sup> September, 2019 passed in *Suit No. 593241/2016*, wherein the petitioner herein has denied the ownership of one of the alleged co-owners of the subject property and has denied execution of any Rent Agreement with the owners of the subject property. Further, it is recorded in the said judgment that while the alleged original owner claimed to own only 0.5 Bigha (approximately 500 Sq. yards), the petitioner herein claimed to be in occupation of more than 20 Kanals (approximately 20,000 Sq. yards) of land. Thus, it is submitted that the petitioner is not only an encroacher on public land, but has encroached more than what was handed over to the petitioner by the original encroacher, who claimed to be the alleged owner of the subject land.

4.2 It is further submitted that the petitioner was granted personal hearing following the directions passed by this Court, pursuant to which, Speaking Order dated 28<sup>th</sup> November, 2023 has been passed by the Delhi Development Authority (“DDA”), wherein it is categorically stated that the claim of the petitioner upon the subject land is devoid of any merit.

5. Having heard learned counsels for the parties and having perused the record, this Court notes that when the present matter was listed for hearing on 14<sup>th</sup> November, 2023, learned counsel for the petitioner had stated in



categorical terms that if it was found that the subject land or any part of it under the occupation of the petitioner was an acquired land, the petitioner shall vacate the said acquired land. The undertaking of the petitioner in that regard was duly recorded in the order dated 14<sup>th</sup> November, 2023, which reads as under:

“xxx xxx xxx

3.1. *He states that the Petitioner is in occupation of the subject property as a tenant for the past 20 years. He, therefore, seeks an opportunity to appear before the Respondent No.2, Delhi Development Authority (“DDA”) and produce documents, which evidence that the subject property stands in the name of the landlord, Mr. Gaurav Dagar, as per the revenue records.*

3.2. *He states that after the grant of the hearing by DDA and verification of their claim of acquisition, if it is found that the subject land or part thereof, which the Petitioner is occupying is an acquired land, the Petitioner undertakes to vacate the said acquired land within two (2) months. He states that he is seeking this extension of two (2) months in view of the fact that the Petitioner is housing and giving shelter to stray animals and he needs to make alternate arrangements for re-homing the said animals. The said statement is taken on record and the Petitioner is bound down to the same.*

xxx xxx xxx”

(Emphasis Supplied)

6. Pursuant to the order dated 14<sup>th</sup> November, 2023, the petitioner was granted opportunity of hearing by the DDA as well as to produce all documents pertaining to the subject property. Thereafter, Speaking Order dated 28<sup>th</sup> November, 2023 was passed by the DDA, wherein it has been stated in categorical terms that the occupation of the petitioner is by way of encroachment on the subject land, the same being DDA/Government land. The Speaking Order dated 28<sup>th</sup> November, 2023 passed by DDA, is



reproduced hereunder:

**“Delhi Development Authority**  
**Office of The Dy. Director (South Zone-II)**  
**C-Block, Ground Floor, Vikas Sadan, New Delhi**

No. SZ(245)2023/DD/LM/SZ/DDA/1035

Date: 28.11.2023

**SPEAKING ORDER**

*Whereas, Hon'ble High Court of Delhi in WPC 14877/2023 titled Kunal Kumar Vs GNCTD & Ors. vide order dated 14.11.2023 pleased to direct Director (LM), DDA to grant a hearing to the petitioner on 17.11.2023 at 02:30 PM.*

*Whereas, in compliance of the said order, notice dated 16.11.2023 was sent to the petitioner with the request to attend the office of Director (LM-I), DDA along with documentary proofs in respect of the land occupied by him.*

*Whereas, the petitioner and his advocate attended the office on scheduled date and submitted a representation dated 17.11.2023. The petitioner however, did not submit any ownership document with respect to the subject land despite prior notice. The petitioner, in the said hearing, was provided with the site plan of the subject land along with award and possession proceedings clearly showing the subject land to be belonging to DDA/government. The petitioner requested the undersigned to grant another hearing to produce his documents which was acceded to and another hearing was granted on 23.11.2023 at 02:30 PM vide notice dated 22.11.2023.*

*Whereas, on 23.11.2023, the representative of the petitioner Sh. S.K. Dua appeared before undersigned and submitted that the portion of subject land which is falling in the alignment of road, has been demolished by the petitioner himself and the boundary of the dog/animal shelter has been shifted to provide passage for road widening. Some photographs in this regard were also provided along with a second representation.*

**Whereas, upon examination of the representation dated 17.11.2023 & 23.11.2023, and submission made by the petitioner, it has been found that the petitioner in the present case is only an encroacher upon DDA/government land through one Sh. Gaurav Dagar, who himself is an encroacher upon the DDA/government land. Needless to state, the petitioner has failed to produce documents of ownership either of his own or Sh. Gaurav Dagar to support claim on the subject land.**



**Whereas, it is appreciated that the petitioner on his own has demolished the portion of land falling in the alignment of road, however, it does not take away from the fact that the encroachment of subject land by him in any manner or form whatsoever is illegal, the same being DDA/government land.**

**Now therefore, after taking into consideration all the documents presented during the hearing and the facts presented above, the claim of the petitioner upon the subject land is found devoid of merit and is accordingly rejected.** The representation is accordingly disposed of.

(Pramod Kumar)  
Director (LM-I), DDA

To,

Sh. Kunal Kumar  
S/o Late Vishwant Kumar  
R/o Shop No. 18 & 19, Modern Bazar,  
Basant Lok, Vasant Vihar, New Delhi

xxx xxx xxx”

(Emphasis Supplied)

7. The DDA has brought forth in clear terms that the subject land has already been acquired vide Award No. 23/87-88 dated 17<sup>th</sup> June, 1987 of village Maidangarhi and physical possession of the said Khasra nos., as claimed by the petitioner, have already been taken over by the Land Acquisition Collector and handed over to DDA by way of possession proceedings dated 16<sup>th</sup> July, 1987. Copy of the aforesaid Award dated 17<sup>th</sup> June, 1987 and possession proceedings dated 16<sup>th</sup> July, 1987 have been duly placed on record by the DDA. The submissions made by DDA in this regard in its counter affidavit, read as under:

“xxx xxx xxx

5. That the land in question falls in Khasra no. 403, 404, 405, 406, 407 and 424 of village Maidangarhi. As per land record of the answering respondent of village Maidangarhi the Khasra nos. 403(6-12), 845/404-405(4-04), 406(0-16), 407(4-17), 1000/424(1-05), 1001/424(33-09) have been acquired for public purpose vide Award



no. 23/87-88 of village Maidangarhi and the physical possession of Khasra nos. 403(6-12), 845/404-405(4-04), 407(4-17), 1000/424(1-05), 1001/424min (14-14) has been handed over to the answering respondent DDA by LAC/L&B on 16.07.1987. Copy of Award and possession report is annexed as **Annexure-I & II** respectively.

6. That as per the available list of forest land, the land of Khasra No. 406(0-16) and 1001/424min (18-15) is forest land. Copy of list is annexed as **Annexure III**.

7. That the land in question is required for widening of approach road for Central Armed Police Forces Institute of Medical Sciences (CAPFMS) which is a project concerning national interest.

8. That the petitioner is an encroacher on government land. The petitioner as claimed in the petition has unauthorisedly occupied the property in question by way of tenancy through Shri Jai Singh and Shri Gaurav Dagar. The petitioner has no right, title and interest in the property in question. No document has been filed by the petitioner to substantiate his claim in the property in question which is a government land. It is evident that the petitioner as well as his alleged landlord through whom he is claiming occupation are rank trespassers on huge chunk of acquired government land.

9. That in compliance with order dated 14.11.2023 the respondent gave personal hearing to the petitioner on 17.11.2023 before Director (LM-I). The petitioner and his counsel were given hearing and opportunity to provide ownership documents with respect to the land in question. Land is an acquired government land, therefore, the petitioner has failed to provide any title document in his favour for occupying huge chunk of government land. As per the order passed by this Hon'ble Court the answering respondent furnished the site plan of the subject land as well as copy of award and possession report also to the petitioner which clearly shows that the land in question is a government land and belonged to the answering respondent. The petitioner after taking documents requested for another date of hearing and the same was granted by the answering respondent DDA on 23.11.2023 for providing relevant documents to substantiate his claim upon the land in question. But being the government land, the petitioner has miserably failed to submit any documents. Accordingly a speaking order dated 28.11.2023 was passed by Director(LM-I) whereby rejected the claim of the petitioner for the facts stated herein above. Copy of the speaking order dated 28.11.2023 is annexed as **Annexure-IV**.

xxx xxx xxx”



8. Perusal of the aforesaid makes it evident that the subject land is Government land, which is part of the Forest land. The documents on record clearly show that the subject land stands acquired and physical possession of the same has been duly taken by the Land Acquisition Collector and handed over to DDA.

9. Unauthorized occupants of Government land have no right to seek any protection in law and the Government has every right to evict illegal occupants and take repossession of its land. Illegal occupiers of Government land have no right over such land and their status is that of encroachers and trespassers. Thus, holding that after acquisition of land, the land vests in the State, free from all encumbrances and any person retaining the possession thereafter has to be treated as a trespasser, the Supreme Court in the case of ***Delhi Development Authority Versus Anita Singh and Others, (2023) 6 SCC 113***, has held as follows:

“xxx xxx xxx

*13. The issue as to what is meant by “possession of the land by the State after its acquisition” has also been considered in Indore Development Authority case [Indore Development Authority (LAPSE-5 J.) v. Manoharlal, (2020) 8 SCC 129 : (2020) 4 SCC (Civ) 496] . It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilised. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vests in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paras 246, 247 and 258 are extracted below : (SCC pp. 323 and 329)*



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

247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. **Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc. is deemed to be the trespasser on land which is in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.**

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258. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the 1894 Act



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

xxx xxx xxx''

(Emphasis Supplied)

10. It is also to be noted that in the suit for eviction against the petitioner filed by the alleged owner of the subject land, only Khasra No. 403 is mentioned. However, the present petition has been filed with respect to Khasra Nos. 403/404/405/406/424. This is another pointer to the unauthorized occupation and encroachment by the petitioner.

11. The judgment in the case of ***Dargha Najeebuddin Firdousi (Supra)***, as relied upon by the petitioner, is clearly distinguishable, as the said case pertained to disputed questions of facts pertaining to demarcation of land belonging to the petitioners in the said case. However, in the present case, no such issue is involved. Besides, the petitioner has been granted a detailed hearing by the DDA before passing the Speaking Order dated 28<sup>th</sup> November, 2023, reiterating that the subject land is Government land.

12. Considering the aforesaid detailed discussion, no merit is found in the



2024:DHC:3055



present petition. Thus, the same is accordingly dismissed, along with pending applications.

**(MINI PUSHKARNA)  
JUDGE**

**APRIL 16, 2024/au/kr**

Signature Not Verified

Digitally Signed By: CHARU  
CHAUDHARY  
Signing Date: 16.04.2024  
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