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

+ LPA 38/2024 & CM APPL. 1859/2024

RAJESH SHARMA

..... Appellant

Through: Mr. Anil K. Aggarwal with Mr.
Gaurav Deep Bahl, Advocates

versus

GOVERNMENT BOYS SENIOR SECONDARY SCHOOL NO. 2

..... Respondent

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel, Civil, GNCTD
with Mr. Arun Panwar, Mr.
Pradyumn Rao, Mr. Utkarsh Singh,
Mr. Kartik Sharma, Ms. Prashansa
Sharma, Mr. Rishabh Srivastava and
Ms. Nikita Vir, Advocates

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Date of Decision: 11th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (O R A L)

1. The present appeal has been filed under Clause X of the Letters Patent Act, 1865 read with Section 10 of the Delhi High Court Act, 1966 impugning the judgment dated 20.11.2023 passed by the learned Single Judge of this Court in W.P. (C) 14354 of 2023 ('writ petition') titled as '*Rajesh Sharma v. Government Boys' Senior Secondary School No. 2, Janakpuri*', whereby the writ petition has been dismissed with the observation that the Appellant has to avail the remedy by filing a civil suit



for declaration of his title before seeking recovery of possession.

1.1 The Appellant herein filed the writ petition seeking a direction to the Respondent school to vacate the subject land and handover the possession to the Appellant.

1.2 The facts of the case as stated by the Appellant are that he purchased a plot bearing no. 2 admeasuring 216.75 sq. yds. falling in Khasra No. 268/2 in revenue estate of erstwhile village Nangal Raya ('subject land'), by a registered sale deed dated 30.01.2006. It is stated that after the purchase of said plot, the Appellant took physical possession and constructed a boundary wall thereon.

1.3 Thereafter, on 05.07.2007 a police complaint was filed by the erstwhile vice-principal of the Respondent school against the Appellant alleging encroachment (with respect to the subject land) which led to registration of FIR No. 171/2007 dated 05.07.2007 at Police Station Mayapuri for offences under Sections 447/34 of the Indian Penal Code, 1860.

1.4 After trial, the Metropolitan Magistrate ('learned MM') vide judgment dated 30.01.2017 held that the prosecution failed to prove the charge of criminal trespass against the accused (i.e., the Appellant herein) beyond reasonable doubt and therefore, acquitted the Appellant.

1.5 The learned counsel for the Appellant states that the Appellant was acquitted as the Respondent school during criminal trial failed to prove that the title or possession in the subject land lawfully vests with the school. It is stated that after his acquittal, the Appellant reasonably expected the Respondent school to suo-moto vacate the plot and handover the possession to him. It is stated that the Appellant also issued a legal notice dated



04.09.2023 to the Respondent school for handing over the peaceful possession. It is further stated that the Respondent failed to comply with the said legal notice and in these circumstances the Appellant filed the writ petition (under consideration) on 01.11.2023.

2. The learned Single Judge vide the impugned judgment dated 20.11.2023 has dismissed the writ petition after returning a finding that in the facts of this case since the Appellant is seeking recovery of possession of the subject land on the basis of disputed title, he would have to file a substantive suit to get his title declared before the civil court and seek possession of the plot in question.

3. The learned counsel for the Appellant states that in view of the judgment of the learned MM dated 30.01.2017, the issue of absence of title of Respondent school in the subject land stands determined. He states that it is therefore, obvious that the sale deed 30.01.2006 relied upon by the Appellant is genuine and therefore, the Respondent school ought to be directed to handover possession of the subject land. He states that the Respondent school is entitled to remain in possession of land falling in Khasra No.270/1 whereas the subject land falls in Khasra No. 268/2. He states therefore, the Respondent school has no right to continue with possession of the subject land and this issue can be decided in writ proceedings.

4. In reply, the learned counsel for the Respondent states that the Appellant's title in the subject land is disputed. He states that the Respondent school has always been in possession of the subject land and the action of the Appellant in 2007 of constructing a boundary wall was illegal. He states that the Respondent school is in rightful possession of the subject



land and the writ petition is not maintainable.

5. This Court has considered the submissions of the learned counsel for the parties and perused the record.

6. The sole basis of the Appellant for seeking relief of possession by filing the writ petition is the judgment of the learned MM dated 30.01.2017. The Appellant does not dispute that the Respondent school is in actual and physical possession of the subject land (atleast since 2007). The Appellant also does not dispute that the Respondent school has been allotted land on perpetual lease in Khasra No. 270/1. The claim of the Appellant is that the subject land falls in Khasra No. 268/2 and the Respondent school does not have any right, title or interest in Khasra No. 268/2.

7. In the aforementioned facts, the issue as regards whether the subject land falls in Khasra No. 268/2 or Khasra No. 270/1 is a disputed question of fact, which has to be decided after the parties have led evidence.

8. The learned MM as well in the judgment dated 30.01.2017 had recorded the submission of the Appellant that the identity of the subject land alleged to have been trespassed was disputed. The learned MM accepted the said objection of the Appellant and concluded that the investigating officer ('IO') had failed to discharge his legal duty to fairly investigate the matter as the IO had failed to get Khasra Nos. 268/2 and Khasra Nos. 270/1 demarcated from the concerned department. The learned MM therefore, accepted the contention of the Appellant that the identity of the subject land as regards its location and the concerning Khasra number was disputed and therefore an essential ingredient for proving the offence of Section 447 of IPC had not been established. The learned MM held that the benefit of lacunae in the investigation had to be given to the accused and for the said



reason held that the Appellant herein was entitled to acquittal. In the considered opinion of this Court as well as, in view of the said finding of the learned MM, the identification of the location of the subject land is a disputed fact and an issue arising for adjudication between the parties.

9. The Respondent school is asserting its right to remain in possession over the subject land in pursuance to a perpetual lease and is disputing that it has dispossessed the Appellant in the year 2007 as alleged in the writ petition. Therefore, the finding of the learned Single Judge that in the facts of this case the Appellant cannot contend violation of his rights under Article 300A of Constitution of India is correct.

10. In our view, the learned Single Judge has rightly held that the Appellant will have to approach the civil court for determination of his title in the subject land before seeking recovery of possession. For the said purpose, the issue of identification of the location of the suit land demarcation with respect to Khasra Nos. 270/1 and 268/2 would also have to be first determined by the civil court by recording evidence.

11. The learned Single Judge has rightly relied upon the Judgment of Supreme Court in *Shalini Shyam Shetty and Another v. Rajendra Shankar Patil*¹, wherein it has been reiterated that a proceeding under Article 226 of the Constitution of India is not an appropriate forum for adjudication of property disputes or disputes relating to title. The relevant portion of the judgment reads as under:

“59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In Mohd. Hanif v. State of Assam [(1969) 2 SCC 782] a three-Judge Bench of this Court, explaining the

¹ (2010) 8 SCC 329



general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. (See SCC p. 786, para 5 of the Report.) In coming to the aforesaid conclusion in *Hanif* [(1969) 2 SCC 782], this Court referred to the Constitution Bench decision in *T.C. Basappa v. T. Nagappa* [AIR 1954 SC 440].

60. Following the aforesaid principles in *Hanif* [(1969) 2 SCC 782], this Court in *Hindustan Steel Ltd. v. Kalyani Banerjee* [(1973) 1 SCC 273] **held that serious questions about title and possession of land cannot be dealt with by writ court.** In formulating these principles in *Kalyani Banerjee* [(1973) 1 SCC 273], this Court relied on the Constitution Bench decision in *Sohan Lal* [AIR 1957 SC 529] (see SCC p. 282, para 16 of the Report).

61. Again in *State of Rajasthan v. Bhawani Singh* [1993 Supp (1) SCC 306] **this Court held that a writ petition is not the appropriate forum to declare a person's title to property.** (See SCC p. 309, para 7 of the Report.)

62. Subsequently, again in *Mohan Pandey v. Usha Rani Rajgaria* [(1992) 4 SCC 61], **this Court held that a regular suit is the appropriate remedy for deciding property disputes between private persons and remedy under Article 226 is not available to decide such disputes unless there is violation of some statutory duty on the part of a statutory authority.** (See p. 63, para 6 of the Report.)

63. Following the aforesaid ratio in *Mohan Pandey* [(1992) 4 SCC 61], this Court again in *Prasanna Kumar Roy Karmakar v. State of W.B.* [(1996) 3 SCC 403], held that in a dispute between the landlord and tenant, a tenant cannot be evicted from his possession by a writ court. Again in *P.R. Murlidharan v. Swami Dharmananda Theertha Padar* [(2006) 4 SCC 501], this Court held that it would be an abuse of process to approach a writ court in connection with dispute on questions of title for deciding which the civil court is the appropriate forum.

64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. **We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.**”

(Emphasis Supplied)

12. In the facts of the present case, a dispute as regards to title has been



raised by the parties, which requires determination of the claim of title and identification of the location of the subject land before any order for possession can be passed. This Court, therefore, finds no merit in the present appeal and the same is accordingly dismissed. The Appellant will have their remedy to file a civil suit in terms of the liberty reserved by the learned Single Judge in the impugned judgment dated 20.11.2023. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 11, 2024/msh/MG

Click here to check corrigendum, if any