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

Judgment reserved on: 08.11.2023

Judgment pronounced on: 31.01.2024

+ **W.P.(C) 10285/2005**

BAL KISHAN GUPTA

..... Petitioner

Through: Mr Sermon Rawat, Mr Vikas Rathee and
Ms Aastha Vishwakarma, Advs.

versus

D.D.A.

..... Respondent

Through: Mr Anish Dhingra, Mr Nakul Ahuja and
Ms Rupinder Oberoi Dhingra, Advs. for
DDA with Mr Praveen Dewidi, Dy.
Director, Land Management.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, J**

1. This is a petition seeking, amongst others, the following substantial relief:-

“2) to issue a writ of prohibition or a similar writ, direction or order restraining the respondent and its employees, subordinates, from demolishing the petitioner house No. T-5139 A/1 (Municipal No. 12036/1) Pusa Road, Karol Bagh, New Delhi and from dispossessing the Petitioner therefrom.”

Brief Facts:

2. The brief facts of the case as per the petitioner are as follows:-

3. That one Mr. Jiwan Mal, son of Mr. Lal Chand held and occupied property bearing No. T-5139 A-1, Pusa Road, Karol Bagh, New Delhi admeasuring



460 sq. yards (hereinafter referred to as “premises/property”), single storey built by him in 1948-49 when the provisions of Punjab Municipal Act were applicable to such buildings in Delhi.

4. Mr. Jiwan Mal and his family continuously resided therein and had been letting out portion of the premises from time to time.
5. In the first Municipal Survey which took place, the property was assigned Municipal No. 12036/1 and was provided with amenities of water, electricity and was assessed to property tax since 1956 in the record of Delhi Municipal Committee.
6. In February 1966, the DDA, through its Officers, demolished portions of the property. Mr. Jiwan Mal filed a civil suit bearing Suit No. 254/1975 for recovery of damages on the averments that he was the owner of the house bearing No. T-5139 (Municipal No. 12036/1) and was in peaceful and continuous possession and enjoyment thereof for preceding 17 years. The respondent-DDA and its concerned officers filed their written statement alleging that Mr. Jiwan Mal was a trespasser on the government land (which was passed on to the respondent-DDA for management), having no right and interest in the premises. The learned Sub-Judge 1st Class (hereinafter referred to as “SJIC”) decreed the suit on 17.12.1975. It held the demolition by the defendants to be illegal and unlawful and awarded damages. An appeal as well as a civil revision was filed by the DDA and both were dismissed on 20.09.1978 and 06.01.1986 respectively. No further appeal was filed against the decision of the High Court.
7. Delhi Improvement Trust/DDA claimed title in the land and issued notices to Mr. Jiwan Mal, however, he claimed the title in the premises in himself and continued to hold and possess the same till his death on 20.11.1991 (with no suit/proceeding against him for eviction), and later through his heirs



and assigns, i.e. two sons namely, Mr. R.L. Roshan and Mr. Sher Singh, and six daughters whose details have not been furnished.

8. The legal heirs relinquished their rights in respect of 345 sq. mts. of the total area in favor of Mr. Harish Kumar by way of registered relinquishment deeds (six in number). Subsequently, 172.5 sq. mts. of the undivided portion of the property was transferred by way of a registered sale deed bearing No. 1037 dated 24.02.2001 in favor of the petitioner who was residing in the said portion as a tenant.
9. On 24.04.2005, Naib Tehsildar of DDA accompanied with Naresh Patwari came to the house of the petitioner and demanded title deeds of the property, which were duly shown. The officials, however, returned and carried out partial demolition on the first floor of the property without any notice or intimation. Again, on 24.05.2005, the DDA backed by local police carried out demolition on the first floor of the property without any notice or verbal/written communication to the petitioner. It was stated that the whole structure would be taken down within 15 days i.e. on 08.06.2005, and the petitioner would be dispossessed from the site.
10. The petitioner approached the DDA's Head Office and met the Deputy Director concerned for written orders/notice based on which DDA undertook demolition but to no avail.
11. Hence, the present petition.
12. It is stated by the learned counsel for the petitioner that the said demolition has been conducted without any notice or intimation or permitting the petitioner to show cause against the demolition action. It is stated that the actions of the respondent-DDA have been high-handed, arbitrary and in violation of principles of natural justice. It is also stated that the contentions of the respondent-DDA are barred by principles of *res judicata*.



Submissions (Respondent)

13. It is stated by the learned counsel for the respondent that the petitioner is not the owner of the property, as he had acquired the same from the erstwhile encroacher of the government property, Mr. Jiwan Mal. The property falls in Khasra No. 858/767 in Southern Ridge Revenue Estate and the same is Nazul Land under the management and control of the respondent.
14. It is stated that Mr. Jiwan Mal entered into the property unauthorizedly and raised unauthorized construction upon government land without any sanctioned building plan and approval from the respondent. Due to this unauthorized occupation, notice under Section 4 of the Government Premises (Eviction) Act, 1950 was issued to Mr. Jiwan Mal for assessment of damages. In his objections, it was admitted by him that he came to India after partition of the country and being a poor refugee, he unauthorizedly occupied the land and raised unauthorized construction on the same. He also sought that he be considered as a tenant of the property at a reasonable rate. However, the offer of Mr. Jiwan Mal was rejected by the then Chairman of Delhi Improvement Trust vide order dated 01.12.1952, who imposed reduced damages upon him.
15. Mr. Jiwan Mal filed an appeal against the said order wherein he pleaded that he be given an option to purchase the land on no profit no loss basis in easy instalments or be accepted as tenant of the land on payment of nominal ground rent. Part damages for unauthorized usage were deposited by Mr. Jiwan Mal. The occupation of Mr. Jiwan Mal was never approved by the then Chairman, as illustrated in letters dated 14.03.1966 and 18.03.1966. In the letters, it was reiterated that Mr. Jiwan Mal was an unauthorized occupant of Nazul Land, that his old structures were not demolished, and he was being assessed for damages, however, he was constructing a fresh



building on the said land which warranted demolition. The respondent carried out a demolition program upon Mr. Jiwan Mal to remove the squatters from the unauthorized occupation of the land.

16. It is argued that in the civil suit filed by Mr. Jiwan Mal against the respondent seeking damages, Mr. Jiwan Mal concealed from the court that he was in unauthorized occupation of the property and order of damages has already been passed against him. Further, the learned Civil Court did not frame any issue of whether the ownership of the property lies with Mr. Jiwan Mal, and the remark passed by it was merely based on the testimony of an unrelated person.
17. It is stated that Mr. Jiwan Mal had played fraud upon the court by not disclosing the order passed against him under Section 4 of the Government Premises (Eviction) Act, 1950 and got a decree in his favor, which is accordingly *non est* and can be challenged in writ proceedings. Reliance is placed upon **A.V. Papayya Sastry & Ors. v. Govt. of A.P.** (2007) 4 SCC 221. The relevant portion of the same reads as under:

“21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

“Fraud avoids all judicial acts, ecclesiastical or temporal.”

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be



challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

18. It is stated that the documents brought on record by the respondent by way of an additional affidavit have not been disputed by the petitioner and no reply has been filed by the petitioner to the said documents, thereby admitting the said documents and showing that he was in complete knowledge of the said additional documents which were purposely concealed from this Court. Relying upon ***K.D. Sharma v. Steel Authority of India Ltd. and Ors.*** (2008) 12 SCC 481, it is stated that the present petition should be dismissed at the threshold due to non-disclosure of relevant and material facts by the petitioner. The relevant portion of the same reads as under:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

19. It is further stated that the learned Civil Court could not have made any observation on the ownership of the property when the same was, *firstly*, not in issue, and *secondly*, based on the testimony of an unrelated third person.



20. Based on these averments, it is stated that Mr. Jiwan Mal was an unauthorized occupant, and had no right, title or interest over the property, and thus, could not have transferred a better title to any third person, i.e., the petitioner in the present case. Such a transfer is *void ab initio*.

Submissions (Petitioner)

21. It is stated that the judgment dated 17.12.1975 in Suit No. 254/1975 before the learned Civil Court has attained finality, considering that an appeal R.C.A. 21/1976 against it was dismissed vide order dated 20.09.1978. Subsequent civil revision before the Delhi High Court was also dismissed (in default) vide order dated 06.01.1986. Therefore, the respondent-DDA's any contention against the judgment of the learned Civil Court would be barred by estoppel since they have admittedly waived their right (if any). Any challenge now would be barred by limitation, and any right of the respondent-DDA would stand extinguished. Reliance is placed upon Section 27 and Article 112 of the Schedule of the Limitation Act, 1963. Petitioner became owner of the property through a registered sale deed dated 19.02.2001 and setting aside the said sale deed is also barred by limitation. Reliance is placed upon Article 59 of the Schedule of the Limitation Act, 1963.
22. It is argued that the demolitions have been conducted without any notice or intimation permitting the petitioner to show cause against the demolition action. The actions of the respondent-DDA have been high-handed, arbitrary, and in violation of principles of natural justice. It is further stated that the contentions of the respondent would be barred by principles of *res judicata*.
23. On the respondent's contention that the property is part of Nazul Land, and a part of Southern Ridge Revenue Estate, it is stated by the learned counsel for



the petitioner that no specific description of the composition of Southern Ridge is forthcoming to show that the concerned property forms a part of the same.

24. The respondent's contention that the predecessor-in-interest of the property, Mr. Jiwan Mal, was an unauthorized occupant of the same, is also belied from the record.
- i. It is stated that the documents relied upon by the respondent are in relation to two proceedings (having a gap of 20 years in between) by the Delhi Improvement Trust (in the first instance) and the DDA (in the second instance) against Mr. Jiwan Mal. The first proceeding was for recovery of damages under Section 4 of the Government Premises (Eviction) Act, 1950, and the second proceeding was in relation to Section 7(3), Public Premises (Eviction of Unauthorized Occupants) Act, 1971.
 - ii. There is no document on record to show any proceeding in relation to eviction of Mr. Jiwan Mal under Section 3 of the Govt. Premises (Eviction) Act or under Section 4 and 5 of the Public Premises (Eviction of Unauthorized Occupants) Act; further, no document on record in relation to proceeding/show-cause notice of demolition, such as under Section 5B, Public Premises (Eviction of Unauthorized Occupants) Act or under any other law for any of the admitted demolitions.
 - iii. It is stated that despite this, Mr. Jiwan Mal continued to be in settled possession until his demise. Any proceeding thereafter would be barred by limitation.

Analysis

25. I have heard the learned counsels for the parties.



26. The thrust of the argument of Mr. Sermon Rawat, learned counsel for the petitioner is that the predecessor-in-interest of the property, Mr. Jiwan Mal, was the owner of the property by virtue of a court decree. There have been no steps taken by the respondent for recovery of possession of the premises and all/any action which could have been taken by the respondent have now become barred by limitation. The title of Mr. Jiwan Mal has been perfected and the petitioner being a subsequent purchaser has acquired a clear title to the property. In addition, it has been stated that the action of demolition is illegal, unauthorized and arbitrary as the same is violative of principles of natural justice, and no show cause notice prior to demolition has been given to the petitioner.
27. *Per contra*, the arguments put forth by Mr. Dhingra, learned counsel for the respondent-DDA in opposition to the case of the petitioner are three-fold: a) that the property is Nazul Land, under the management and control of the respondent; b) that Mr. Jiwan Mal had no title in the property and hence the decree of the learned Civil Court is *non est*; and c) that the decree passed by the learned Civil Court was regarding grant of damages, and the question of ownership was never in issue. Based on these arguments, it is stated that since Mr. Jiwan Mal did not have title in the property, he could not have transferred it to the petitioner. Thus, the petitioner is in illegal occupation of the property and had raised unauthorized construction, and therefore, the demolition was lawful.
28. The petitioner has prayed for directions against the respondent-DDA from carrying out demolitions in the property and from dispossessing the petitioner from the property, which both parties claim to have the ownership of.



29. In the present writ petition, I am not required to adjudicate upon the title of the property, and the same has to be decided in appropriate proceedings before the Court having jurisdiction. I am also not required to adjudicate as to whether any action of the respondent is time barred or not, as that will again be subject matter of the proceedings as and when initiated by the respondent.
30. Hence, the main question before me is whether the demolitions carried out by the respondent-DDA were illegal for the want of adherence to principles of natural justice, and the same is the only prayer made by the petitioner in the present writ petition. For the same, it is required of me to determine whether the petitioner was in settled possession of the property.
31. Admittedly, the predecessor-in-interest of the property, Mr. Jiwan Mal was allowed to remain on the property for the time being on payment of unauthorized user charges and accordingly an order dated 01.12.1952 by the then Chairman of the Delhi Improvement Trust was passed against him:

“3. The objectors are in unauthorised occupation of fully developed land within the Trust’s Western Extension Scheme which has been reserved as open space. There can be no question of creating any tenancy on this land. The proper thing in this case would have been to remove the squatters, but as removal will take time and is contingent on providing alternative accommodation first, it has been considered expedient to let the squatters remain where they are for the time being on payment of damages in accordance with the provisions of Section 4 of the Act.... I therefore reduce the rate of damages to Rs. 7/8/- per 100 sq. yards per month for commercial purposes and Rs. 5/- per 100 sq. yards per month for residential purposes in the six cases referred to above. Fresh demand based on



the above rates should be issued and the objectors should be informed accordingly.”

(emphasis supplied)

32. Admittedly, part damages for the unauthorized user of land were deposited by Mr. Jiwan Mal. Thereafter, demolition was ordered on the property and vide judgment dated 17.12.1975 in Suit No. 254/1975 initiated by Mr. Jiwan Mal, the learned SJIC awarded damages to Mr. Jiwan Mal against this action of the DDA. The learned SJIC, in the passing, stated that Mr. Jiwan Mal is the owner of the premises. However, there was no declaratory decree passed declaring Mr. Jiwan Mal to be the owner of the premises. An appeal and a civil revision were filed by the DDA against this judgment; however, both were dismissed.
33. Thereafter, Mr. Jiwan Mal remained in settled possession of the property, notwithstanding whether he had a title to it or not. The petitioner herein has purchased the property from one Mr. Harish Kumar (in whose favor the legal heirs of Mr. Jiwan Mal, after his demise, had relinquished their undivided share in the property) by virtue of a registered sale deed dated 24.02.2001. Hence, as a necessary corollary, the petitioner is also in settled possession of the property.
34. The reliance of the learned counsel for the respondent on the judgment of ***A.V. Papayya Sastry v. Govt. of A.P.***, (2007) 4 SCC 221 is not well-founded as the grounds of fraud and concealment of material documents by Mr. Jiwan Mal should have been taken by the respondent while challenging the judgment dated 17.12.1975 in appeal. The appeal was dismissed, and the subsequent revision was also dismissed. The reliance on ***K.D. Sharma v. Steel Authority of India Ltd. and Ors.*** (2008) 12 SCC 481 is also ill-founded, as the present writ does not require me to adjudicate on the



question of ownership. The petitioner is praying for directions restraining the respondent from carrying out demolition, for which the non-disclosure of some past proceedings against the predecessor-in-interest of the property does not amount to concealment or suppression or misleading the Court as the respondent had already filed an appeal as well as a civil revision, both of which were dismissed.

35. Further, the respondent-DDA has not been able to conclusively show that the land belonged to the government. It is stated by the respondent-DDA that the property bears Khasra No. 858/767 and the same is part of the Southern Ridge Revenue Estate, which is Nazul Land under the management and control of the respondent and covered under the Agreement of 1937 (between the Government and the Delhi Improvement Trust in regard to the administration of certain government property). However, a perusal of the documents annexed by the respondent shows that there is no specific description of the composition of Southern Ridge in the Agreement of 1937. Thus, there is nothing on record to show that the property forms part of Nazul Land.
36. Hence, the title of the property is left to be adjudicated in proceedings before the appropriate forum, if and when initiated by the parties. The fact remains that at the time the demolitions were carried out, the petitioner was in settled possession of the premises.
37. In *Hnunpuui v. MCD*, 2022 SCC OnLine Del 2654, a coordinate bench of this Court has held that the ground of unauthorized construction is not sufficient to demolish a property without offering the persons residing within it a chance to present their case. It observed:

“21. To my mind, there can be no question of demolishing any property on the ground that it is unauthorized, until and unless



the person owning the property and/or in possession of/residing in the property, are given an adequate opportunity of hearing and due principles of natural justice are complied with.

22. *It is also no answer to compliance with the principles of natural justice to contend that, if an opportunity was granted, the persons affecting would not have had any defense to offer. This is the position in law since the time of Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545.*”

(emphasis supplied)

38. Having said that, as regards the prayer in the present writ petition is concerned, it is a fact that the respondent-DDA has carried out demolitions in the property. It is the case of the petitioner that no show cause notice or intimation was given to the petitioner prior to the said demolitions. The respondent, in objection, has merely stated that the petitioner was an unauthorized occupant and had no right in the property, and hence the demolition was lawful.
39. The respondent-DDA has raised no objection/rebuttal on the statement that no show cause notice/prior intimation was given to the petitioner. No document to this effect has been placed on record, neither has any averment been made and thus, it remains unchallenged that the petitioner was given no opportunity to present their case before the authorities.
40. A division bench of this Court in ***Dargha Najeebuddin Firdousi v. DDA***, 2023 SCC OnLine Del 7229 has held:

“17.... The Court's involvement in overseeing the conservation efforts does not exempt the DDA from adhering to the statutory procedures laid down by the legislature. Principles of natural justice demand that those whose interests are adversely affected by



an administrative action, must be given a chance to be heard, particularly when such action carries the significant repercussion of depriving them of their property. In this aspect, the Petitioners' arguments hold weight. Regardless of the environmental imperatives or the Court's prior orders, the obligation of the DDA to act within the framework of the law and ensure procedural fairness to those affected by its actions, remains intact. The Court finds that this procedural infraction stands in need of rectification, and the Petitioners' objection on this ground is upheld."

41. The respondent, being the State, is required to follow principles of natural justice and cannot carry out any demolition on its own whims and fancies. Before initiating the process, it is required to issue a show cause notice, call for reply, adjudicate the reply/objections and thereafter carry out any demolition. No such exercise has been done by the respondent in the present case.
42. Hence, I am of the view that in the facts before me, the petitioner was in settled possession of the property with a registered sale deed in his favor, and hence the action of the respondent to carry out demolition without a prior intimation/show cause notice to the petitioner is violative of principles of natural justice and cannot be permitted.
43. For the said reasons, the writ petition is allowed, and a Writ of Prohibition is issued restraining the respondent-DDA from demolishing the petitioner's house bearing No. T-5139 A/1 (Municipal No. 12036/1) Pusa Road, Karol Bagh, New Delhi and from dispossessing the petitioner without following due process of law.



44. All pending applications, if any, are hereby disposed of.

JANUARY 31st, 2024/

JASMEET SINGH, J

Click here to check corrigendum, if any