



2024:DHC:4237



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CONT.CAS(C) 576/2017****DHARAM DEV SHARMA**

..... Petitioner

Through: Ms. Kiran, Advocate through VC.

versus

VIRENDER SINGH

..... Respondent

Through: None.

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Date of Decision: 17th May, 2024**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MINI PUSHKARNA, J: (ORAL)**

1. The present petition has been filed for initiation of contempt proceedings against the respondent for violation of the order dated 19th December, 2014 passed in *RSA No. 15/2013*. By way of the aforesaid order, the Court had directed the concerned Gram Sabha to initiate proceedings against the trespassers and if the appellant or respondent, were found to be trespassers on the land in question, the trespassed premises were directed to be vacated, by following the due process of law.

2. Learned counsel appearing for the petitioner submits that despite categorical directions, no action has been taken by the concerned Sub Divisional Magistrate ("SDM"). She further submits that direction may be issued to the concerned officials to take action on the unauthorized construction, existing in the property in question.



3. At this stage, learned counsel for the petitioner submits that the petitioner has approached the authorities on various occasions.

4. Having heard learned counsel for the petitioner, at the outset, this Court notes the directions that had been passed by this Court *vide* order dated 19th December, 2014 in *RSA No.15/2013*, which reads as under:

“Appellant is the defendant, who has suffered a decree for permanent injunction in respect of plot No.C-117 in Swami Shardhanand Park, Delhi. The First Appellate Court vide impugned order has maintained the trial court decree for injunction against the appellant.

The facts giving rise to this appeal are already noticed in the opening paragraphs of the impugned judgment and need no reproduction. Suffice it would be to note that respondent-plaintiff basis his claim over 233 sq. yards of land in khasra no.50/2 in village Bhalswa, Jahangirpuri in the colony of Swami Shardhanand Park, Delhi-45 and is said to have purchased the suit property from one Mukesh Kumar on 10th September, 1998 on execution of various documents i.e., registered GPA, notarised Receipt for the consideration amount of Rs.50,000/- and notarised Agreement to Sell as well as registered Will and a notarised Affidavit. Respondent-plaintiff claims to be in possession of the suit property since 10th September, 1998. Whereas, it is the case of the appellant-defendant that he is in peaceful possession of the suit property since 1980 and in fact the suit property is not situated in khasra no.50/2 but is in khasra no.50 of the aforesaid village and khasra no.50 is owned by the Gram Sabha of the village.

Trial court in its judgment of 23rd November, 2009 has relied upon the unrebutted testimony of respondent-plaintiff and one Mr.Vinod Kumar (PW-2). However, First Appellate Court in the impugned judgment had suo moto called for the status report in respect of the suit property from the concerned SDM and on this aspect, the observations of the Appellate Court in the impugned judgment are as under:-



9. Vide order dt. 15.11.11 this court called for report from the office of SDM Model Town, regarding the suit property and pursuant to that concerned patwari Sh.L.D.Sharma from the office of SDM Model Town, had appeared and had stated that concerned khasra no. is 50 and not 50/2 and had also placed on record photocopy of khatoni And khasra girdawari wherein it was mentioned that khasra no. 50 is in the ownership of Gram Sabha.

At the hearing, learned counsel for appellant had submitted that appellant is in long settled and peaceful possession of 110 sq.yards of land in khasra no.50 and in view of the findings of the First Appellant Court in paragraph no.9 of the impugned judgment, the decree for injunction in respect of khasra no.50/2 is unsustainable and deserves to be set aside. To rebut the stand taken on behalf of appellant, learned counsel for respondent submits that appellant is a trespasser whereas respondent-plaintiff is a bonafide purchaser of the suit property and the SDM's report is not per se admissible as it was not subjected to any cross-examination by the parties and in view of the unrebutted evidence of respondent-plaintiff, there is no infirmity in the findings returned by both the courts below against the appellant.

Upon hearing and on perusal of the judgment of the courts below and the material on record, I find that in view of the observations made by the First Appellate Court in paragraph no.9 of the impugned judgment, the decree for injunction in respect of khasra no.50/2 does not bind the appellant as the aforesaid SDM's report is in respect of khasra no.50 and the aforesaid SDM report is neither approved nor disapproved because it was not subjected to cross-examination by either side.

With aforesaid clarification, this appeal and the application are disposed of, with a direction to the concerned Gram Sabha to initiate the proceedings against the trespassers and if appellant or respondent are found to be trespassers on the suit land, then by following the due process of law, the trespassed premises be got vacated. The concerned Gram Sabha or the authorities concerned be apprised of this judgment forthwith and the compliance report



be submitted to this Court within twelve weeks.

The appeal and the application stand disposed of accordingly.”

5. A reading of the aforesaid order shows that directions had been issued to the concerned Gram Sabha to initiate proceedings against the trespassers.

6. Perusal of the record shows that the SDM, Model Town has filed a report, which reads as under:

“1. it Is submitted that the SDM (Model Town) was not a party in RSA 15/2013 titled as Dharam Dev Sharma Vs Santosh and no specific directions were issued to the SDM (Model Town) office. Though, the respondent has implicated the SDM (Model Town) as contemnor in person.

2. The specific directions were issued to Gram Sabha for carrying out the directions. However, the Block Development Officer (North) has informed the following:

A. That Kh. No. 50(7-1) Gram Sabha vested land and is part of Swami Sradhanand Colony which has already been sent to Urban Development Department for Regularization.

B. That the possession of the said land was never handed over to the Gram Sabha.

(enclosed as Annexure-A)

3. Though, this office has no direct role but still this office got the field inspection done of the suit property and as per the report of Haika Patwari. & kanoongo, Swami Sharadha Nand Colony including Kh.No. 50(7-1) Is heavily built-up area and it is difficult to locate the suit property measuring- 233 Sq. Yards exactly.

4. It is further submitted that orders regarding vesting of Kh. No. 50 in village Bhaiaswa Jahangir Pur had been issued in 1986 that is 32 years before and accordingly, the vesting orders were sought from the record room by this office letter dt. 05/03/2018 and further vide this office reminder dt.02/04/2018 (Enclosed as Annexure-B).

5. That the vesting orders were received from the record room on 05/04/2018 and the same was forwarded to BDO (North) vide letter dated 12/4/2018 for taking necessary action(Enclosed as Annexure-C)

6. It is further submitted that when the vesting order was issued in 1986, BDO was not the supervisory authority of vesting lands and hence it could not be handed over.



7. That Kh. No. 50 in village Bhaiaswa Jahangir pur is not an original Gram Sabha Land but a vested Gram Sabha Land.(Copy of Khatauni is enclosed as Annexure-D)

8. It Is further submitted that to ascertain the trespassers, Sh. Dharam Dev Sharma & Santosh were called along with their relevant documents regarding suit property vide notice dtd. 12/04/2018 and 23/04/2018 issued by Tehsildar (Model Town). But none were present on both occasions. This office is, hence, not in a position to identify trespasser (Enclosed as Annuexure-E)

9. It is humbly submitted that in the present circumstances, ejectment is not feasible as the GPA is not a valid documents of ownership and the true owner of the property can hot be ascertained by this office as both the parties are claiming ownership on GPA documents. However, in all probability, it appears, the proper recourse with regard to the aforesaid suit property should be the police authority or any investigating authority to verify.

10. This office is open to any directions as passed, by Hon'ble Court in view of the fresh development, facts and circumstances which have surfaced consequent to passing of the original order.”

7. Reading of the aforesaid report filed by the SDM shows that it is the case of the SDM that the petitioner herein was called to ascertain the trespassers. However, the petitioner was not present on both the occasions, when he was called for identification of the property.

8. This Court also notes that it is the clear stand of the SDM that in view of the heavy Built Up area, it is difficult to locate the suit property measuring 233 sq. yds. Thus, no action has come to be taken.

9. Considering the aforesaid, it is manifest that the respondent has made efforts to comply with the order passed by this Court. However, in view of the fact that the property in question has not been identified as yet, being located in a heavily Built Up area, it cannot be said that there is any willful disobedience by the respondents of the order passed by this Court.

10. Accordingly, it is directed that the petitioner shall make a



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representation to the concerned official/department in order to assist the authority to identify the property in question.

11. The petitioner shall cooperate with the authority and specifically pin point the property, wherein, the unauthorized construction exists.

12. Upon the petitioner pointing out the specific property to the authority, the concerned authority shall take action in accordance with law for removal of encroachment, in case any encroachment is found in the property.

13. In case trespassers are found in the property, requisite action shall be taken, in accordance with law.

14. With the aforesaid directions, the present petition is disposed of.

MINI PUSHKARNA, J

MAY 17, 2024/MR