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

**Date of Decision: 26<sup>th</sup> September 2024**

+ **W.P.(C) 12218/2015 & CM APPL. 32437/2015**

**M/S SWASTIK CONSTRUCTION & BUILDERS PVT. LTD.**

..... Petitioner

Through: Ms. Neha Walia, Authorised  
Representative of the Petitioner.

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Mr. Rishikesh Kumar, ASC with Ms.  
Sheenu Priya, Mr. Atik Gill, Mr.  
Sudhir Kumar Shukla and Mr. Sudhir,  
Advocates for GNCTD.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

By way of the present petition filed under Article 226 of the Constitution of India, the petitioner company seeks a writ holding that demarcation report dated 12.05.1998 in respect of property No. C-2/A Asola Village, New Delhi comprised in land bearing Khasra Nos. 1922/1314 and 1315 situate in Village : Asola, New Delhi ('subject land') is valid *and* that subsequent demarcation exercises in respect of the subject land, along with the reports based on those exercises, are void. The petitioner also seeks other consequential and ancillary reliefs against the respondents, as per the prayers made in the amended writ petition.



2. The petitioner is a company incorporated on 11.08.1986 under the (Indian) Companies Act, 1956 as a private limited company and claims to be the lawful owner in possession and occupation of the subject land for the last several decades. The claim as to ownership of the subject land is based on certain sale deeds, as detailed hereinafter, and is not disputed by the respondents; the dispute being as regards the demarcation exercises conducted in respect of the subject land.
3. Respondent No. 1 is the Union of India; respondents Nos. 2 and 3 are the Government of NCT of Delhi through the Department of Revenue and Department of Environment & Forests respectively; and respondent No. 4 is the Delhi Police. In view of the prayers made, the only contesting respondents are respondents Nos. 2 and 3, namely the two departments of the Government of NCT of Delhi.
4. Notice on the present petition was issued on 27.01.2016; consequent upon which counter-affidavit dated 16.01.2017 has been filed on behalf of respondents Nos. 2 to 4; and rejoinder dated 24.07.2017 has been filed by the petitioner to that counter-affidavit.
5. As recorded in order dated 31.03.2016, since no relief was claimed against the Union of India, no counter-affidavit was filed on behalf of respondent No. 1.
6. In addition, in response to the reliefs sought by way of the present petition, the following status reports and objections have also been filed by the contesting parties :
  - 6.1. Status Report dated 25.04.2016 has been filed on behalf of respondent No. 2, to which the petitioner has filed objections dated 02.06.2016;



- 6.2. Status Report dated 10.01.2018 has been filed on behalf of respondent No. 3, to which the petitioner has filed objections dated 27.01.2018;
  - 6.3. A second Status Report dated 08.02.2019 has been filed on behalf of respondent No. 2, to which the petitioner has filed objections dated 09.04.2019; and
  - 6.4. A third Status Report dated 11.10.2022 has also been filed on behalf of respondent No. 2.
7. The court has heard Ms. Neha Walia, Authorised Representative of the petitioner and Mr. Rishikesh Kumar, learned ASC appearing for respondents Nos. 2 and 3. Written submissions have also been filed on behalf of the petitioner as well as respondents Nos. 2 to 4.

#### **BRIEF BACKGROUND**

8. The genesis of the matter is an incident of 28.04.2014, on which date respondent No. 3 demolished the boundary wall surrounding the subject land, which demolition, the petitioner claims was undertaken pursuant to a notice dated 24.04.2014 pasted on the subject land *on the very same day as the demolition*, without awaiting any response or explanation from the petitioner to that notice.
9. Aggrieved by the aforesaid action of respondent No. 3, the petitioner made enquiries and filed complaints before respondents Nos. 2 and 3. Dissatisfied by the response of respondents Nos. 2 and 3 to such enquiries and complaints, the petitioner approached the learned National Green Tribunal, Principal Bench, New Delhi ('NGT') by way of Original Application No. 145/2014 titled ***M/s. Swastik Construction & Builders Pvt. Ltd. vs. Govt. of NCT of Delhi & Ors;***



and *vide* order dated 06.08.2014 made in the said proceedings, the learned NGT took the view that the dispute between the parties does not give rise to any environmental issue; and in the circumstances, the petitioner (applicant before the NGT) sought to withdraw their application, with liberty to approach the appropriate forum for seeking redressal of their grievance. A copy of order dated 06.08.2014 passed by the NGT has been appended to the petition. The relevant portion of order dated 06.08.2014 reads as follows :

*“Essentially, it appears to be a dispute over demarcation of land and not regarding any legal enforcement of legal right arising out of the environmental issues.*

*“At this stage, liberty is sought by the applicant to withdraw the present application with liberty to approach appropriate forum for redressal of her grievance. Liberty is grant. Accordingly, the Original Application no. 145/2014 stand (sic : stands) disposed of as withdrawn.”*

10. Thereafter, it transpired that the Tehsildar (South), Saket, New Delhi conducted fresh demarcation proceedings on 26.06.2015 and issued a demarcation report dated 23.11.2015 in respect of the subject land. The fresh demarcation report was purportedly issued pursuant to Order No. F.8(118)/PA/CF/RUC/Pt.IV/7709-7723 dated 28.02.2012 (‘order dated 28.02.2012’) issued by the Chief Conservator of Forests, Department of Forests and Wildlife, Government of NCT of Delhi, which department had *inter-alia* constituted a Special Task Force (‘STF’) to survey and demarcate notified forest land in certain parts of Delhi through the Total Station Method (‘TSM’).



11. It is the petitioner's contention that the said demarcation exercise conducted on 26.06.2015 was unlawful; and the present petition has been filed challenging that exercise.
12. In essence and substance, the petitioner impugns the validity of *all demarcation reports issued subsequent to the demarcation report dated 12.05.1998*, including demarcation report dated 23.11.2015 issued by respondent No.2 in respect of the subject land.

### **PETITIONER'S SUBMISSIONS**

13. Ms. Walia has made the following principal submissions in support of her prayers in the present petition :
  - 13.1. That the petitioner company purchased the subject land *vide* 05 separate Sale Deeds all dated 23.12.1987, which sale deeds were duly registered with the concerned Sub-Registrar of Assurances as Document Nos. 9742 to 9746 in Book No. I, Volume No. 5999 on 28.12.1987 ('sale deeds dated 23.12.1987') and the petitioner company has been in lawful ownership and peaceful possession of the subject land ever-since 1987.
  - 13.2. That based upon the aforementioned sale deeds dated 23.12.1987, on 15.04.1998 the petitioner applied to the Consolidation Officer, Tehsil Mehrauli, New Delhi for conducting demarcation of the subject land in order to confirm the exact contours and extent thereof; and pursuant to such application, respondent No. 2 issued to the petitioner demarcation report dated 12.05.1998 in respect of the subject



land, further validating the extent of the petitioner's possession over the subject land under sale deeds dated 23.12.1987.

13.3. That the petitioner's ownership and possession over the subject land is further evidenced by the following documents issued to the petitioner based on the revenue records and municipal records of the concerned authorities :

13.3.1. Revenue records, being the *khatauni*,  *khasra girdwari* and  *aks shijra* for the years 1984 to 2014;

13.3.2. Building Sanction Plans issued by the Municipal Corporation of Delhi ('MCD') to the petitioner in 2006 in respect of the construction made on the subject land; and

13.3.3. Property Tax Receipts issued by the MCD towards property-tax paid by the petitioner in relation to the subject land.

13.4. That on 28.04.2014 respondent No. 3 illegally demolished the boundary wall of the subject land, without issuing any valid show-cause notice; without checking any documentation or records; and without affording to the petitioner any opportunity to offer a response or explain that a demarcation exercise had already been duly carried-out with respect to the subject land by the concerned authorities way back in 1998. Furthermore, the *notice for the demolition exercise* undertaken on 28.04.2014 was pasted on the subject land barely 20 minutes before the boundary wall of the subject land was demolished.



- 13.5. That *subsequently*, a fresh demarcation exercise was conducted by the respondents on 26.06.2015 and a demarcation report dated 23.11.2015 was issued by respondent No. 2, which was contrary to the previous demarcation report dated 12.05.1998, which earlier report was based on a validly conducted demarcation exercise conducted by the same respondent; and there was no reason or justification for conducting such exercise afresh. Moreover, the demarcation exercise was conducted on 26.06.2015 and demarcation report dated 23.11.2015 was drawn-up without the petitioner's participation and in complete disregard of the existing position of ownership and possession of the subject land.
14. Based on the foregoing submissions, Ms. Walia argues that demarcation report dated 12.05.1998 reflects the correct position as to the extent and contours of the subject land; and that the subsequent demarcation exercise conducted on 26.06.2015 and demarcation report dated 23.11.2015 issued pursuant thereto, is illegal since it was initiated without issuing a valid or legal show-cause notice, which vitiates the entire demarcation exercise as being wholly unlawful and untenable in law. It is accordingly prayed that the present petition be allowed, thereby affirming the correctness of the first demarcation report dated 12.05.1998 and holding that *all* subsequent demarcation exercises conducted and demarcation reports issued are incorrect, illegal and void.



### RESPONDENT'S SUBMISSIONS

15. On the other hand, opposing the relief prayed-for in the petition, learned ASC has made the following submissions on behalf of the Government of NCT of Delhi ('contesting respondents') :

15.1. That the present petition is not maintainable, since the petitioner has alternative and efficacious remedies available under section 28 read with section 64 of the Delhi Land Revenue Act, 1954 ('DLR Act'). Any challenge to demarcation report dated 23.11.2015 ought to have been pursued under the aforementioned statutory provisions, and not by way of the present writ petition filed directly before this court under Article 226 of the Constitution of India. In support of this submission, the contesting respondents rely upon the judgment of a Division Bench of this court in ***Indraprastha Medical Corporation vs. NHAI***.<sup>1</sup>

15.2. That the current status of the subject land must be understood in the context in which it has evolved, which, according to the contesting respondents, is the following :

15.2.1. Pursuant to Government Notification No. F.10(12)-1/PA/DCF/93/2012-17(I) dated 24.05.1994, issued under the provisions of section 4 of the Indian Forest Act, 1927 by the Hon'ble Lt. Governor of Delhi ('notification dated 24.05.1994'), *all forest lands* and wastelands over which the Government of NCT of

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<sup>1</sup> 2009:DHC:1060-DB



Delhi has proprietary rights were declared as ‘Reserved Forests’ identified as the four ridges *i.e.* the Northern, Central, South-Central and Southern Ridge in Delhi.

15.2.2. Subsequently *vide* Government Notification No. FI(29)/PA/DC/95 dated 02.04.1996 issued under section 154 of the Delhi Land Reforms Act 1954 (‘notification dated 02.04.1996’) by respondent No. 3, certain uncultivated land of the *Gaon Sabhas* situate in 14 villages in the Southern Ridge were *excluded* from vesting in the respective *Gaon Sabhas* and were placed at the disposal of the Forest Department of the Government of NCT of Delhi for the purpose of creating ‘Reserved Forests’. This, it is argued, was done in compliance of orders passed by the Supreme Court in ***M.C. Mehta vs. Union of India***.<sup>2</sup>

15.2.3. Out of the 14 villages mentioned in notification dated 02.04.1996, certain parcels of land in 03 villages *viz.* Asola, Sahurpur and Maidan Garhi had already been declared ‘Wild Life Sanctuary’ in exercise of powers under section 18 of the Wild Life (Protection) Act, 1972 by the Administrator of Delhi *vide* Government Notification No. F.3(116)/CWLW/84/897/906 dated 09.10.1986 (‘notification dated 09.10.1986’).

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<sup>2</sup> Orders dated 25.01.1996 and 13.03.1996 passed in I.A. Nos. 18 and 22 in W.P.(C) No. 4677/1985



- 15.2.4. Thereafter, in order to put into effect notification dated 02.04.1996 referred to above, the Chief Conservator of Forests, Department of Forests & Wildlife issued order dated 28.02.2012 whereby an STF was constituted to survey and demarcate notified forest land in the Southern Ridge, which *inter alia* includes Village : Asola, New Delhi where the subject land is situated.
- 15.3. That it was in the above backdrop, that demolition drives were carried-out as part of the exercise of demarcating forest land in the Southern Ridge, in an effort to restore to the State government all forest land that had been illegally encroached upon by various persons. It is submitted, that demolition of a portion of the boundary wall of the subject land was carried-out as part of the aforesaid exercise; but that the exercise was conducted only after issuing a public notice to all encroachers, as evidenced by public notice dated 27.04.2014, apart from issuance of notice dated 24.04.2014 to the petitioner by pasting it on the subject land.
- 15.4. That demarcation report dated 12.05.1998, which the petitioner claims to be the only valid demarcation report, was based on a demarcation exercise that *was carried-out manually*, as will be seen from the findings of the *Field Kanungo* concerning the demarcation report dated 12.05.1998, the relevant portion of which findings reads as follows<sup>3</sup> :

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<sup>3</sup> cf. status report dated 08.02.2019, para 2



“i) The earlier demarcation is manual demarcation and it is mentioned that the village Asola is under (**Chakbandi**) consolidation and the consolidation proceedings had not been done. The Asola village is (**Bandu Basti**) settlement which had been made in the year 1908-09 which is (**Daridahalat**) dilapidated condition after that no (**Chakbandi**) consolidation proceedings were held in village Asola.

“ii) That, in the demarcation it is also mentioned that village Asola is (**Pahdi**) hilly area due to that (**Kheton ki dhol**) exact Killa line does not match.

“iii) That, the demarcation is for particular khasra Nos or part of the Asola village. These demarcations did not cover entire village or all the khasras of village Asola.

“iv) Further, in the said demarcation it is mentioned that reference point was taken from khasras (**gosha bay ka kona of khasra no-1292**) part B of khasra No-1292 of village Asola.

“v) That, the revenue records used for the old demarcation and the present demarcation are one and same i.e. Masavi, Field Book and old Sizra.”

(bold in original)

It is submitted that the subsequent demarcation exercise conducted on 26.06.2015 was carried-out using the TSM method; and demarcation report 23.11.2015 has been prepared in pursuance of order dated 28.02.2012 issued by the Chief Conservator of Forests; and therefore the petitioner's contention that the subsequent demarcation is arbitrary, is baseless.

15.5. That in the proceedings before it in **Sonya Gosh vs. Govt. of NCT of Delhi & Ors.** in Original Application No. 58/2013,



116/2015 and 144/2015, the learned NGT had directed the contesting respondents to complete the demarcation exercise on the entire Southern Ridge/Forest Land; and that it was in compliance of such directions that a contractor was appointed by the respondents to carry-out demarcation in Village : Asola, New Delhi using the TSM method.

16. In light of the above submission, Mr. Kumar prays that the present petition be dismissed.

**SUBMISSIONS IN REJOINDER**

17. Ms. Walia has made the following submissions in rejoinder :

- 17.1. That the contesting respondents have *not* denied that demarcation report dated 12.05.1998 was issued after conducting a proper demarcation exercise as permissible in law. The exercise that preceded that demarcation has not been challenged by any person, nor even by the contesting respondents, under the provisions of Chapter VI of the DLR Act, which challenge was available to them if they had so desired.
- 17.2. That since no challenge was preferred to the above demarcation during the *entire period between 1998 and 2015*, demarcation report dated 12.05.1998 has attained *finality* and cannot be challenged at this late stage.
- 17.3. That by issuing demarcation report dated 12.05.1998, respondent No. 2 had created '*possessory rights*' in favour of the petitioner; and in any event, the demarcation exercise pursuant to which demarcation report dated 12.05.1998 was



issued cannot be *reviewed or revised* by respondent No. 2 *suo-motu* resulting in a fresh demarcation, without issuance of a valid show-cause notice to the petitioner, who is the duly recorded owner-in-possession of the subject land both in the revenue records as well as in the municipal records of the State authorities.

17.4. That most importantly, notifications dated 09.10.1986 and 02.04.1996 issued by the contesting respondents, upon which they seem to base their subsequent action, *do not relate to the subject land at all*, since the said notifications relate to *different khasra numbers* though in Village : Asola, New Delhi.

17.5. That there is no cavil as regards the authenticity and genuineness of the title documents and revenue records under which the petitioner has been holding lawful ownership and possession of the subject land *from 1987 onwards*, namely the 05 sale deeds dated 23.12.1987 and the *khatauni, khasra girdwari* and *aks shijra* relating to the years 1984 to 2014; and therefore, the petitioner cannot simply be divested of any portion of the subject land, by the respondents pretending to conduct a so-called fresh demarcation exercise.

### **DISCUSSION AND CONCLUSIONS**

18. Though much has been argued on the two sides, in the opinion of this court, the considerations on which the decision of the present case turns are the following :

18.1. The respondents have not cavilled that the petitioner has acquired title to the subject land *vide* 05 sale deeds all dated



23.12.1987, by which sale deeds the petitioner had purchased various parcels of land from different sellers, which parcels of land now comprise the subject land.

- 18.2. It is also not disputed by the contesting respondents that the petitioner has been in settled possession of the subject land ever-since it was purchased in 1987. A perusal of the sale deeds in respect of the subject land would show that the parcels of land that were subject matter of sale *were comprised in Khasra Nos. 1922/1314 and 1315* and were ad-measuring 12 *bigha* 12 *biswa* in the aggregate situate in the revenue estate of Village : Asola, New Delhi, all of which land was purchased by the petitioner.
- 18.3. Furthermore, the respondents also do not dispute the revenue records filed by the petitioner in the present matter, namely the *khatauni* for the year 1984-85 and the  *khasra girdwari* for the year 2013-14 in respect of Khasra Nos. 1922/1314 and 1315, which were the parcels of land transferred to the petitioner by the sellers by way of the above-referred 05 sale deeds. The petitioner has also placed on record the *aks shijra* relating to the Khasra Nos. 1314 and 1315 which were subject matter of purchase by the petitioner *vide* the 05 sale deeds. The respondents have not disputed that *aks shijra* either.
- 18.4. After purchasing the subject land in 1987, *vide* a letter dated 14.04.1998, the petitioner requested the concerned authorities to carry-out demarcation of the subject land; whereupon, the Tehsildar, Kalkaji/Defence Colony, New Delhi, issued to the



*Field Kanungo* a *robkar* vide his communication dated 04.05.1998, directing the *Field Kanungo* to undertake demarcation of the subject land and to render a report. In compliance of such directions, demarcation of the subject land was carried-out on 12.05.1998; and a report dated 12.05.1998 was issued in relation to that demarcation exercise, duly signed by all concerned persons, including the *Field Kanungo*, the *Halqa Patwari* and representatives of the petitioner.

18.5. Furthermore, after acquiring the subject land, vide communication dated 20.07.2006 the petitioner obtained a sanction plan from the MCD for undertaking construction on the very same khasra numbers viz. *Khasra Nos. 1922/1314 and 1315* in Village : Asola, New Delhi, based on which construction was made; and there has never been any dispute with regard to such construction, since there is nothing on the record to show that any authority ever objected to the petitioner having made any construction or erected any boundary wall on any piece of land that the petitioner did not own.

19. The matter rested at this point from 1998 upto 2014 when notice dated 24.04.2014 was issued by the Deputy Conservator of Forest (South) to “*Shri/Shrimati Occupant S/o \_\_\_\_\_*” putting them to notice that they were in unauthorised occupation of *Khasra Nos. 1309 and 1310* in Village : Asola, New Delhi reciting as follows :

**“GOVERNMENT OF NCT OF DELHI  
OFFICE OF THE DEPUTY CONSERVATOR OF FOREST  
(SOUTH)  
NEAR DR. KARNI SINGH SHOOTING RANGE**



**TUGHLAKABAD, NEW DELHI-110044**

File No. 21/DCF(S)/Land/(Asola Ridge Land)/2013-14/240

Dated 24/4/14

**NOTICE**

Whereas all Forest lands and waste lands which is the property of Government, over which Government has propriety rights has been declared as Reserved Forest under the provisions of section 4 of Indian Forest Act, 1927 vide notification dated 24/05/1994 and 02/04/1996, read with orders of Hon'ble Supreme Court in I.A. No. 703 in W.P. No. 202/95 dated 23.11.2001.

Whereas Shri/Shrimati occupant S/o is in unauthorized occupancy under Kh. No. 1309, 1310 of village Asola comprising of \_\_\_\_\_ ~~Bigha~~ (sic : struck through in original) \_\_\_\_\_ Biswa area has violated the provisions under section 26(d) (g) (h) and section 63 (c) of Indian Forest Act, 1927.

I **Nisheeth Saxena** DCF (South) duly empowered to do so, hereby give this opportunity to remove the above said unauthorized occupation from the above said Kh. No. 1309 of village Asola, as part of the Forest land with immediate effect. In case, you fail to remove the encroachment/unauthorized occupancy on your own, the structure would be demolished at your cost and you will be responsible to bear the cost incurred by the department in removal of the unauthorized structures.

Sd/-

Dy. Conservator of Forests (South)  
Near Karni Singh Shooting Range  
Tughlakabad, New Delhi-110044"

(underscoring supplied; bold in original)

As is evident from a bare perusal of the above notice, apart from a broad declaration that, in compliance of orders of the Supreme Court made in I.A. No. 703 in W.P.(C) No. 202/1995, the government had declared "... .. all forest land and waste land which is the property of the government" as 'reserved forest' under the provisions of the Indian Forest Act 1927, the said notice was not even addressed



to any named person or entity; and was only directed to the ‘occupant’ and that too the ‘occupant’ of *Khasra Nos. 1309 and 1310* in Village : Asola, New Delhi. It may be observed that the subject land, with which the petitioner is concerned, is land comprised in *Khasra Nos. 1922/1314 and 1315* in Village : Asola, New Delhi and not in *Khasra No. 1309 or 1310* in that village.

20. By way of the aforesaid notice the concerned forest official purported to grant to the ‘occupant’ the opportunity to remove “... .. *the above said unauthorised occupation from the above said Kh. No. 1309 of village Asola ..... with immediate effect*” since it was part of forest land. The notice then proceeded to warn the ‘occupant’ that if the encroachments/unauthorised occupation of the forest land were not removed, the structures would be demolished at their cost.
21. The petitioner has argued that they never received a copy of notice dated 24.04.2014, though a copy of the said notice was pasted on their property on 28.04.2014 *minutes before* the demolition action ensued. It has in fact been argued, that the notice was pasted on the subject land *after* officers representing the Deputy Conservator of Forest (South) had already entered upon the subject land.
22. The petitioner narrates that thereafter, purportedly with the objective of taking back forest land belonging to the government, the officers proceeded to demolish the boundary wall and associated structures on the subject land using JCBs; and later it turned-out, that the Forest Department had installed cement pillars across the subject land re-marking its boundaries.



23. On the other hand, the contesting respondents have nothing to show that any notice was served *upon the petitioner company* or upon any of its officers. As observed above, notice dated 24.04.2014 based on which action was purportedly taken *neither* contained the name of the petitioner company; and, even more significantly, nor did the notice refer to the khasra numbers which the petitioner is occupying. This exercise was conducted by the respondents despite the fact that the petitioner's name was duly mutated in the revenue records and the subject land, owned and possessed by the petitioner, was described in the revenue records as Khasra Nos. 1922/1314 and 1315 in Village : Asola, New Delhi.
24. It is equally important to note, that the *extent and measurement* of the said khasras was also duly recorded in the revenue records, namely that Khasra No. 1922/1314 was ad-measuring about 8 *bigha and 8 biswa* and Khasra No.1315 was ad-measuring about 4 *bigha and 4 biswa*; and the total land was therefore ad-measuring about 12 *bigha and 12 biswa*.
25. As a consequence of the action taken by the Forest Department on 28.04.2014, the petitioner sent letters dated 08.05.2014 to the concerned SDM and Tehsildar; and letter dated 15.05.2014 to the officers of the Forest Department, urging them that the JCB machines and private contractors be directed not to enter their property till the dispute was adjudicated.
26. In the communication sent to the Forest Department, the petitioner also pointed-out that the petitioner was *not* the applicant in the proceedings bearing Original Application Nos. 58/2013, 116/2015



and 144/2015 titled **Sonya Ghosh vs. Govt. of NCT of Delhi & Ors.** pending before the learned NGT; in which, *vide* order dated 07.05.2014, the applicants before the tribunal were directed to get their land demarcated by the Revenue Department. The petitioners accordingly brought to the notice of the Forest Department that the directions of the learned NGT in those proceedings were not directed at the petitioners.

27. As the record shows, subsequently, the petitioner also addressed a communication dated 08.03.2015 to the District Commissioner (South), to the District Magistrate (South) and to other revenue officials, raising the same grievance.
28. Evidently, since the petitioner did not receive any constructive response to the communications sent to various governmental authorities, the petitioner approached the learned NGT by way of Original Application No. 145/2014 titled **M/s. Swastik Construction & Builders Pvt. Ltd. vs. Govt. of NCT of Delhi & Ors.** challenging Show Cause Notice dated 24.04.2014 issued by the Deputy Conservator of Forest (South), which application was disposed-of by the learned NGT *vide* order dated 06.08.2014, with the following observations :

*“Heard. Perused.*

*“The Applicant is challenging the show-cause notice dated 24.04.2014 file no. 21/DCF(S)/Land/Asola Ridge Land/2013-14/240 issued by the Deputy Conservator of Forest. It is the case of the Applicant that his company herein as the owner of the plot situates at C-2/A, Asola village and Khasara Nos. 1314 and 1315 village Asola which has been validly demarcated by demarcation report dated 12.05.1998 and the Deputy Conservator of Forest is acting on*



*the impugned notice issued regarding unauthorised occupants under Khasra Nos. 1309 and 1310 of village Asola.*

*“Essentially, it appears to be a dispute over demarcation of land and not regarding any legal enforcement of legal right arising out of the environmental issues.*

*“At this stage, liberty is sought by the Applicant to withdraw the present application with liberty to approach appropriate forum for redressal of her grievances. Liberty is granted. Accordingly, the Original Application No. 145/2014 stands disposed of as withdrawn.”*

29. Then came a notice dated 16.06.2015 issued by the Tehsildar (Saket), which was addressed to the petitioner company among 10 other persons, informing them that demarcation of “... .. the above mentioned khasra Nos. has been fixed for 26.06.2015”; and that they were to depute an authorised officer or person to remain present at the Tehsildar’s Office for that purpose. Notably, the khasra numbers referred to in this notice *also did not include Khasra Nos. 1922/1314 and 1315*, of which the petitioner claims ownership and possession.
30. Be that as it may, pursuant to the aforesaid notice dated 16.06.2015, a demarcation exercise was carried-out on 26.06.2015; and proceedings report dated 26.06.2015 was submitted in relation thereto. Needless to add that the petitioner was neither represented in these demarcation proceedings, nor did these demarcation proceedings relate to Khasra Nos. 1922/1314 and 1315 with which the petitioner is concerned. This has been narrated in the proceedings report dated 26.06.2015.
31. The aforesaid proceedings report dated 26.06.2015 culminated in issuance of a demarcation report dated 23.11.2015, which gave the following main findings :



**“Main findings of the Demarcation report are as follows:**

1. Similar results were obtained using manual and TSM method.
2. All the measurements of khasra no. involved on the ground were found to be in sync with the field book.
3. The actual possession of land in terms of area and Khasra nos. of the respective recorded bhumidhar is as follows:

Table No.-2

| S.No. | Name of bhumidhar                          | Khasra Nos.                                    | Actual possession on the ground | Excess/less area |
|-------|--------------------------------------------|------------------------------------------------|---------------------------------|------------------|
| 1     | Smt. Anjali Verma                          | 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1722 | 13 Bigha, 06 Biswa              | (-1)1-08         |
| 2     | Sh. Ashish Kakkar                          | 1681, 1682, 1684, 1685, 1687, 1688, 1694, 1693 | 14 Bigha, 16 Biswa              | (+)2-17          |
| 3     | Sh. V.K. Kukkar                            | 1677                                           | 17 Bigha, 14 Biswa              | (+)10-08         |
| 4     | M/s R. Construction and Builders pvt. ltd. | 1293, 1308, 1309, 1310, 1311, 1312, 1313, 1314 | 12 Bigha, 18 Biswa              | 0-0              |

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“In the end, it is also important to point out that the demarcation report using local reference points as mentioned above was found to be sync with the demarcation report earlier submitted by revenue department in National Green Tribunal (NGT). In fact, the findings of earlier of demarcation report as submitted in NGT has been corroborated by the current demarcation report done using localized reference points.

“Moreover, the findings in terms of the area occupied by each bhumidhar is also in conformity with the earlier finding of revenue department wherein worthy chief Secretary was apprised about the whole issue in the meeting held on 30.04.2014.”

(emphasis supplied)



It is therefore noticed that even demarcation report dated 23.11.2015 records that “*Similar results were obtained using manual and TSM method*”; and that “*All the measurements of khasra no. involved on the ground were found to be in sync with the field book*”; and further that “*the findings in terms of the area occupied by each bhumidhar is also in conformity with the earlier finding of revenue department*”. Accordingly, there appears to have been no change in the measurement of the parcels of land undertaken by the TSM method compared to the one undertaken manually; and the occupants were found in possession of their respective extents of the land.

32. Now there is another issue that requires to be considered, namely that even though the demarcation exercise conducted on 26.06.2015 did not name the petitioner, *it does refer to Khasra No. 1314* situate in Village : Asola; and shows that khasra in the *ownership of one M/s. R. Construction and Builders Pvt. Ltd.* The issue whether the land comprised in *Khasra No. 1314* is owned by the aforesaid M/s. R. Construction and Builders Pvt. Ltd or a part of the land is owned by the petitioner may, if there is at all such an issue, be a matter of ‘title’ as between the said two owners. However, we must be clear that public notice dated 27.04.2014 and notice dated 24.04.2014 issued to the ‘*occupant*’ of certain khasra numbers (not referring to the petitioner or the khasra numbers owned by it) said that the respondents intended to re-claim and re-possess forest land and waste land<sup>4</sup> which are the *property of the government* and which had been

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<sup>4</sup> cf. counter-affidavit dated 16.01.2017, para 4



declared as reserved forest under the provisions of the section 4 of the Indian Forest Act. The purpose of the exercise was not to decide any title dispute between one private company, *i.e.* M/s. Swastik Construction Pvt. Ltd. (petitioner) and another private company, *i.e.* M/s. R. Construction and Builders Pvt. Ltd. or to *reclaim* land from one company only to hand it over to another. Indeed, a demarcation exercise is not an exercise to decide the title of property, since that is the exclusive preserve of a civil court; nor was that the scope of the action initiated by the respondents by way of the said notices.

33. In their status reports and counter-affidavit filed in the matter, an important contention raised by the respondents is that the petitioner has an equally efficacious remedy available under the provisions *inter-alia* of sections 26 to 28 of the DLR Act. This contention of the respondents is however irrelevant in the present circumstances for the reason that notice dated 24.04.2014 was *neither addressed to the petitioner nor did it refer to the khasra numbers to which the petitioner claims ownership and possession*. If there was an issue relating to correction of any mistake or error in the annual register; or in relation to the entries in the annual register; or as to boundaries of any parcel of land, which could be amenable to action under sections 26 to 28 of the DLR Act, such dispute was in relation to Khasra Nos.1309 and 1310, which were not owned or possessed by the petitioner; and therefore, the petitioner had no concern with any such dispute. In the circumstances, the petitioner did not have any alternate remedy under the DLR Act; and it was therefore permissible for the petitioner to approach this court by way of the present writ petition.



34. In their counter-affidavit the respondents also say that if the petitioner had any grievance relating to the demarcation or identification of land boundaries relating to the subject land, the petitioner ought to have approached the appropriate appellate authority for redressal of its grievance. In taking that position, the respondents completely ignore the fact that the petitioner had no grievance in relation to the demarcation of the subject land conducted as far back as on 12.05.1998; and was in settled possession of the entire extent of the subject land without any dispute, demand or objection by any person or authority, whether private or governmental. It was, in fact, the respondents who unilaterally undertook a purported re-demarcation exercise after some 17 years, seeking to demolish the boundary wall of the petitioner's property and installing cement pillars to carve-out a portion of the subject land, claiming it to be reserved forest, without even issuing a show-cause notice *to the petitioner or relating to the petitioner's khasra numbers*.
35. The respondents have also made a statement in their counter-affidavit<sup>5</sup> to the effect that the petition does not pertain to entries made in the revenue records, and that the dispute relates to *identification of land*, which the respondents contend is a matter covered by section 28 of the Delhi Land Reforms Act, 1954 and not by section 30 of the Delhi Land Revenue Act, 1954. This argument is also to be heard only to be rejected, since *that was never the purport or purpose of notice dated*

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<sup>5</sup> cf. counter-affidavit dated 16.01.2017, para 12



24.04.2014 or public notice dated 27.04.2014, which were the genesis of the respondents' action against the subject land.

36. It is also important to note that Notification dated 02.04.1996 issued by the Revenue Department of the Government of NCT of Delhi<sup>6</sup> to the effect that uncultivated, surplus land of the *Gaon Sabhas* is to be excluded from vesting in the *Gaon Sabhas* and is to be placed at the disposal of the Forest Department, *does not refer to Khasra Nos.1922/1314 and 1315* in Village : Asola, New Delhi as per Annexure-E to that notification as placed on the record. Furthermore, public notice dated 27.04.2014 issued by the Forest Department in exercise of the powers conferred by section 18 of the Wild Life (Protection) Act *also does not refer to the khasra numbers* comprised in the subject land. Yet again therefore, the very basis of the respondents' action against the khasra numbers which are admittedly in the possession of the petitioner is mis-conceived.
37. Most importantly, *vide* a Notification dated 20.11.2019<sup>7</sup> issued by the Lt. Governor of the NCT of Delhi in exercise of powers under section 507(a) of the Delhi Municipal Corporation Act 1957, Village : Asola, in which the subject land is situate, has been '*urbanised*' and has consequently vested in the Central Government; and has thereafter been placed at the disposal of the DDA *vide* Notification dated 25.09.2020<sup>8</sup> issued by the Ministry of Housing & Urban Affairs of the

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<sup>6</sup> as per directions of the Supreme Court *vide* orders dated 25.01.1996 and 13.03.1996 in *M.C. Mehta* (supra)

<sup>7</sup> Notification bearing No. F7 (280)/DLB/2019/000580156/14600-15

<sup>8</sup> S.O. 3302 (E)



Central Government in exercise of the powers under section 22(1) of the Delhi Development Act 1957, to be dealt with as per the extant Master Plan for Delhi, as notified from time-to-time.

38. As a result of urbanisation of the village, the subject land situate in that village is no longer 'land' that is held or occupied for purposes connected with agriculture, horticulture or animal husbandry (including pisciculture or poultry farming) within the meaning of section 3(13) of the Delhi Land Reforms Act, 1954; and is therefore not covered within the ambit of the Delhi Land Reforms Act at all. Consequently, the subject land also does not fall within the ambit of the Delhi Land Revenue Act, 1954. Since the subject land is no longer covered by the provisions of the said two statutes, it no longer falls under the jurisdiction of revenue officials acting under either of those statutes, who can therefore no longer carry-out any re-demarcation exercise in respect thereof.<sup>9</sup>
39. For completeness, it may be noted that *vide* order dated 07.12.2018 made in the present proceedings, the respondents were directed to maintain *status-quo* in respect of the subject land, which order has been continuing ever-since. The petitioner therefore continues to remain in possession and occupation of the entire extent of the subject land, even though a part of the boundary wall has been demolished by the respondents.

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<sup>9</sup> *Mohinder Singh (Dead) through LRs & Anr. vs. Narain Singh & Ors.*, 2023 SCC OnLine SC 261, para 36



40. As a sequitur to the above discussion, in the opinion of this court, the following inferences arise :

- 40.1. Show-cause notice dated 24.04.2014 was neither addressed to the petitioner; nor did it contain any reference to the petitioner; nor did it even refer to Khasra Nos. 1922/1314 and 1315, of which the petitioner is admittedly in possession;
- 40.2. Therefore, even if notice dated 24.04.2014 was pasted on the wall of the subject land ahead of the proposed action by the respondents, the *notice did not refer to the subject land at all*; and therefore such notice was of no consequence or effect insofar as the petitioner was concerned. Any action ensuing from that notice was therefore an *action without notice* to the petitioner; and accordingly stands vitiated as a matter of law;
- 40.3. Public notice dated 27.04.2014 stated to have been put-out by the respondents, also *did not carry any reference to the khasra numbers of the subject land*;
- 40.4. It is inconceivable in law that a show-cause notice which is the basis of proposed action by an authority against a person (in this case a company) *is not even addressed to such person nor does it refer to a subject concerning that person*. No show-cause notice could be more baseless and untenable in law than one which is addressed to a third party; and relates to a subject matter which concerns some other party. Any action on the part of an authority based on such show-cause notice would be *ex-facie* illegal and untenable in law. At the risk of repetition, it must be noted that in the present case, it is not that the



respondents were not aware of the identity of the petitioner, or its address, or the details of the khasra numbers that the petitioner was holding, since all that was part of the duly mutated revenue records maintained by the concerned authorities; yet the show-cause notice was delightfully bereft of any such details. In the absence of a legally valid show-cause notice, any exercise conducted by the respondents is vitiated as a matter of law; and

- 40.5. The petitioner has admittedly been in possession and occupation of the subject land ever-since it was purchased by way of registered sale deeds dated 23.12.1987; and the subject land was duly demarcated by an exercise conducted on 12.05.1998, which demarcation exercise was not challenged by any party in any proceedings up-until the respondents' ill-conceived action in June 2015. The respondents could therefore not have upset the demarcation exercise conducted on 12.05.1998 except strictly in accordance with law.
41. It is relevant to observe that all the foregoing inferences arise from a *plain reading of the admitted records* of the matter; and do not therefore require adjudication of any disputed questions of fact as between the contesting parties.
42. As a consequence of the foregoing discussion, this court is persuaded to hold that notice dated 16.06.2015; re-demarcation exercise carried-out pursuant thereto on 26.06.2015; and demarcation report dated 23.11.2015, *insofar as these relate to the petitioner and to the land standing in the petitioner's name comprised in Khasra Nos.*



*1922/1314 and 1315 situate in Village : Asola, New Delhi stand vitiated in law; and are accordingly quashed and set-aside.*

43. Furthermore, it is held that public notice dated 27.04.2014 and notice dated 24.04.2014 issued by the respondents are also of no application or consequence *insofar as the petitioner and the subject land held in Khasra Nos. 1922/1314 and 1315 in Village : Asola, New Delhi are concerned.*
44. Before closing the matter, this court is constrained to observe that ill-conceived and arbitrary action on the part of governmental authorities, as is evident in the present case requires to be deprecated; and such tendency ought to be thwarted vigorously by the courts.
45. The petition is disposed-of in the above terms.
46. Pending applications, if any, also stand disposed.

**ANUP JAIRAM BHAMBHANI, J.**

**SEPTEMBER 26, 2024**

HJ/V.Rawat