



\$~15

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

+ **FAO 343/2023**

KULDEEP SINGH HOODA

.....Appellant

Through: Mr. Amit Pawan, Mr. Hassan
Zubair Waris, Ms. Aastha
Shrestha, Ms. Shivangi Singh
Rawat, Mr. Suchit Singh Rawat
& Mr. Kuldeep Mishra, Advs.

versus

SUBHASH SHARMA & ORS.

.....Respondents

Through: Ms. Shobhana Takiar and Mr.
Kuljeet Singh, Advs. for R-1-
4/DDA.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

22.04.2025

%

1. Having heard the learned counsel for the parties and on perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) assailing the impugned order dated 07.08.2023 passed by the learned ADJ-02, Central District whereby the application of the appellant/plaintiff under Order XXXIX Rule 2A of the CPC was dismissed *qua* the officials of the respondents/DDA.

2. In a nutshell, the appellant, being the plaintiff, instituted a suit against the private parties arrayed as respondents/defendants no.1 to 4 seeking permanent injunction on the ground that he has been in possession of the subject land as *Gair Maroosi* (Non-occupancy Tenant) bearing Khasra No.2608/1/20 (old) and now bearing Khasra No.356 measuring 5 Bighas and 5 Biswas situated in the revenue

estate of the Village Mehrauli, Tehsil Mehrauli, Delhi (subject land).

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 22/05/2025 at 12:17:16



He claimed that he has been in possession of the property since 1991 and the land is duly mutated/recorded in his name in the Khasra *Girdawari* and other revenue records of the Government of NCT of Delhi. He claimed that the respondents no.1 to 4, who are also the natives of the same village, were attempting to dispossess him forcibly from the suit premises.

3. On the present suit being filed by the appellant/plaintiff along with an application under Order XXXIX Rules 1 and 2 of the CPC, this Court *vide* order dated 17.03.1999 restrained the then defendants, their servants and agents from dispossessing the appellant/plaintiff from the premises in question except by following the due process of law. It is also a matter of record that later on, the interim order was made absolute by disposing the application under Order XXXIX Rules 1 and 2 of the CPC in favour of the appellant/plaintiff *vide* order dated 23.08.2006.

4. It appears that the appellant moved an application under Order 1 Rule 10 of the CPC on 01.06.2009 seeking to implead the DDA on the allegations that the officials of the DDA had visited the subject property on 27.05.2009 and claimed that the suit land belonged to the DDA; and the officials of the DDA threatened the appellant/plaintiff that they would take over the possession of the subject land from him. Evidently, on issuance of the notice, a reply was filed by the respondents/DDA and it was acknowledged that they were aware of the order dated 23.08.2006 but it was denied that any threat was given or that there was any attempt on their part to disobey the direction passed by this Court.

5. The application moved on behalf of the appellant under Order 1

Rule 10 of the CPC was allowed *vide* order dated 28.08.2010 and the

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 22/05/2025 at 12:17:16



respondents/DDA came to be impleaded as the respondent no.5. The appellant moved the present application under Order 39 XXXIX 2A of the CPC claiming that the officials of the DDA along with the police force came to the site on 25.07.2016 and despite showing the order passed by this Court, the entire superstructure on the premises was demolished for which reliance is placed on the photographs placed on the record.

6. The learned Trial Court *vide* impugned order dated 07.08.2023 although observed that the plea by the officials of the DDA that they were not aware of the interim orders passed by this Court was not fathomable, however, it was found that the officials of the DDA had acted in public interest to remove the encroachment from the suit land and it cannot be said that they committed any wilful or deliberate disobedience of the directions of this Court. Resultantly, the application under Order XXXIX Rule 2A of the CPC was dismissed.

7. It is brought on the record that the subject land has been vested in the DDA through the Gazette notification dated 12.07.1976 by the Ministry of Rehabilitation, Government of India. It is also brought on the record that the subject land is required for re-construction of the road from Mehrauli-Mahipalpur main road to ILBS hospital road, and therefore, after obtaining prior approval from the Principal Commissioner, DDA, the encroachment on the land in Khasra No.353 and 356 were removed on 25.07.2016.

8. Avoiding unnecessary thesis on the subject, this Court has no hesitation in holding that the impugned order dated 07.08.2023 does not suffer from any patent illegality, perversity or incorrect approach in law for the elementary reason that at the time when the interim

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 22/05/2025 at 12:17:16



the DDA was not a party to the litigation.

9. At the cost of repetition, the DDA became a party consequent to the application under Order 1 Rule 10 of the CPC having been allowed *vide* order dated 28.08.2010. No modification of the order was sought by the appellant/plaintiff so as to make applicable the restraining order upon the newly impleaded respondent/DDA. It might be that the officials of the DDA were aware of such orders but considering that there was no direct or specific restraining order against the DDA from taking appropriate action in accordance with law with regard to the subject property, no wilful or deliberate disobedience or disregard to the directions of this Court can be attributed to the officials of the DDA.

10. In view of the foregoing discussions, I find that the present appeal is bereft of any merit and same is hereby dismissed.

DHARMESH SHARMA, J.

APRIL 22, 2025
Ch