



2025:DHC:10463-DB



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

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Judgment reserved on: 18.11.2025

Judgment delivered on: 26.11.2025

+ LPA 1092/2024, CM APPL. 64384/2024, CM APPL. 64385/2024 & CM APPL. 64387/2024

KANHAIYA LAL THROUGH SPA HOLDER

.....Appellant

versus

DELHI DEVELOPMENT AUTHORITY & ORS

.....Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Sanjay Goel, Advocate

For the Respondents: Ms. Kritika Gupta and Ms. Vidushi Singhania,
Advocates for DDA.
Ms. Nidhi Raman, CGSC with Mr. Mayank Sansanwal, Mr. Akash Mittal and Mr. Om Ram,
Advocates for R-2 & 3/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. The present Letters Patent Appeal has been preferred assailing the impugned judgment and order dated 28.08.2024 passed by the learned Single Judge in W.P.(C) 10311/2019 titled "*Kanhaiya Lal vs. Delhi Development Authority and Ors.*" dismissing the said writ petition imposing costs of Rs.50,000/-.

2. Shorn off of all unnecessary details, it is to be noticed that when the

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appellant came to realize that the officials of the Delhi Development Authority (hereinafter mentioned as “DDA”) had started digging trenches in order to construct the boundary wall on a plot adjacent to the appellant’s plot (hereinafter mentioned as “Subject Plot”), the appellant filed complaints with various authorities, including the DDA. In response, the DDA uploaded its reply on the CPGRAMS Portal on 06.02.2019 indicating that the subject plot was vacant and was encroached upon by the owners of the adjoining H.No. 124A in the shape of an extended sunshade balcony and two gates with four ventilators. The Deputy Director (Land Management) of the DDA, passed the order dated 02.04.2019 reiterating the aforesaid stand. It appears that the appellant filed numerous complaints to various authorities, in vain. Consequent thereto, the appellant filed the underlying writ petition on 18.09.2019. The said writ petition was dismissed *vide* the impugned judgment dated 28.08.2024 with costs of Rs.50,000/- constraining the appellant to prefer the present appeal.

3. The appellant claimed that his father Sh. Sewa Ram was allotted plot Nos. A-123 and A-124 in the year 1958 and a Lease Deed was executed in the year 1960 in his favour. The appellant also claimed an easementary right over the open land citing a premium of Rs. 90/- having been paid for the three sided open plot No.A-124. Amongst others, the appellant asserted that since a premium sum was paid by the appellant for a corner three side open plot, his easementary rights as also the right of ingress and egress cannot be curtailed in the manner as sought by the DDA. It is in these circumstances that the underlying writ petition was filed claiming the following reliefs:-

“(i) To set aside/quash order dated 02.04.2019 passed by the respondent No.1 - Delhi Development Authority, or any other similar order allowing construction of boundary wall that blocks the doors and windows of 3 side open plot



holders/last house in a row of house.

(ii) To give necessary directions to DDA not to interfere in the peaceful possession and enjoyment of three side open plot A- 124, which is a part of regularized layout plan dated 3-1- 1961 maintained by the office of Town & Country planning department SDMC. As owner of the last house in the row of houses has a right to access (ingress, egress and regress) its property from North side over open land existing in the line plan provided by LND. As government department has charged total 1440 i.e. for A-124 i.e. an additional premium of Rs 90 for a three side open plot.

(iii) A Writ of Mandamus be issued restraining the respondents from allowing any construction or creating any third party interest or changing the status of the open land as per the Zonal plan and regularized layout plan maintained by Town & Country planning Dept./SDMC adjoining plot No.A-124, Lajpat Nagar-IV, New Delhi.

(iv) Issue writ in the nature of Mandamus directing the respondents not to Carve out new plot by changing the land use (of open land and land reserved for road as per the regularized layout plan of Lajpat Nagar fourth Neighbourhood) as it is in gross violation of Sec. 313(5) of the DMC Act 1957, Layout plan sanctioned by the layout scrutiny committee and standing committee as well as the development code sec17 clause 3(4) and clause 3(5) of the Master Plan of Delhi 2021. Further, a Writ of Mandamus or any other appropriate writ be issued to show cause notice to LOSC of MCD that once 43 sufficient merits exist for not allowing /denial of modifying Regularized layout plan of/for DDA request for inclusion of newly carved out plots which violate the existing Building bye laws. As such plots are created by combining a portion of the open space and land reserved for roads. It is against the rights of adjoining three side open plot holders who have been already lawfully sanctioned to open doors and windows towards open land and overhanging sunshades over open land u/s section 29 of BBL of MCD Act 1957. Restrain it from changing the existing land use from open land to a new plot thus interfering /adversely affecting easement rights of the 3 side plot holder.

(v) If the court observes and finds that petitioner need to file a separate suit for injunction against DDA the government authority, as petitioner has a right to enter the property A- 124 from the north side as per the line plan provided by L&DO. It is a prayer to the Hon. Court to grant permission for the same that is to file a civil suit of injunction to restrain disturbance under sec 35 of the Easement Act 1982 against the DDA, then such a prayer is hereby requested and may kindly be granted to the petitioner. To safeguard and enforce this right of 3 side open plot holder, it is requested to Hon. Court to



provide a right-of-way or safe passage of 10 foot or any suitable width as per the MCD building bye laws.

(vi) prayer to setup a inquiry or committee to investigate and examine the issues of MOR Land Package Deal 1982 being injurious and adversely affecting the rights of 3 side open plot holders particularly in the present case whereas clause(5) clearly states that such cases of existing commitment by Department of rehabilitation when bought to the notice later on, will be examined on merits and decided in consultation with DDA .But DDA has not set up any meditation facility or agency (arbitration tribunal or ombudsman) for the same purpose under the said deal.

(vii) Further any other appropriate Writ, Direction or Order may also be issued keeping into consideration the peculiar facts of the present case.

(viii) The cost of petition may also be awarded to the petitioner and against the respondents.”

4. The appellant appearing in person submitted that both the Municipal Corporation of Delhi (hereinafter mentioned as “MCD”) as also the DDA being State under Article 12 could not discriminate or act arbitrarily to deprive the appellant of his easementary rights. He also pleaded that neither the DDA nor the MCD could have violated the conditions specified in the package deal executed by the Ministry of Rehabilitation (hereinafter referred as “MoR”).

5. The appellant further argued that the refusal of DDA to provide a seven feet passage for the three sided open plot No.A-124 is not only arbitrary but also violates the legitimate expectations inasmuch as many similarly situated plot owners, particularly of plot Nos. A-104, A-105, A-52 and A-99 were granted similar benefits. He asserted that by virtue of the construction of a boundary wall, the rights of the appellant under the Easements Act, 1882 would be clearly violated. He further stated that the construction of doors and windows is in accordance with the sanctioned building plan and therefore DDA cannot curtail



the right of the appellant from opening doors and windows which are duly sanctioned in accordance with law.

6. The appellant further asserted that the subject plot of land which is adjacent to his plot bearing No. A-124 can neither be sold nor be used without violating the Zonal Layout Plan (hereinafter mentioned as “ZLP”). He emphasizes that the plot bearing No. A-124 being the corner plot with three sides open had a right to have a seven feet wide passage between A-124 and the vacant subject plot. Additionally, the appellant disputed the maps placed on record by the DDA on the premise that the same are neither correct nor authenticated. He stated that there is a violation of the ZLP as sanctioned under Section 313(2) and Section 313(5) of the DMC Act, 1957. He asserted that the land in question belongs to the MoR while the DDA is only a custodian. In such eventuality, according to him, DDA cannot assert its right as an owner since its rights as a custodian are only limited. He relies on the judgment of the Supreme Court in ***Pt. Chet Ram Vashisht vs. MCD*** reported in (1995) 1 SCC 47, which clearly laid down the distinction between ownership rights and the rights of a custodian.

7. He contends that the learned Single Judge did not take into consideration the aforesaid submissions and therefore this Court needs to interfere and set aside the impugned judgment and grant reliefs as sought in the underlying writ petition.

8. *Per contra*, Ms. Kritika Gupta, learned counsel for the DDA submits that the subject land measures 137 Sq. Yds. adjoining H.No. A-124, Lajpat Nagar IV and was transferred to DDA from MoR under a package deal on 02.09.1982 and was physically handed over on 03.01.1984. According to her, the appellants have unlawfully opened the doors and windows towards the subject plot on the pretext



of A-124 being a corner plot. She stated that no document has been placed on record to support the stand that A-124 is a corner plot. Moreover, there is no document or any other evidence to demonstrate any existing pathway between A-124 and the subject plot. In fact, she asserted that appellant is a rank encroacher on the land belonging to DDA.

9. So far as the submission of appellant that DDA is not an owner is concerned, she relies on Section 12 of the Displaced Person (Compensation and Rehabilitation) Act, 1954 to submit that by virtue of such provisions, the subject plot including the entire area was vested in the MoR, which is not disputed by the appellant. The MoR has further vested the subject plot unto the DDA by virtue of the package deal dated 02.09.1982. She states that it was only thereafter that the DDA got the Zonal Layout Plan (hereinafter referred to as “ZLP”) approved by the Town Planner, MCD in the year 1985 to include the subject plot. The said ZLP has been placed on record in the appeal. She asserted that as per the approved ZLP, the subject plot is earmarked as “Residential”, therefore no public road, lane or *gali* could be designated in that area. She further disputes the map filed by the appellant.

10. We have heard the appellant in person as also Ms. Gupta, learned counsel for the DDA and perused the records of the underlying writ petition.

11. From a perusal of the impugned judgment, we find that learned Single Judge has meticulously dealt with each and every contention put forward by the appellant on facts and on finding no merit therein, dismissed the writ petition with costs. Since the appellant had asserted that the DDA is a mere custodian and not an owner of the subject plot, it would be appropriate to extract Section 12 of the Displaced Person (Compensation and Rehabilitation) Act, 1954. The same



reads thus:-

“12. Power to acquire evacuee property for rehabilitation of displaced persons :-

(1) If the Central Government is of opinion that it is necessary to acquire any evacuee property for a public purpose, being a purpose connected with the relief and rehabilitation of displaced persons, including payment of compensation to such persons, the Central Government may at any time acquire such evacuee property by publishing in the Official Gazette a notification to the effect that the Central Government has decided to acquire such evacuee property in pursuance of this section.

(2) On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances.

(3) It shall be lawful for the Central Government, if it so considers necessary, to issue from time to time the notification referred to in sub-section (1) in respect of:

- (a) all evacuee property generally; or*
- (b) any class of evacuee property; or*
- (c) all evacuee property situated in a specified area; or*
- (d) any particular evacuee property.”*

12. It is not disputed that the area within which the subject plot and the plot of the appellant was acquired by the Central Government in exercise of powers conferred in Section 12 of the Displaced Person (Compensation and Rehabilitation) Act. It appears that under the provisions of the package deal executed on 02.09.1982, the MoR vested the subject plot with the DDA. Once the said plot was vested with the DDA under the package deal, unless there is any covenant repugnant to the intention of conferring ownership rights, the land would obviously vest with the DDA as an owner. No such repugnancy was shown by the appellant. The intention of MoR vesting certain ownership rights to the DDA is clear from the letter dated 02.09.1982 issued by the MoR, which is



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extracted hereunder:-

*“No.4(19)/78-SS.II(Vol.II)
Government of India
Ministry of Supply and Rehabilitation
(Department of Rehabilitation)*

*Jaisalmer House, Mansingh Road,
New Delhi, dated 2nd September, 1982.*

To

*The Vice-Chairman,
Delhi Development Authority,
Vikas Minar,
Indraprastha Estate,
New Delhi-110002.*

*Sub: Transfer of unutilized lands within the urban/urbanisable limits of
Delhi/New Delhi under the charge of the Department of Rehabilitation
to the Delhi Development Authority.*

Sir,

I am directed to say that in 1967, the Cabinet approved the proposal of the Ministry of Works & Housing in regard to large-scale acquisition and development and disposal of land in Delhi (vide case No. 14/2/67, dated the 17th January, 1967) that inter-alia Provided that unutilised lands with the Department of Rehabilitation within the urbanisable limits of Delhi, should be transferred to the Delhi Administration at market value on negotiated basis to be fixed by the Department of Rehabilitation. It was considered that since the Delhi Administration itself was transferring all its lands to the Delhi Development Authority, the lands in question should be transferred direct to the Delhi Development Authority in consultation with the Ministry of-Works & Housing.

2. Negotiations. were held with the Ministry of Works & Housing and the Delhi Development Authority to arrive at a mutually agreed cost formula. The Delhi Development Authority has agreed to take over these lands on 'as-is-where-is' basis on payment of Rs.30/ crores.

3. I am accordingly to convey the sanction of the President to the transfer of unutilised lands (both developed and un-developed) measuring, approximately-1020 acres to the Delhi Development Authority on payment of Rs.30/- crores, subject to the conditions, laid down in paras 4 to 7 below.

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The broad details of the surveyed and un-surveyed lands are given in Annexure 'A' and Annexure 'B' respectively. The particulars of lands not being transferred to Delhi Development Authority and retained by the Department of Rehabilitation are given in Annexure 'C'. The details shown in these Annexures are based on the result of the joint survey carried out by this Department and the Delhi Development Authority from 1978 onwards in respect of the surveyed colonies and on the basis of this Department be some omissions/variations in the areas shown against different colonies. The exact area transferable to the Delhi Development Authority under this sanction will be as per physical handing over/taking over of the lands. Rupees 30/- crores has been agreed as a package deal and this amount shall not be changed if the variations are found in the actual area of the land either on plus or minus side.

4. Where the Department of Rehabilitation is required to allot/transfer some land in pursuance of the existing or future judgements of the Courts, Arbitrators, Tribunals, etc., such cases/judgements will be fully; honoured/implemented by the Delhi Development Authority.

5. If any case of commitment made by the Department of Rehabilitation comes to the notice later on, such cases will be examined on merits and decided in consultation with the Delhi Development Authority.

6. The Delhi Development Authority shall pay to this Department a sum of Rs.30/- crores (Rupees Thirty Crores) only in three equal instalments. The first instalment of Rs.10/- crores will be paid by the Delhi Development Authority by 2nd October, 1982 and the subsequent instalments will be paid by 31st October, 1983 and 31st October, 1984. In default, the Delhi Development Authority will be liable to pay interest for the unpaid amount at the rate fixed by the Central Government from time to time.

7. Full particulars of the land, the broad details of which are given in Annexures 'A' & 'B', together with sketch plans etc., will be furnished by the Deputy Chief Settlement Commissioner(M) to the Delhi Development Authority within a period of two months from the date of issue of this sanction. The Delhi Development Authority shall render all assistance to ensure speedy process of handing over/taking over the lands and for preparing the sketch plan.

8. The transfer of the lands in question shall take effect on the payment of first instalment of Rs.10/- crores. The Delhi Development Authority shall maintain, develop and dispose of these lands under the provisions of the Delhi Development Act.



9. *The payment to be made by the Delhi Development Authority under this package deal will be made to the Department by way of Demand Draft drawn in favour of "Deputy Controller of Accounts (Rehabilitation), New Delhi for being credited under the following Head:-*

"088- Social Security and Welfare - Relief and Rehabilitation of Displaced Persons - Displaced Persons from former West Pakistan - Receipts forming part of the Compensation Pool - Receipts on account of Acquired Evacuee Properties adjustable by the Deputy Controller of Accounts (Rehabilitation), New Delhi."

10. *This sanction issues with the concurrence of the Finance Branch vide their U.O. No. 2510/Fin/82, dated 2.9.1982.*

*Yours faithfully
-sd-*

*UNDER SECRETARY TO THE GOVT. OF INDIA
TELE: 381540"*

It leaves little doubt as to the rights exercisable by the DDA in respect of the subject plot. Thus, the submission of the appellant on the lack of rights of DDA over the subject plot, have no merit.

13. It may also be necessary to place on record the contents of the counter affidavit of DDA in respect of not only the transfer of the subject plot to DDA but also as to the necessity of having sought rectification of the ZLP to include the subject plot. The relevant paragraphs are extracted hereunder:-

"3. That the zonal layout plan prepared by town planner MCD was approved on 08.08.1974, but the DDA corner plot adjoining to A/124 and other corner plots adjoining to B/63, plot E-IV/265 and plot D-IV/33A were handed over to the Answering Respondent from Ministry of Rehabilitation (MOR) on 03.01.1984 in Lajpat Nagar-IV, after preparation of Zonal Layout Plan, therefore the above mentioned corner plot (hereinafter referred as subject land) of the Answering Respondent could not be mentioned in the zonal layout plan.



Thus, there is no violation of the zonal layout plan by the Answering Respondent as alleged by the Petitioner.

4. That the subject land admeasuring 137 Sq. Yds. at site no.12 adjoining house No. A-IV/124 Lajpat Nagar-IV was transferred to the Answering Respondent from M.O.R. under a package deal on 03.01.1984.

5. That the owner of the adjoining plot no. A-IV/124 Lajpat Nagar-IV i.e. the Petitioner has opened unauthorized doors and windows towards the Answering Respondent's corner plot. It is pertinent to mention here that there is no path between the Petitioner's plot and the subject land.

6. That the subject land was lying vacant, so the office of S&S-II issued a letter to the Executive Engineer/Eastern Division -7 of the Answering Respondent to construct a boundary wall around the said plot.

7. That the subject land is one of the MOR Pockets forwarded to the area planning unit for preparation of layout plan for MOR land pockets and the layout titled "planning and development of MOR Land in Lajpat Nagar-IV" has been approved by the VC, DDA vide file no.PA/Dy.Dir./Plg/85-55. Further, the land use of the subject land is residential as per Layout Plan of MOR lands and Zonal Development Plan of Zone-F under MPD-2021. It is pertinent to mention here that as per the layout plan of MOR land/site/pocket to be used for Residential Purpose and there is no such Gali/Public road/Lane provided in this MOR Pockets of land."

14. Even the Land and Development Office in its counter affidavit has reiterated that the subject plot in question is a marked plot of land and was handed over to the DDA as part of transfer of land by the erstwhile MoR in the year 1982-1984. The relevant paragraphs are extracted hereunder:-

"9. In the facts and circumstances stated herein above, it is submitted that the land in question is a marked plot of land and was handed over to the DDA as part of transfer of land by the erstwhile Ministry of Rehabilitation to the DDA in 1982- 1984."

15. So far as the dispute in respect of the maps placed on record by the appellant or the DDA is concerned, these are clearly disputed questions of fact



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which cannot be appreciated or considered by a Court exercising writ jurisdiction or an Appellate Court. However, for whatever it is worth, it needs to be appreciated that the ZLP was prepared by the Town Planner, MCD on 08.08.1974 whereas, the said plot of land was handed over to the DDA on 03.01.1984 and therefore, there was no mention of the subject plot in the ZLP. It was only after the said transfer that the Vice-Chairman, DDA sought rectification and approval of the ZLP to include the subject plot from the Town Planner, MCD. The said approval by the Town Planner to the ZLP is made clear upon perusal of the amended ZLP of the year 1985 placed on record by the DDA in the present appeal.

16. On an overall consideration of the aforesaid facts, it is clear that the appellant is bereft of any rights so far as the subject plot is concerned.

17. The appeal lacks merits and is dismissed upholding the costs of Rs.50,000/- as imposed by the learned Single Judge. The said costs be deposited within four weeks with the DDA.

18. We further direct that in case the cost is not deposited within the time stipulated hereinabove, the Registrar General of this Court shall take appropriate steps for recovery of the same, including, if required, by taking recourse to the process of recovery by way of arrears of land revenue.

TUSHAR RAO GEDELA
(JUDGE)

DEVENDRA KUMAR UPADHYAYA
(CHIEF JUSTICE)

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