

Rajendra Singh Verma And 2 Ors. vs State Of U.P. And 10 Ors. on 1 April, 2025

Bench: Anjani Kumar Mishra, Jayant Banerji

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44491-DB

Court No. - 3

Case :- WRIT - C No. - 8848 of 2018

Petitioner :- Rajendra Singh Verma And 2 Ors.

Respondent :- State Of U.P. And 10 Ors.

Counsel for Petitioner :- Akash Khare,Hari Om

Counsel for Respondent :- Anil Kumar Rai,C.S.C.,Kartikeya Saran,Nagendra Nath Mishra,Pra

With

Case :- WRIT - C No. - 8915 of 2018

Petitioner :- Vijaypal Yadav

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- Akash Khare,Hari Om

Counsel for Respondent :- Arvind Singh,Brijesh Ojha,C.S.C.,Pradeep Kumar Singh,Vrindavan

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Jayant Banerji,J.

1. Heard Shri Hari Om Khare, learned counsel for the petitioner and learned Standing Counsel for the State respondents. The case of the petitioners in Writ C No. 8848 of 2018 is being considered first.

2. The writ petition has been filed seeking the following reliefs:-

"I. to issue a writ, order or direction in the nature of certiorari the Compliance Report dated 6.10.2017 sent by the respondent no. 6 to respondent no. 2 and letter dated 6.10.2017 sent by the respondent no. 6 to the S.H.O., Police Station Sihani Gate, Ghaziabad respectively (Annexure '15' to the writ petition);

II. to issue a writ, order or direction in the nature of certiorari quashing the Demarcation Report dated 28.2.2017 along with Map submitted by the Team constituted by the respondent no. 4, before the respondent no. 4 (Annexure '8' to the writ petition);

III. to issue a writ, order or direction in the nature of mandamus directing and commanding the authorities concerned to restore the possession of petitioners in TOTO over their respective land in question of plot no. 161/1 area 177 Sq. meter in case of petitioner no. 1 and area 354 Sq. meter in case of petitioner no. 2 as per Possession Letter dated 25.8.2015 issued by the authority concerned of the Nagar Nigam Ghaziabad to petitioner nos. 1 and 2 (Annexure '3' to the writ petition) in compliance of the orders dated 28.7.2015, 24.9.2015 and 16.10.2015 respectively passed by this Hon'ble Court (Annexure '2' to the writ petition) and plot no. 161/2 area 927 Sq. meters (1112 Sq. yards) of petitioner no. 3 as per sale-deed dated 9.6.2003 executed by the aforesaid Duli Chand (father of respondent nos. 7 and 8) and recorded in Khatauni also (Annexure '5' to the writ petition) respectively, situate in Village Sihani, Pargana and Tehsil Loni, District Ghaziabad, Or, Direct the concerned respondents to pay compensation to petitioners @ Rs. One Lac per Sq. meter according to their land in question;

IV. to issue a writ, order or direction in the nature of mandamus directing and commanding the authorities concerned to do fresh/correct demarcation of plot no. 160 and 161 of Village Sihani, Pargana and Tehsil Loni, District Ghaziabad in accordance with Bandobasti Map/Shizra and Khatauni (Annexure '1' to this writ petition) as well as in accordance with law at the earliest;"

3. The dispute in the petition relates to plot Nos. 161/1 and 161/2 situated in Village Sihani, Pargana and Tehsil Loni, District Ghaziabad adjacent to plot No. 160 which belongs to the Nagar Nigam, Ghaziabad.

4. The case of the petitioners is that the petitioner Nos. 1, 2 and 3 are owners of plot No. 137 having an area of 1390 Sq. meters along with two others. This plot no. 137 with other plots was acquired by the Irrigation Department and a 45 meter road namely Raj Nagar Extension Road was constructed.

Compensation of this acquisition was paid to the Nagar Nigam, Ghaziabad and the petitioners were allotted plot No. 161 in lieu of their shares in plot No. 137.

5. It appears that the actual physical possession of Khasra No. 161/1, area 885 Sq. Meters, was given to the petitioner Nos. 1, 2 and two others consequent to the directions issued by this Court on 28.07.2015 in Writ No. 40197 of 2010 (Rakesh Kumar and others v. State of U.P. and others).

6. Moreover, in compliance of the said order, a registered sale deed was executed by the sixth respondent, Sampatti Prabhari/Sanyukt Nagar Ayukt, Ghaziabad Nagar Nigam, Ghaziabad. This sale deed was for an area of 885 Sq. meters out of total area of 3410 Sq. Meters. Out of this land which was sold, regarding which the sale deed was executed for an area of 177 Sq. Meter to petitioner no. 1 and 350 Sq. meters to petitioner No. 2. The possession was also issued in favour of the petitioners.

7. Petitioner No. 3 purchased 927 Sq. Meters of plot No. 161/2 from Duli Chand, its recorded holder.

8. Duli Chand also executed a sale deed of plot No. 161/2 having an area of 167.22 Sq. Meters on 30.05.2003 in favour of Vijaypal Yadav, the petitioner in the connected writ petition.

9. In paragraph 12 of the writ petition, it has been averred as follows:-

"12. That it is pertinent to mention here that, admittedly, as per Khatauni, the total area of plot no. 161 was 3410 Sq. Meters having plot nos. 161/1 and 161/2, are as follows:-

Petitioner No. 1	- 177 Sq. Meters
Petitioner No. 2	-354 Sq. Meters
Petitioner No. 3	- 927 Sq. Meters
Vijay Pal	- 167.22 Sq. Meters
Ram Autar	- 167.22 Sq. Meters
Rakesh Kumar Rana	-177.00 Sq. Meters
Ratan Singh Rana	- 177.00 Sq. Meters
Total Area	- 2146.44 Sq. Meters
Area of Nagar Nigam Left	- 1263.56 Sq. Meters
Grand Total	- 3410 Sq. Meters

And they have title and possession over the same."

8. It appears that respondent Nos. 7 and 8 filed PIL No. 55998 of 2017 (Dharamvir Singh and 11 others v. State of U.P. and 06 Others) alleging therein that Plot Nos. 160 and 161/1 belong to the Nagar Nigam Ghaziabad and have been illegally encroached by petitioner Nos. 1 and 2.

9. The PIL aforesaid was disposed of by the order dated 1.12.2016, the relevant portion of the said order is quoted hereinbelow:-

"Heard Mr. Anil Kumar Rai, learned counsel for the petitioners, Mr. Mahendra Pratap, learned counsel for respondent no. 2, Mr. Ashok Kumar, learned Additional Chief Standing Counsel for respondent nos. 1 and 3, and Mr. Anil Tiwari, learned counsel for respondent nos. 4 and 5.

The petitioners, in the instant PIL, seek a direction to the respondent authorities to take all steps for protecting the plots/land in question, owned by the Nagar Nigam, Ghaziabad. Counsel appearing for respondent nos. 4 and 5, on instructions, submits that if the concerned revenue authorities measure and demarcate the plots/land, respondent nos. 4 and 5 are ready to remove the encroachments, if any, on the land in question and, if necessary, with the help of police force. Counsel for respondent nos. 1 and 3, on instructions, submits that respondent no.3 shall make the concerned revenue staff available for measurement and demarcation of the land in question and shall complete the work of measurement and demarcation within a period of four weeks from the date of receipt of this order. The petitioners undertake to communicate this order along with a copy of the writ petition and its annexures to the District Magistrate, Ghaziabad within ten days from today. Counsel for respondent nos. 4 and 5 submits that, after the work of demarcation is completed, the said respondents shall remove the encroachment, if any, and, if necessary, with the help of police force, within a period of four weeks therefrom. The submissions made by learned counsel for the parties are recorded and accepted. In view thereof, we direct the concerned authorities to act on the basis of the statements made by learned counsel appearing on their behalf.

It is needless to mention that the concerned authorities shall issue notice to respondent nos. 6 and 7 while carrying out the work of demarcation.

With these observations, the petition is disposed of."

10. It is the case of the petitioners that consequent to the directions in the PIL, a demarcation was conducted and on the basis of demarcation report dated 28.08.2017 which report was incorrect and illegal, the constructions of the petitioners were demolished. The demolitions were carried out on 16.10.2017 despite numerous objections having been filed by the petitioners.

11. It is vehemently submitted by learned counsel for the petitioners that the demarcation has been conducted without any fixed points having been identified. The demarcation itself is stated to have

been done through "Total Station Survey Machine" which does not have any sanction of law.

12. After hearing learned counsel for the parties, this Court on 23.7.2024 passed the following order.

"1. Heard Shri Hari Om, for the petitioner, Shri P. K. Singh, learned counsel appearing for respondent nos. 2, 5 and 6 as well Mr. Vinayak Ranjan (Advocate Roll No. A/V 2137/23) holding brief of Mr. Kartikeya Saran, learned counsel for the respondent no.3 and Mr. Ashok Pandey (Advocate Roll No. A/A 1369/12) holding brief of Mr. Vishnu Singh, learned counsel for the respondent no.4.

2. Shri P. K. Singh, learned counsel appearing for respondent nos. 2, 5 and 6 seeks time to obtain instructions and to file supplementary counter-affidavit addressing therein some queries that have been raised by the Court during the course of hearing namely as to the area over which constructions have been demolished consequent to certain directions issued in a PIL and the total ownership of the respondents over portion of plot nos. 161/1 and 161/2 and its area; the actual location of the constructions in plot no. 161/1 and 161/2 which have been demolished. The status of the balance area of the aforesaid plots, apart from the area claimed by the petitioners shall also be specified.

3. Learned Standing Counsel is also directed to obtain instructions as regards the manner of operation of a "Total Station Survey Machine" whereby demarcation is alleged to having been carried out prior to demolition have been effected by the respondents.

4. For the aforesaid purposes two weeks' time is granted to the respondents with the stipulation that no further time shall be granted therefor.

5. List this petition for further hearing after two weeks, peremptorily, at the top of list."

13. In pursuance of the order aforesaid, an affidavit has been filed by fourth respondent explaining procedure for conducting the survey on the basis of "Total Station Survey Machine". Paragraph 9 of this affidavit is extremely relevant. The same is quoted hereinbelow:-

"9. That in the present case, for demarcation of Khasra No. 160 and 161 of Village Sihani, the Lekhpal informed about the boundary of Khasra No. 166 and Khasra No. 173 as fixed point and upon the basis of the same, the digitalized map was prepared and super imposed and a survey sheet was prepared accordingly. A true photostate copy of digital map is being annexed herewith and marked as Annexure No. A-4 to this affidavit."

14. The stand of the respondents in the petition is that petitioners being encroachers and after conducting a proper demarcation consequent to the directions issued in PIL No. 5598 of 2017, the

offending constructions belonging to the petitioners who are encroachers were demolished and that the demarcation have been carried out through Total Station Survey Machine.

15. From the averment quoted above, it is clear that the survey had been conducted taking the boundary of two plots as fixed point. This is totally wrong, illegal and contrary to law in this regard. The boundary between two plots can never be taken as fixed point. For this reason alone, the survey on the basis of which demolition has been carried out consequent to the directions in the public interest litigation is vitiated.

5. According and since, the demolition has been made on the basis of a survey which cannot be accepted, this writ petition is liable to be allowed and is allowed with the following directions:

(a) The respondents are directed to deliver possession of plot nos. 161/1, 161/2 to the petitioners in these petitions within a period of two weeks from today;

(b) It shall, however, be open to the respondents to proceed, afresh, against the petitioners in case they so desire, after conducting a fresh survey to be conducted on the basis of valid fixed points.

(c) Additionally, the relief in the writ petition is for payment of compensation for the demolition effected against the petitioners. Since, the question of compensation necessarily involves questions of fact, we do not deem it appropriate to pass any orders in that regard, leaving it open to the petitioners to sue for damages in case so advised.

6. This order shall also apply insofar as the petitioner in Writ C No. 8915 of 2018 is concerned, who had purchased a portion of plot No. 161/2 from Duli Chand, its recorded tenure-holder.

Order Date :- 1.4.2025 Aditya/A.V. Singh