

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

W.P.(C) 4/2021

Date of Decision : 12.04.2022

IN THE MATTER OF:

NADEEM QURESHI

..... Petitioner

Through: Mr. Sunil Satyarthi, Advocate with
petitioner in person.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS. Respondents

Through: Mr. Mukesh Gupta, Standing Counsel
with Mr. Raghav Gupta and Mr.
Mayank Ahuja, Advocates for
Nr.DMC.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed as follows:-

“a) Issue a writ in nature of mandamus or an appropriate writ, order or direction to the respondents to permit the petitioner to reconstruct/rebuild his property Bearing No. 551 (GF - 18.40 sq. mtrs.), Chatta Lal Miya, behind Delite Cinema, Delhi.

b) Issue a writ in nature of mandamus or an appropriate writ, order or direction to the respondents thereby directing the respondents to pay to the petitioner compensatory damages to the tune of Rs. 20,00,000/- (Rupees Twenty Lacs).”

2. Learned counsel for the petitioner has submitted that the petitioner is the owner/occupant of property bearing *No. 551 (GF-18.40 sq. mtrs.), Chatta Lal Miya, behind Delite Cinema, Delhi* (hereinafter, referred to as the '*subject property*'). In this regard, reliance is placed on documents, including GPA, Will, and Gift Deed placed on record, stated to be executed by the mother of the present petitioner in his favor. In support of the claim of ownership, it is also averred that the petitioner has been in occupation of the subject property for the last 60 years and has regularly paid electricity charges, water charges, property tax, etc. relating to the subject property, as well as conversion, parking and registration charges for conversion of its use from residential to commercial. It is further averred that the respondent/Corporation had issued various challans from time to time, which were also paid by the petitioner and receipts of the same have been placed on record. Lastly, it is contended that having been in continuous physical possession of the subject property for the last 60 years, the petitioner is the owner/occupant thereof.

3. Mr. Mukesh Gupta, learned Standing Counsel for the respondent/North DMC, on the other hand, while disputing the submissions of the learned counsel for the petitioner, has submitted that initially a Show Cause Notice dated 09.12.2017 under Sections 415/417 of the DMC Act, 1957 (hereinafter referred to as '*the Act*') was issued to the petitioner for running a trade of sale of Offal's meat from the subject property without a valid Municipal trade license as well as in unhygienic and insanitary condition. The same was statedly followed by a sealing order dated 03.03.2018 issued under Sections 417/415 of the Act. Subsequently, the subject property came to be demolished on 10.11.2020.

It is further submitted that without prejudice to the above, at the time of consideration of the request for de-sealing made by the petitioner, file related to the subject property was initially sent to the Engineering Department to examine status of the property. At the time, it was found that the same was constructed by encroaching upon the land of toilet block. Thereafter, the Land & Estate Department informed that the subject property was registered in the immovable property Register at C No. 60, page No. 09 with the details that there is *Dhalao, Toilet, Urinal opposite Delite Cinema, Rakab Ganj, Delhi*. As per the information provided by the Land & Estate Department, the land is measuring 292.2 sq. meters.

4. Learned Standing Counsel has further submitted that an inspection of the toilet block was carried out by the team of the respondent/Corporation on 08.06.2018 and the area was found to measure 122.64 sq. meters. In this regard, he has drawn attention of the Court to the Status Report placed on record, where it is stated as follows :-

“ix) That the measurement of the toilet blocks, urinal block and its area including details of measurement for shop No. 551 and plan carried out by the engineering department JE(W)I, EE-M/II/CSPZ and it is further submitted the total number of seats in the toilet block is 48 Numbers including 2 Washrooms and 2 Urinal block found during the inspection. That as per the measurement, details of the area has been calculated as 122.64 sq. metrs. with the observation that there is no evidence of meat shops and it is existing on the Government land. This land/property pertains to DEMS (Department of Environmental Maintenance Services) therefore DEMS was to fix the program for removal of the encroachments and Works Department will assist the DEMS during the encroachment removal program which was approved by the competent authority i.e. Dy. Commissioner/City-S.P. Zone. The programme for demolition was fixed by booking local police force on dated 15.10.2018,

12.12.2018 and 18.12.2018 with the Dy. Commissioner of Police Central District. A true copy of the letters dated 15.10.2018, 12.12.2018 and 18.12.2018 are annexed herewith as Annexure R-4 (Colly). ”

5. Thus, the case of the respondent/Corporation is that the petitioner has encroached upon public land, without the subject property ever being allotted to him.

6. In addition to the foregoing, learned Standing Counsel has contended that the present case involves disputed questions of fact which cannot be gone into while deciding a writ petition. In this regard, he has placed reliance on the order dated 12.11.2010 passed by a Co-ordinate Bench of this Court in Joginder Kaur v. M.C.D. & Ors. (and other connected petitions) reported as **2010 SCC OnLine Del 3941**, as well as the order dated 24.12.2010 passed by a Division Bench in LPA No.915/2010 arising out of the said decision. It is pointed out that the aforesaid decisions were also followed by a Co-ordinate Bench of this Court in R.S. Juneja & Ors. v. MCD reported as **2015 SCC OnLine Del 10701**.

7. I have heard the learned counsels for the parties and perused the material placed on record.

8. In the present case, the petitioner has claimed ownership of the subject property admeasuring 18.40 sq. m. on the basis of various documents as well as continued physical possession for the last 60 years. He has also claimed to have made various payments towards statutory dues relating to the subject property.

9. On the other hand, the respondent/Corporation has disputed the claims of the petitioner and stated that the subject property was built by

encroaching upon the land of toilet block.

10. Admittedly, the subject property already stands demolished. The questions raised on behalf of the petitioner are disputed questions of fact with respect not only to the title of the property, but also to the measurements of the same. These questions, in the opinion of this Court, cannot be determined under writ jurisdiction.

11. In this backdrop, this Court finds force in the submissions of learned Standing Counsel for the respondent/Corporation that the petitioner ought to approach the appropriate Court for establishing his legal title/possession over the subject property, as well as for relief of damages as claimed herein.

12. Accordingly, the writ petition is dismissed.

13. It is clarified that this order has been passed without prejudice to the rights and contentions of the respective parties and the same shall remain reserved.

MANOJ KUMAR OHRI
JUDGE

APRIL 12, 2022

ga/na