

Puran Singh Yadav & Ors vs North Delhi Municipal Corporation ... on 12 January, 2023

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1737/2018, CM APPL. 5268/2020, CM APPL. 5269/2020
CM APPL. 40474/2022 and CM APPL. 40475/2022

PURAN SINGH YADAV & ORS. Petitioners

Through: Mr. Ashutosh Dubey, Mr. Aman Vachher, Mr. Abhishek Chauhan, Mr. Amit P. Shahi and Mr. Amit Kumar Advokates.

versus

NORTH DELHI MUNICIPAL CORPORATION DELHI & ORS. Respondents

Through: Ms. Renu Gupta, Advocate for respondent No.1.
Ms. Shobhana Takiar, Standing Counsel with Mr. Kuljeet Singh, Advocate for DDA/respondent No.2
Mr. Jai Sahai Endlaw, Mr. Mahipal Singh Drall, Mr. Jagdish Prasad Mr. Ashish Kumar, Advocates for respondent No. 3.
Mr. M.M. Singh and Ms. Ayushi Mishra, Advocates for RWA.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 12.01.2023

1. Petitioners have preferred the present petition seeking directions to respondent Nos. 1 and 2 to initiate action against the illegal and unauthorised construction stated to be carried out by respondent No. 3 by Digitally Signed By:SANGEETA ANAND Signing Date:17.01.2023 12:35:39 encroaching upon the petitioners' property i.e., Bhagwan Dass Nagar Extension falling in Khasra No. 79 of Shakurpur Village, Delhi.

2. Mr. Ashutosh Dubey, learned counsel for the petitioners submits that the petitioners are the owners of the aforesaid property and on account of the encroachment, complaint(s) dated

16.02.2018 and 17.02.2018 have been addressed to various authorities including SHO, P.S. Punjabi Bagh and respondent No. 1 respectively. He also submits that similar complaint dated 17.02.2018 has been addressed to respondent No. 2/DDA, however no action has been taken till date.

3. Mr. Jai Sahai Endlaw, learned counsel for respondent No. 3, on the other hand, has contested the writ petition by submitting that the answering respondent's predecessor in interest had preferred a civil suit being CS No. 460/1979 seeking relief of permanent injunction which was decreed vide order dated 21.09.1984. Eventually, the challenge reached upto the Supreme Court by way of Civil Appeal No. 8971/2010 wherein vide judgment dated 16.11.2020 the said appeal, preferred by the present petitioners, came to be dismissed. While dismissing the appeal, the Supreme Court observed as under :-

"3. The plaintiffs alleged that defendant No. 1 claimed that Khasra No. 238 is part of the land allotted to it. The suit for permanent injunction was thus filed by the plaintiffs apprehending threat to their possession of land comprising Khasra No. 238, Village Basai Darapur, Delhi against defendant No. 1 i.e. The Refugees' Cooperative Housing Society Ltd., its President - defendant No. 2, Secretary - defendant No. 3 and defendant No. 4, Kirpa Ram, predecessor in interest of the present appellants. Two separate sets of written statements were filed before the Court, one by defendant Nos. 1 to 3 and another by defendant No. 4. The defendant Nos. 1 to 3 raised preliminary objection that the jurisdiction of the Civil Court Digitally Signed By:SANGEETA ANAND Signing Date:17.01.2023 12:35:39 relating to Bhumidari land is barred under Section 85 of the Reforms Act. It was stated that defendant No. 4 threatened to encroach upon the land in the Society comprising of Khasra No. 1273 which led to proceedings under Section 145 of the Code of Criminal Procedure, 1973. Such proceedings have nothing to do with land comprising in Khasra No. 238.

4. The defendant No. 4 in written statement asserted that the plaintiffs were not in possession of the land in dispute and suit for injunction was therefore not maintainable. It was further stated that defendant Nos. 1 to 3 were not concerned with the land in question and that land did not belong either to plaintiffs or defendant Nos. 1 to 3 and they were not in possession thereof. Such land was in fact only in the possession of the defendant No. 4. It was also stated that the land in dispute does not bear Khasra No. 238 and that it is not situated in the revenue estate of Village Basai Darapur. Instead, the land in dispute bears Khasra No. 79 and is situated in revenue estate of Village Shakarpur.

5. In view of the pleadings of the parties, the following issues were framed by the trial court:

"1. Whether any notice u/s 70 of the Bombay Societies Act as extended to the Delhi was not necessary to be served on the defendants no. 1 to 3 before instituting the present suit? If so, then to what effect? (Objected to).

2. Whether this Court has no jurisdiction to try this suit as mentioned in the written statement?

3. Whether the plaintiffs are the owners in possession of the land in dispute bearing khasra no. 238 as alleged in the plaint?

4. Whether the land in dispute formed the part of khasra no. 238 of village Basai Darapur, Delhi as alleged in the plaint?

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5. Whether the land in dispute formed the part of khasra no. 79 situated in village Shakar Pur as mentioned in the written statement? (objected to)

6. Whether this suit is properly valued for the purposes of court fee and jurisdiction? If not, then to what effect?

7. Whether the suit is bad on account of mis-joinder of defendants as mentioned in the written statement? If so, then to what effect?

8. Whether the plaintiffs are entitled for a decree for permanent injunction claimed in the plaint?

9. Relief."

6. With respect of Issue No. 2, the learned trial court held that the suit was a simpliciter suit for injunction and the Court has the jurisdiction to find out in which khasra number the land in dispute falls. It was thus held that suit land falls in Khasra No. 238 in Village Basai Darapur and is in the possession of the plaintiffs, therefore, the suit was decreed.

7. Issue Nos. 4 and 5 were taken up for decision together. The plaintiffs had produced site plan (Ex.PW-3/1) pertaining to the year 1953-54 when consolidation took place in Village Shakarpur. The plaintiffs also produced site plan (Ex.PW-3/3) of Village Basai Darapur. The learned trial court held that the consolidation had taken place in Village Shakarpur and not in Village Basai Darapur. Therefore, the area of Khasra No. 238 could not be reduced from 4 Bighas 3 Biswas to 2 Bighas 6 Biswas. It was held by the trial court as under:

"18. ...One thing remains certain that the present defendants have no concern in Khasra no. 238 village Basai Darapur. Either it belongs to the plaintiffs or it vests in the Gaon Sabha. The present defendants, who are third parties, have no right to challenge the said judgment and decree passed in favour of the present plaintiffs. Therefore, I hold that plaintiffs are the owners of khasra no. 238, village Basai Darapur."

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17. Furthermore, the application under Order XLI Rule 27 of the Code was in respect of revenue documents in respect of Village Basai Darapur. Admittedly, the appellants have no claim on any part of the land of Village Basai Darapur. The appellants are asserting their possession relating to Khasra No. 79 of Village Shakarpur. The appellants have sought such revenue record in the additional evidence as the same was not in their knowledge and that no issue was also framed as to the correctness of the area of Khasra No. 238 of Village Basai Darapur. The plaintiffs have asserted their possession and title over Khasra No. 238 of Village Basai Darapur whereas defendant No. 4 averred that the land in dispute bears Khasra No. 79 situated in Village Shakarpur, Delhi. It is to be noted that Issue Nos. 3, 4 and 5 were related to ownership and possession of Khasra No. 238 and whether the land in dispute formed a part of Khasra No. 79 of Village Shakarpur. Therefore, the entire argument that no issue was framed in respect of correctness of area of Khasra No. 238 is untenable. The parties have understood the case about the area of Khasra No. 238 falling in Basai Darapur or in Khasra No. 79 of Village Shakarpur. Once the parties have understood the said controversy and had adduced evidence before the trial court, the appellant cannot be permitted to produce additional evidence in the first appeal. Thus, the additional documents cannot be permitted to be produced as they are not relevant to the plea raised by the appellant.

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26. In view of the above findings, we do not find any error in the judgment and order of the High Court dismissing the Second Appeal. The present appeal is thus dismissed. Pending applications, if any, shall stand disposed of."

4. In the rejoinder filed by the petitioners to the counter-affidavit filed by respondent No. 3, an objection has been raised to the effect that the said decision passed by the Supreme Court was apropos to a property situated at Digitally Signed By:SANGEETA ANAND Signing Date:17.01.2023 12:35:39 'Shakarpur Village' and not 'Shakurpur Village'. The respondent No. 3 by way of Miscellaneous Application No. 468/2021 sought correction of the decision dated 16.11.2020 passed by the Supreme Court, which came to allowed on 26.11.2021 with a direction that instead of Village 'Shakarpur', Village 'Shakurpur' may be substituted in para Nos. 4,7,8,12 and 17 of the captioned decision.

5. Learned counsel for the respondent No. 3 submits that though vide order dated 10.04.2018 passed by Division Bench of this Court in LPA 186/2018, the parties were directed to maintain status quo with regard to the construction and possession, but on that date, a statement was made by the answering respondent as the disputes between the parties were pending before the Supreme Court which eventually came to be decided vide judgment dated 16.11.2020.

6. Ms. Renu Gupta, learned counsel for respondent No. 1/Corporation has referred to the Status Report placed on record by way of a short- affidavit. The contents of the Status Report reads as under :-

"1. That presently I am working as Executive Engineer (Bldg.), Karol Bagh Zone, Municipal Corporation of Delhi and being conversant with the facts and circumstances of the case on the basis of available record of the case as maintained with the department and competent to swear this affidavit.

2. That an inspection of the property situated at Bhagwan Dass Extension falling in Khasra No. 79 of Village Shakurpur, Delhi was carried out on 06.07.2022 and it was found that neither there was ongoing construction at the time of inspection, nor any permanent structure was found existing at site except a temporary room and boundary wall Digitally Signed By:SANGEETA ANAND Signing Date:17.01.2023 12:35:39 made up of tin shed. Photographs taken at the time of inspection are enclosed herewith as Annexure -A (colly)".

Alongwith the Status Report, photographs of the construction existing at the site at the time of inspection is also placed on record. Although, respondent No. 2/DDA was impleaded as a party, however no stand has been placed on record on their behalf.

7. At this stage, learned counsel for respondent No. 3, on instructions, submits that the answering respondent undertakes not to carry out any construction at the subject property, which is not in accordance with law. The statement made on behalf of respondent No. 3 is taken on record and he is made bound by the same.

8. Considering the relief sought in the instant petition i.e., initiation of action against the illegal and unauthorized construction and the stand taken by respondent No. 1 in its Status Report, no further orders are required to be passed and the petition is disposed of alongwith miscellaneous applications.

9. It is clarified that this Court has not gone into the merits of claim of either of the parties with respect to ownership or possessory rights and that respondent No. 1 is duty bound to take requisite action against the unauthorised construction.

MANOJ KUMAR OHRI, J JANUARY 12, 2023 ga Digitally Signed By:SANGEETA ANAND Signing Date:17.01.2023 12:35:39