

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : May 5, 2005  
Date of Decision : May 16<sup>th</sup>, 2005

W.P.(C) No. 805/2005 & CM 4309/2004, 2244/05

**RAKESH MEHTA**

... Petitioner

Through: Mr. Amarjeet Singh Chandhoike, Sr. Advocate  
with Mr. S.K Chaudhary, Ms. Jyothi Mehndiratta,  
Ms. Sweta Kakkad, Advocates

Versus

**DELHI DEVELOPMENT AUTHORITY & ANR**

... Respondents

Mr. Gaurav Sarin and Mr. Manlik Nanavati, Advocates for DDA  
Mr. Vibhu Shankar, Advocate for MCD  
Nemo for DMRC

**CORAM:**

**THE HON'BLE MR.JUSTICE S.RAVINDRA BHAT**

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**S.RAVINDRA BHAT, J.**

For judgment, see WP(C) No7840/2003 & CM 13137/2003.

*S.Ravindra Bhat*  
**S.RAVINDRA BHAT J.**

**MAY 16, 2005**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : May 5, 2005  
Date of Decision : May 16<sup>th</sup>, 2005

1. W.P.(C) No. 7840/2003 & CM 13137/2003

OM PRAKASH AHUJA

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate  
with Mr. Aly Mirza & Mr. Pawan Bindra, Advocates

Versus

DELHI DEVELOPMENT AUTHORITY & ANR.....Respondents

Through: Mr. Gaurav Sarin, Advocate for DDA,  
Mr. Vibhu Shankar, Advocate for MCD

2. W.P.(C) No. 805/2005 & CM 4309/2004, 2244/05

RAKESH MEHTA

... Petitioner

Through: Mr. Amarjeet Singh Chandhoike, Sr. Advocate  
with Mr. S.K. Chaudhury, Ms. Jyothi Mehndiratta,  
Ms. Sweta Kakkad, Advocates

Versus

DELHI DEVELOPMENT AUTHORITY & ANR

... Respondents

Mr. Gaurav Sarin and Mr. Maulik Nanavati, Advocates for DDA  
Mr. Vibhu Shankar, Advocate for MCD  
Nemo for DMRC

CORAM:

THE HON'BLE MR.JUSTICE S.RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?

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3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J.

1. These petitions under Article 226 involve common questions of fact; hence they were taken up and heard together.

2. The petitioner in WP 7840/2003 ( hereafter " Om Prakash") claims to be in possession of 100 square yards opposite No. 9, Moti Nagar, New Delhi, falling in Khasra No 3741/3221/2752/734, where a coal depot was running. It is alleged that Om Prakash's father Bhagwandas Ahuja took those premises on rent, sometime in 1953. In spite of this position, the Municipal Corporation of Delhi (MCD) started claiming tehbazari from the year 1958, which he was paying all the while. It is also alleged that MCD had issued a license for running a coal depot. The petitioner asserts that the land is private, and its recorded owner is his landlord, Bharat Singh Tayagi, as per Khasra Girdhawri. Sometime in September, there was a dispute between the Delhi Development Authority (DDA) and the revenue authorities as to the extent of land owned and in the possession of the former. The petitioner's landlord applied for demarcation on 8<sup>th</sup> September, 2003. The demarcation exercise somehow got delayed. Thereafter, on 9<sup>th</sup> September, DDA demolished certain jhuggies located opposite the petitioner's coal depot; while at the job, those officials started action against the petitioner's premises. There was a threat of demolition in November, 2003. The petitioner therefore approached under Article 226 of

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the Constitution. He states that the lands are in his lawful possession, and they do not belong to the DDA, or any other authority.

3. The petitioner in WP 805/2004, (hereafter "Rakesh Mehta") like Om Prakash, claims to be in possession of 100 sq. yards in the same khasra numbers. He too alleges that his father, late Balwant Rai Mehta took that land on rent, and commenced business of a coal depot; he too, like Om Prakash was paying tehbazari to MCD, since 1958, even though the lands are private lands. In all other particulars, too, his claim corresponds with that of Om Prakash; he seeks appropriate direction against the DDA, and the Delhi Metro Rail Corporation (DMRC). He has relied upon Girdawaris to show possession.

4. Both the writ petitioners have relied upon a demarcation report, dated 22-1-2004, which was prepared in their presence, and the presence of the revenue authorities and DDA officials. This report pertains to Khasra No 3741/3221/2752/734; it discloses that the different points claimed were established/ confirmed. The petitioners herein affirm the correctness and veracity of the report. The DDA, on the other hand, contests its correctness.

5. The DDA has taken the stand that the petitioners encroached upon the lands. The lands were originally handed over by the Government of India, on 16<sup>th</sup> April, 1986. A letter, annexing the details of lands handed over has been relied on for the purpose. The

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relevant part of that document shows that an extent of 5.54 acres was handed over to DDA, it was shown as encroached, by stalls, shops, temples, jhuggies and semi-pucca houses. In the "remarks" column, the following noting was made:

*" One Shri Bhurui Tyagi s/o Shri Gokul Chand claim the ownership of land measuring 8 Bighas 6 Bis. Under Khasra No. 3741/3221/2752/734 in Village Basti Darapur. According to revenue records, it is not included in the offer, but should have been acquired. The area now transferred is excluding this area. DDA may like to verify it again from the revenue records and if found available will be handed over separately."*

It has been averred that the entire land has been handed over to the DMRC for development, and utilization in the Metro Project.

6 The MCD has taken the position that the petitioners were being given tehbazari rights, but for the last 3-4 years, those rights have not been renewed. It has also been contended that the coal depots were to be run in an area of 100 square yards, however the petitioners have encroached government lands, which are beyond that 100 square yards limit.

7 The DMRC is a party in the writ petition filed by <sup>Rajesh</sup> ~~Rajiv~~ Mehta. It has contended that the land belongs to it. DDA handed it over on 21 October 2003 for the purpose of rehabilitation of project affected persons and other allied activities. It is claimed that the DDA had full rights over the property, and could legally transfer those rights, and possession to DMRC.

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8. Mr. A.S. Chandhoike and Mr. Sandeep Sethi, learned senior counsel appearing for the petitioners, contended that the respondents could not have resorted to high handed action, by rushing into private lands, which were neither owned by them nor in their possession, and take coercive action to displace people who were residing there for over five decades. They have also relied upon the demarcation report and the document issued by the Central Government, which bear out their submission.

9. Mr. Gaurav Sarin and Mr. Vibhu Shankar, learned counsel appearing on behalf of DDA and MCD, respectively, on the other hand, submitted that the petitioners are encroachers on government property, and cannot claim right to legal possession. It was submitted on behalf of DDA that the demarcation report is erroneous, and appropriate remedy by way of appeal, revision, etc, is proposed. That, however, does not detract from the fact that the petitioners do not have right or title to the land. It is also contended that the MCD had stopped collecting tehbazari fees/ amounts from the petitioners, and they can no longer claim to be in possession, and carrying on the business, alleged by them.

10. The only issue which arises for consideration in these proceedings is whether the petitioners' claim to relief can be granted. One principle, relied upon by the respondents, is the powers under Article 226 of the Constitution of India should be exercised where disputes relate to title. In *State of Rajasthan v. Bhawani Singh*, 1993 Supp (1) SCC 306.

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at page 309 it was held, by the Supreme Court that:

*"Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition".*

This position was reiterated in *State of Manipur v. Hamlung Victims of Development*. (1998) 9 SCC 335.

10. The petitioners, on the other hand, assert that they are not claiming any title or interest in the lands; they only seek protection from the court that their existing possession ought not to be disturbed, or interfered with in any manner. It has been submitted that the nature of controversy is extremely limited; no questions of fact, or evidence have to be gone into. The two documents, namely the demarcation report, and the 1986 letter of the Central Government, produced by DDA itself, show that it does not have possession in respect of 8 bighas 6 biswas land, which was neither acquired nor handed over.

11. The rule of non-interference in writ proceedings where questions of fact are involved, is one of convenience; it is not one of invariable practice, or rigid adherence. In *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* (2004) 3 SCC

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553 the Supreme Court held as follows:

*"17. The above judgment of Gunwant Kaur<sup>8</sup> finds support from another judgment of this Court in the case of Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council<sup>2</sup> wherein this Court held: (SCC p. 587, para 13)*

*"Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary."*

*18. This observation of the Court was made while negating a contention advanced on behalf of the respondent Municipality which contended that the petition filed by the appellant Company therein apparently raised questions of fact which argument of the Municipality was accepted by the High Court holding that such disputed questions of fact cannot be tried in the exercise of the extraordinary jurisdiction under Article 226 of the Constitution. But this Court held otherwise.*

*19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur<sup>8</sup> this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact."*

12. There is considerable merit in the contentions of the petitioners that the nature of relief claimed is limited; an order or direction, protecting the status quo, as far as their possession is concerned, has to be passed. Their possession has been, in my opinion underscored by the reference to the owner of land, Shri Bharat Tyagi, the owner of the lands, whose name finds place in the document handing over the entire lands to DDA. The concerned piece of land, 8 bighas 6 biswas, was not handed over at that point in time to DDA. The document states that it was not included in the award/ offer. Nothing was



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shown as to whether any subsequent document exists, evidencing the DDA's claim to possession of such land. The other circumstance is the demarcation report. Right or wrong, it contains reference to the relevant khasra numbers; the DDA disputes that it was preceded by a correct exercise. Till such time the demarcation exercise is challenged, and set aside, under provisions of the Delhi Land Revenue Rules and other provisions, it would continue to bind the parties.

13. It is an established principle of law that every action of the state or its agencies (as the DDA and the other respondents undeniably are) must be backed by law, or have the sanction of some legal provision. As held by the Supreme Court in *State of U.P. v. Mahuraja Dharmender Prasad Singh*, (1989) 2 SCC 505:

*"all actions of government and governmental authorities should have a 'legal pedigree'. In Bishan Das v. State of Punjab 1962[2] SCR 69 this Court said - (SCR pp. 79-80)*

*"We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications and impact on law and order ...*

*Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law."*

14. I am of the considered opinion, in view of the above facts and circumstances, that till such time the DDA seeks its remedies, and the demarcation exercise carried out in respect of the lands which are subject matter of these proceedings are interfered with/ set aside, the status quo as regards the petitioner's possession has to be maintained. A direction is accordingly issued to the respondents.

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CM 7453109 for Certificate of title  
7454109 for Easement.

DATE: 16<sup>th</sup> May, 2005

S. RAVINDRA BHAT, J

*Indra Bhat*

applications are disposed off in terms of this judgment. No costs.

15 The writ petitions are allowed to the extent indicated above. All interlocutory

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