

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

+ **WRIT PETITION (CIVIL) NO. 4101 OF 2008**

% **Reserved on : 27th October, 2009.**
Date of Decision : 29th January, 2010.

SATYA PAL & ANOTHER. Petitioners.
Through Mr. Keshav Dayal, Sr.
Advocate with Mr. Arun K. Beriwal,
advocate.

VERSUS

CHIEF ENGINEER, IRRIGATION &
FLOOD CONTROL DEPARTMENT & ORS. Respondents.
Through Ms. Zubeda Begum, advocate
for Respondents 1 & 3.
Ms. Renuka Arora, Advocate for DDA.
Mr. V.K. Tandon, Advocate for
respondent.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.:

1. The petitioners, Mr. Satya Pal and Mr. Yashpal by way of the present Writ Petition have prayed for quashing of the demarcation reports dated 28th January, 1997, 4th November, 1999 and 14th March, 2005, and Order dated 14th July, 2006 passed by the Deputy Commissioner and Order dated 15th February, 2008 passed by the

Financial Commissioner upholding the demarcation reports. Another prayer made by the petitioners is that Mandamus may be issued that demarcation dated 23rd March, 1979 affirmed on 30th January, 1990 is binding. Consequential prayer for restraining the respondent no.1- Irrigation and Flood Control Department of GNCT of Delhi from taking any action for demolition or interfering with the possession of the petitioners is made.

2. The land, subject matter of dispute is situated in Village Dhirpur. 141 bigha and 17 biswa of land in village Dhirpur was acquired for construction of outer Ring Road vide Award No 26/80-81 though possession of this land was taken on 8th December, 1978. Possession of 623 bigha and 1 biswa of land in village Dhirpur was acquired on 15th September, 1981 vide Award dated 16th December, 1983. On 23rd March, 1979 Union of India acquired 155 bigha and 5 biswa of land in village Jharoda Majra, Burari, Delhi vide Award no. 40/79-80 for construction of supplementary drain contiguous to the outer Ring Road in the shape of a strip of land of 500 sq. ft. width from G.T. Road to Wazirabad, Delhi.

3. The contention of the petitioners is that original demarcation was done on 23rd March, 1979 by the Revenue authorities and the said demarcation was reaffirmed in the verification proceedings held under the supervision of A.D.M. (Revenue), Delhi on 30th January,

1990 and thus these demarcations have been wrongly superseded and rejected by the Deputy Commissioner in the impugned Order dated 14th July, 2006 and by the Financial Commissioner in the Order dated 15th February, 2008.

4. Learned Deputy Commissioner has examined the said proceedings and has explained that no demarcation was conducted on 23rd March, 1979. He has observed that the report dated 23rd March, 1979 relied upon by the petitioners is regarding handing over the possession of land to Irrigation and Flood Control Department of GNCT of Delhi. The said report contains details of acquired khasras along with the total area of the drain. It is also mentioned that some areas were under cultivation and the remaining land was vacant. There was no actual demarcation measuring the land. The report infact only records handing over of the possession of the area to the Irrigation and Flood Control Department of GNCT of Delhi. Similarly, it has been stated by the Deputy Commissioner that a verification exercise was undertaken on 30th January, 1990 under the A.D.M. (Revenue) in the presence of the revenue staff/officials of Irrigation and Flood Control Department and Mr. Gyan Prakash Tyagi who made a complaint. No proper measurement from any fixed point was made on the said date. The demarcation was done on the basis of field book and it was noticed

that the land area of the drain was not less except in Khasra no. 36/2-3 where the boundary line of the quila nos. 2 and 3 were not found to be in proper place. The said findings have been upheld by the Financial Commissioner in his Order dated 15th February, 2008.

5. Learned counsel for the petitioners could not controvert and contest the said findings. In any demarcation it is necessary to refer to a fixed point and then the measurement is to be undertaken. As stated above, the land in Villages Jharoda and Dhirpur were acquired for construction of outer Ring Road and a drain. In 1979, possession was handed over to the Irrigation and Flood Control Department and the land was measured. It was found that the land measured 500 sq.ft. from the boundary wall. Deputy Commissioner in her Order dated 14th July, 2006 has noticed that initially discrepancy in the demarcation had crept in while handing over of possession of the land to Public Works Department (hereinafter referred to as PWD, for short) in 1978. She has noticed in her report that PWD had encroached on the land of the Delhi Development Authority (hereinafter referred to as DDA, for short) and Irrigation and Flood Control Department had encroached on the land of the PWD from the southern side. As both the Irrigation and Flood Control Department and PWD had 500 ft. and 300 ft. width of land respectively, the discrepancy that land of DDA was encroached upon

did not come to notice. The Order further specifically mentions that DDA subsequently started developing the land in their physical possession and then detected that the actual area in their occupation was less than what was acquired for them on 15th September, 1981.

6. On a private complaint received in 1996 regarding illegal sale of Govt. land, demarcation was conducted on 28th January, 1997. The said demarcation confirmed the aforesaid facts which have been set out in the Order dated 14th July, 2006 passed by the Deputy Commissioner. The demarcation report dated 28th January, 1997 mentions that the same was conducted in the presence of the land owners, complainant, Police Department and Irrigation and Flood Control Department. The demarcation makes specific reference to the fixed points in the form of “*mustakil* stone” which were found to be intact and in proper position. It also refers to a pucca road which was found to be located at the right place as per the field book, etc. This demarcation, it is alleged by the petitioners, was conducted without notice to the bhumidars of the unacquired land including the petitioners. The said demarcation was challenged by the petitioners in a civil suit and also by filing proceedings before the Deputy Commissioner under the Land Revenue Act. One Ms.Sadhna Tyagi a relative of the petitioners filed Writ Petition (Crl.) No. 703/1998 before the High Court. The petitioners who were not a party to the said writ

petition moved an application for vacation of restraint order and also filed their objections to the demarcation report dated 28th January, 1997. By Order dated 25th August, 1999 passed in Writ Petition (Crl.) No. 703/1998, the High Court directed fresh demarcation of the acquired land to settle the controversy. On 4th November, 1999 fresh demarcation was carried out as per the directions of the High Court. The fresh demarcation confirmed the findings of the earlier demarcation report dated 28th January, 1997. It is therefore clear that the demarcation done on 4th November, 1999 was pursuant to the Orders passed by the High Court. The said demarcation cannot be challenged and questioned on the ground that since some demarcation was carried out in 1979 and was confirmed in 1990, therefore no fresh demarcation could have been undertaken in 1999. Demarcation carried out on 4th November, 1999 was under the direction/Order passed by the High Court and the petitioners cannot now object and question the said demarcation on the ground that it should not have been undertaken in view of the alleged demarcation dated 23rd March, 1979 and which it is claimed was affirmed on 30th January, 1990. In case the petitioners had any such objection they should have raised the same before the High Court when Order dated 25th August, 1999 was passed and in case they were not satisfied with the said order they should have preferred an appeal.

7. After the demarcation report dated 4th November, 1999, Writ Petition (Crl.) No. 703/1998 was disposed of on 16th August, 2001 recording as under:-

“Crl. M. Nos. 1231-32/2000 & Crl. W. No.703/98

X X X X

Prayer made in the present petition are (i) to register FIR against Yash Pal and Sat Pal, (ii) for investigation by a special cell and finally that the status report with regard to land bearing Khasra Nos. 30/22, 30/21, 31/16/2, 31/25 sought to be acquired by respondent No.4 be placed on record. Pursuant to orders passed by this Court from time to time the Chief Engineer, Flood Control Department, ISBT, Delhi was asked to have the demarcation done with the assistance of the Revenue Department which has already been done. The report of the same has already been filed. Yash Pal and Sat Pal sons of late Shri Yag Dutt Tyagi have already been directed by our order dated 27th May, 1999 to maintain status quo and they were further restrained from selling, alienating or in any way transferring the land in question except to the Government.

We have now been told that the said Yash Pal and Sat Pal have also filed a writ petition wherein they have got the stay. In this view of the matter direction for registration of the case against them cannot arise at this stage. Since the prayer made has already been met nothing survives in this petition. The same is, accordingly, disposed of.”

8. Thus, the Court recorded that demarcation had already been done and a restraint order had been passed against the petitioners, herein. However, no direction for registration of FIR was made as the

petitioners herein had filed a civil writ petition in the High Court in which a restraint order was passed directing the parties to maintain status quo. This writ petition no. 4083/2000 was disposed of on 5th October, 2004 along with the Writ Petition No. 2823/2000, which was filed by some other land owners, recording as under :-

“.....Learned senior counsel states that this demarcation has been carried out at the back of the petitioners and the applications filed by the petitioners before the Division Bench were not even considered since in the meantime the Criminal Writ Petition itself was disposed of.

In view of the aforesaid, I am of the considered view that the present proceedings are not the appropriate proceedings to determine the validity of the demarcation carried out in pursuance to the directions of the Division Bench in the Criminal Writ Petition. The demarcation was undoubtedly carried out, but validity of the said demarcation has not been gone into. In my considered view, it is open for the petitioners in the said writ petition to file appropriate proceedings, in case it is so advised, to challenge the demarcation which has been carried out in pursuance to the directions of the Division Bench in the Criminal Writ Petition.

In so far as the petitioners in WP(C) 282/2000 (sic) are concerned, learned counsel for the petitioners therein contends that the land of the petitioners does not form any mention in any of the demarcation reports and, thus, there can be no question of the petitioners being dispossessed from the land in their occupation which they have purchased from the owners of the property. Since certain land was acquired by the Department, it is only the acquired land which vests with the Department and not any other land which remains unacquired. Thus, the respondent authorities can take action only in respect of the acquired portion of the land. However, I consider appropriate to grant liberty even to the said petitions to challenge any

demarcation report in accordance with law, if the said petitioners are aggrieved by the demarcation carried out.

Interim orders shall continue to ensure for the benefit of the petitioners for a period of one month from today in order to enable the petitioners to take recourse to appropriate legal proceedings making it clear that continuation of the interim orders is no reflection on the merits of the controversy.

The writ petitions are disposed of in the aforesaid terms.”

9. Thus, the parties to the writ petition were directed to challenge the demarcation report made on 4th November, 1999 affirming the earlier demarcation dated 28th January, 1997 before the Revenue Authorities on merits. However, the petitioners could not have challenged and cannot be permitted to challenge the validity of act of demarcation, which was made pursuant to directions issued by the Division Bench in their Order dated 25th August, 1999 in Writ Petition (Crl.) No. 703/1998. The petitioners, therefore, before the Revenue Authorities were entitled to challenge and question the demarcation report dated 4th November, 1999, affirming the earlier demarcation report dated 28th January, 1997, on merits but could not question whether or not the said demarcation should have been undertaken.

10. After the Order dated 5th October, 2004 disposing of the Writ Petition (Civil) Nos. 2823/2000 and 4083/2000 was passed, the petitioners filed an application before the Deputy Commissioner challenging the demarcations dated 28th January, 1997 and 4th

November, 1999. The main objection raised by the petitioners herein before the Deputy Commissioner was that the demarcation conducted pursuant to the Order dated 4th November, 1999 of the High Court was without notice to PWD and DDA. In order to satisfy the petitioners, the Deputy Commissioner directed the Revenue staff to conduct fresh demarcation after issuing notices to all affected parties including Irrigation and Flood Control Department, complainant-Ms. Sadhna Tyagi and the petitioners. This demarcation was undertaken on 14th March, 2005. It may be appropriate to reproduce below, the findings recorded by the Deputy Commissioner in the Order dated 14th July, 2006 with regard to the demarcation done on 14th March, 2005 :

“The revenue staff tried to find out the “Mustkil Stones” as mentioned in the report of demarcation dt. 28.1.1997. No such stones were found in the field. Thereafter the revenue staff initiated the measurement from Jharoda Dairy from the eastern side of Khasra No. 18/6 & 15, they reached the North Eastern corner of Khasra No.18/16/1. It was found correct as at this location one gatha water channel was found to be established at its place. Thereafter by measuring 48 gathas in South-Eastern corner side they reached khasra No.18/25 which was also found present at its place. At this place there should have been a “Mustkil Stone” (as found during demarcation dated 28.01.1997) which however was not found at its place. Thereafter they reached Kh.No.31/11/2 on Southern side according to the field book measurement of land and found the South-West side corner of Kh. No.31/11/2 at its proper place. This corner hits the “Sizra” road which confirms that the measurement up to this point of demarcation was

correct. There after from 31/11/2 they went towards North-Eastern side according to the field book and reached North Eastern corner of kh. No.31/16/1. This point was also established. To confirm this point they went back to Khasra No.18/25. They reached the South Eastern corner of Khasra No. 18/25. From this point they measured 5 acres towards Eastern side and reached the North-Eastern corner of Khasra No.22/25. There should have been a "Mustkil Stone" here (found during 28.01.1997 demarcation) which however was not found. From this point they went to South according to field book and again reached North Eastern corner of Khasra No. 31/16/1 and found that they reached the same point which was established earlier. Hence, by coming from the other route after establishing this point, they reached the Sizra road which is existing at its place.

After this they took the dimensions according to the field book 'Tatima' prepared during the Award No.40/79-80 vide which land was acquired for the purpose of the drain. Then, after measurement as per gathas they established the South Eastern corner of 31/16/1 and 16/2. After measuring 2 gathas from this point they reached North Western corner of 30/21/1 and marked it with red point. Thereafter they went towards Eastern side from 31/16/2 and reached the North Eastern corner of 30/21/2 and marked with red point. From this point they went to South. After measuring 14 gathas they established South Eastern corner of Khasra No. 30/21/2 which is also North-Eastern corner of Khasra No.30/21/1. The boundary wall of the drain was found to be shifted on the Southern side. Khasra No. 30/21/2 belongs to the petitioner and its four corners were measured. Thereafter they established all the points on the boundary of the drain along Khasra Nos. 30/22/2, 36/3/1, 36/4/1, 36/6/1 and 37/10/2 and established those points where the drain should have existed. Thereafter all these points were connected. At site there is a 3 gatha Nisan vide Phirni on the Northern-Eastern side of Khasra No. 30/24. It is correct at its place. Thereafter on the North-Eastern side of Khasra No.30/24, they confirmed the point on the phirni by measuring the gatha according to field book

towards the western side of khasra No.30/24 and 30/7 and the phirni rasta towards the Northern side of 30/24 which were found to be correct.

Thereafter they measured the distance of existing boundary line and the exact boundary line where the drain should have been present. This distance between the stretch of khasra No. 31/18/1 and 17/1 is 113 feet, from Kh. No.17/1 & 16/2 is 141 feet from Kh. No.31/25 to 30/21 is 144 feet, between Kh. No. 30/21/1 and 30/22/1 128 feet from Kh. No. 36/2 and 3/1, 114 feet, from Kh. No. 36/3/1 to 4/1, 116 feet, from 37/6/1 and 10/1 143 feet and from Kh. No.37/10 156 feet. All this portion of land is built up having large number of pucca houses.

Thus all these measurements found that existing boundary constructed by Flood & Control Deptt. Was not at its proper place and that it had shifted towards South in 90 feet to 150 feet width from the place where it should have been the area as pointed out in the report had been encroached.”

11. During the course of hearing before the Deputy Commissioner, the petitioners objected to this demarcation on the ground that the same should have been conducted from vill. Dhirpur side also. Patwari of Vill. Dhirpur was called along with the records and it was noticed that in vill. Dhirpur *chakabandi* had not taken place whereas in Jharoda vill, *chakbandi* had taken place in 1954-55 and therefore ‘quila –line’ between the two villages could not match. Almost the whole area of vill. Dhirpur had been acquired by DDA and no mustkil /fixed point could be located. Hence demarcation from the side of vill. Dhirpur was not possible. To satisfy the petitioners the revenue staff was again asked to conduct verification from vill. Dhirpur side and

notices were issued to PWD, DDA and National Highways Authority of India. No *mustkil stone* could be found in vill. Dhirpur and therefore the revenue staff mentioned in their report that the earlier demarcation conducted on 14th March, 2005 was correct.

12. Thereafter, another attempt was made to trace out some fixed points in vill. Dhirpur so that demarcation could be carried out from that side also. *Taj poshi pillar* could be traced out but in the absence of *massavi* as well as measurement in the field book, demarcation was not possible. A report dated 29th October, 2005 was submitted stating that demarcation carried out on 14th March, 2005 may be treated as correct.

13. Yet another demarcation was carried out on 23rd November, 2005 on the directions given by the Deputy Commissioner. In the Order dated 14th July, 2006 with regard to this demarcation, Deputy Commissioner has stated as under :-

“This time, as per orders, the measurements were carried out from rectangle from the established point to Kh. No. 32-31 and Kh. No.30-36 from the boundary of Village Dhirpur and Jharoda. After starting from North-Eastern corner of Kh. No.32/16 and 25 measuring 73 gathas, they reached South-Eastern corner of Kh. No.34/5. Starting from Kh. No.31/1’6, they measured 86 gathas and reached southern-eastern Kh. No.35/6 and placed a mark on the North-Western corner of this Khasra. In the same way they started from Khasra No. 30/24 which is on the phirni after measuring 65 gathas and reached south-eastern corner of Khasra No.

36/4-7. Thus the boundary of the village Dhirpur and Village Jharoda Majra was established. All those present were satisfied with the measurement. It is mentioned in the report that from the point of the boundary of the village so established, the points of the drain earlier established as per demarcation dt. 14.03.05 (they were members of demarcation team) were found correct. On this date, a map as per measurement conducted during demarcation was prepared showing the position of the encroachment along the drain. This matched the findings of demarcation dated 28.01.1997. Also while the demarcation from 'Mustkil Stone' was conducted on 28.01.1997 and the field staff reached the Phirni road, the same road was reached when demarcation was conducted from Jharoda Dairy side as no stones are existing now. This proves that the new measurements are correct even though the 'Mustkil Stones' are no more available.

Before the onset of the hearing in the appeal case in this court the demarcations were conducted on 4/11/99, 28/1/97, 23/3/79 and 30/1/90. On 4/11/99, the map of the encroachments as detected during demarcation was prepared which also conforms to the encroachments detected on 28.01.1997 & 14.03.2005 and subsequent demarcations."

14. After referring to these facts in the detailed order dated 14th July, 2006, the Deputy Commissioner has lucidly and clearly drawn inferences and findings from the various demarcation reports. It was observed that the moot question was not whether the drain has proper width and length for which the exercise was undertaken on 30th January, 1990 but whether the authorities, i.e. DDA, PWD and Irrigation and Flood Department were/are in occupation of their acquired land. The said findings by the Deputy Commissioner have

been affirmed by the Financial Commissioner in his equally detailed and well reasoned order dated 15th February, 2008. Learned Financial Commissioner has held that the demarcation carried out on three different dates in 1997, 1999 and 2005 have reached the same conclusion that an anomaly had crept in at the time of handing over of possession of the land in 1979 and as a result PWD had taken over the land which was acquired by the DDA and the Irrigation and Flood Control Department were in possession of land acquired by PWD but the land of DDA got reduced because PWD had encroached upon the DDA land. The petitioners and others therefore had occupied and were in possession of land which was acquired.

15. DDA in their counter affidavit filed before this Court have accepted the said position. They have said PWD had shifted the road on the south and encroached upon the land acquired for the DDA and Irrigation and Flood Control Department had in turn encroached upon the land of PWD. Thus, the acquired land of DDA got reduced.

16. Learned counsel for the petitioners submitted that proceedings under the Land Acquisition Act, 1894 should be treated as final. Reference was made to judgment of this Court in ***Nagin Chand Godha versus Union of India and others*** 2003 (70) DRJ 721 (DB) in which an earlier decision of the Division Bench in ***Ajit Singh versus Union of India*** (2001) 89 DLT 495 has been quoted. The ratio of the said decision is that the Government becomes absolute

owner of the land on taking possession under Section 16 of the Land Acquisition Act. It has been further held that symbolic possession is sufficient. Further once the land is acquired then it cannot be denotified. The said decisions along with other decisions of the Supreme Court on the same issue referred in ***Satendra Prasad Jain and others versus State of U.P. & others*** (1993) 4 SCC 369 do not in any way support the contentions or issues raised in this petition. Ratio and legal question raised and decided are not relevant to the issue and controversy in question. A feeble attempt has been made to question the demarcation reports of 1997, 1999 and 2005 on the ground that all affected khasra numbers were not measured to verify the correctness. This contention has to be rejected as discussed above. In fact, there is no material to show that the demarcation from any fixed point was carried on 23rd March, 1979 and the A.D.M.(Revenue) verified the said demarcation with reference to any fixed points.

16. In view of the aforesaid, I do not find any merit in the present Writ Petition and the same is dismissed with costs of Rs.10,000/- which will be paid to the respondent no.1 towards litigation expenses.

(SANJIV KHANNA)
JUDGE

JANUARY 29th, 2010.
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