

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

Date of decision: 28th February, 2011.

+ W.P.(C) 9380/2009 & CM No.7200/2009 (for interim stay)

% MAHAVIR PRASAD Petitioner

Through: Mr. Abhay Mani Tripathi with Mr.
Pramod Kumar Tyagi, Advocates.

Versus

GOVT. OF NCT & ORS. Respondents

Through: Mr. Soreishang Kharay, Adv. for
Ms. Rinchen O. Bhutia, Adv. for R-
1 GNCTD.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported
in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The respondents no.4 to 7 and the respondent no.3 have filed their counter affidavits. The counsel for the petitioner states that his rejoinder

thereto is ready. The same has been taken over in the Court. The counsels have been heard.

2. The petitioner claims to have been allotted land admeasuring 5 Bighas and 13 Biswas in Khasra Nos.393 & 399 of Village-Meethapur, Delhi and further claims to have been declared a *Bhumidhar* with respect thereto in the year 1978-79; he claims that the said land is adjoining to Khasra Nos.1032, 1033 & 1038 of Village-Molarband; that several private parties (who are not respondents before this Court) have been raising unauthorized construction on the land aforesaid in Village-Molarband and have been attempting to encroach upon his land in Village-Meethapur also; that owing thereto he had to file several suits in the Civil Court in this regard; that proceedings under Section 81 of the Delhi Land Reforms Act, 1954 were also taken against him and an order of his eviction has been passed with respect to his land in Village-Meethapur and against which order his appeal before the Deputy Commissioner is stated to be still pending; he further claims to have in or about the year 1996 filed a suit against the respondents herein to restrain them from dispossessing him

forcibly from the said land and in which suit a statement was given by the Block Development Officer (BDO) to the effect that the petitioner shall not be dispossessed save by due process of law and the said suit was disposed of on 5th October, 2004 in terms of the said statement; he further claims that a part of the land in Village-Molarband adjoining to his land has now been allotted for construction of a hundred bedded Government Hospital and the respondents during the process of construction of the said Hospital, are encroaching upon his land in Village-Meethapur also. On the contention of the petitioner that the demarcation proceedings to demarcate his land from the land on which the Hospital is being constructed remained inconclusive/incomplete, notice of the writ petition was issued.

3. The counter affidavits as aforesaid have been filed. The SDM, Kalkaji in his counter affidavit has pleaded that the land has already been demarcated and boundary wall has been raised by the petitioner as far back as in the year 1999; that the petitioner however has been attempting to encroach upon the land in Khasra Nos.1033 & 1032 of Village-Molarband also and has been filing suits with the said purpose.

4. It may also be stated that the petitioner admits having filed a civil suit claiming to be in possession of the land in Khasra Nos. 1033 and 1032 of Village-Molarband and seeking to restrain dispossession therefrom; the said suit was dismissed. The petitioner filed an appeal thereagainst which was dismissed in default. The petitioner however claims that he had filed the said suit under a misconception that his land was in Khasra Nos.1033 and 1032 of Village-Molarband and not in Khasra Nos.393 & 399 of Village-Meethapur as now contended and owing to having realized his mistake he did not apply for restoration of the said appeal.

5. Coming back to the counter affidavit of the SDM, it is further pleaded that the petitioner has efficacious remedies available to him before the District Collector if aggrieved from the demarcation done. It is further pleaded that the question of demarcation is also subject matter of the various civil suits which the counsel for the petitioner today also admits are still pending, though the same are against the private parties (he however states that in none of the civil suits, the relief of demarcation has been claimed). It is further pleaded that owing to the pendency of the

present writ petition, the construction of the Hospital is held up. It is pleaded that the present writ petition is nothing but an attempt of the petitioner to retain his illegal possession of Khasra Nos.1033 & 1032 of Village-Molarband. It is yet further pleaded that the petitioner has already sold his land in Village-Meethapur and was now in occupation of Khasra No.1032 & 1033 of Village-Molarband and is falsely claiming the land in his possession to be part of Khasra Nos.393 & 399 of Village-Meethapur. It is contended that the petitioner if aggrieved from the demarcation report, instead of preferring an appeal thereagainst, has filed the present writ petition to perpetuate his illegality and which is holding up a public project.

6. The respondent no.3 the Secretary, Directorate of Health Services, Govt. of NCT of Delhi has in his affidavit also stated that demarcation of Khasra Nos.1032, 1033 & 1038 on which the Hospital is being constructed, has been carried out several times.

7. The petitioner in this writ petition has sought the relief of appointment of a Court Commissioner to carry out the demarcation and for

removal of the foundation stone of the Hospital on the land which the petitioner claims to be in Village-Meethapur and belonging to him.

8. The petitioner in rejoinder handed over in the Court has denied the averments in the counter affidavit of the demarcation having been carried out.

9. It has been enquired from the counsel for the petitioner as to whether he has applied for demarcation and if so which is the application and what is the order thereon. The counsel for the petitioner invites attention to page 63 of the paper book being the order dated 26th December, 2005 of the SDM, Kalkaji, New Delhi on the application of the petitioner for demarcation and directing the Field Kanoongo to carry out the demarcation.

10. It has next been enquired from the counsel for the petitioner as to whether in pursuance thereto any demarcation was carried out. The counsel for the petitioner draws attention to page 152 of the paper book being a demarcation report dated 6th January, 2006 and 17th January, 2006 being in

pursuance to the order aforesaid dated 26th December, 2005. It has as such been enquired from the counsel for the petitioner that if the demarcation has already been carried out and if the petitioner is aggrieved from the demarcation report, his remedy would be by preferring an appeal against the demarcation report rather than by way of this petition.

11. The counsel for the petitioner however contends that this petition is maintainable because the petitioner in pursuance to a wrong demarcation report has been dispossessed from his land and because the relief of re-possession is also claimed in this petition. Attention is also invited to the demarcation report aforesaid in which it has been observed that since there is heavy construction on both sides of village Mithapur and village Molarband, it is not possible to carry out the measurements and the construction obviates the measurements. The counsel also states that the said demarcation was in his absence.

12. I am of the considered opinion that a Court Commissioner cannot be appointed for carrying out the demarcation which under the statute has to be carried out by the designated persons. The counsel also admits that the

statute provides the remedy of appeal against the report of demarcation. Merely because the petitioner has been dispossessed, would not entitle the petitioner to be first put back into possession. The remedy of the petitioner still is to prefer appeal against the demarcation report and if succeeds in establishing that the land from which he has been dispossessed belongs to him, would be entitled to the relief of re-possession. The petitioner himself has sought the relief of re-possession only pursuant to demarcation.

13. No need is also felt for this Court to issue direction for carrying out demarcation. The statute having provided for the remedies, and demarcation having been carried out and the grievance being only against the report, no fresh demarcation as sought can be directed. However if the petitioner in the appeal against the demarcation report is able to satisfy the Appellate Authority (which is informed by the counsel for the petitioner to be the Dy. Commissioner) the Dy. Commissioner would be entitled to order such fresh demarcation or issue any further directions with respect thereto.

14. This Court without finding any title in favour of the petitioner

cannot direct the petitioner to be put back into possession as claimed.

15. The petition is therefore found to be not maintainable and is dismissed with liberty to the petitioner to prefer an appeal against the demarcation report aforesaid. On request of counsel for the petitioner it is further directed that in the event of the said appeal being preferred, the same be disposed of as expeditiously as possible, preferably within six months from completion of service of notices on all the parties.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 28, 2011
bs/pp