

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

%

Date of Decision: 30.04.2013

+ W.P.(C) 3448/2003

RAJPAL AND ORS.

..... Petitioners

Through: Mr Vikram Nandrajog, Adv.

versus

D.D.A.

..... Respondent

Through: Mr Ajay Verma, Adv

**CORAM:**

**HON'BLE MR. JUSTICE V.K.JAIN**

**JUDGMENT**

**V.K.JAIN, J. (ORAL)**

1. The petitioners before this Court claim to be owner of property No.RZ-19 in village Nangloi Syed, Delhi and also allege that the aforesaid property is comprised in Khasra No. 94 of the said village. According to the petitioners, the officials of the respondent visited their property and tried to demolish the same, without following the due process of law. The petitioners are accordingly seeking a writ of Mandamus or any other writ or a direction to the respondents not to dispossess them or demolish their property bearing No. RZ-19 in village Nangloi Syed, Delhi.
2. The writ petition has been contested by the respondent-DDA. In its counter-affidavit, DDA has alleged that approximately 200 square yards of land of the disputed property falls in Khasra No. 95/2 min of village Nangloi Syed, Delhi as

per the demarcation carried on 09.01.2033 by the staff of DDA and Government of N.C.T. of Delhi, whereas rest of the land falls in Khasra No. 94 of the aforesaid village. This is also the case of the respondent that Khasra No. 95/2 (1 bigha 13 biswas) stand acquired vide Award No. 2202 and physical possession of the acquired land was handed over to DDA by the Land Acquisition Collector on 12.03.1969 by placing the aforesaid land at the disposal of DDA under Section 22(i) of Delhi Development Act. It is, however, an admitted position that Khasra No. 94 has not been acquired.

3. In their rejoinder, the petitioners have denied the case of the respondent that part of the aforesaid property falls in Khasra No. 95/2 and they have reiterated that the property falls only in Khasra No. 94 of village Nangloi Syed, Delhi. This is, however, not the case of the petitioners in the rejoinder that even Khasra No. 95/2 has not been acquired.

4. The question as to whether the whole of the suit property falls in Khasra No. 94 of village Nangloi Syed, Delhi, as claimed by the petitioners, or only part of it falls in the aforesaid Khasra and a portion measuring 200 square yards falls in Khasra No. 95/2, as is claimed by the respondent, is a question of fact which cannot be decided in this writ petition since it requires recording of evidence.

5. The learned counsel for the respondent has placed on record a copy of the Demarcation Report dated 09.01.2003 along with copy of the award, the

proceedings relating to taking over possession of the aforesaid land and handing over same to DDA. A copy of the notification under Section 22 of Delhi Development Act is also annexed to the aforesaid Demarcation Report. Copy has been supplied to the learned counsel for the petitioners. Though the Demarcation Report filed by the respondents has been taken on record, the Court is not in a position to decide in this writ petition, as to whether the whole of the property subject matter of this petition falls in Khasra No. 94 or part of it falls in Khasra No. 95/2 of Village Nangloi Syed, Delhi. This is an issue which can be decided only before a Civil Court where evidence can be taken in this regard. Suffice it would be to say that if the land measuring 200 square yards of the suit property falls in Khasra No. 95/2 and the aforesaid Khasra stands acquired, said piece of the land in terms of Section 16 of Land Acquisition Act vests in the Government, free from all encumbrances since possession has already been taken pursuant to the award, whereby the aforesaid land was acquired. If that is so, the petitioner would have no legal right to continue to occupy the aforesaid piece of land measuring 200 square yards.

6. The learned counsel for the petitioner states that in view of the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, the construction which was raised by the petitioners much before filing of this writ petition in the year 2003 cannot be demolished by the respondents, even if

the case set up by the respondent is taken to be correct. This aspect of the matter, however, need not be gone into in this writ petition since, in my view, if there is a legislative mandate, prohibiting the respondent from demolishing construction in question, no order needs to be passed, asking the respondent to act in terms of the said legislative mandate. Mr Vohra, however, states that on account of the interim order granted by this Court, the respondent could not take action for demolition of the aforesaid construction and consequently, the benefit of the aforesaid legislation would not be available to the petitioners. However, these are not the questions which can be gone into in this writ petition. What is relevant for deciding the writ petition is that the disputed question of fact as to whether part of the suit property in Khasra No. 95/2 or 94 cannot be gone into in this writ petition.

For the reasons stated above, the writ petition is dismissed.

The interim order stands vacated.

**V.K. JAIN, J**

**APRIL 30, 2013**

**BG**