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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th November, 2020

Date of decision: 18th December, 2020

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CM (M) 416/2019

BAL BHAGWAN

..... Petitioner

Through: Mr. Y. K. Kapur and Mr. Manish Vats, Advocates (M: 9811432428).

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rajiv Bansal, Senior Advocate with Mr. Dhanesh Relan, Advocate (M: 9717999789).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This judgment has been pronounced through video conferencing.

CM APPL. 14329/2020

2. This is an application seeking exemption from filing court fee and duly attested affidavits. Binding the deponent of the affidavit to the contents of the application, the exemption is granted. Insofar as the court fee is concerned, the same be deposited within four weeks. Application is disposed of. Registry to submit a report in case the court fees is not filed after a month.

CM APPL. 241/2020

3. This application has been filed by the Petitioner for referring the Khasra girdawari for the year 1983-88, which is in Urdu, for translation to the translation branch of the Delhi High Court or for the true translated copy filed by the Petitioner to be treated as the correct true translated copy of the

girdawari. The translation of the *Khasra girdawari* filed by the Petitioner is taken on record. Application is disposed of.

CM (M) 416/2019 & CM APPL.11534/2019 (for stay)

Brief Background

4. The present petition arises out of a suit for permanent injunction filed by the Petitioner/Plaintiff (*hereinafter, "Plaintiff"*) - Mr. Bal Bhagwan against the Delhi Development Authority (*hereinafter, "DDA"*) seeking permanent injunction restraining the DDA from demolishing or forcibly dispossessing the Plaintiff from three temple premises namely *Mandir Kali Mai, Mandir Bada Beer Dham* and *Mandir Shivji Maharaj* situated on private land bearing Khasra No. 1075/803/50 measuring 4 bigha 3 biswas and a temple premises of *Sankat Mochan Bajrang Bali* on land measuring 2 bigha 11 biswas in Khasra No. 1074/803/50 of village Khampura Raya, Delhi bearing MCD No.2151/18, Swami Onkara Nand Ashram, New Patel Nagar, New Delhi (*hereinafter, "suit property"*).

5. The Plaintiff had moved an application for interim injunction under Order XXXIX Rules 1 and 2 CPC before the Civil Judge. Vide order dated 10th December, 2018, the Ld. Civil Court dismissed the application for injunction. Thereafter, the Plaintiff preferred an appeal, which was also dismissed vide the impugned order dated 27th February, 2019. This Court, at the time of admission of the present petition, on 12th March, 2019, issued notice and directed that no coercive steps be taken by the DDA against the Plaintiff.

6. The case of the Plaintiff has been captured in brief in the plaint. The Plaintiff claims that he is the *Chela* of Late Swami Onkara Nand who was managing/running four temples situated on the suit property. The temples

were located on two separate khasras, with three temples being located on Khasra No. 1075/803/50 and one temple being located on Khasra No.1074/803/50. It is claimed that the said four temples are in the possession of the Plaintiff as they are managed by him and they have been running at least since the 1960s.

7. Swami Onkara Nand expired on 10th May, 1982 and by way of a registered Will dated 13th April, 1982, the Plaintiff was made the manager of the entire temple complex. It is claimed that the DDA attempted to take forcible possession of the suit property and dispossess the Plaintiff, leading to the filing of the suit for permanent injunction. The DDA filed its written statement and claimed that the entire land is government land and that the Plaintiff is in illegal occupation of the same. It took the stand that the Plaintiff, who has no rights in the suit property, cannot prevent the DDA from taking over the land which is meant for rehabilitation of the Kathputli Colony dwellers and had been vested in the DDA by the Ministry of Rehabilitation way back in 1982. Both Courts have agreed with the DDA and have dismissed the Plaintiff's application for interim injunction.

Plaintiff's Submissions

8. Mr. Kapur, Id. counsel appearing for the Plaintiff has urged before this Court that insofar as the DDA is concerned, the issue only relates to 2 Bighas and 11 Biswas as the other land has been held to be *Shamlat Deh* land. The stand of the DDA is that the land was acquired and was put at its disposal. However, the Plaintiff claims that he himself is in settled possession of the land in question. Reliance is placed on the *Jamabandis* dating back to 1946-47 and the *Khasra Girdawaris* dating back to 1967-68,

which show the existence of the temple. Mr. Kapur specifically relies upon the various documents of the Revenue Authorities filed by the DDA to show that these documents themselves establish the existence of the temple as also the fact that the same was managed by Swami Onkara Nand. Vehement reliance is also placed on an alleged copy of DDA's City Planning Wing's document which shows the regularisation of New Patel Nagar area of which the suit property is alleged to be forming part. It is claimed that the survey which was conducted in this area on 15th September, 1977 itself shows the existence of a temple on the said land.

9. Ld. counsel submits that once the Plaintiff has been shown to be in settled possession on the basis of the *Jamabandis*, *Khasra Girdawaries* and the DDA's own plan, the possession of the Plaintiff cannot be disturbed except in accordance with law. It is further urged that the documents which are relied upon by the DDA show that the DDA had acquired this land from the Ministry on an '*as is where is*' basis. Thus, when the transfer took place in 1982, since the temple was already in existence and the Plaintiff/his predecessor was managing the said temple, the DDA was well aware of the risk of taking over the said land. Further, it is argued that the Plaintiff has been paying all the necessary charges to the local authorities, including water, telephone, electricity and also the house tax. It is submitted that the possession of the Plaintiff not being in dispute, the dismissal of the application under Order XXXIX Rules 1&2 CPC is erroneous and is contrary to law.

10. Ld. counsel also relies upon the relevant paragraphs of the written statement to show that there is no denial by the DDA on the claim of settled possession. The only claim of the DDA is that the Plaintiff is an encroacher.

Ld. counsel urges that as per the provisions of Order VIII Rule 5 CPC any denial which is not a specific denial is no denial in the eyes of law. The DDA has not specifically denied the claim of settled possession and thus, the stand of the Plaintiff that he is in settled possession should be deemed to be admitted by the DDA.

11. Mr. Kapur, ld. counsel, specifically points out glaring errors in the order of the Trial Court dated 10th December, 2018 which observes that the existence of the temple is shown but the name of the Plaintiff is not shown. This, according to the ld. counsel, is a completely incorrect and blatantly wrong finding by the Trial Court which is clearly rebuttable from a plain reading of the *khasra girdawaris* which show that Swami Onkara Nand was managing the temple. It is further argued that the land being part of a bigger block of land, unless and until demarcation is done, the Plaintiff cannot be dispossessed.

12. Mr. Kapur submits that there is a difference between settled possession and adverse possession. The Plaintiff in this case was only pleading settled possession but the Court below has confused the same with adverse possession. He refers to paragraphs 11, 16 and 26 of the plaint and submits that the stand of the Plaintiff is very clear that it is one for settled possession. Further, the Court below has confused the claim of the Plaintiff to be one for title and ownership whereas the claim is only for an injunction on the basis of settled possession.

13. Reference is made to the prayer in the plaint to argue that in respect of both the portions of land i.e., 4 bighas and 3 biswas and 2 bighas and 11 biswas, the Plaintiff seeks an injunction against dispossession. The finding of the Trial Court, insofar as the 2 bigha portion is concerned is that the

Plaintiff is an encroacher. It is submitted that once the Plaintiff is admitted to be an encroacher, he cannot be dispossessed except in accordance with law as he is in settled possession.

14. It is submitted that the finding of the Trial Court that the Plaintiff has no title to the land itself shows the misconception on the basis of which the Trial Court has proceeded, as this was not a suit where the Plaintiff was seeking declaration of ownership/title. This misconception has led to an erroneous judgment by the Trial Court and the errors by the Trial Court have just been perpetuated by the Id. District Judge.

15. Mr. Kapur, Id. counsel submits that the land in question has in fact been handed over to the MCD/NrDMC as per the DDA's own admission at page 275. Id. counsel relies upon the notice under Order XII Rule 8 CPC to the DDA to produce certain documents. In response to the said notice, the DDA has stated as under:

“8. In reply to para 6 of the Notice it is submitted that the Kathputali Colony Area stands transferred to the Municipal Corporation of Delhi since been succeeded by the North Delhi Municipal Corporation and the drawings/layout plan of the said are not available with the D.D.A and can be obtained from North Delhi Municipal Corporation.”

16. It is submitted that since the land has now been transferred to the MCD/NrDMC, the DDA has no right on the said land. In any event, insofar as the 4 Bigha 3 Biswas portion of land is concerned, the same has been held to be *Shamlat Deh* land and does not belong to the DDA.

17. It is further submitted that both the Civil Judge and the Appellate Court admit that the possession is with the Plaintiff. These findings are not challenged by the DDA either by filing cross-objections or otherwise. It is submitted that since the said findings are not challenged, the Court has to proceed on the basis that the Plaintiff is in settled possession of the land. He submits that the Trial Court has simply relied upon the judgment of the Supreme Court in **Jagpal Singh & Ors. v State Of Punjab & Ors. 2011 (11) SCC 396**, which in his submission is *per incuriam* as is clear from a reading of various judgments of the Supreme Court, including **Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769**, **Puran Singh v. State of Punjab, (1975) 4 SCC 518**, **Munshi Ram & Ors. v. Delhi Administration, AIR 1968 SC 702**, **Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through LRs, (2012) 5 SCC 370** and finally, **Poona Ram v. Moti Ram (D) thr LRs and Ors., (2019) 2 SCALE 207**.

18. Ld. counsel relies upon **Government of AP v. Thummalla Krishna Rao & Anr., (1982) 2 SCC 134** to argue that once a party is openly in possession for an appreciable length of time, he cannot be dispossessed except by impartial adjudication. It is submitted that an order under Order XXXIX Rules 1 and 2 CPC is not an impartial adjudication. Reliance is also placed on **Krishna Ram v. Mrs. Shobha, (1989) 4 SCC 131**. It is urged on behalf of the Plaintiff that the Trial Court ought to honour the judgments. It is submitted that the judgment in **Jagpal Singh (supra)** is completely distinguishable as it was a case where the gaon sabha land was taken over for commercial use and was encroached upon. Under those circumstances, the Supreme Court held in favour of the State. It was also not a case of settled possession.

19. Reliance is also placed on *Ashwani Kumar Singh v. UP Public Service Commission & Ors.*, AIR 2003 SC 2661 to argue that the Trial Court cannot blindly follow a judgment without appreciating the factual context of the same. Ld. counsel vehemently urges that the Plaintiff's case is not of adverse possession but settled possession. It is argued that the order of the Trial Court is perverse and is liable to be set-aside due to non-application of mind. It is also argued that if the settled legal position is not followed by a judgment, then that judgment cannot stand in the eyes of the law. The following cases were relied on for this proposition: *Arulvelu & Anr. v. State represented by the PP & Anr.*, 2009 10 SCC 206, *S. R. Tewari v. UOI & Anr.*, (2013) 6 SCC 602, and *Associate Builders v. DDA*, (2015) 3 SCC 49.

DDA's Submissions

20. Mr. Rajiv Bansal, ld. senior counsel along with Mr. Dhanesh Relan, ld. counsel appears for the DDA. He raises two preliminary objections. The first preliminary submission is that the petition is under Article 227 of the Constitution of India which is not an appellate remedy. The scope of judicial review is limited in such a petition. The Court is not to act as an appellate authority and neither is such a petition to be treated as a second appeal. The Court cannot interfere unless there is flagrant miscarriage of justice or abuse of principles of law. The Trial Court's finding has to be perverse or patently erroneous for the Court to exercise jurisdiction in such a petition. It is submitted that the Court cannot re-appreciate the evidence and also cannot reverse the finding on insufficiency of evidence. The Court also cannot substitute the trial court's finding with its own opinion in the matter. It is further submitted that if there are two concurrent findings, the power under

Article 227 ought to be sparingly exercised. Reliance is placed on the following judgments:

- a) *Annad Kumar v. Dinesh Kumar*, (2017) 125 ALR 75
- b) *Surender v. Roshani & Ors.*, 2010 SCCOnline Del 2482
- c) *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97
- d) *Ouseph Mathai & Ors. v. M. Abdul Khadir*, (2002) 1 SCC 319
- e) *Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur*, (2009) 5 SCC 162

21. It is submitted that Article 227 basically deals with jurisdictional errors. The question as to what constitutes a jurisdictional error is laid down in *S. Satnam Singh & Ors. v. Surender Kaur & Anr.*, (2009) 5 SCC 562. If the Trial Court considers irrelevant facts or ignores relevant facts, the same constitutes a jurisdictional error. It is submitted that in the present petition, none of the grounds raised portray any jurisdictional error. Unless it can be shown that the issue goes to the root of the matter, the Court does not exercise jurisdiction under Article 227.

22. Mr. Rajiv Bansal, Id. senior counsel takes the Court through the plaint to argue that in respect of 4 Bighas and 3 Biswas, the case is that the same is a private land, however, no document is placed on record to establish title. Insofar as 2 Bighas and 11 Biswas are concerned, it is submitted that the acquisition proceedings were not challenged by the Petitioner. The finding of the Trial Court is that the so called private land is only 'shamlat deh' land i.e., it belongs to the common village community. He submits that in both these parcels of lands, which are more than one and a half acres i.e. 6,700 sq. yards, the four *Mandirs* are in a very small portion and the remaining

portion consists of a residence, shops and factories. Thus, the land is used for commercial purposes and not for the purposes of *Mandirs*.

23. The plaint is referred to in order to show that in paragraph 25 there is an implied admission that the land is Government land. The further submission is that there are contrary pleas that are taken by the Plaintiff. On the one hand, the Plaintiff claims settled possession but on the other hand the Plaintiff pleads adverse possession.

24. The second preliminary submission raised is that the suit filed by the Petitioner is a simpliciter suit for injunction and no declaration is sought. Finally, the prayer in the plaint is referred to argue that the same is only for a permanent injunction and there is no declaration which is being sought. It is submitted that this is completely contrary to the settled legal position in *Anathula Sudhakar v. P. Buchi Reddy (Dead) By Lrs & Ors, (2008) 4 SCC 594* where the Supreme Court has made it clear that if the title to the property is in dispute or under a cloud, the prayer for declaration is mandatory to be sought by the Plaintiff. The relief of injunction is only consequential in nature. Reliance is placed on paragraphs 13 and 21 of the said judgment. It is submitted that the Plaintiff, while pleading ownership has not placed a single document on record, except the Will of late Swami Onkara Nand, to establish title.

25. Mr. Bansal thereafter refers to the Will dated 13th April, 1982 by Swami Onkara Nand to canvas the proposition that in the Will, there are no details as to on what basis the Plaintiff's Guru claims to be the owner of the suit property. Further, the Will only mentions one temple with a number of living rooms. He thus submits that the prayer is in respect of the remaining set of four temples, which are not mentioned in the Will.

26. Ld. Senior Counsel further refers to the order passed on 8th November, 2011 in *W.P.(C) 7200/2011* titled *Richpal Singh & Ors. v. MCD & Ors.*, which relates to the same property i.e. MCD No.2151 of 2018, where the Plaintiff herein ought to have been a party. He submits that in the said writ petition, the ld. Single Judge had directed that if there was no sanctioned plan and there was any unauthorized construction, MCD was required to take action in accordance with law. On a query put by the Court, Mr. Kapur, on instructions from his client, submits that the Plaintiff was a party in the said writ petition i.e. Respondent No.4 but he was not served in the said writ petition.

27. On the aspect of the DDA having taken over the land on 'as is where is' basis, according to Mr. Bansal, ld. counsel, this only meant that the Government of India was not giving any guarantees or warranties in respect of the land. The transfer of property to MCD/ NrDMC was for the purposes of providing municipal amenities and facilities in the area concerned. He also reiterated that *Khasra Girdhawaris* and other revenue records do not confer any title. Insofar as settled possession is concerned, he relied upon the judgment of *Maria Margarita (supra)* to argue that once the Court had looked at the facts and passed an order sufficient compliance of due process takes place.

28. Ld. counsel thereafter placed reliance upon the Appellate Court's judgment to argue that the Appellate Court has clearly come to the conclusion that the acquisition of the property having been admitted by the Plaintiff himself, he cannot claim any rights in respect of the acquired property or slum.

29. The award is thereafter relied upon to argue that the Plaintiff did not have any claims and all the claimants were heard before the award was passed almost 60 years ago. Even as per the demarcation report, relied upon by the Plaintiff himself, the acquisition was upheld by the High Court in ***W.P.(C) 7200/2011*** titled ***Richpal Singh & Ors. v. MCD & Ors.***

Rejoinder and Sur-rejoinder Submissions

30. Mr. Kapur has commenced his rejoinder submissions and submits that in so far as the District Court's findings are concerned, there are no cross-objections filed by the DDA. Hence, the issue is only with respect to the 2 bighas and 11 biswas of land and not the other part of the land which has been declared as *shamlat deh* land.

31. He thereafter relies upon the record of ***W.P.(C) 7200/2011*** titled ***Richpal Singh & Ors. v. MCD & Ors*** and ***Cont. Cas (C) 750/2012*** titled ***Richpal Singh & Ors. v. PK Gupta & Anr*** arising therefrom to argue that the Plaintiff herein, who was Respondent No. 4 in the said writ, was never served in the matter. Even the order dated 8th November, 2011 does not record the appearance of Respondent No. 4, i.e. the Plaintiff. In the said order, it has merely been directed that if there is no sanctioned plan, demolition action can be taken in accordance with law. However, no demolition was carried out by the Municipal Authorities. The contempt petition also had an Action Taken Report filed by the DDA wherein the DDA took the stand that the area marked in blue was construction made prior to February, 2007 and was protected under the prevalent regulations. Ld. counsel submits that the Plaintiff had no knowledge of these proceedings and having acquired knowledge thereafter cannot be held to be bound by the said order.

32. Mr. Kapur, ld. counsel thereafter relies upon the photographs filed by the DDA to argue that these photographs, in fact, establish settled possession of the Plaintiff.

33. Ld. counsel further submits that the proposition that if a suit for declaration is not filed, the suit for injunction is not maintainable is clearly not the declared position of law. He also relies upon the judgments in *Annad Kumar v. Dinesh Kumar, 2017 SCC Online All 1889*, *Kishore Kumar Khaitan & Ors. v. Praveen Kumar Singh, AIR 2006 SC 1474* and *Achutananda Baidya v. Prafulla Kumar Gayen & Ors., AIR 1997 SCC 2007* to argue that whenever there is a perverse or patently illegal finding or the approach of the Trial Court is wrong, then the petition under Article 227 would be maintainable.

34. Mr. Bansal, ld. counsel concluding his submissions relies upon a compilation of documents to argue that the project of the Kathputli Colony was fully sanctioned as per the orders in the said writ petition. He submits that in so far as the *shamlat deh* land is concerned, the villagers are the co-sharers only till the land is organised and the village is urbanised. Once the village is urbanised, under Section 407 of the Delhi Municipal Corporation Act, 1957, the land vests with the Central Government. He relies upon the *Khasra Girdawari* at page 48 to argue that even the *Khasra Girdawari* relied upon by the Plaintiff clearly shows that ownership of the land is with the *Sarkar* i.e. the Government. The possession of the land is with the *Mandir* and Bal Bhagwan i.e. the Plaintiff is only the manager of the said *Mandir*. The *Khasra Girdawari* cannot vest either ownership or possessory interest in the Plaintiff.

35. Mr. Bansal, ld. counsel thereafter relies upon the orders in *Suit No.*

478/2011 titled *Balbir Singh & Ors. v. Bal Bhagwan*, which, according to him do not vest any ownership or title in the Petitioner. He submits that even as per the plaint itself at page 92, the order was an order relating to Order VI Rule 17 CPC and thus, the interpretation given by the Petitioner to the said order is not tenable. Finally, Mr. Bansal relies upon the judgment in *Ashok Kapoor & Ors. v. MCD [CS (OS) 2045/2008, order dated 11th March, 2014]* to argue that the view of the Supreme Court has completely changed after the judgment in *S.P. Chengalvaraya Naidu Vs. Jagannath, AIR 1994 SC 853* where the Supreme Court has held that land grabbers and other illegitimate claimants to public land ought not to be encouraged. Moreover, apart from the three principles governing the grant of temporary injunction, a fourth principle of public interest can also be applied. He submits that the interests of the Petitioner herein cannot be kept above the other citizens who are now waiting for a developed colony.

36. Mr. Kapur concludes his submissions by arguing that the said judgment in *Ashok Kapur (supra)* would be *per incuriam* as it does not discuss *Rame Gowda (supra)*

Analysis & Findings

37. An application under Order XXXIX Rules 1 & 2 CPC, which was rejected by both the Trial Court and the Appellate Court, is the subject matter of the present petition, which has been argued extensively by Id. counsels for the parties. This comes as no surprise as the land involved is precious land located in the heart of Delhi in which the Plaintiff wishes to continue to retain possession.

38. On 4th August, 2020, the photographs of the area were called for by

this Court. They revealed that the temples are merely a minute portion of the suit property, which is surrounded by residential and commercial properties. The entire area has no sanctioned plan. The Plaintiff, obviously, does not wish to be dispossessed from the suit property.

39. A perusal of the plaint shows that the Plaintiff claims ownership in the suit property. Paragraph 10 of the plaint reads as under:

*“10. That **the plaintiff is owner in possession or a transferee/successor from the original owner of the suit property** through documents in his favour and is legal occupier of the suit property.”*

However, before this Court, the Plaintiff concedes that he does not have any document of title in respect of the suit property. Thus, the only question is whether the Plaintiff is entitled to interim relief from being dispossessed.

40. In the plaint it is admitted that the land is government land and that the Plaintiff has rights in the same by way of adverse possession. The relevant extract of the plaint reads as under:

*“That no action to take forcible possession after dispossessing the plaintiff from the suit land can be taken as the same is barred by Section 27 read with Article 112 of Limitation Act, 1963. **The government can take action for eviction and for possession against the alleged illegal occupant on the government land within 30 years and the period of limitation had began to run. under this act against a like suit by a private person and hence the threat of alleged action of dispossession/forcible dispossession by the defendant is barred by time as the right of the defendant has extinguished in respect of the suit property.** Even otherwise **the plaintiff is owner by adverse***

possession in view of notice of defendant issued in the month of November, 1982 to the plaintiff and other residents of the area site of New Patel Nagar in respect of alleged acquired land of village Khampur Raya, Delhi.”

41. However, before this Court the Plaintiff's case has changed and is one of settled possession and not of adverse possession. The issue, therefore, is very short - Whether the Plaintiff claiming settled possession without any ownership can be dispossessed or is entitled to injunction against dispossession?

42. The suit seeks the following reliefs:

“It is, therefore, prayed that this Hon'ble Court may graciously be pleased to pass a decree of permanent injunction restraining the defendant from demolishing the suit property and forcibly dispossessing the plaintiff from the suit property i.e. three temples premises namely Mandir Kali Mai, Mandir Shivji Maharaj situated on private land bearing Khasra No. 1075/803/50 measuring 4 bigha 3 biswas and a temple premises of Sankat Mochan Bajrang Bali on land measuring 2 bigha 11 biswas comprising in Khasra No. 1074/803/50 of village Khampura Raya, Delhi bearing MCD No.2151/18, Swami Onkara Nand Ashram, New Patel Nagar, New Delhi; without due process of law.

It is further prayed that the costs of the present suit may also be award in favour of the plaintiff and against the defendant.

Any other order as this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiff and against the defendant in the interest of justice.”

Thus, the only relief claimed is permanent injunction against demolition and forceful dispossession.

43. The case of the DDA is that the land was acquired by the government and was placed with the DDA. The acquisition proceedings have acquired finality. The land was also placed with municipal authorities in order to develop municipal amenities/facilities in the area. The Plaintiff has been argued to be a tress-passer and illegal occupant who has no ownership rights whatsoever in the suit property.

44. The Trial Court vide its order dated 10th December, 2018 held as under:

- i. That one part of the suit property lies in Khasra No.1074/803/50 and another part lies in Khasra No.1075/803/50;
- ii. Insofar as Khasra No. 1074/803/50 is concerned, the same is part of acquired land, which was purchased by the DDA on 2nd September, 1982. The acquisition is not challenged and the same is more than 60 years old. The Plaintiff, thus, encroached in Khasra No. 1074/803/50.;
- iii. Insofar as Khasra No.1075/803/50 is concerned, the same is private land i.e. *Shamlat Deh* land. Following the judgment in ***Jagpal Singh (supra)***, the Trial Court held that *Shamlat Deh* land is meant for the common use of the village and no one person can claim rights in the same.;
- iv. That the Plaintiff does not have title on either part of the suit property and, at best, he is an encroacher.;
- v. The Plaintiff claims ownership on one hand and on the other hand, claims rights by way of adverse possession.;

vi. The judgment in *Rame Gowda (supra)* has been considered by the Trial court along with the judgment in *Maria Margarida (supra)*. The Trial Court holds that the moment the pleadings are filed by the parties and the Court applies its mind to the matter and finds that the Plaintiff has no title to the land, the requirement of due process of law is complete. The Plaintiff was found to be an unauthorised occupant who had no right to remain on the land. Thus, the injunction application was dismissed.

45. The Plaintiff filed an appeal against the said order, which was heard by the Id. ASCJ. The Appellate Court, vide its order dated 27th February, 2019, held that the land belongs to the DDA and the Trial Court has rightly rejected the prayer for injunction.

46. The petition before this Court is under Article 227 of the Constitution of India. Clearly, the extent of intervention in such cases is quite limited. There are concurrent findings by the Trial Court and Appellate Court. All the relevant facts have been considered by the Courts below. Thus, in view of the settled legal position, no interference would ordinarily be called for in the writ petition. However, in view of the extensive arguments which have been made before this Court, the Court proceeds to deal with the issues raised by the parties.

Scope of interference under Article 227

47. A faint attempt has been made by the Plaintiff to argue that the Trial Court and Appellate Court have not rendered any findings in respect of the case of the Plaintiff on the relevant issues. On the strength of *Kishore Kumar (supra)* it is argued that the same constitutes a jurisdictional error under Article 227 and hence the present petition is maintainable.

48. The grounds raised for seeking interference under Article 227 of the Plaintiff are devoid of any merits. The land admittedly is government land. The Plaintiff has no title to the said land. The Plaintiff has also been changing stances since the filing of the suit and has become wiser as the litigation has progressed. Initially, after claiming ownership rights by way of adverse possession, in the present writ petition the only argument of the Plaintiff has been that he is in settled possession and cannot be dispossessed except by due process of law. The Trial Court and the Appellate Court have considered the Plaintiff's case as pleaded in the plaint. The said forums cannot therefore be faulted. The Trial Court has dealt with the pleadings and documents in detail and cannot therefore be alleged to have failed in rendering the necessary findings. In the opinion of this Court there is no jurisdictional error. However, the Court has also examined the merits of the matter in view of the various issues raised before it. Each of broad submissions made on behalf of the Petitioner are dealt with hereinbelow.

A. The effect of property being vested with DDA on an 'as is where is' basis

49. The property in question has been vested vide letter dated 2nd September, 1982 by the Ministry of Settlement of Rehabilitation, Government of India with the DDA. The said vesting would in effect mean that the DDA is free to deal with it and take action in whatever manner it deems appropriate, including taking action against any encroachment. This Court agrees with the DDA's submission that the DDA is the owner of the land and the term 'as is where is' basis merely means that there are no guarantees or warranties that are being given by the Government of India in

respect of this land. The fact that the property was vested in the DDA on 'as is where is' basis does not mean that the DDA cannot take any action to remove an unauthorised occupant or encroacher.

B. The property being transferred to the MCD/NrDMC

50. Insofar as the transfer of the property to MCD/NrDMC is concerned, once the land is urbanized, the land can be transferred to the Corporation for the purpose of providing municipal amenities and facilities. This cannot be a ground for the Plaintiff to argue that the DDA has no right in the suit property. In any event, the suit filed by the Plaintiff is against the DDA and not against the Corporation. Thus, the DDA is entitled to defend itself in the present suit.

C. The legality and validity of Khasra Girdawaris and other revenue records

51. The award by which Khasra No. 1075/803/50 was acquired was passed more than 60 years ago and has not been challenged by the Plaintiff herein. The Plaintiff claims to be in possession of the private land. Though ownership is claimed, no documents such as sale deed etc. have been placed on record. The land was acquired under the Resettlement of the Displaced Persons (Land Acquisition) Act, 1948. The title of the land was vested in community and the Plaintiff has no title in the said land.

52. The Petitioner relies upon these records to prove possession. Mr. Kapur admits to the fact that the revenue records do not vest title with DDA in the property but have been filed to show possession. Mr. Bansal submits that the said documents do not confer any title and the settled position as

laid down in *Union of India & Ors. v. Vasavi Cooperative Housing Society Limited & Ors.* [(2014) 2 SCC 269] has been relied upon.

53. It is also well settled that *jamabandis* and *khasra girdawaris* do not vest any ownership rights, as per the judgment of the Supreme Court in *State of A.P. v. Star Bone Mill and Fertiliser Company*, (2013) 9 SCC 319. In any event, even the *khasra girdawari* for the year 2000-01 to 2004-05, clearly shows that the Plaintiff does not have any ownership rights.

D. Settled possession

54. The foundation of the Plaintiff's case before this Court is one of settled possession, which cannot be disturbed except by due process of law. The core of the argument is based on the judgment of the Supreme Court in *Rame Gowda (supra)*. The vehement contention of Id. counsel for the Plaintiff has been that this judgment, though considered by the Trial Court, has not been properly applied. The judgment, having been delivered by a three-judge bench, ought to have been followed instead of the judgment in *Jagpal Singh (supra)*, which is a division bench judgment.

55. In order to prove settled possession, the Plaintiff relies upon *jamabandis* and *khasra girdawaris*. Both these documents merely show that there was a *mandir* which was under the management of the Plaintiff. The *khasra girdawari* for the year 2000-01 to 2004-05 records the following:

<i>1</i>	<i>2</i>	<i>3</i>
<i>Khasra No.</i>	<i>Owner's Name in short With Jamabandi No.</i>	<i>Cultivator's name in short with khatauni No. and Lagan</i>
<i>1074/803/50 Min</i>	<i>Sarkar Daulat Madar khewat No.99</i>	<i>Under possession of Mandir managed by Bal Bhagwan jagat Nirankar chela Onkarananda R/o Village</i>
<i>1075/803/50 Min</i>	<i>Shamlat Deh Khewat No.99</i>	<i>Balbir Singh s/o Harvans Singh, Phool singh s/o Khushhal Rajendra Singh s/o Ram Chandr, Jagan Singh s/o Ghisa equal Share Sewadar Mandir</i>

56. A perusal of these entries in the *khasra girdawari* clearly shows that in respect of Khasra No.1074/803/50, the owner is *Sarkar daulat* i.e. the government and insofar as Khasra No.1075/803/50 is concerned, it is shown as *Shamlat Deh* land. Admittedly, the ownership of these lands does not vest in the Plaintiff and the plea to the contrary in the plaint is false to the knowledge of the Plaintiff himself.

57. All the rights that the Plaintiff is claiming is as the Manager of the *Mandir* and *chela* of Swami Onkara Nand. Insofar as Khasra No.1074/803/50 is concerned, firstly Swami Onkara Nand did not have any ownership of the land. The Will dated 13th April, 1982 relied upon by the Plaintiff is, thus, of no consequence. In any case, the Manager of the *Mandir* cannot claim the right to remain in possession forever, especially when the

land is government land. Even if the said possession is treated as settled possession, the same can only be protected against forceful taking of possession. The person in settled possession cannot question being dispossessed in accordance with law after due process has been followed.

58. What constitutes 'due process' is now well settled in view of the judgment of the Supreme Court in *Maria Margarida (supra)*, wherein the Court has observed as under:

“81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the Defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

*82. The High Court of Delhi in a case *Thomas Cook (India) Limited v. Hotel Imperial*, 2006 (88) DRJ 545: (AIR 2007) (NOC) 169 held as under:*

“28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing – ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here,

simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event, it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I, would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the

present case, the Plaintiff's failure to make out of a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

59. The issue as to what constitutes 'due process' is thus settled beyond any doubt. The Plaintiff, who is claiming possession, can be dispossessed in the suit for injunction filed by him. Due process does not always mean that the owner has to file the suit to prove his title. So long as a Court of law has examined the documents and has given a fair hearing to the parties concerned, the compliance of due process has taken place. Moreover, due process of law also does not mean the final adjudication after trial. It merely means an opportunity being given to present the case before the Court of law and the rights of the parties being adjudicated. It does not mean the whole trial, as per *Maria Margarida (supra)*.

60. The judgment of the Supreme Court in *Rame Gowda (supra)* is to the effect that if a party is in settled possession, his possession cannot be disturbed without due process of law being followed. The said case related to a private land in dispute between two private parties. The lands of the Plaintiff and the Defendant were adjoining in nature and there was a dispute as to the demarcation thereof. Since the identification and extent of the land itself was in doubt, the Court, in order to protect the Plaintiff, held that the owner would have to assert his title in an independent suit. The facts of the said case cannot be compared to the facts of the present case to permit an encroacher and illegal occupant to retain possession of the suit property.

61. The plea of adverse possession, though pleaded in the plaint, has been given up in the present petition and only settled possession is argued. The

question as to whether the Plaintiff is in settled possession or not, in terms of the test laid down in *Puran Singh (supra)* need not be gone into in the present case, inasmuch as the fact that the Plaintiff is in possession, in whatsoever capacity, to the knowledge of the authorities, is clear from the *khasra girdawari* itself. The person in settled possession cannot continue to remain in possession forever. Once a Court of law has arrived at the conclusion that the person in possession has no rights, the possession can be taken away. The Trial Court has not merely relied upon *Jagpal Singh (supra)* but also considered various judgments of the Supreme Court including *Rame Gowda (supra)* and *Maria Margarida (supra)*. Thus, the grievance against the Trial Court judgment that it followed *Jagpal Singh (supra)* which is *per incuriam* is without any merit.

62. Several judgments on various propositions have been cited, which, according to the Court, do not require any consideration in the present case. The main question to be determined is whether the Plaintiff, who is in settled possession, can be dispossessed in an application under Order XXXIX Rules 1 & 2 CPC. The answer is a clear yes.

63. Insofar as the *Shamlat Deh* land is concerned, the Plaintiff cannot claim any rights in the same as the same vests for the common interest of the villagers. This Court agrees with the stand of the DDA that the land has been urbanised and once urbanization takes place, the village owners have no rights.

64. The plea that the suit itself is not maintainable due to absence of the relief of declaration, in view of the judgment of the Supreme Court in *Anathula Sudhakar (supra)* is not being gone into in this petition. The

DDA is permitted to raise this plea before the Trial Court at the appropriate stage. In this petition, only the application under Order 39 Rules 1 & 2 CPC is being considered.

65. Mr. Bansal further submits that Kathputli Colony is one of the first Public Private Partnership (PPP) model for redevelopment, which is taking place for providing alternative accommodation to the dwellers in the colony. More than 3000 dwellers have been moved out from there and that land, which is the subject matter of the suit is situated in a very crucial position as also in effect acting as a hindrance in the implementation of the project itself.

66. Though the land in question was vested in the DDA several years ago, the DDA is yet to obtain possession of the land. An important developmental project has been derailed because of the present litigation as the DDA continues to make valiant attempts to obtain possession in accordance with law. The photographs in the present case are extremely revealing. The *mandir* constitutes a miniscule portion of the entire land which has various commercial shops and residences. The case of the DDA is that the Plaintiff is earning huge revenues by collecting rent from these occupants, however, this Court does not see the need to go into this aspect. Clearly, the Plaintiff, or anyone occupying or claiming rights through the Plaintiff, does not have any right to continue to remain in possession of the suit property. Ld. counsel for the DDA has submitted that an alternative accommodation has been given to the dwellers in the colony. It is for the DDA to ensure that the same is provided to everyone in occupation, in accordance with its policy.

67. Finally, this Court expresses grave concern over the fact that public

land is sought to be encroached upon under the shelter of a place of worship. As is seen in a large number of cases, rights are claimed by parties under the garb of temples or other places of worship located on government land. This trend has been repeatedly frowned upon by the Supreme Court and other courts. The Supreme Court, in its judgment in *Union of India v. State of Gujarat & Ors., (2011) 14 SCC 62* has, in fact, taken cognizance of this menace and directed State Governments and Union Territories to review the situation and take appropriate action in an expeditious manner. The relevant extract of the judgment reads as under:

*“5. As an interim measure, we direct that henceforth **no unauthorised construction shall be carried out or permitted in the name of temple, church, mosque or gurdwara, etc. on public streets, public parks or other public places, etc.** In respect of the unauthorised construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case-to-case basis and take appropriate steps as expeditiously as possible.”*

68. Such attempts by unscrupulous parties ought to be discouraged, inasmuch as the occupants, under the garb of a place of worship, turn the land into a completely unplanned encroachment by hundreds of people. The authorities have an obligation to ensure that in public land, places of worship are not created in this manner. Moreover, in the present case, an infrastructure project is being completely crippled due to the pendency of this litigation. This would be contrary to even public interest.

69. The land, being public land, the Plaintiff is not entitled to any relief.

The petition is dismissed with costs of Rs.1 lakh to be deposited by the Plaintiff with the High Court of Delhi (Middle Income Group) Legal Aid Society. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

DECEMBER 18, 2020

Rahul/dj/dk/T

