$~

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

Reserved on: 16th December, 2021
Date of decision: 01st February, 2022

\+ **RSA 64/2020**

NATHU RAM ..... Appellant

Through: Mr. Pramod K. Ahuja, Advocate

versus

D.D.A & ANR. ..... Respondents

Through: Mr. Roshan Lal Goel & Ms. Anju Gupta, Advocates (M: 9211113560)
Mr. Abhay, Patwari (M: 9718392326)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. The Plaintiffs – Mr. Surat Singh and his son – Mr. Nathu Ram/Appellant herein (*hereinafter "Plaintiff"*), have filed a suit for perpetual injunction before the Senior Sub-Judge, Delhi, being ***Suit No.390/2006*** titled ***Sh. Surat Singh & Anr. v. DDA***. The case of the Plaintiffs was that they have been in possession as owners of 2,500 sq. yds. of land forming part of Khasra No. 48/7 in the revenue estate of Humayunpur, New Delhi (*hereinafter "suit property"*), since the time of their forefathers. The Plaintiffs claim to have constructed a house bearing no. 20-B, Krishan Nagar, on a piece of land measuring 800 sq. yds. in the said Khasra. The suit property, as per the site plan exhibited as Ex.PW1/1 consists of nine rooms, an open courtyard and a tin shed. As per the site plan, there is only one property i.e., B-20, located on the western side of the

suit property. On the northern and eastern sides, there are roads and the southern side has a service lane. The relevant paragraphs 1 and 2 of the plaint read as under:

> *"That the Plaintiffs are owners in possession of 2500 sq. yards in Khasra No. 48/7 in the revenue estate of village Humayunpur, New Delhi. This property is an ancestral property of the plaintiffs and the same is in their possession as owners since the time of their forefathers. The plaintiffs have constructed a house bearing No. 20-B Krishna Nagar New Delhi consisting of 9 rooms on a piece of land measuring about 800 sq. yards in the said khasra. The constructed house is bounded as under:*
>
> *East - Road*
> *West - House No. 20 Krishna Nagar*
> *North - Road*
> *South - Service Lane.*
>
> *In addition to the above construction of the house there is a grassy lawn in the courtyard and some plantation is there within the vacant area of the area.*
>
> *2. That the area aforesaid and under the construction of the house No. B-20 Krishna Nagar New Delhi has not been acquired by the Land Acquisition Collector and the same has not been handed over to the defendant for any public purpose or whatsoever it may be. The plot in suit is free of acquisition and is ancestral property of the plaintiffs."*

2. The suit was filed against the Defendants on the ground that on 8th May, 1984, the Respondent/Defendant-DDA (*hereinafter "DDA"*) had threatened to demolish the construction of the house and asked the Plaintiffs to hand over the possession of the same to DDA. Notably, in the plaint itself,

the Plaintiffs take the position that the area where the house B-20 is located, is not acquired by the Land Acquisition Collector and therefore the DDA does not have any right to demolish the construction over the suit property. The prayer in the plaint reads as under:

> *"It is therefore most respectfully and in the interest of justice prayed that a perpetual injunction may kindly be granted in favour of the plaintiff and against the defendants, its officers, employees restraining them not to demolish the construction of house No.20-B on a plot measuring about 800 sq. yards in Khasra No. 48/7 in the revenue estate of village Humayunpur New Delhi and to take the possession of the said plot without following the due process of law. The costs of the suit may also be awarded to the plaintiff against the defendant. Any other relief this Hon'ble court deems fit and proper may also be awarded to the plaintiffs."*

3. The case of DDA in its written statement was that the Plaintiffs were illegally occupying a horticulture park, falling in Khasra No. 48/5 and not in Khasra No. 48/7, in the revenue estate of Village Humayunpur. The same had already been acquired by the Union of India vide Award No. 1170/61 notified on 3rd November, 1961 and was placed at the disposal of DDA. Accordingly, DDA alleged that the Plaintiffs had no right, title and interest in the suit property and the intention of the Plaintiffs was only to grab DDA's land by unauthorizedly constructing their house on the same. DDA further contended that the Plaintiffs could not have challenged the said acquisition by way of a civil suit as the jurisdiction of the civil court was barred under the provisions of the Land Acquisition Act, 1894 *(hereinafter "Land Acquisition Act").*

4. In view of these pleadings before the Trial Court, vide order dated

13th December, 1989, the Trial Court appointed the Tehsildar, Mehrauli as the Local Commissioner, to inspect the suit property and find out whether the suit property fell within Khasra No.48/7 or 48/5 as also to ascertain the area of the suit property. The said Local Commissioner's report was submitted to the Trial Court. In the report, the Local Commissioner stated that he could not do the exact demarcation as the fixed points required for the same were not ascertainable. He relied upon a sale transaction of 1953 and 1959 in favour of a retired government servant whose property was located behind the suit property, and concluded that since in the said transaction, the property was described as having been located in Khasra No. 48/7, the suit property is also located in Khasra No. 48/7. The relevant extracts of the said report are as under:

> *"On 11.12.91 permanent point were searched but no permanent point was found. However, staff of DDA suggested another point saying that this point (Khasra No.41) is situated on its correct position but after demarcation from this point it was found that this point also could not be fixed. Besides, during demarcation from this khasra No. 41, measurements were not found according to xxx as provided in Field Book. It was also agreed that no point is available in the area.*
> *In this circumstances, explained above, other source of points xxx. It was found that plaintiffs have sold a portion of Khasra No. 48/7, to Sh. Sen Gupta Retired Asstt. Secretary Ministry of Defence G.O.I. and he has constructed house on the said land and still residing there. This transaction was as back as 1953 & 59. Photo Copy of the sale deed were produced before the u/s. I was satisfied with the documents. The portion of land bearing khasra No.48/7, under possession of Mr. Sen Gupta retired*

> *Asstt. Secretary M.O.D. G.O.I. was inspected and it was found that this sold land is situated just behind the suit property and this fact certified that the suit property falls in khasra No. 48/7. The construction on the suit land is about 12-15 years old and this land have been always in possession of the plaintiffs. Moreover, the suit property (Kh. No. 48/7) is found reparated by road on two sides constructed by DDA on acquired land. Thus it is clear that suit property falls within khasra No. 48/7."*

5. DDA filed its objections to the said report stating that no proper measurements were taken by the Local Commissioner and only an inference was drawn.

6. Subsequently, vide order dated 11th January, 1995, DDA was restrained from demolishing the suit property till further orders. The following issues were framed in the suit:

> *"1. Whether the suit property forms part of khasra no. 48/7, Village Krishna Nagar, Humayunpur, Delhi? OPP*
> *2. Whether the suit property forms part of khasra no. 48/5, Village Krishna Nagar, Humayunpur, Delhi which has been acquired and placed at the disposal of DDA? OPD*
> *3. Whether the plaintiff is owner in settled possession of the suit property? OPP*
> *4. Whether the plaintiff is entitled to the relief claimed for? OPP*
> *5. Relief."*

7. Thereafter, the trial of the suit commenced and witnesses and evidence were produced by both parties. While the Plaintiffs produced PW-1 to PW-10, the Defendants relied on the testimony of DW-1 to DW-3. A brief

overview of the witnesses and evidence before the Trial Court is as under:

(i) PW-1 – Sh. Nath Ram who was the uncle of Sh. Surat Singh – one of the Plaintiffs – claimed that the suit property is located in Khasra No. 48/7. He also claimed that 2,500 sq. yds. of the suit property is with them, out of which, 800 sq. yds. has been constructed. He claimed that the said land was divided in 1951 by the Officer Mall and whoever was in possession remained in possession. Thereafter, he relies upon the *khasra girdawaris* and mutations - which are all marked documents and not exhibited, to state that the name of the concerned owners was substituted in the revenue record. He also stated that his uncles and predecessors had sold some portion of the land to three to four persons. He could not produce any house tax, electricity bill, I-card or ration card. He also confirmed that his signatures were not on the site plan and the said plan was unsigned. He stated that he was not aware of the location of Khasra No.48/5.

(ii) PW-2 – Sh. Hari Singh, PW-3 – Sh. Sultan Singh, PW-5 – Sh. Om Prakash and PW-6 – Sh. Sher Singh were all residents of the area who were produced by the Plaintiffs. All of them confirmed that until the late 1980s, there was only a *chappar* and a temporary construction on the suit property. It was converted into a *pakka* construction only 20 years prior i.e., late 1970s/1980s.

(iii) PW-4 – Smt. Geeta – D/o Sh. Surat Singh, stated that she could not say about the exact area under occupation of her family, but stated that about 10-12 rooms had been constructed over the

suit property. She also stated that no threat was ever given by DDA officials for demolishing the structure and she was unaware of the correspondence between DDA and her father.

(iv) PW-5 – Sh. Om Prakash, was another neighbour of the Plaintiffs who categorically stated that he had not seen any document relating to sale and purchase of the suit property, in which the khasra number is mentioned. PW-5 also claimed that there was a road which delineated Khasra Nos. 48/5 and 48/7 and the Plaintiffs were in actual possession of the suit property. He also stated that he had seen a *jamabandi* of the year 1948 showing ownership of ancestors of the Plaintiffs in Khasra No.48/7.

(v) PW-7 – Sh. Sunil Kumar, Halka Patwari, Humayunpur, New Delhi – also claimed that he had no knowledge of Khasra No.48/5. He further stated that the Plaintiff's name is reflected and names of Sh. Jaipal Singh, Dharamvir, Ramvir, Lakhpat Singh s/o Nathu Ram and Satbir, Vijay Pal s/o Jeet Ram, Sant Ram s/o Kartar Singh, are reflected in 1998 Kharif to Rabi 2000 in the *khasra girdawari* and they have been shown as agriculturists. On cross-examination, he, however, confirmed that as per *khasra girdawari* for the year 1998-2000, the name of Sh. Surat Singh is not reflected in Khasra No.48/7/3. The evidence of PW-7 is very relevant and is set out below:

> *"PW-7 Sh. Sunil Kumar – Halka Patwari, Humayunpur, New Delhi.*
> *On S.A.*
> *I have brought the summoned record. I have*

got Khasra girdawari records of 1998 Kharif to of Rabi 2000 available with me. As per Khasra Girdawari Ex.PW7/1 Kh. No. 48/7/3 min stands in the name of plf's son namely Jaipal Singh, Dharamvir, Ramvir, Lakhpat Singh S/o Nathu Ram and Satbir, Vijay Pal S/o Jeet Ram, Sant Ram S/0 Kartar Singh. They have get land of 9 biswas. As per our record kh. No. 48/7/3 min has not been acquired. As per our record kh. No.48/4/5 measuring 2 bighas18 biswas belongs to the Govt. Our Deptt. Maintained a regular record. I have also bought the jamabandi but the same is torned condition.

I have not brought any record where the name of Surat Singh and Bhartu was there as the present plf. Name was substituted after the death of their father. I have not brought the record of 1974 whereby the name of Surat Singh and Bhartu has been mentioned. It is correct that the name of son are mentioned only after the death of their father and thereafter mutation/substitution takes place. As per the record maintained by the revenue authorities the above mentioned persons are in actual physical possession of the property in question and they have been shown as agricultures in our record.

xxxxby counsel for deft. DDA.

There is no record of Kh. No. 48/5 in Kh. Girdawari of vill. Humayunpur which I brought today. I have no knowledge whether the Kh. No. 48/5 has been acquired or no as there is no entry in record which I have brought today in the court. There may be entry in the previous record of Jamabandi in respect of Kh. No.48/5.

The jamabandi record which I have brought today in court is in torned condition. However, I may be allowed to given some time to consult

with my senior officer to ascertain the exact position of Kh. No.48/5 village Humayunpur.

Further cross deferred.

8.9.2000.

PW7 Sh. Sunil Kumar – H. Patwari (recalled for further cross examination)

On S.A.

As per record brought by me the Kh. No. 48/5 (6-14) has been acquired vide award no. 1170 dt. 26.2.1961. The mutation No. 1022 which was recorded 24.11.1967. The the property in Kh. No. 48/7/3 min is a pvt. Land. The photocopy of the same is ExPW/D1. ***As per khasra girdawari for the year 1998 to 2000 the name of plf. Sh. Surat Singh does not appear as owner of the property, in Kh. No. 48/7/3****. At this stage counsel for the plf. seeks adjournment and requested that the cross be deferred. JLO for DDA strongly objects the same as he submits that in the entire record the name of plf. Does not appear in the Jamabandi and Kh. Girdawari pertaining to kh. No.48/7. He submits that as the name of the plf. Does not appear, therefore, the Cl. Seeks adjournment. Witness submit that record is quite old and is torn out and is also in Urdu, therefore he also seeks time.*

Cross deferred for further cross examination.

25.4.2001.

PW7 Sh. Sunil Kumar – Halka Patwari (recalled for further cross examination by JLO for DDA).

On S.A.

It is correct that in the record brought by me there is no mention of the name of plaintiff or his father in Kh. No.48/7. X(vol. in the mutation record, the name of kh. Is never mentioned but only the khewat No. is mentioned.). It is correct that Khasra Girdawari brought by me the name of plff. Surat Singh in Kh. No.48/7 is not mentioned. In Kh. No. 48/7/3 min the name of cultivators the name of Jaipal Singh, Dharamvir, Ramvir, Laxman Singh son of Nathu Ram is mentioned. Same is ExPW7/01. In intkal No./Mutation No. 1585, the name of Nathu Ram, Kartar Singh, Jeet Ram sons of Bhartu were mutated after death of Bhartu S/o Hardev in respect of Kh. No. 48/7 min. area 8 biswas per share. The mutation was allowed on 5.3.79.

I had never visited the disputed site. I donot know about the occupation of plff. That on which Kh. No. i.e. 48/5 or 48/7, of the plaintiff at site. No demarcation has ever taken place in my presence. I cannot say also whether the plf.. is in unauthorized occupation of government land of Kh. No.48/5."

(vi) PW-8 – Sh. Azar Ahmad, Patwari Office, SDM, Hauz Khas, New Delhi – stated that the mutation in the name of Sh. Nathu Ram & others has been carried out in respect of Khasra No. 48/7. He also confirmed in cross-examination that *khasra girdawari* of Khasra Nos. 48/1, 48/2, 48/4/1, 48/4/2, 48/4/5, 48/6 and 48/8 is recorded as *Sarkar Daulat Madar* i.e., as having been acquired. The Patwari also states that "*I have not visited the suit land. I cannot say in which khasra number the suit land falls*". He confirms that *khasra girdawari* is not the

title document for title and ownership. He further states that he has no personal knowledge of the case or the suit property and he has never visited the suit property nor he is aware of the khasra number. He states that:

> *"It is correct that the record of jamabandi is prepared for entering the mutations and the khasra girdawaris are revised after every four years. Jamabandi is the record of ownership and the the name of the owners is mentioned in the column no. 3 in the proforma. It is correct that the khasra girdawari is not the document of title and ownership. It is correct that since the suit land is stand acquired the entry in respect of details of kahsra numbers mentioned above have been record to be the land as "Sarkar Daulta Madar". (further cross examination is deferred as it is lunch time)."*

(vii) PW-9 and PW-10 appeared as witnesses to confirm the translation of the *jamabandi* record produced by PW-8, from Urdu to Hindi and did not have knowledge about the suit property.

(viii) DW-1 – Sh. Vijay Kumar, Patwari, LM South West Zone, DDA stated that the suit property falls in Khasra No.48/5. He stated that on the disputed government land which is shown in *aks sajra* – Ex. DW 1/2, some unauthorized houses were constructed. He denied that the suit property falls in Khasra No.48/7. He confirmed that the land in Khasra No.48/7 is not acquired, but denied the suggestion that the Plaintiffs are in possession of the suit property falling in Khasra No.48/7.

(ix) DW-2 – Sh. Hari Om – Naib Tehsildar, LM Southwest Zone,

DDA, confirmed that the suit property falls in Khasra No.48/5/min of Village Humayunpur. He categorically stated that the disputed land does not fall in Khasra No.48/7.

(x) DW-3 – Sh. Prem Chand – Tehsildar confirmed that the possession of the disputed property is still with the legal heirs of the Plaintiffs and they are in unauthorized occupation. He stated that there are 15 to 17 houses in Khasra No. 48/5. As per the Tehsildar, the disputed property falls in Khasra No.48/5. He also states that the *aks sajra* – Ex.DW 1/2 prepared by the Patwari – Sh. Gulfam Ahmed is correct and that the possession of this entire land was taken over by DDA on 29th September, 1975. He also states that the possession of the Plaintiff has not been shown in their records in Khasra No. 48/5. He further stated that the Plaintiffs have encroached upon DDA land and that the Plaintiffs have no right, title and interest. He confirmed that DDA has not already carried out part demolition of the property.

8. Having recorded the statements of the witnesses and evidence, the Trial Court gave the following findings vide decision dated 24th September, 2011:

(i) In so far as the Local Commissioner's report was concerned, it held that the demarcation has not been carried out in terms of the guidelines issued under the Punjab Land Revenue Act, 1887 read with the Delhi High Court Act, 1966. Since no permanent fixed point could be located, the Local Commissioner assumed that since the house of one Sh. Sen Gupta lies in Khasra

No.48/7, therefore the suit property was also in the same khasra. Thus, the Local Commissioner's report was discarded by the Trial Court.

(ii) The Trial Court then relied upon PW-1 to find that the Plaintiffs had been in possession of the suit property for more than 70 years and the same falls in Khasra No.48/7, which is a private land. *Khasra girdawaris* for the year 1947-48 marked as Mark-A, and other revenue records were produced by the Plaintiff to support their contention.

(iii) The Trial Court thereafter relied upon the testimony of neighbours and other people who resided in the locality, i.e., PW-2, PW-3, PW-5 and PW-6, to hold that the Plaintiffs had been in possession of the suit property for a long time.

(iv) As per the Trial Court, PW-7 – the Halka Patwari established on the basis of *khasra girdawari* for the year 1998-2000, that the name of the Plaintiff and his sons appeared *qua* Khasra No.48/7/3 min. Upon the DDA objecting that PW-7 had admitted in the cross-examination that the name of the Plaintiffs was not mentioned in the record of Khasra No.48/7, the Trial Court held that name of one Sh. Jaipal Singh, Dharambir, Ranvir, Lakhpat Singh s/o Nathu Ram was mentioned and since they are family members of the Plaintiffs, there was no force in the objection raised by DDA.

(v) Consequently, it held that since the *khasra girdawari* and the revenue records showed that the Plaintiff and his family members were in possession of the suit property, the onus

shifted upon the DDA to show as to which portion was encroached upon by the Plaintiffs.

(vi) Finally, it held that the Plaintiffs had proved that the award only led to acquisition of Khasra No. 48/5 and not 48/7.

(vii) Towards discharge of the onus on DDA, the Trial Court observed that the witnesses produced by DDA could not establish that the Plaintiffs were residing on acquired land in Khasra No.48/5.

(viii) In so far as DW-1 is concerned, the Trial Court held that the evidence produced by him only established that Khasra No. 48/5 was acquired and the Plaintiffs and their family members had not encroached upon Khasra No. 48/5.

(ix) The testimony of DW-2 was disregarded as he later stated he had never visited the suit property. Similarly, DW-3's testimony only established that the name of the person in possession of a land being acquired is generally mentioned in the land acquisition record, but here the record did not reflect the Plaintiff's name.

(x) The Trial Court also held that the *aks sajra* cannot be relied upon as it does not bear any seal or signature.

9. The relevant excerpts of the Trial Court's observations are as under:

> *"xxx xxx xxx*
> *Thus two admissions are clearly carved out from the cross examination of DW 1. Firstly khasra no. 48/7 which belongs to the plaintiffs is not acquired and is a private land and secondly the plaintiff and his family members have not encroached khasra no. 48/5. Thus there is no encroachment which has*

been made by them in the government land in khasra no. 48/5.

xxx xxx xxx

Thus it is clearly reveals that khasra no. 48/7 is a private land and that there is no encroachment made by the plaintiffs in khasra no.48/5. In view of the aforesaid discussion, it is clear that plaintiff is not an encroacher of government land. Through the various documents viz. khasra girdawaris, award, revenue records, khasra girdawaris of the year 1998 to 2000, mutation records etc. the plaintiff has proved the possession of his family members on the suit property. Moreover, it is categorically admitted by the defendant/DDA themselves that khasra no.48/7 is not acquired and that there is no record to show that plaintiff is in possession of any part of khasra no. 48/5.

Further even if for the sake of arguments, it is assumed that plaintiff is a encroacher of government land then DDA's witness himself viz. DW 3 has categorically admitted in his cross examination that plaintiffs are in possession of the suit property as on date. It is a settled law that even a trespasser in settled possession can not be dispossessed without due process of law."

10. On the basis of the above finding, the Trial Court holds that the Plaintiffs are in settled possession of the suit property and a permanent injunction is therefore, liable to be granted.

11. This decision was appealed against by DDA. In appeal, the Appellate Court, in its judgment dated 19th June, 2020, observes that:

(i) The report of the Local Commissioner was rightly not relied upon.

(ii) PW-1 had relied only on seven documents, all of which are marked as mark A to G. None of these documents were

exhibited before the Trial Court. Moreover, original documents for the same could not be produced by the witnesses.

(iii) The Appellate Court analysed the evidence of the remaining witnesses i.e., PW-2, 3, 4 and 6 and held that none of these witnesses knew the exact location of Khasra No.48/7 nor they were aware of the demarcation of the said Khasra from Khasra No.48/5.

(iv) It was also noted that no documents such as house tax, electricity bills, I-card or ration card were produced before the Trial Court.

(v) Finally, the Appellate Court noted that vide government notification dated 3rd November, 2006, the land was urbanized and it was, therefore, inexplicable as to how in the revenue record, the Plaintiffs could be shown as cultivators. Thus, there was an enormous doubt cast on the documents which were produced by the Plaintiffs.

12. The Appellate Court, concludes as under:

> *"10. The plaintiffs/appellants have failed to prove their documents. Law is well-settled that merely marking of documents does not mean that the same are proved. The documents filed by the plaintiffs/appellants in this case are not proved and have no value. Even the site plan (Ex-PW1/1) is also not clear and specific.*
> *11. Sec 101 of Indian Evidence Act makes it obligatory to prove the burden of proof of any fact on the person claiming or asserting any fact. As per Sec.102 of Indian Evidence Act, the burden of proof lies on that person, who would fail if no evidence at all were given on either side.*

> *In the case at hand, it is claimed by the plaintiffs that they are owners and in possession of the suit property. The plaintiffs have failed to prove that the suit property falls in Khasra No 48/7 as pleaded by them. The plaintiffs have also failed to prove that they are in possession of the property falling in Khasra No.48/7, which itself is suffice to allow the appeal.*
>
> *12. Tehsildar was appointed as L/C vide order dated 13.12.1989 and was directed to visit the suit property. In the report fired by the L/C (Tehsildar). It is clearly mentioned that correct demarcation could not be done for the want of permanent point but filed a report in favour or the plaintiff by reporting that the suit property falls within Khasra No.48/7.*
>
> *The said report of the L/C rightly was not relied upon by the ld. Trial Court since the demarcation was not as per procedure and based on presumption.*
>
> *In view of above, the Issue no.1 was incorrectly decided by the ld. Trial Court in favour of the plaintiffs. Therefore, it is decided against the plaintiffs and in favour of the defendant."*

13. In view of the above findings, since the Plaintiffs failed to prove their ownership over the suit property and also failed to prove that the suit property is situated in Khasra No.48/7, the onus of the Plaintiffs to prove that the suit property was located in Khasra No. 48/7, was not discharged, hence the suit was dismissed. The Appellate Court did not further examine DDA's contentions or evidence.

14. This decision has now been appealed against by way of a second appeal before this Court. The prayer in this second appeal is as under:

> *"It is therefore, most humbly prayed to the Hon'ble High Court that the Impugned Judgment dated*

19.06.2020 passed by the LD. SCJ, Tis Hazari Court, Delhi in refferecne Delhi Development Authority Vs. Nathu Ram now deceased represented by Legal Heirs in RCA No. 410/16 may pleased be set-aside and the order of the Trial Court may please be ordered of the Trial Court dated 24.09.2011 may be ordered to be maintained and the possession of the Appellants from Khasra No. 48/7 may please be not disturbed in view of the order passed by the Hon'ble High Court on 06.08.201 which is still in force/existence as on date and has not been complied and is also concerning Khasra No. 48/7, in the facts and circumstances of the case and in the interest of justice.

Or may pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

It is prayed accordingly."

Submissions

15. Mr. Ahuja, ld. Counsel for the Plaintiff, submits that the Plaintiff is residing in Khasra No. 48/7, which is not acquired. To support this contention, he makes the following submissions:

(i) At the outset, he relies upon the issues which have been framed in the matter to argue that while the onus of Issue No. 1 is on the Plaintiff, the onus of Issue No. 2 is on the Defendant.

(ii) To contend that the Plaintiff's onus has been discharged, he relies upon the testimonies of the Plaintiff's witnesses to submit that various witnesses have deposed that the Plaintiff and his family was in the settled possession of the suit property in question, which is located in Khasra No. 48/7.

(iii) As far as the Appellate Court's observation is concerned, that the Plaintiff's name was not reflected in the revenue records continuously, as also revealed in the cross-examination of PW-7, ld. counsel submits that only in 1998 to 2000, the name of the Plaintiff simply does not appear and in all the previous periods, various family members of the Plaintiff are mentioned in the land records.

(iv) In view of this evidence of the Plaintiff, he submits that this would lead to the onus shifting to DDA to establish Issue No.2. Therefore, he submits that the Appellate Court has completely taken a wrong approach by simply holding that nothing needs to be proved by the DDA.

(v) Coming to DDA's evidence, he submits that DDA has been unable to discharge its onus. He relies upon the testimonies of DW-1, DW-2 and DW-3 to argue that the Patwari and the Tehsildar, all of them proved that there is no record of Khasra No. 48/5 and Khasra No. 48/5 is the only Khasra which is acquired by the Government. He submits that no proof was shown by DDA that the Plaintiffs were in possession of this acquired Khasra No. 48/5.

(vi) In fact, he submits that DW-1, Mr. Hari Om, the Naib Tehsildar and Tehsildar had deposed in the Plaintiff's favour and that there are more than 60 people residing in the suit property.

(vii) In any event, he contends that the Plaintiff cannot be dispossessed unless a proper demarcation of the suit property is carried out. For this, he relies upon an order dated 6th August,

2014 in ***WP(C) 824/2012*** titled ***Subhadra & Anr. V. GNCTD*** which was decided by a ld. Single Judge of the Delhi High Court in a case where demarcation of identical Khasra Nos. was sought. It was held therein that the plaintiffs were residing in Khasra Number 48/7 and demarcation had to be carried out by DDA to ascertain the Khasra No. in possession of the plaintiff. He therefore submits that if the demarcation is not carried out, the Plaintiff cannot be evicted in this case. Moreover, he submits that the land in question is an urbanized village and the designation of *khasra khatauni* in any case had become irrelevant.

(viii) He finally urges that the Plaintiff's family has been in possession for the last 60 years and currently they are paying House Tax and Electricity Bill and thus, he submits that the Plaintiff cannot be dispossessed in accordance with law.

16. On the other hand, Mr. Goel, ld. counsel for DDA, relies upon the following to argue that the Plaintiffs are in possession of land belonging to DDA.

(i) In so far as the onus on the Plaintiff is concerned, he submits that the Plaintiff did not file any documents to prove their case which is clearly recorded in the Appellate Court's order. Even documents such as electricity bill, identity card, etc., were not placed on record by the Plaintiff.

(ii) In support of DDA's submission, he places reliance upon the recording in the Trial Court's order, to argue that three witnesses appeared, DW-1, DW-2, DW-3, i.e., Naib Tehsildar,

Tehsildar and the Patwari, who proved clearly that the land in Khasra No. 48/5 is acquired by the Government and it was then transferred to DDA. DW-3 categorically states that the Plaintiff is an encroacher upon the DDA land. Specifically, he also relies upon the cross examination of DW-1, Mr. Hari Om, Naib Tehsildar who states that Mr. Jaipal Singh is in unauthorised possession of the property.

(iii) He further submits that the *aks sajra* in fact identified the location of the suit property and therefore could not be discarded by the Trial Court.

(iv) He finally urges that the Court has a duty to protect public land and ban encroachers into the suit property. The Plaintiffs have not discharged their onus in the suit. Accordingly, the order passed by the Appellate Court does not deserve to be interfered with.

Analysis & Findings

17. Heard the parties and perused the record. The question that arises in the present second appeal is whether the Appellate Court's judgment deserves to be interfered with or not.

18. At the outset, it must be kept in mind that in a second appeal, the settled position of law is that the Court is not to re-appreciate the evidence on record, but to see if there is any glaring error or any substantial question of law, as held by the Supreme Court in ***C Doddanarayana Reddy (Dead) by LRs & Ors v. C Jayarama Reddy (Dead) by LRs & Ors AIR 2020 SC 1912*** and most recently reiterated in ***KN Nagarajappa & Ors. v. H Narsimha Reddy [Civil Appeal Nos. 5033-5034 of 2009, decided on 2nd***

September, 2021].

19. Before examining the findings of the Courts below, this Court notes that there is an existing decision of a ld. Single Judge of this Court in respect of the same Khasra No. 48/7, as involved in the present second appeal. In the said case being ***RSA 28/2001*** titled ***Subhadra & Anr. v. D.D.A.,*** the ld. Single Judge was dealing with another portion of land falling in the same Khasra being residential house nos. 20-H and 20-I, in Khasra No.48/7. Even in that case, the Trial Court and the Appellate Court had held that the demarcation which was done was not in accordance with law. The suit had been dismissed by the Trial Court and the Appellate Court had endorsed the same findings. In the second appeal, the Court vide judgment dated 11th November, 2010, held as under:

> *"16. However, the question which has to be answered is as to whether the suit land falls in Khasra No.48/7 or 48/5. Both the Courts below had given concurrent findings of fact that the demarcation report not having followed the procedure relating enquiries to be made by Revenue Officers in boundary disputes the said demarcation report could not be relied upon. The demarcation report had clearly stated that since there were houses in the vicinity no pucca/permanent point could be established for the purpose of 'paimaish/measurement.*
>
> *17. The Punjab Land Revenue Act, 1887 extends to the Union Territory of Delhi. Chapter VII deals with surveys and boundaries. Under Section 100, the Financial Commissioner has powers to make rules as to matters in which the boundaries of all or any estates in any local area are to be demarcated. Part C of the Delhi High Court Act 1966 relate to the instructions to Civil Courts. The*

procedure has been entailed for "Hadd Shikni" cases/boundary disputes under the aforenoted instructions which are binding instructions. As per these instructions the Field Kanungo should with his scale read on the map, the position and distance of those points from a line of square, and then with a chain and cross staff mark out the position and distance of those points. If there is no map on the square system available, he should then find three points on different sides of the place in dispute as near to it as he can, and if possible, not more than 200 kadams, apart which are shown in the map and which the parties admit to have been undisturbed. Further, these instructions should be followed by the Revenue Officers of Field Kanungos whenever they are appointed by a Civil Court as a Commissioner in suits involving disputed boundaries. This is a mandate.

18. These instructions/guidelines had not been adhered to as is evident from the demarcation report. The Tehsildar had admitted that there is construction and houses have been raised in land in dispute; it is not possible to identify pucca/permanent points as a result of which the paimaish/measurement could not be taken. Only on approximations, the demarcation report had drawn a conclusion that the suit land falls in Khasra No.48/7. This was not the answer which was required to be given to the Court. A positive finding had to be returned in the absence of which both the Courts below had rightly ignored the demarcation report.

19. The plaintiffs had alleged that the suit land falls in Khasra No.48/7; the onus was upon him to prove it. They had failed to discharge this onus. This Court, is not a third fact finding Court.

20. The question of law as formulated on

> *5.12.2003 was to the effect that the statement of DW-1 that the houses in dispute fall in Khasra No.48/7 could not have been ignored. Testimony of DW-1 was based on the demarcation report. That report itself has been ignored for the reasons aforenoted. It could not have been read in evidence. In this view of the matter, the testimony of DW-1 based on demarcation report is of no relevance. It is not as if DW-1, the Patwari had made an independent factual enquiry himself and had drawn the said conclusion. Both the Courts below had appreciated the fact that the demarcation report not having adhered to the procedure and the requirements which have been set out under the Punjab Land Revenue Act, 1887 applicable to the Union Territory of Delhi as also the Delhi High Court Act 1966 and Rules framed thereunder, this report was only a piece of paper; it had based its conclusion on approximations alone; paimaish/measurements could not be taken by the local commissioner. This report was thus rightly ignored. Substantial question of law is answered accordingly.*
>
> *21. There is no merit in the appeal. The appeal as also the pending application is dismissed."*

20. In the above judgment relating to the same very land i.e., Khasra No. 48/7, the Court held that since the demarcation was not carried out in accordance with law, the dismissal of the suit against the parties who were occupying parts of Khasra No.48/7, was in accordance with law. A special leave petition against this decision was also dismissed by the Supreme Court on 15th April, 2011, in ***SLP(C) No. 009230 / 2011*** titled ***Smt. Subhadra v. DDA***.

21. Similarly, even in the present case, the Local Commissioner's report cannot be relied upon as the Local Commissioner clearly stated that he could

not determine the points from where the demarcation had to be carried out. Thus, the plaintiffs in the said ***RSA 28/2001*** would therefore be similarly placed to the Plaintiff in the present case.

22. The Petitioner however relies upon an order passed subsequently in in ***WP(C) 824/2012*** titled ***Subhadra & Anr. V. GNCTD***, concerning the same parties as in ***RSA 28/2001***, with identical Khasra No. Insofar as this order in ***WP(C) 824/2012*** is concerned, the said proceedings are not civil proceedings and are subsequent to the decision in the suit and the decision in ***RSA 28/2001***. Further, it is not clear whether or not demarcation was ultimately carried out in those proceedings and what the final outcome of the said proceedings was. In any event, the order passed in the writ proceedings observes that the plaintiffs therein are residing in Khasra No.48/7, however DDA was directed to carry out demarcation, as the area was unclear. Moreover, this Court is presently dealing with a second appeal arising out of a civil suit and not a writ petition. In these proceedings, the Court is primarily concerned with the pleadings and evidence on record as also the judgements of the courts below and no extraneous plea is to be considered.

23. As for the other contentions made by the parties and evidence presented, this Court observes first, that the Plaintiffs have heavily relied upon their and their family members' names reflecting in certain revenue records such as *Khasra girdawaris* to establish that they have been in ownership and possession of the suit property. However, it is the settled position in law that reflection of a party's name in the revenue records cannot confer title. This was most recently upheld in ***Prabhagiya Van Adhikari Awadh Van Prabhag V. Arun Kumar Bhardwaj (Dead) Thr. Lrs. [Civil Appeal No 7017 of 2009, decided on 5th October, 2021]***, where the

Supreme Court held:

> *"26. This Court in a judgment reported as Prahlad Pradhan and Ors. v. Sonu Kumhar and Ors.7 negated argument of ownership based upon entries in the revenue records.* ***It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title****. The Court held 7 (2019) 10 SCC 259 as under:*
>
> > *"5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property."*
>
> *27. The six yearly khatauni for the fasli year 1395 to 1400 is to the effect that the land stands transferred according to the Forest Act as the reserved forest. Such revenue record is in respect of Khasra No. 1576. It is only in the revenue record for the period 1394 fasli to 1395 fasli, name of the lessees find mention but without any basis. The revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is*

> *inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as a lessee of the Gaon Sabha."*

24. In the present case also, similar to the decision in ***Prabhagiya Van Adhikai (supra)***, the manner in which the possession of Plaintiff/his family members is shown in some *khasra girdawaris,* that too as agriculturists and cultivators, for some sporadic periods but not continuously, does raise doubts as to whether they were in continuous possession or not. Therefore, the mere mention in some years of *khasra girdawari* showing possession, cannot by itself confer ownership and title in respect of such precious land.

25. In so far as the Trial Court's finding stating that DDA cannot dispossess the Plaintiffs without due process of law, is concerned, this is clearly an erroneous approach inasmuch as even if the Plaintiffs are stated to be in settled possession, it is not necessary for the DDA to file a suit to take possession from them. The DDA can, as a Defendant, establish before the Court that the Plaintiffs are in possession of a government land and the same can result in dismissal of the suit. Due process of law, as is settled in several judgments of the Supreme Court and this Court, does not always require initiation of action by the owner/ Government. Dismissal of a suit by a competent Court of law after affording proper opportunity to the parties, is also a recognized mode of following the due process of law. On this issue, the observations of the Supreme Court in ***Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through LRs, (2012) 5 SCC 370,*** are 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 - ejectment 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."

26. This position was reiterated by this Court in ***Bal Bhagwan v. Delhi***

Development Authority [CM (M) 416/2019, decided on 18th December, 2020] holding that the 'due process' condition would be sufficiently met if a person in settled possession is dispossessed by the dismissal of an application for interim injunction, as long as the rights of the parties are adjudicated upon and opportunity is given to them to present their case. On the question of 'due process', this Court has observed as under:

> *"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."

27. A special leave petition against this decision in ***Bal Bhagwan (supra)*** was also dismissed by the Supreme Court on 19th April, 2021, in ***SLP(C) No. 4247 / 2021*** titled ***Bal Bhagwan v. DDA***.

28. Recently in ***Mehvish Adil & Ors v. Delhi Wakf Board & Ors., [CRP 223/2019, decided on 15th December, 2021]*** this Court has observed in respect of Waqf land, which is also in the nature of a public land, as under:

> *"33. As held in Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through LRs, (2012) 5 SCC 370, 'due process' need not always mean a process initiated by the owner it can be any judicial proceedings where the respective contentions of the parties are adjudicated in a free and fair manner and with proper opportunity being afforded to the parties. The observations of the Supreme Court in Maria Margarida (supra) are as under:*
> *…*
> *35. Thus, it is the settled legal position that 'due process' need not mean only an active process initiated by the owner of the property. It can even mean rejection of relief in a proceeding initiated by the occupants/encroachers or persons in possession."*

29. In view of this legal position, the requirement of adhering to due process of law has been satisfied in the present case and the Plaintiffs are not being dispossessed contrary to law.

30. This brings the Court to the question of the onus of the Plaintiffs of proving their ownership of the suit property. It is well-settled that in cases of government land, there is a greater responsibility of Courts in ascertaining title of third parties. In fact, the plaintiff in such cases must establish his clear right, title and nature of possession in the property, superior to that of the Government authority and there is a presumption in favour of the Government. In such cases, the Supreme Court has clearly observed that it is not sufficient to show possession or adverse possession merely by some

stray revenue entries or records. This position was elaborated upon by the Supreme Court in ***R. Hanumaiah and Ors. v. Secretary to Government of Karnataka, Revenue Department and Ors., (2010) SCC 203***:

> *"**Nature of proof required in suits for declaration of title against the Government***
> *15. Suits for declaration of title against the government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the government. All lands which are not the property of any person or which are not vested in a local authority, belong to the government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against government. This follows from Article 112 of Limitation Act, 1963 which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire state and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and*

maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

16. Many civil courts deal with suits for declaration of title and injunction against government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the government contests the suit or not, before a suit for declaration of title against a government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the government, grant declaratory or injunctive decrees against the government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the government : whether the plaintiff has produced title deeds tracing the

title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the government for a period of more than thirty years, so as to convert his possession into title.

Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession - authorized or unauthorized; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

17. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name

> *entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government. Be that as it may."*

31. Thus, the Plaintiffs had a heavy onus to establish the following:

(i) That they had acquired the suit property through legally recognized documents such as registered sale deed, allotment from governmental authorities, etc. However, no such documents were produced by the Plaintiffs.

(ii) That the Plaintiffs were in possession of the suit property which falls in Khasra No.48/7 – this ought to have been established by positive evidence and not by an inference.

(iii) That the Plaintiffs had to rely on documents proved in accordance with law, even to establish possession – however, in this case, only some spattering revenue records which were marked and not even exhibited, were relied upon by the Plaintiffs.

32. The plaint in the present case is bereft of any pleadings as to how ownership/title was acquired by the Plaintiffs to the land in question. It is relevant to note that even paragraph 2 of the plaint shows the manner in which the Plaintiffs state that the suit property is not acquired by the Land Acquisition Collector and was not handed over to the DDA. This reflects the

state of mind of the Plaintiffs who seem to have themselves had an apprehension that the suit property may be falling in the acquired portion of the land.

33. The testimonies of the Patwari, South West Zone – DW-1, the Naib Tehsildar, South West Zone – DW-2, and DW-3 make it clear that the suit property falls in Khasra No.48/5. The relevant portion of the said testimonies are as under:

Testimony of DW-1

> *"5.12.2001.*
> *DW1 Sh. Vijay Kr. – Patwari, LM South West Zone, DDA.*
> *On S.A.*
> *I have visited the disputed land. It falls in kh. No. 48/5, vill, Humyunpur.…*
> *It is incorrect that disputed land falls in kh. No.48/7…*
>
> *XXX*
>
> *11.9.2002.*
> *DW1 Sh. Vijay Kr. – Patwari (recalled for cross examination by Cl. Pramod Ahuja For plff.)*
> *On S.A.*
> *……. It is correct that Jaipal Singh is in possession of the site in dispute unauthorisedly… ….*
> *I cannot produce any document from my deptt. to show the possession of Jaipal Singh in kh. No. 48/5. The land or kh. No. 48/7 is unacquired. It is wrong to suggest that the plff. is in possession of 48/7 and not in kh. No.48/5……."*

Testimony of DW-2

"DW2 Hari Om- Naik Tehsildar, LM Southwest Zone DDA.
On S.A.

I have seen the disputed land. It falls in kh. No. 48/5 min in revenue estate or vill, Humayunpur which has been acquired vide award No. 1170. Copy of award is already EXPW1/2. Disputed land does not falls in kh. No. 48/7……
The disputed land shown by red portion in the Aks Sajra which is already ExDW1/2. The possession of land was taken over by DDA on 29.9.75. Copy of possession proceedings is ExDW2/1. The plaintiff has not right, title or interest in the disputed land and land belongs to DDA only. The plaintiff is in unauthorised occupation of DDA land. (all the document originals seen and returned.)

xxx by Cl. Sh. Pramod Ahuja for Plff.

I am is south west zone area for the last 2 years, appox. I have visited the site in question 10 days back. I cannot tell how many houses are constructed on kh. No. 48/5. But the area is built up. There also exists kh. No. 48/7, in the adjacent. I visited the site alongwith the patwari. I visited the site and it was noted in the file. The file is at presently lying with the advocate. As per our record, the site which I visited is in kh. No. 48/5…..
It is wrong to suggest that plff. is not in occupation of kh. No. 48/5 and is in possession of kh. No. 48/7. …..
It is wrong to suggest that LR of Surat Singh are living in kh. No. 48/7, and not in kh. No. 48/5."

Testimony of DW-3

"685/87/84
DW3 Sh. Prem Chand- Tehsildar from L.M. Conference Hall, D.D.A.
On S.A.
I have seen the disputed land which falls in Khasra no. 48/5 min revenue estate of Humayunpur which has been acquired vide award No. 1170 copy of which is Ex.PW1/2 Disputed land does not falls in Khasra no. 48/7. ……
The disputed land is shown by red portion aks sajra which is already Ex.DW1/2 which is correct and has been prepared by one Gulfam Ahmad Patwari. ……
The Plaintiff has encroached upon the D.D.A. land, the pltf. has no right title interest over the disputed land and land belongs to the D.D.A. only. I have brought the original procedure proceedings which have been handed over L.A.C. Land and Building at the time or handing over the land.

XXX

DW3
Sh. Prem Chand, Tehsildar, recalled for further examination.
On S.A.
Question: Do you know that the plaintiff, his predecessors and family are sitting in Khasra No. 48/7 for the last more than 50 years?
Answer: As per our record, the plaintiffs are sitting in Khasra No. 48/5. The Delhi Administration might have issued revenue record in favour of the plaintiff but the DDA has not issued. I do not know whether the record with regard to the possession of the forefathers of the plaintiff is there in Khasra No. 48/5 or not. It may be available with Delhi Administration. The Plaintiff is in possession of approximately 2000 sq yard of property. It is incorrect that DDA has carried partly demolition

> *during the pendency of the case. It is wrong to suggest that plaintiffs are in occupation of Khasra No. 48/7. Vol. They are in possession of Khasra No. 48/5. The plaintiff is still in possession of property in question as on data. The possession of the plaintiff has not been shown in our record in Khasra No. 48/5. It is correct that when the land is acquired, the occupation and area in respect of respective person is mentioned in the land acquisition record…"*

34. The evidence on record also shows that the construction in the suit property was just prior to the institution of the suit itself in 1984 i.e., in the late 1970s and early 1980s. The relevant portions of the testimonies of PW-3 and PW- 5, confirming this fact, is as under:

Testimony of PW-3

> *"Earlier kacha chapar were existing over the land. Now from 20 years back plaintiffs built 8 or 9 rooms on the said property. The said house was built 20 years back."*

Testimony of PW-5

> *"At present there is pucca structure over the land which have been constructed about 25 yrs. Ago. Earlier there was kacha chapar over the land. There are about 9/10 rooms at present."*

35. Accordingly, the onus was clearly on the Plaintiff, which the Plaintiff has failed to discharge.

36. In view of the above settled legal position, that mere sporadic or stray entries in the revenue records cannot confer title, and the facts mentioned above, this Court is of the opinion that the Plaintiff has failed to establish that there is any substantial question of law which deserves to be adjudicated upon in the present second appeal. In fact, from the evidence which has

emerged from the record, it is clear that apart from some mention in *khasra girdawaris*, there are no other concrete documents which have been filed by the Plaintiff to discharge the heavy onus that is placed on him.

37. This Court is also conscious of the fact that the suit property in question is stated to be near a South Delhi Colony, adjacent to Safdarjung Enclave/Green Park and is very valuable. The Plaintiff who is in possession of a large part of this suit property, cannot continue to remain in possession, as permitting the same would be a giving a premium to illegal encroachments and occupations on public land.

38. The present second appeal accordingly deserves to be dismissed. Ordered accordingly. All pending applications are also disposed of.

39. Accordingly, DDA is free to take steps in accordance with law.

40. This Court notes that the present case is also another example of the ills that plague civil litigation in respect of government acquired land. The acquisition in this case dates back to 1961. The land was placed at the disposal of DDA in 1975. The suit in this case was filed in 1984 i.e., nine years later and was adjudicated upon by the Trial Court in 2011, i.e., more than 25 years later. The Appellate Court gave its decision in 2020. The DDA had taken an objection as to the maintainability of the suit itself, right at inception in its written statement. However, the suit had to go through the full journey of trial and final adjudication. In such cases, advantage is taken of the fact that due to rampant encroachment, demarcation cannot be usually done in the manner as prescribed by law. Illegal occupants of such properties continue to enjoy prime government/public land without paying a single penny to the government for use and occupation. As government authorities continue to defend against suits filed by such occupants, the

public is deprived of the use and enjoyment of the said land which has been acquired for public purposes. Thus, it is incumbent upon the Trial Courts, to consider the maintainability of such suits at the initial stage in a manner that they deem appropriate, so as to ensure that such long delays do not take place, especially in respect of government land.

41. Copy of this order be circulated to all District Judges for onward circulation to all Judicial Officers in the Trial Courts. Copy of this order be also sent to the worthy Registrar General of this Court, for appropriate action.

42. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 01, 2022
Rahul/MS