

(2023) 05 DEL CK 0310

In the Delhi High Court

Case No : Civil Writ Petition No. 6922 Of 2023, Civil Miscellaneous Application
No. 26942 Of 2023

Mahipal Singh Rawat Through Its Authorized Representative **APPELLANT**

Vs

Government Of Nct Of Delhi & Ors. **RESPONDENT**

Date of Decision : 29-05-2023

Acts Referred:

Delhi Land Reforms Act, 1957 — Section 28

Citation : (2023) 05 DEL CK 0310

Hon'ble Judges : Mini Pushkarna, J

Bench : Single Bench

Advocate : M.R. Shamshad, Sarwar Raza, Arijit Sarkar, Nabeela Jamil,
Amandeep Joshi, Yeeshu Jain, Jyoti Tyagi, Manisha, Rishikesh Kumar, Muhammad
Zaid, Sudhir Kumar Shukla, Aditya Raj, Sheenu Priya, Roshni Haldhar, Sudhir

Final Decision : Disposed Of

Judgement

Mini Pushkarna, J

W.P.(C) 6922/2023 & CM APPL.26942/2023 (Application under Section 151 CPC
on behalf of the petitioner seeking interim directions)

1. The present writ petition has been filed on behalf of the petitioner seeking
directions for restoring the demolished boundary wall of the property of the
petitioner.

2. It is submitted that petitioner is the owner and in physical possession of land
measuring 12 Bighas and 15 Biswas comprising in Khasra Nos. 1338 (Min)
(2-15), 1344 (Min) (1-18), 1345 (Min) (1-0) and 1346 (Min) (7-2) in Village
Asola, New Delhi, by virtue of Sale Deed dated 06.02.2006.

3. The Forest Department started identifying the lands allotted to it, for the
purpose of the reserved forest somewhere in the years 2013 and 2014. The
Revenue Department demarcated the forest land and fenced the forest land with
proper boundary adjacent to the property of the petitioner. According to map/

demarcation of 2014 of the Revenue Department, the property of the petitioner is clearly distinct/different by the presence of road between the property of the petitioner and forest land.

4. It is the case of the petitioner that in order to avoid any confusion, he made an application to the Tehsildar (Revenue), South on 02.05.2014 for demarcation of his land by depositing the requisite fee for the same. However, no action was taken in this regard by the respondents.

5. In the year 2018, National Green Tribunal (NGT) in O.A. No. 58/2013, Sonya Ghosh Vs. Govt. of NCT of Delhi, had directed the respondents to conduct demarcation of the forest and ridge land in Delhi. Pursuant thereto, demarcation process was carried out by respondents, for which no notice was ever served on the petitioner.

6. It is submitted that the respondents demolished the boundary wall in the year 2018 around the house of the petitioner. The said demolition was undertaken despite the fact that the demarcation that was done by the Revenue Department in the year 2014, showed the property of the petitioner as clearly distinct and different and as not part of the forest land, as there is a road between the forest land and the property of the petitioner. The petitioner has submitted many representations to the respondents for appropriate demarcation of the land/house of the petitioners. However, respondent till date has not been able to either take appropriate steps for demarcation and has not been able to finalized the demarcation.

7. It is submitted that the petitioner had earlier approached this Court by way of W.P.(C) 6302/2018, titled as Mahipal Singh Rawat vs. Government of NCT Delhi. In the said writ petition, the petitioner had prayed for directions to restrain the respondents from further demolishing and dispossessing the petitioner from the subject property and also to demarcate the subject property. Thus, this Court by order dated 31.05.2018 had disposed of the said writ petition. It was directed that the said petition be treated as a representation and the respondents were directed to pass a speaking order. It was further directed that no coercive action will be taken against the petitioner till the said representation is decided. The material portion of the order dated 31.05.2018 passed in W.P.(C) 6302/2022 is reproduced as below:-

"Having considered the directions given by the Co-ordinate Bench and considered die prayers made in the present petition, I am of the view that the respondents are directed to treat the present writ petition as a representation and pass a reasoned and speaking order on the same after giving due opportunity of hearing to the petitioner.

It is further directed that till the petitioner's representation is decided by the respondents, no coercive action will be taken against the petitioner.

Needless to say, in case the petitioner is aggrieved by any order passed by the

respondent on his representation, he will be entitled to take legal recourse as permissible under law.”

8. It is the contention on behalf of the petitioner that despite the aforesaid directions of this Court, the representation of the petitioner has still not been decided.

9. Learned counsel appearing for the petitioner also relies upon the order dated 23.05.2022 passed by Co-ordinate Bench of this Court in W.P.(C) 8052/2022, Asola Homes Welfare Association and Another Vs. Govt. of NCT of Delhi and Others. By way of the said writ petition, the Asola Homes Welfare Association, wherein the land of the petitioner is also situated, had approached this Court. In the said writ petition there was prayer for direction to the respondents to carry out demarcation of the forest land and other lands in the village Asola by prescribed procedure, after giving due notice to the petitioner association. The said writ petition was disposed of, wherein liberty was granted to the petitioners to move a detailed application to the Deputy Commissioner (South), Department of Revenue, Government of NCT of Delhi, in terms of Section 28 of the Delhi Land Reforms Act, 1957 (DLR Act). By way of the said order, it was further directed that upon receipt of the application, the concerned authority of the Revenue Department shall pass a detailed and well recent order expeditiously. The material portions from the order dated 23.05.2022 passed in W.P.(C) 8052/2022 is reproduced as below:-

“7. Keeping in view the statutory provisions as well as the facts in the petition, this Court is inclined to allow the limited prayer made by learned counsel for the petitioners to move a detailed application along with the writ petition before the Deputy Commissioner (South), Department of Revenue, Government of NCT of Delhi within two weeks.

8. It is directed that after receipt of the application, the Deputy Commissioner (South), Department of Revenue, Government of NCT of Delhi, shall decide the dispute related to the incidental and ancillary issue of demarcation of the land in accordance with law, keeping into consideration the facts and contentions made in the instant writ petition and pass a detailed/well-reasoned order expeditiously, preferably within a period of six weeks. The petitioners are also directed to cooperate in the proceedings.

9. No coercive steps shall be taken against the petitioners as per the list of names given on page 77, Annexure-P4 to the petition till the disposal of the application. It is also directed that status quo with respect to the boundaries of the respective petitioners shall be maintained by both the parties.”

10. Learned counsel appearing for the petitioner has also relied upon the order dated 05.01.2023 passed by this Court in W.P.(C) 17703/2022, M/s Rangoli Resorts Private Limited and Another Vs. Government of National Capital Territory of Delhi & Ors. By reference to the said order, it is submitted that the property of the petitioner, bearing No.E-4, village Asola, Mehrauli, New Delhi is situated

adjacent to property No. E-3, which was subject matter of the said petition i.e. W.P.(C) 17703/2022. Thus, it is submitted that the case of the petitioner is similarly situated as the aforesaid case and that similar orders may be passed by this Court.

11. Learned counsel for the petitioner also submits that application of the petitioner for demarcation of the land is pending before the Deputy Commissioner since long and that representations in this behalf have also been submitted before the concerned Revenue Authority many times.

12. On the other hand Mr. Rishikesh Kumar, Learned Additional Standing Counsel for the Delhi Government, submits that the present petition is the second round of litigation between the parties. He submits that the petitioner had earlier approached this Court in the year 2018, in which similar prayers were made by the petitioner, as are sought to be made in the present writ petition. He further submits that the interest of the petitioner is already protected, since in the litigation initiated earlier by the petitioner in W.P.(C) 6302/2018, there are already interim directions in favour of the petitioner, wherein it has been stated that no coercive action will be taken against the petitioner till the representation of the petitioner is decided.

13. Learned Additional Standing Counsel for the Delhi Government further submits that the demolition in question took place in the year 2018. Therefore, he submits that there is no fresh cause of action in favour of the petitioner after so many years. He further relies upon order dated 06.10.2022 passed by Co-ordinate Bench of this Court in W.P.(C) 11257/2020, Thapar Farms Pvt Ltd Vs. Govt. of NCT of Delhi & Ors. By referring to the said order, it is submitted on behalf of the respondents that only temporary fencing in the form of non-structure may be allowed and not construction of wall.

14. Learned Additional Standing Counsel appearing for the respondents further submits that the present writ petition as such is not maintainable, as with respect to any boundary dispute, there is efficacious remedy available under Section 28 of the DLR Act to file appropriate application before the concerned Deputy Commissioner. He further submits that the petitioner has not challenged the demarcation of the year 2014, therefore, he is bound by the same.

15. Learned counsel appearing for the respondents vehemently opposes the present writ petition and submits that no relief can be granted to the petitioner in the present proceedings.

16. I have heard learned counsels for the parties and have also perused the record.

17. It is seen that the case of the petitioner is similarly situated as decided by this Court in W.P.(C) 17703/2022, Rangoli Resorts Private Limited and Another (supra). By way of the order dated 05.01.2023 in the aforesaid case, this Court had dealt with the issue of demolished boundary wall of House No. E-3, village

Asola, Mehrauli, New Delhi. The present case pertains to House No. E-4, village Asola, Mehrauli, New Delhi. Thus, it is seen that the property which is subject matter of the present petition, is situated adjacent to the property which was the subject matter of W.P.(C) 17703/2022. Thus, there is no justification in not passing similar order in favour of the petitioner in the present case, when this Court has already taken a view in a similar matter.

18. It is undisputed that the petitioner is the owner of the land in question as aforesaid. It is also undisputed that this Court has granted liberty to the Welfare Association of the area in question to approach the concerned Deputy Commissioner for carrying out the demarcation of the forest land as well as the areas which are under the private ownership of the various residents of the area of Asola village. It is also undisputed that the application made on behalf of the Asola Homes Welfare Association in terms of the liberty granted by this Court in W.P.(C) 8052/2022 is still pending adjudication before the concerned Revenue Authority.

19. It is also undisputed that the representation of the petitioner in terms of order dated 31.05.2018 in W.P.(C) 6302/2018 is still pending and the same has not been decided.

20. By way of the present writ petition, the only limited prayer which the petitioner has sought is that during the pendency of the proceedings before the Revenue Authorities for deciding the issue with respect to the demarcation of the area in question, the petitioner herein may be allowed to raise temporary structure only with a view to secure the private land under the ownership of the petitioner.

21. Considering the submissions made before this Court, this Court is of the opinion that the respondent authorities ought to decide the application filed on behalf of the Welfare Association of the area in question as well as the petitioner herein, for the purposes of carrying out the demarcation of the area in question.

22. Thus, it is directed that the requisite applications which are pending before the concerned Revenue Authority for deciding the issue with respect to carrying out the demarcation of the area of Asola village, for demarcation of the forest area as well as demarcation of the private lands of the various residents of village Asola, shall be decided expeditiously, preferably within eight weeks from today.

23. This Court vide order dated 05.01.2023 in W.P.(C) 17703/2022 had passed directions for completion of the demarcation process with respect to the area in question within a period of eight weeks. The said period of eight weeks is long over and this Court has been informed that the applications for considering the issue of demarcation of the area in question, is still pending with the concerned Revenue Authorities.

24. In view of the aforesaid, petitioner is given liberty to construct a boundary

wall forthwith, in order to secure the private land under his possession.

25. However, it is clarified that in case upon demarcation of the area in question, it is found that the area which has been bounded by the petitioner falls under the land of the forest department or any other Government Authority, the concerned Government Authority including the forest department would have the right to take possession of the said forest land/public land.

26. This Court further records the undertaking of the petitioner that the petitioner shall demolish any boundary wall that may be found to be existing on the land of the forest department or any other public land after demarcation process is complete. The petitioner is bound by the said undertaking. In case the petitioner does not honour the said undertaking, the respondents would be at liberty to take appropriate steps in accordance with law.

27. It is clarified that this Court has not given any finding on the merits of the demarcation proceedings which may be carried out by the respondent.

28. As far as the objection of the respondent with respect to the non-maintainability of the present writ petition is concerned, the said objection is found to be without any merits, as the petitioner has approached this Court with a limited prayer, as noted above. As far as the substantive application on behalf of the petitioner with respect to demarcation of the land is concerned, the same is already pending before the Deputy Commissioner of the concerned area.

29. As regards objection on behalf of the respondent that the petitioner has not challenged the 2014 demarcation, this Court may note that in the previous proceedings, this Court has already granted liberty to the Welfare Association of the area in question to approach the Revenue Authorities for the purposes of demarcation of the area in question. Likewise, in the previous proceedings initiated on behalf of the petitioner in the year 2018, similar relief has been granted to the petitioner, wherein the earlier writ petition of the petitioner was directed to be treated as a representation, which is still pending with the respondent authorities. In view of this, the said objection of the respondent does not hold any water.

30. Consequently, the present writ petition is disposed of with the aforesaid directions.