

(2016) 03 DEL CK 0253
In the Delhi High Court
Case No : W.P. (C) 5382/2014

Pawan Garg and Others

APPELLANT

Vs

Shamsher Singh and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 298, Section 299, Section 300,
Section 301, Section 302, Section 303, Section 304, Section 305, Section 306, Section
307, Section 308, Section 309, Secti

Citation : (2016) 6 ADDelhi 124 : (2016) 229 DLT 542 : (2016) 157 DRJ 344

Hon'ble Judges : V.P. Vaish, J.

Bench : Single Bench

Advocate : Chetan Sharma, Sr. Advocate, V.K. Sharma and Pawan Verma,
Advocates, for the Appellant; Sanjay Poddar, Sr. Advocate and Mini Pushkarna,
Standing Counsel, for the Respondent

Final Decision : Disposed off

Judgement

V.P. Vaish, J.—1. By way of present petition under Article 226 of the Constitution of India the petitioner seeks setting aside the decision dated 19th May 2014 passed by the Lay Out Scrutiny Committee (LOSC) of the respondent No. 5, South Delhi Municipal Corporation (SDMC) and directing the respondents to incorporate the petitioners' plots comprised in Khasra Nos. 5, 6 and 14 Village Yusuf Sarai Jat, New Delhi in the layout plan of Green Park Extension Colony, New Delhi.

2. Briefly recapitulating the facts as stated in the petition are that a colony, namely, Green Park Extension was developed in the year 1975 by a developer M/s. Urban Development Company Pvt. Ltd. The said developer sold the land admeasuring 1600 sq. yards comprised in Khasra Nos. 5, 6 and 14 situated at Village Yusuf Sarai Jat (now known as K-28, Green Park Extension) to Shri Govind Ram, Shri Vasudev, Shri Prem Nath, Shri Pearey Ram and Shri Jagdish Lal Batra (erstwhile owners) vide duly registered sale deeds, all dated 18th June,

1975.

3. It is stated that the respondent, SDMC during the year 1975 to 1982 tried to dispossess the erstwhile owners from their plots in the aforesaid land. The aforesaid owners filed five separate suits for injunction against the respondent before the Civil Court.

4. The said five suits were decided by the Sub Judge, First Class vide separate judgment dated 1st October, 1988 holding the erstwhile owners of the respective plots as owners and the respondent was restrained from dispossessing them from the said plots. Appeals preferred by the respondent were also dismissed by Shri S.N. Dhingra, the then learned Additional District Judge, Delhi vide order dated 21st March, 1992. The second appeal filed in this Court was also dismissed.

5. The erstwhile owners sold their respective plots to the six buyers (subsequent owners) in the year 1994 by duly registered sale deeds, the details of which are referred to in paragraph 6 of the writ petition. Since the respondent Corporation again interfered with the possession of the said plots despite the judgments of the civil Court and the appellate courts, the subsequent owners filed contempt petitions against the erring officers of the Corporation. The officers of the Corporation appeared before the Civil Judge and apologized for their unintentional acts and on tendering written apology by them, the subsequent owners withdrew the contempt petitions.

6. The subsequent owners applied to the respondent Corporation on 8th August, 1996 for incorporation of their plots in the layout plan of Green Park Extension as the same were not incorporated in the layout plan of the said colony by the respondent Corporation.

7. It is further stated that MCD in its resolution bearing No. 210 passed in the meeting of the Standing Committee held on 19th August, 1998 regarding the land in question also mentioned that the revenue authorities had verified the ownership in favour of the applicants and Tehsildar (N) informed in January 1997 that the land had not been notified for acquisition by that time. However, the proposal for incorporation of the land in question was rejected by the Standing Committee as the DDA in its letter dated 13th January, 1998 informed that the land was required for acquisition of school.

8. The petitioner No. 1 again wrote a letter dated 17th September, 1999 to the Commissioner, MCD for reopening the matter regarding incorporation of the said plots in the Green Park Extension layout plan on the ground that no acquisition proceedings had been carried out. The respondent again requested the DDA to send its report regarding acquisition of the land in question, as the DDA had earlier communicated to the MCD that the land was required to be acquired by it for higher secondary school, on which basis, the proposal for carving out six residential plots on the site was rejected by the Standing Committee, MCD vide resolution No. 210 dated 19th August, 1998. DDA again reported that the land in question had not been acquired by it. It was further stated that as per land use

plan of MPD-2001 the land had been indicated for residential use. As per the approved zonal plan of Zone F, the land was a part of proposed Sr. Sec. School. As per the MPD-2001, the minimum area required for the Sr. School is 4(1.6 ha) acre and the available land is inadequate for school. The DDA further intimated that the subject area is under jurisdiction of MCD and modification/approval in the layout plan lies with the MCD.

9. The Town Planner, MCD again vide letter dated 8.9.2000 asked for further clarification from DDA whether the land is required by DDA or not. The DDA again vide letter dated 17.1.2001 clarified the position and reiterated the stand taken by it in the letter dated 14th August, 2000.

10. It is further stated that in the year 2000 a writ petition being W.P.(C) No. 4788/2000 was filed by the Green Park Extension Residents Association wherein the MCD filed its counter affidavit dated 17.02.2011 admitting that the land in question was not owned by MCD and the civil courts declared the owners to be the owners of the said land.

11. Further, clarification was sought by the Chief Town Planner, MCD from DDA vide letter dated 17th June, 2002. The DDA reiterated that it has already communicated its observations vide letters dated 14th August, 2000 and 17th January, 2001.

12. The Lay Out Scrutiny Committee of MCD vide its decision dated 28th October, 2002 held that the application for carving out seven plots be agreed to and it be put up to the Standing Committee for approval only after obtaining proper clearance from DDA. It was also decided that the proposal with the details of existing users of the site proposed for Sr. Sec. School be sent to DDA for their examination and issuance of clearance. The observations of DDA were sought by the respondent in view of the decision of the LOSC.

13. During the year 2006-2008 the plots in question were further sold to persons mentioned in Table-E at page 19 of the paper book, vide duly registered conveyance deeds.

14. In the meanwhile the DDA approved Zonal Development Plan for Zone-F for the area in question. In that the plots in question had been shown in Residential Zone. The petitioners wrote various letters to MCD and the Chief Town Planner, besides sending a legal notice dated 28th June 2013. However, the respondent did not proceed with the incorporation of the petitioner's plot in the layout plan of Green Park Extension. This led to the petitioners moving a complaint dated 13th August, 2013 to the Public Grievance Commission, NCT of Delhi. The respondents submitted a letter dated 30th August, 2013 before the Public Grievance Commission wherein it is stated that in view of DDA's letter dated 24th January 2011 the matter was being placed before Lay Out Scrutiny Committee of MCD for its consideration and thereafter as per the recommendation of the LOSC, it will be put up before the Standing Committee.

15. However, the respondents again submitted yet another letter on 24th December, 2013 before the Public Grievance Commission wherein they came up with an entire new stand taken after the expiry of 18 years stating therein that the said plots were the properties of MCD. The petitioners submitted their detailed reply showing their ownership.

16. The respondents on 5th August, 2014 informed the Public Grievance Commission vide letter of the same date that the LOSC had rejected the matter and the same is being sent to the Standing Committee. However, copy of the decision of LOSC was not supplied to the petitioner. The petitioners were supplied a copy of the decision of the LOSC in response to the RTI application submitted by them to the Town Planning Department, MCD.

17. Learned counsel for the petitioners vehemently contended that the ownership of the erstwhile owners on the plots in question had been established by the competent civil court vide its judgments dated 1st October, 1988, which also attained finality in the appeals. The respondents have no authority to deny the same and claim ownership. In the proceedings initiated pursuant to the contempt petitions filed by the petitioners the respondents also acknowledged the ownership and apologized for their interference in the land in question.

18. Learned counsel for the petitioner further contended that the admission of the respondents is on record regarding acknowledging the ownership of the petitioners as also their erstwhile owners. The Standing Committee was satisfied about the ownership of the subsequent owners of the said plot thus the claim of the MCD regarding its ownership is baseless and without any justification.

19. It was also argued on behalf of the petitioners that the Deputy Law Officer of MCD in his opinion also stated that the ownership of the applicants had been established.

20. It is further contended that the Jamabandi of the land clearly shows that the land was in absolute ownership and possession of the petitioners including their predecessors since beginning.

21. The respondents have filed reply to the petition. It is stated that the Green Park Extension colony was originally approved by the Standing Committee in 1958 vide Resolution No. 7 dated 3rd September, 1958. Subsequently, a revised layout plan indicating certain modification and an increase in the number of plots was approved vide Resolution No. 10 dated 28th March, 1959 passed by the Standing Committee. Subsequently, a demarcation layout plan including the combined layout plan of shopping centre of Green Park main and extension colonies was approved vide Resolution No. 183 dated 30th May, 1969.

22. It is further stated that in the plan of 1969 it was stipulated that the portions of land not owned by the colonizer as well as the portions shown as encroached upon which have been clearly indicated in the layout plan as pockets, be not considered as part of the approved layout plan. Thus the said plots and portions

shown as encroached upon, were not considered as part of approved layout plan. It is further stated that the site in question were formally handed over to the MCD and entry with regard thereto was made in the Register of Immovable Property. It is further stated that at the time of handing over the land in question there were 100 unauthorized jhuggies, a store of P&T department and a tube well. The area in question was handed over to MCD in 1968 by the colonizer. It is stated that the lay out plan at the time of regularization shows the same as an area marked for community services such as parks, schools, dispensary etc.

23. It is further stated by the respondents that since there were encroachments on the land in question the respondents sought to remove the said encroachments. However, the occupants of the land filed suits for perpetual injunction in the year 1975 against the MCD. The said suits were in the nature of perpetual injunction and vide judgments passed in the said suits the MCD was only restrained from forcible dispossession of the predecessor-in-interest of the petitioners. It is further stated that the said judgments neither conferred any title of ownership over the predecessor-in-interest of the petitioners nor established the title of predecessor-in-interest of the petitioners.

24. It is further stated that the petitioners' application for incorporation of the plots was rejected by the Standing Committee vide Resolution No. 210 dated 19th August, 1998 and the petitioners did not challenge the said decision and the same has become final. It is stated that the land in question was marked for primary school in the approved layout plan of the colony. Again the case of the petitioners for incorporation of the plots was rightly considered by the Lay Out Scrutiny Committee which rejected the same vide decision dated 19th May, 2014. The said decision was confirmed by the Standing Committee vide decision dated 17th July, 2014 and the said decision of the Standing Committee has not been challenged by the petitioners. It is further stated that the status of the petitioners are that of illegal tress-passers. It is contended that the judgment in favour of predecessor-in-interest of the petitioners only specifies that they would not be dispossessed, however, the said injunction did not create any right of ownership in favour of the predecessor-in-interest of the petitioners. The land has to be used in terms of the Master Plan/Zonal Development Plan/ Approved Layout Plan and the sites being reserved for any specific purpose shall be used by the public in general. In support of his arguments, learned counsel for the respondents relied on certain judgments as referred to in the written submissions filed by the respondents.

25. I have given my thoughtful consideration to the submissions advanced by learned senior counsel for both the parties and carefully perused the material on record.

26. The land in question was purchased in the year 1975 by the predecessors of the petitioners vide duly registered sale deeds. When the MCD tried to dispossess the erstwhile owners namely, Ch. Pearey Ram, Govind Ram, Vasu Dev, Prem Nath and Jagdish Lal Batra, they filed separate suits before the Senior Civil

Judge. In the said suits the plaintiffs had claimed ownership rights. In Suit No. 445-A/78 titled as "Prem Nath vs. Municipal Corporation of Delhi & Anr.", a specific issue No. 3 was framed i.e. whether the plaintiff is the owner of the disputed land. Evidence was led by both the parties i.e. the owners as well as the MCD. After recording evidence and hearing both the parties, the suit was decreed by learned Sub-Judge, Ist Class, Delhi vide judgment and decree dated 1st October, 1998. The finding with regard to the issue No. 3 is as under:-

"Issue No. 3.

22...A perusal of the sale deed Ext. PW9/1 goes to show that there was joint sale deed in respect of 8 biswas of land falling in Khasra No. 5 and 14 in village Yusuf Sarai Jat as shown in site plan Ext. PW 9/2. Thus, the plaintiff is the co-owner of the disputed land by virtue of sale deed Ext. PW 9/1. This issue is decided accordingly."

The Civil Court thus granted the following relief:-

Relief:

25. In view of the above discussion, I am satisfied that the plaintiff was in possession of the suit property and also is the owner by virtue of sale deed Ext. PW 9/1. Any forcible dispossession without compliance with the procedural requirements will be against the law. The suit of the plaintiff is accordingly decreed. The deft. MCD is restrained from forcible possession of the property measuring 8 biswas forming part of Khasra No. 5 and 14 in village Yusuf Sarai Jat, New Delhi without due process of law"

27. The appeals filed by MCD against the aforesaid judgment were also dismissed by the learned Additional District Judge, Delhi vide judgment dated 21st March, 1992. The Regular Second Appeal bearing RSA No. 69/1992 titled as "Municipal Corporation of Delhi Vs. Pyare Ram" was also dismissed by this Court on 04.11.1992. Thus, the findings of the civil court attained finality.

28. A perusal of the pleadings before the civil court and the appellate court clearly shows that the respondent MCD never took the stand that the land in question was owned by them as it was incorporated in the I.P. Register of the MCD. Not a single whisper about the I.P. Register was made either in the pleadings before the civil court or before this Court by the MCD in WP(C) No. 4788/2000. Thus, the stand now taken by the MCD is clearly an afterthought and misplaced.

29. Certain communications are also placed on record, which were exchanged between the respondent Corporation, Delhi Development Authority and the Govt. of NCT of Delhi pertaining to the plots in question regarding clarification whether the land was MCD property or whether the land was acquired. It was communicated by the DDA that the land was not acquired by it. Demarcation/ Nishandehi was also done by the respondent Corporation through the concerned Tehsildar in the year 1998 and it was reported that the land in question falls in

Khasra Nos. 5, 6 and 14.

30. The matter of the petitioners was reopened on the application filed by petitioner No. 1 in September, 1999 for reconsideration of their case, which was ultimately rejected by the impugned decision of the LOSC. The impugned order itself stated that the matter was reopened on the application of the petitioner No. 1, thus the argument of the decision of the Standing Committee dated 19th August, 1998 becoming final, is not tenable.

31. The agony of the owners of the land did not end there. Despite the judgments passed by the civil courts and the appellate court, respondent corporation tried to interfere in the possession of the erstwhile owners which led to filing of the Contempt Petitions against the MCD. There also the MCD officers appeared and apologized by making written statements before the trial court regarding their acts of interference. It was never shown or argued that the land belongs to MCD.

32. The stand of the MCD that it owns the land further demolished on perusal of communication dated 3rd September, 1997 of the Additional Deputy Commissioner (Land & Estate) MCD wherein he referred to the confusion regarding the ownership of the land in view of the judgments in the civil suits and statements made by MCD officers. He further sought clarification whether the aforesaid land is MCD property or private property in the name of subsequent owners. The MCD also obtained a written opinion of the Chief Legal Officer in the year 1998 who had also clearly opined that the land belonged to the predecessors/petitioners and did not belong to the MCD.

33. In the Resolution No. 210 passed in a meeting of the Standing Committee held on 19th August, 1998 regarding the land in question, it was mentioned as under:-

"After the receipt of application, for ascertaining the status of land, the reports were requisitioned from ADC (L&E), Director (Edu.), Tehsildar (N) and Revenue Authorities.

Revenue Authorities has verified the ownership in favour of the applicants and Tehsildar (N) informed in Jan. 1997 that the land had not been notified for acquisition by that time."

34. For the first time in the written submissions the respondents have stated that the impugned decision of the LOSC dated 19th May 2014 was approved by the Standing Committee vide decision dated 17th July, 2014. Admittedly, the said decision of the Standing Committee was neither communicated to the petitioners nor any averment in this regard was made in the counter affidavit filed by the respondents. The MCD filed its counter affidavit much after the decision of the Standing Committee dated 17th July, 2014, yet the same was neither referred to in the counter affidavit nor the decision was placed on record. Since the petitioners challenged the decision of the LOSC, which rejected the proposal of

the petitioners, the Standing Committee only approved the said rejection.

35. The Court has power to mould the relief according to the demand of the situation to do complete justice between the parties. Thus, the petition cannot be rejected merely on the ground that the petitioners have not challenged the decision of the Standing Committee. A similar view was also taken by the Supreme Court in the case reported as *Rajesh Kumar & Ors. Vs. State of Bihar & Ors.* Civil Appeal Nos. 2525-2516/2014 decided on 13th March, 2013.

36. It is interesting to note that in the proceedings before the trial court in the suit filed by the erstwhile owners, as also in the writ petition (mentioned above) before this Court, the respondent neither produced the I.P. Register nor made a single averment in this regard. However, in the present petition suddenly I.P. Register came into picture. Likewise, not a single averment was made in the counter affidavit of present petition about the decision of the Standing Committee dated 17th July, 2014 and now when the written submissions are filed, the respondent talked about the decision of the Standing Committee, which to my kind is inconsequential as the Standing Committee only affirmed the decision taken by the LOSC.

37. Chapter XV of the Act deals with streets. The public streets are dealt from Section 298 to 311 of the Act whereas private streets are dealt with from Section 312 to Section 330 of the Act. Section 312 of the Act obliges an owner of any land utilising, selling, leasing out or otherwise disclosing of the land for the construction of building to lay out and make a street or streets giving access to the plots into which the land may be divided and connect it with an existing public or private street. Section 313 of the Act requires the owner to submit a lay out plan before utilizing the land for any of the purposes mentioned in Section 312 and send it to the Commissioner with a lay out plan showing the particulars mentioned in clauses (a) to (e) of Section 313.

38. In terms of Section 313(3) of the Delhi Municipal Corporation Act, 1957 the Standing Committee is required to decide the application moved under Section 33(1) of the Act within a period of 60 days. Section 313(3) of the DMC Act is reproduced as under:-

" 313 (3) Within sixty days after the receipt of any application under sub-section (1) the Standing Committee shall either accord sanction to the lay-out plan on such conditions as it may think fit or disallow it or ask for further information with respect to it."

Proviso to Section 313 further provides that the passing of such orders shall not be in any case be delayed for more than sixty days after the Standing Committee has received the information which it considers necessary to enable it to deal with the said application.

39. The present case is a peculiar case where the application of the petitioners was decided only after a period of more than 18 years.

40. Learned counsel for the respondent has relied upon judgments in Prem Nath Wadhawan vs. Inder Rai Wadhawan, , (1993) 105 (3) PLR 70, Machavarapu Srinivasa Rao & Anr. vs. The Vijawada, Guntur, , (2011) 12 SCC 154, Kenneth Builders & Developers Ltd. vs. Union of India & Ors. in W.P.(C) No. 10647/2009, decided on 30.07.2010, Pt. Chet Ram Vashisth vs. MCD, , (1995) 1 SCC 47, Harish Batra vs. DDA & Ors., , 2013 (133) DRJ 348, DLF Housing Construction (P) Ltd. vs. Delhi Municipal Corporation & Ors., , (1976) 3 SCC 160, Govt. of NCT of Delhi vs. Lt. Kabool Chand Maithal in RSA No. 157/2012 decided on 24.04.2014, Sajjadanashin Sayed vs. Musa Dadabhai Ummer, , (2000) 3 SCC 350, Chinnammal vs. Nagarathinammal, , AIR 1990 Mad 249, Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Coop. Housing Society, Jaipur & Ors., , (2013) 5 SCC 427, Bank of Baroda vs. Rednam Nagachaya Devi, , (1989) 4 SCC 470, UOI vs. Pandurang Kashinath More, , AIR 1962 SC 630, Rajasthan Pradesh Vaidya Samiti, Sardarshahar & Anr. Vs. UOI & Ors., , (2010) 12 SCC 609, Chandigarh Administration & Anr. vs. State of Punjab, , (1995) 1 SCC 745 and Chamanlal vs. State of Punjab, (2014) 15 SCC 715. The same are of no help to the respondent as the same are not applicable to the facts and circumstances of the present case.

41. Regarding the issue of ownership of the land in question, the Deputy Law Officer of the Corporation vide noting dated 11th December, 1998 also opined as under:-

"The reference as made to the Law Department does not involve any question of law worth consideration. There would have been a valid and significant case, had the Deptt. Claimed that notwithstanding the hard facts of losing the suits for declaration of ownership and handing of possession, and despite the fact that MCD has not gone in for appeal, and for the fact that the land has been earmarked for the MCD school park in the layout plan of Green Park Extension, the MCD has obtained appropriate sanction from the corporation for acquisition of the Land for public purpose as earmarked in the layout plan and that reference has been made to Govt. Of NCT of Delhi for initiating acquisition proceedings. The record on the file shows that neither the sanction for acquisition of land has been obtained from the Corporation nor any acquisition proceedings have been initiated to acquire the said piece of land for public purpose. Had the position as at X on prepage been secured, the opinion would have been that no claim from the decree holder should be entertained since the acquisition proceedings are going on. In the absence of any acquisition proceedings as on today, non-compliance of judgment and decree of the Court of competent jurisdiction, which has already become "Res Judicata" between the parties and binding in every respect, will tantamount to disobeying the legal mandate and may warrant further spate of litigation.

Under the present circumstances, whether the title or ownership of the applicants is accepted or not, the unassailable and admitted position as per law is that the applicants are the owners of the Land in dispute.

Sd/- 11.12.98"

42. Further, in the counter affidavit filed in WP(C) No. 4788 of 2000 by the MCD, it clearly admitted as under:-

".....It is further humbly submitted and stated that the areas which fell under the control of MCD are being maintained as per the regularization plan except for the pocket as now shown as "others land" and that too for the reason that owners of the said land have filed civil suits against the MCD and the civil courts declared them (owners) to be the owners of these lands and the MCD has been restrained from dispossessing or interfering from peaceful possession of these persons" (Para 3)

.....This particular alleged K-28 is a part of others land shown in the layout plan of the Town & Planning Department of MCD" (Para 11)

The erstwhile owners purchased the land in question from Urban Improvement Co. P. Ltd. in the year 1975 vide duly registered sale deeds. The property was in their possession. The sale deeds submitted by the petitioners or the erstwhile owners to the MCD were never questioned by the MCD.

43. A perusal of the communications between the MCD and DDA also reveal that the land in question was not acquired and jurisdiction for modification/approval of the layout plan lies with MCD as the area was under their jurisdiction.

44. The petitioners had to fight for a number of years even to get rights to their land. The petitioners' predecessors had to file civil suits which were contested by the respondent which culminated into declaring the petitioners' predecessors as owners. The findings of the Civil Court was affirmed in the appellate Courts also as far back as in 1992.

45. Interestingly, the decision of the Lay Out Scrutiny Committee dated 19th May, 2014 itself shows that the ownership was verified in the name of the applicants by concerned Tehsildar in 1997. Mere entry in the I.P. Register does not entitle the Corporation to become the owner of the land in question. The own documentation of the respondent Corporation itself frustrates the stand taken by the MCD that the land is owned by them.

46. In my considered view, in light of the aforesaid discussion, the decision taken by the Lay Out Screening Committee can hardly be considered rational. The result is that the petitioners cannot utilise their land despite fighting for their rights since 1975. Thus the decision of the Lay Out Scrutiny Committee dated 19th May 2014 qua the petitioners' land is set aside. Consequently, the decision of Standing Committee dated 17.7.2014 qua the petitioner's land is also set aside. The respondent, South Delhi Municipal Corporation is directed to consider the petitioner's plots in question in the layout plan within a period of sixty days from today in accordance with law.

47. The writ petition is disposed of in the above terms. No order as to costs.