

(2011) 09 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (C) 6694 of 2011 and C.Ms. No's. 13531-33 of 2011

Ram Narain and Others

APPELLANT

Vs

Block Development Officer (BDO) and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0097

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Rajesh Gupta and Harpreet Singh, for the Appellant; Zubeda Begum and Sana Ansari for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the Petitioners praying inter alia for directions to Respondents No. 1 and 2 to carry out complete demarcation of Khasra Nos. 166, 167, 168, 170 and 176 situated in the revenue estate of village Hiranki Kushak, Alipur, Delhi, and after such demarcation, decide whether the phirni road and pucca nala, alongside the phirni road, exist on the common village land or encroach on private land. The third relief sought by the Petitioners is for quashing of the notices dated 6.9.2011 addressed by Respondent No. 1 to the Petitioners informing them that they were found to be unauthorizedly occupying certain land alongside the phirni Road, and that they were required to remove such encroachment by 13.9.2011, failing which the same would be removed by the department on 14.9.2011.

2. At the outset, counsel for the Petitioners confines the relief in the present petition to prayer (III) alone, while reserving the right of the Petitioners to approach the Revenue Authorities for the reliefs mentioned in prayers (I) and (II) of the writ petition. Leave as prayed for is granted and present petition is confined to prayer No. (III) alone.

3. Learned Counsel for the Petitioner states that the genesis of the dispute

between the Petitioners and Respondents No. 1 to 3 and the private Respondent No. 4, arose in view of the fact that Respondent No. 4 preferred a writ petition in this Court, registered as WP (C) No. 6134/2010 entitled *Bir Singh v. Block Development Officer and Anr.*", wherein he claimed to be in physical and cultivatory possession of land falling in Khasra Nos. 166, 167, 168, 108, 109 and 110 situated in the revenue estate of village Kushak (Hiranki) and that the aforesaid land was alongside a 25-feet wide road, called phirni road. In between the road and the land of the Petitioner, there flowed a small damaged pucca nala. It was the case of the Petitioner therein that a part of his land has been encroached upon by the MCD by constructing the aforesaid road and pucca nala and that the said encroachment should be removed.

4. Vide order dated 28.9.2010, the aforesaid writ petition was disposed of, on a statement made on behalf of the Block Development Officer (BDO) that the road/pucca nala was encroaching upon the land of the Petitioner therein because of encroachment existing on the other side of the road where the Lal Dora Abadi of the village existed. It was stated that the encroachment was in the form of built-up structures and unless the said encroachment was removed, the road/pucca nala encroaching upon the land of the Petitioner, could not be removed. Having regard to the aforesaid submission made on behalf of the BDO, it was directed that he would have the area demarcated again by involving not only the Petitioner therein but also the persons owning the structures on other side of the road, who claimed that they were not encroaching on any public land. MCD was also directed to be involved in the said demarcation, which was to be completed in a time-bound manner. It was further directed that upon the demarcation being carried out, if any encroachment was found on the land of the Petitioner therein, the same would be removed by MCD and if any encroachment was found existing on the other side of the road, both MCD and the BDO would remove the same.

5. Counsel for the Petitioners states that the demarcation took place on 28.07.2011 by using Total Station Method. However, the lands of the Petitioners were not demarcated. He further states that the Petitioners had filed written objections dated 06.08.2011 before the SDM regarding the same, and thereafter, they received the impugned notices dated 6.9.2011 issued by the BDO calling upon them to remove their occupation from certain portions of the lands, as mentioned in the impugned notices, by 13.9.2011, failing which the same would be removed by the department on 14.9.2011. He submits that the notices dated 6.9.2011 were served dasti upon the Petitioners only on 12.9.2011, thus hardly leaving any time for them to avail of their remedies by way of an appeal or for that matter, by approaching the SDM for an interim order.

6. Counsel for Respondents No. 1 and 2, who appears on advance copy, questions the maintainability of the present petition on the ground that the Petitioners have an equally efficacious alternate remedy available to them by way of an appeal under the statute, which has not been exhausted by them and instead they have approached this Court directly by preferring the present

petition. She further states, on instructions from her clients, that the impugned notices in question were sent by speed post to the Petitioners on 7.9.2011 and in ordinary course, they ought to have been received by them on or before 8.9.2011, thus giving them ample time to have assailed the said notices before the revenue authorities. Lastly, she states that there is no allegation either in the writ petition or in the objections filed by the Petitioners before the SDM of the area (Annexure P-6) with regard to their ownership of Khasra Nos. 169 and 178, which form the subject matter of the impugned notices dated 6.9.2011.

7. On a pointed query to the counsel for the Petitioners in this regard and after going through the writ petition and the documents placed on record, he has not been able to contradict the aforesaid submission made by the counsel for Respondents No. 1 and 2, except for orally stating that the built-up houses of the Petitioners exist in Khasra Nos. 169 and 178, subject matter of the impugned notices. In the absence of any averment to that effect in the writ petition or for that matter in any of the documents enclosed with the petition, particularly, the objections filed by the Petitioners before the SDM (Annexure P-6), this Court is unable to accept the oral submissions made on behalf of the Petitioners that they had raised any grievance with regard to their claim to land situated in Khasra Nos. 169 and 178. Furthermore, a perusal of the objections filed by the Petitioners before the SDM of the area shows that references have been made by them in respect of the Khasra Nos. 166, 167, 168, 170 and 176, however, none of the notices make a mention of the aforesaid Khasra Nos. 169 and 178. The Petitioners having failed to establish any case to show that they are occupants, much less lawful occupants of Khasra No. 169 and 178 or that the objections filed by them before the SDM are in respect of the aforesaid Khasra Nos. 169 and 178, they cannot seek a stay of the impugned notices which on a bare reading reveal that they relate to the aforesaid Khasra Nos. As a result, the present petition fails and is accordingly dismissed in limine.

8. Needless to state that if the Petitioners are aggrieved by the orders passed by the revenue authorities in respect of their objections pertaining to some other Khasra Nos., they shall be entitled to seek their remedies under the statute and the appropriate forum shall consider and dispose of their petitions, uninfluenced by the orders passed in the present case.

The petition is dismissed, along with the pending applications.