

(2012) 02 DEL CK 0124
In the Delhi High Court
Case No : Writ Petition (C) 3503 of 1992

Rati Ram and Another	Vs	APPELLANT
Delhi Development Authority and Another		RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 4

Citation : (2012) 02 DEL CK 0124

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Vishal Singh, for the Appellant; Sangeeta Chandra, Advocate for respondent No. 1/DDA and Mr. R.N. Singh, Advocate with Mr. A.S. Singh, Advocate for respondent No. 2/ASI, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition had been filed by the petitioners in September 1992 claiming inter alia that a plot of land measuring 1127 square meters (11 Bigha 17 Biswas), which forms part of Khasra No. 144/84 situated in the revenue estate of village Sarai Sahaji, Delhi, has been jointly purchased by various persons including their ancestors much prior to the year 1948-49. The petitioners claimed that ever since then, they and their family members had remained in actual cultivatory possession and occupation of the said land, constructed various structures on the land including a boundary wall to secure the plot of land and invested large sums therein. Some photographs were enclosed with the petition to show the cultivatory possession and occupation of the petitioners in the land in question.

2. The entire claim of the petitioners to the subject land is predicated on a Jamabandi entry in the revenue records of the respondents relating to the year 1948-49. As per the petitioners, on 26.09.1992, the officers of respondent No. 2/ Archaeological Survey of India (in short "ASI"), visited the property in question and started to interfere in their peaceful possession of the subject land.

Apprehending their alleged illegal dispossession, the petitioners had filed the present writ petition stating inter alia that the subject land had neither been acquired by the Government, nor had the property in question been notified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as "the Act") or under the Public Premises Act or any other Statute and, therefore, the petitioner should be permitted to enjoy their peaceful cultivatory possession in the subject land.

3. Notice was issued on the present petition on 20.10.1992. On 11.11.1992, counsel for respondent No. 2/ASI had stated that the land in question had been notified under the Act and that the possession of the said land was with respondent No. 2/ASI. After the pleadings were completed, vide order dated 29.01.1993, status quo with regard to possession of the land as existing on the said date, was directed to be maintained. Thereafter, the proceedings recorded on 12.08.1993 are material and are reproduced hereinbelow:-

Mr. Jagdev Singh has produced in Court the record showing that the ownership of the property in question was not of the petitioner. The document which is placed before us is prepared by Shri Baljit Singh, Patwari who has also issued a document which has been placed on record by the petitioner, which purports to show that the ownership was transferred in favour of the joint owners by virtue of Mutation No. 517. This document signed by Shri Baljit Singh, Patwari and filed by the petitioner is dated 13th October, 1992 and, interestingly enough, the document placed before us by the respondents is signed by Shri Baljit Singh, Patwari on 19th November, 1992.

Shri Baljit Singh, Patwari is directed to be present in Court on the next date of hearing with the latest revenue record including the Jama Bandi as well as Khasra Girdawari, as also the order pertaining to Mutation No. 517, showing as to who is the owner of Khasra No. 144/84.

To come up on 24th September, 1993.

Interim orders to continue.

4. Vide order dated 10.08.1994, Rule was issued in the writ petition and the status quo order passed earlier, was confirmed. When the matter was taken up on 15.09.2008 for regular hearing, none had appeared for the petitioners and resultantly, the writ petition was dismissed in default. Vide order dated 09.03.2010, the petition came to be restored to its original position upon the petitioners paying costs of Rs. 20,000/- to the respondents.

5. The stand of respondent No. 2/ASI as taken in its counter affidavit was that the petitioners did not have any locus standi to file the present writ petition and they are encroachers/trespassers on the land in question. It was further averred that the subject land is a vacant land, which falls within the limit of the historical monument, namely, "Sarai Shahji", which is a protected monument under the Act and is under the sole control and ownership of respondent No. 2/ASI. The

monument has been described as a unique piece of the Mughal period comprising of a Palace, Mosque, Graveyards of Farid Murtaza Khan and the ruins situated in the land adjacent to the land in question. Further, it was averred that despite the protection notice and other instructions issued by the ASI, the petitioners had encroached upon a part of the land and sought to grab the same. When the aforesaid unlawful action of the petitioners was objected to by the officials of respondent No. 2/ASI, they were threatened with dire consequences. This occasioned the matter to be reported to the local police on 15.09.1992.

6. In support of its submission that the monument in question has been notified, respondent No. 2/ASI relied upon a Gazette notification dated 12.11.1987 issued by the Government of India and published in the Gazette of India on 05.12.1987, in which, two months notice of intention to declare the Monument as protected, was specified. As per the rules, the said notification had also been affixed at conspicuous/prominent places near the said monument. The Gazette of India notification was made available to the public on 07.12.1987. As no objections were received by the respondent No. 2/ASI from any quarter, the monument was notified as a centrally protected monument in exercise of the powers vested in the Competent Authority u/s 4 of the Act, and thereafter ownership thereof vested with the ASI, in terms of the final Gazette Notification dated 21.05.1988.

7. As regards the Jamabandi of the year 1948-49 that had been relied upon heavily by the petitioners, respondent No. 2/ASI stated that the same is a forged and fabricated document and that the land in question is Samlath-Deh land as is reflected in the revenue records procured from the Tehsildar, Mehrauli, and duly verified by the revenue officials. It was averred in the counter affidavit that the total area of the disputed land is 11 bighas 17 biswas (11850 sq. yards), whereas the petitioners had claimed that the same measures 1127 sq. mtrs. It was further pointed out that the Jamabandi furnished by the petitioners showed that there were 32 claimants to the subject land. It was averred that acting on the complaints of respondent No. 2/ASI, the local police had arrested the petitioners alongwith some accomplices for trying to demolish the ancient wall of "Sarai Shahji". Thereafter, an FIR No. 470/1992 was registered against them. It is contended by learned counsel for respondent No. 2/ASI that the present petition is nothing but a counterblast to the aforesaid FIR that had been lodged by respondent No. 2/ASI against the petitioners. Pertinently, the petitioners have not filed a rejoinder to the aforesaid counter affidavit filed by respondent No. 2/ASI.

8. The main plank of the argument of the counsel for the petitioners is based on the Jamabandi of the subject land for the year 1948-49. The record reveals that the revenue records for the period after the year 1948-49 have not been placed on record by the petitioners so as to show that thereafter they had been actually enjoying the cultivatory possession of the subject land all throughout, till the date of filing of the writ petition. In support of their contention that they had remained in continuous uninterrupted cultivatory possession of the subject land,

the least that the petitioners were expected to do was to place on record the copies of the Khasra Girdawaris of the land in question to show their cultivatory possession from on a year to year basis and if not for the entire period, at least for a reasonable period prior to the institution of the present petition. However, no such document has been placed on record by the petitioners.

9. Apart from making a vague averment to the effect that their ancestors had jointly purchased the land in question, there is no mention in the petition as to the date on which the land in question came in the possession of the ancestors of the petitioners and the party from whom they purchased it. Nor have they filed on record the copies of documents of purchase of the subject land and the status of the subject land with reference to the revenue records, from the date of its purported purchase, till the date of filing the present writ petition. Even after the institution of the present petition in the year 1992, the petitioners did not choose to place on record any document to establish that they were and had remained in continuous lawful possession and occupation of the land in question. Merely because the petitioners claimed that they were carrying on cultivation on the land in question, would in itself not be a ground for the Court to injunct the respondents from interfering in their possession inasmuch as they have failed to place on record any legal document to establish their purported ownership in the subject land. Apart from filing a copy of a Jamabandi in respect of the subject land, relating to the year 1948-49, a perusal of which shows that there were 32 claimants to it, no other relevant document was filed by the petitioners.

10. On the other hand, respondent No. 2/ASI has placed on record a set of documents including a copy of the schedule dated 10.07.1986 for the protection of a group of monuments at Sarai Shahji, wherein, a specific mention has been made of Khasra No. 144/84 measuring 11 Bigha 17 Biswas alongwith boundaries thereof that collectively go to show that the land falls within the limit of a protected monument and was duly notified under the Act. Moreover, in the last column of the aforesaid document, there is a remark that the land in question is vacant. Pertinently, the petitioners have not rebutted any of the aforesaid averments made by respondent No. 2/ASI, by filing a rejoinder thereto. This only fortifies the submission made by learned counsel for respondent No. 2/ASI that the present petition is a counterblast to the FIR lodged by the police against petitioner No. 1 and some other accused, at the instance of the officers of the ASI who had complained that they were attempting to garb the land abutting the protected monuments.

11. This Court is therefore inclined to accept the submission made by the counsel for respondent No. 2/ASI that the petitioners, having illegally occupied the open land, which is a part of the protected monument, had encroached thereon and tried to demolish the ancient wall surrounding the centrally protected monument. The aforesaid submission made by learned counsel for respondent No. 2/ASI stands ratified by the police complaint dated 10.09.1992 lodged by respondent No. 2/ASI against petitioner No. 1 and some others for trying to demolish a

portion of the ancient monument. The report dated 15.10.1992 submitted by the DCP to the Superintending Archaeologist also gains significance in the above circumstances. In the said report it was stated that the matter had been looked into and the encroachers, who had demolished the ancient wall were arrested in FIR No. 470/1992. It is relevant to note that the names of the said encroachers include that of petitioner No. 1, i.e., Shri Rati Ram.

12. In view of the aforesaid facts and circumstances, it is quite apparent that the petitioners have miserably failed to establish their lawful title and ownership in the land in question. Even the cultivatory possession/occupation of the land in question has not been demonstrated by the petitioners by placing on record the extracts of the relevant records maintained by the revenue authorities in respect of the subject land. In these circumstances, the present writ petition is dismissed as being grossly misconceived with costs quantified at Rs. 20,000/- payable to respondent No. 2/ASI within four weeks. The costs are limited to Rs. 20,000/- in view of the fact that when the writ petition was dismissed in default vide order dated 15.09.2008, the same had been restored on 09.03.2010, upon the petitioners paying costs of Rs. 20,000/- to respondent No. 2/ASI.