

(2011) 01 DEL CK 0472

In the Delhi High Court

Case No : Writ Petition (C) No. 6199 of 2007

Sh. Arun Kumar Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0472

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : N.S. Dalal, B.S. Shukla, D.P. Singh and Mahipal Singh, for the Appellant; Neeraj Yadav, for Ruchi Sindhwani, for R-2 to R-5, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner claiming to be the bhumidhar of 46 Bigha 19 Biswas of land spread out over Khasra Nos. 716(12-8), 717(2-7), 718(5-17), 719(2-0), 720(4-8), 721(8-1), 722(2-0), 723(1-5), 724(1-3), 727(3-5), 728(3-5), 1149(0-13) & 1197(0-7) in the revenue estate of village Bhatti, New Delhi and further claiming to have bound the said land with a wall, gates and have provided electricity connection, tube well and rooms therein and further claiming that the Respondents i.e. the Revenue Officials, Officials of the Govt. of NCT of Delhi and of the Forest Department have on 12th September, 2006 illegally demolished the said wall, construction etc. without any notice, has filed the present writ petition claiming restoration of possession, wall, construction, tube well, electricity connection etc. as existing earlier. Though the writ petition was accompanied with an application for interim relief also seeking to be put back into possession of the land, but notice only of the petition and the application was issued and no interim relief granted.

2. The Respondent No. 5 Block Development Officer (South) of the Govt. of NCT of Delhi has in response to the petition filed affidavits dated 2nd December, 2008, 5th October, 2009 and 28th April, 2010. In the said affidavits, it is not controverted that the Petitioner is the bhumidhar of the land aforesaid. It is

however contended that the Petitioner had encroached upon Khasra No. 715 also which admittedly did not belong to him and which belonged to the Gaon Sabha and which the Supreme Court had directed to be handed over to the Forest Department. It is further pleaded that no demolition action was taken with respect to the land of the Petitioner and the Petitioner continues to be in possession of the land of which he is the bhumidhar. It is further pleaded that prior to the said demolition action demarcation was carried out on 7th September, 2006 as well as on 12th September, 2006 and in which demarcation the Petitioner was found to have erected the boundary wall and rooms etc. on Khasra No. 715. It is further pleaded that the demarcation was done in the presence of the Petitioner but the Petitioner refused to sign the same and left the site and whereafter demolition was carried out. It is thus contended that the Petitioner was fully aware of the demarcation and the demolition and was not caught off guard. It is also stated that yet another demarcation through Total Station Method was also carried out during the pendency of the present petition and as per which demarcation report also the land on which demolition action was taken out was encroached upon by the Petitioner.

3. Needless to state that the Petitioner in rejoinder controverts all the aforesaid facts and relies upon his own demarcation.

4. The counsel for the Petitioner has rightly contended that the question is, as to which is the land of the Petitioner. The said question is essentially a question of fact and which cannot be adjudicated in writ jurisdiction. The reliance by the counsel for the Petitioner on his demarcation report dated 2nd May, 1989 to which he states that no objection has been filed is of no help inasmuch as the Respondents are also relying upon their demarcation reports. The question as to which of the demarcation reports is accurate is also to be determined in the proceedings before the revenue authorities as provided for under the land laws and not in this writ jurisdiction.

5. The counsel for the Petitioner then contends that even if the Petitioner was in illegal possession of the land, he could not have been dispossessed there from in the manner done and the Respondents ought to have instituted suits / proceedings for his ejectment from the said land.

6. However, the Petitioner forgets that this is not the case with which he has approached this Court. The categorical case of the Petitioner is that he was in possession of his own land only and from which he has been wrongfully dispossessed. It is not his case that he was in possession of land of Gaon Sabha or had acquired any rights therein. The Petitioner cannot argue what he has not pleaded.

7. The matter entails a factual controversy beyond the comprehension of the writ jurisdiction, particularly when alternative efficacious remedies are available. The writ petition is therefore dismissed as not maintainable leaving the Petitioner to avail alternative remedies for the reliefs claimed.

No order as to costs.