Mam Chand and Others Vs Govt. of N.C.T. of Delhi and Others

Writ Petition (C) 14909-14911 of 2004

Court: Delhi High Court

Date of Decision: May 14, 2012

Acts Referred:

Delhi Land Reforms Act, 1954 â€" Section 85

Hon'ble Judges: Sunil Gaur, J

Bench: Single Bench

Advocate: Ashish Mohan, for the Appellant; Chetali, Advocate for Mr. V.K. Tandon, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sunil Gaur

1. In this petition, suspecting encroachment upon petitioner''s land comprising of six bighas in khasra No. 389 situated in the revenue estate of

Village Bhalswa Jahangirpuri, Delhi (hereinafter referred to as subject land), petitioners seek demarcation of the subject land. The consequential

relief claimed is of restoration of the encroached land of the petitioner or direction to the respondents to acquire it, as per provisions of the Land

Acquisition Act and to accordingly compensate the petitioner. Petitioners rely upon revenue record khasra Girdawari of the year 2001-02

(Annexure P-2 colly.) to assert that they are in the cultivatory possession of the subject land and when their possession was threatened to be

disturbed, they had filed a civil suit seeking permanent injunction against respondent No. 3-Delhi Tourism & Transportation Development

Corporation Ltd., which was dismissed vide order of 29th January, 2004 (Annexure P-5).

2. In April, 2004 upon noticing of activity of fencing/carving out a canal, which was passing through a portion of the land of the petitioner, the

protest made by the petitioner was responded to, by stating that the said activity was being carried out on the land belonging to respondent No. 3.

Thereupon, petitioner had submitted an application on 21st April, 2004 (Annexure P-6) to respondent No. 2 seeking demarcation of the subject

land but to no avail.

3. While entertaining this writ, the second respondent was directed to carry out the demarcation of khasra No. 389 in question. Along with the

reply affidavit, the first two respondents have placed on record the Demarcation Report of 14th October, 2004 (Annexure R-1) with a site plan of

the spot, which had indicated that entire khasra No. 389 was in the jheel area but somehow subject land was shown to be a private land.

4. Aforesaid Demarcation Report (Annexure R-1) was found to be not acceptable vide detailed interim order of 20th December, 2005 and vide

aforesaid order, the concerned Dy. Commissioner was directed to conduct an enquiry in this matter. Accordingly, Enquiry Report of 13th April,

2006 along with copies of field book, Award No. 816, Revenue Record and the statement of the concerned Patwari was submitted by the Dy.

Commissioner concerned. The findings of the aforesaid Enquiry Report are as under:-

i) That the land in question (khasra No. 389) was acquired vide Award No.816 dated 23.11.1956;

ii) That the possession of the land had been handed over to the Municipal Corporation of Delhi in 1957-58;

iii) That the revenue authorities had in order to please Shri Bhoop Singh had shown the said land to be in his cultivatory possession and the order

dated 30.07.1996 declaring Shri Bhoop Singh as a Bhumidar u/s 85 of the Delhi Land Reforms Act is illegal;

iv) that the said subject land is a part of Gair Mumkin Jheel and no cultivation is possible on it.

5. By way of Additional Affidavit of 11th December, 2006, petitioners had responded to the Enquiry Report of 13th April, 2006 by asserting that

in the Acquisition Award No. 816 of 23rd November, 1956, new khasra numbers are not shown and so the said Award is rendered doubtful and

thus unreliable and that the handing over of the possession of the subject land to MCD is not factually true as petitioners are in cultivatory

possession of the subject land in respect of which, their predecessor were declared Bhumidar in the year 1996 and for non-recording in the

Revenue Record, of aforesaid Award being passed, petitioner cannot be blamed.

6. As regards the subject land being part of Gair Mumkin Jheel and of being incapable of cultivation, it is asserted by the petitioners that this is

again factually incorrect as the water in the subject land came from the adjoining jheel which was under respondent no. 3 who had starting digging

the subject land to carved out a canal through it. Again, it was asserted in the aforesaid Additional Affidavit by the petitioners that the reference in

the aforesaid Enquiry Report of floods in Delhi in the year 1978 rendering the khasra number in question including the subject land incapable of

cultivation is belied by the revenue record of the years 1978-79 and 1979-80. Thus, learned counsel for the petitioners seeks rejection of the aforesaid Enquiry Report being untenable.

7. After hearing learned counsel for the parties in this matter and upon perusal of the material on record, this Court finds that the Enquiry Report of

13th April, 2006 is preceded by a full-fledged enquiry in which the petitioner had participated and the finding returned in the aforesaid Enquiry

Report of the entire khasra No. 389 being acquired by the Government way back in the year 1956 is well founded and the same cannot be set at

naught merely because the new khasra number do not find mentioned therein. In fact, in the year 1956, new khasra number was not assigned to

the subject land and for this reason, there is no mention of the new khasra number in the Acquisition Award No. 816 of 23rd November, 1956.

8. Regarding subject land being shown in the revenue record as under cultivatory possession of the petitioners and of petitioners being declared as

a Bhumidar of the subject land, the factual finding returned in the aforesaid Enquiry Report being due to non mentioning in the Revenue Record of

Award being passed in respect of the subject land remains unassailable and so the contention of the petitioner''s counsel that the order of 30th July,

1996 declaring the predecessor of the petitioners to be the Bhumidar of the subject land would not operate as res judicata. Since there is no

worthwhile challenge to the aforesaid Enquiry Report of 13th April, 2006 which is quite comprehensive and sufficiently negates the stand taken by

the petitioners in this petition, therefore, finding no substance in this petition, I dismiss it while leaving the parties to bear their own costs.