* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 30 January 2025**
Judgment pronounced on: 03 February 2025

\+ W.P.(C) 2504/2023 & CM APPL. 9578/2023, CM APPL. 28476/2023

UDAIVEER & ORS. .....Petitioners

Through: Mr. Mohan Singh, Ms. Vishakha Deshwal, Mr. Robin Singh, Mr. Sachin Kumar and Mr. Deepak Garg, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Prabhsahay Kaur, SC for DDA.
Ms. Hetu Arora Sethi, ASC GNCTD and Mr. Arjun Basra, Adv. for GNCTD.
Mr. Sanjay Kumar Pathak, SC with Ms. K.K. Kiran Pathak, Mr. Sunil K. Jha, Mr. M.S. Akhtar, Mr. Mayank Madhu and Mr. Sami Sameer Siddique, Advs. for R-5 and 6.
Mr. Rajesh Katyal and Ms. Seema Katyal, Advs. for R-8.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The five petitioners invoke the extra-ordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, 1950, by seeking the following reliefs:

a) Issue a writ in the nature of mandamus or any other appropriate writ holding the act of Respondents in depriving the Petitioners

of their property and livelihood as violative of Article 14, Article 21 and Article 300 A of the Constitution of India.

b) Issue a writ in the nature of mandamus or any other appropriate writ or directions restraining the respondents from disturbing the peaceful, physical possession of the petitioners over their respective parcels of the subject land; and directing the said respondent not to encroach and demolish / remove crops and cattle from the subject land that belongs to the petitioner;

c) A writ of mandamus or any other appropriate writ, order or direction to not disturb the possession of the petitioners on their land till the final disposal of this petition or it is decided by demarcation.

d) Issue a writ in the nature of mandamus or any other appropriate writ or directions for calling the revenue record, acquisition record of Village Chak-Chila, District South East, Delhi, and also calling the record of demarcation if any, undertaken by the respondents;

e) Cost of the petition may also be awarded in favour of the petitioners and against the respondents.

BRIEF FACTS

2. Shorn of unnecessary details, it is claimed that the five petitioners herein and their predecessors-in-interest, who are farmers and cattlemen, have, since the period of British rule, enjoyed lawful and peaceful possession of the agricultural land situated in the revenue estate of Chak-Chilla, District South-East, Defence Colony, Delhi, which falls on the north-eastern bank of the Yamuna River (*hereinafter referred to as 'subject land'*), The petitioners have sought to rely upon the *jamabandi* records pertaining to the year 2012-2013 (Annexure P-7) issued by the *Halqa Patwari,* for the purpose of the determination of their ownership over the subject land.

3. It has been brought to the fore that over the last few decades, the territorial scope of the revenue estate of Chak-Chilla has been subjected to continuous alteration as a result of multiple acquisition

and re-acquisition proceedings initiated by the appropriate authorities under the Land Acquisition Act, 1894. The chronological record of the land acquisition proceedings pertaining to the area forming part of revenue estate of Chak-Chilla is tabularised hereinunder:

Area in question	Status	Date	Purpose
1779 bigha 01 biswa	**Acquired** *vide* Award passed under section 11 of the LA Act	19.06.1992	Planned Development of Delhi (Channelisation of Yamuna River)
506 bigha 18 biswa (out of the acquired land)	**De-notified** *vide* notification published under section 48 of the LA Act	25.01.1995	-
248 bigha 11 biswa (out of the acquired land)	**De-notified** *vide* notification published under section 48 of the LA Act	12.01.1998	-
105 bigha 01 biswa (out of the de-notified portion)	**Re-acquired** *vide* Award passed under section 11 of the LA Act	31.03.2000	Construction of the Delhi-Noida Direct (DND) Bridge and another bridge on Yamuna River connecting DND bridge

4. It is stated that the appropriate authority has constructed the Delhi Noida Direct (DND) bridge, spanning 1780 meters, and another connecting bridge on Yamuna River, spanning 710 meters, on the acquired land as per the Award dated 31.03.2000. However, much to the distress of the petitioners, the respondent No. 8 i.e., National Capital Region Transport Corporation ['**NCRTC**'], a joint venture company of the Government of India and States of Haryana, Rajasthan, and Uttar Pradesh, is developing a rail based suburban transport system i.e., Regional Rapid Transit System ['**RRTS**'] for the

National Capital Region, despite being in knowledge of the fact that the petitioners i.e., the alleged land owners of Chak-Chilla are being substantially adversely affected inasmuch as they are being physically displaced from their housing and losing their productive assets due to the construction of the RRTS Project (Delhi-Meerut Link).

5. It is further brought out that to safeguard their rights, the petitioners made a representation by way of a demarcation application before the the Tehsildar (Defence Colony) and the Land Acquisition Collector/ADM (South-East), for the purpose of demarcation of the acquired and un-acquired land in the revenue estate of village Chak-Chilla, Delhi, upon payment of the requisite fees. However, the concerned authorities did not respond to the said representation. Aggrieved thereof, the petitioners along with the other farmers/residents of Chak-Chilla approached this Court by filing a writ petitioner bearing WP(C) 4729 of 2021 titled as "Dhan Raj & Ors. vs. Union of India & Ors.", seeking demarcation of the acquired and un-acquired land of Village Chak-Chilla. It is pertinent to mention here that as a matter of record, the said writ petition stands withdrawn for having been satisfied *vide* order dated 10.11.2023.

6. However, during the pendency of the said writ petition, on 16.02.2023 and thereafter, on 22.02.2023, the officials of the respondent No. 3, i.e., the Delhi Development Authority ['**DDA**'] along with the respondent No.7 i.e., Delhi Police allegedly conducted a demolition drive in Chak-Chilla and destroyed/removed the crops and cattle of the farmers/land-owners without serving any prior notice or following the due process of law. Aggrieved thereof, the petitioners

claim to have made several representations to the respondents dated 21.02.2023 and 22.02.2023 restraining the respondents from carrying any further demolition, however to no avail.

7. It is the case set up by the petitioners herein that the land on which the RRTS project is proposed to be constructed is owned by the petitioners and other similarly placed persons as per the *jamabandi* records of the year 2012-2013. The petitioners herein are aggrieved insofar as the respondents have demolished their lands without even acquiring the same. It is claimed that the respondents have deprived the petitioners and similarly placed persons of their property and livelihood without being compensated for the same, which is in violation of their rights protected under Articles 14 and 21 besides 300A of the Constitution of India, 1950.

8. Reliance in this regard has also been placed on the decision of the Supreme Court in **Raju S. Jethmalani v. State of Maharashtra**[1], as well as **Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Limited**[2] besides **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai**[3] and **K.T. Plantation Private Limited v. State of Karnataka**[4]. Further reliance has been placed on the decision of this Court in the case titled **Baldev Singh Dhillon v. Union of India**[5], wherein this Court, in the year 1996, had directed the respondent authorities to demarcate the flood plains of the Yamuna River with the help of revenue records to

[1] (2005) 11 SCC 222
[2] (2007) 8 SCC 705
[3] (2005) 7 SCC 627
[4] (2011) 9 SCC 1
[5] 64 (1996) DLT 329

indicate such lands adjacent to the river Yamuna which are flood-prone and would be dangerous to construct bridges on. In the aforesaid backdrop, the present petition has come to be filed by the petitioners herein.

PROCEEDINGS BEFORE THIS COURT

9. Upon the institution of the present writ petition, this Court vide order dated 28.02.2023, recorded the submission of the learned counsel for the petitioners that almost 40% of the land of village Chak-Chilla was unacquired and the office of DDA and Land Collector besides Tehsildar were not able to identify the acquired as well as unacquired land despite their application to this effect dated 15.02.2021. However, learned standing counsel for the DDA apprised this Court that the demarcation of the land in question had already been carried out by the Revenue authorities and the contention of the petitioners that a demarcation is yet to be done, was entirely false. It was also brought to the attention of this Court that the petitioners herein had previously filed similar writ petitions bearing WP(C) Nos. 14841/2021 and 8695/2022 in which they failed to obtain favourable orders on account of their inability to establish any vestige of a right, title or interest over the subject land.

10. Anyhow, during the pendency of the writ, this Court *vide* order dated 15.03.2023 issued directions to the respondent no.4 i.e., Sub-Divisional Magistrate (South-East) [‘**SDM**’] and the respondent No.5 i.e., Land Acquisition Collector/ADM (South-East) besides the respondent No. 6 i.e., Government of NCT of Delhi, Land & Building Department, to conduct fresh demarcation proceedings in Village

Chak-Chilla, and file a map/plan of the area in question clearly indicating the acquired as well as un-acquired areas Village Chak-Chilla as well as the lands purportedly owned or occupied by the petitioners.

11. Pursuant to the aforesaid directions, the respondent No.4/SDM, Defence Colony, filed a demarcation report dated 24.03.2022 *vide* status report dated 11.07.2023.

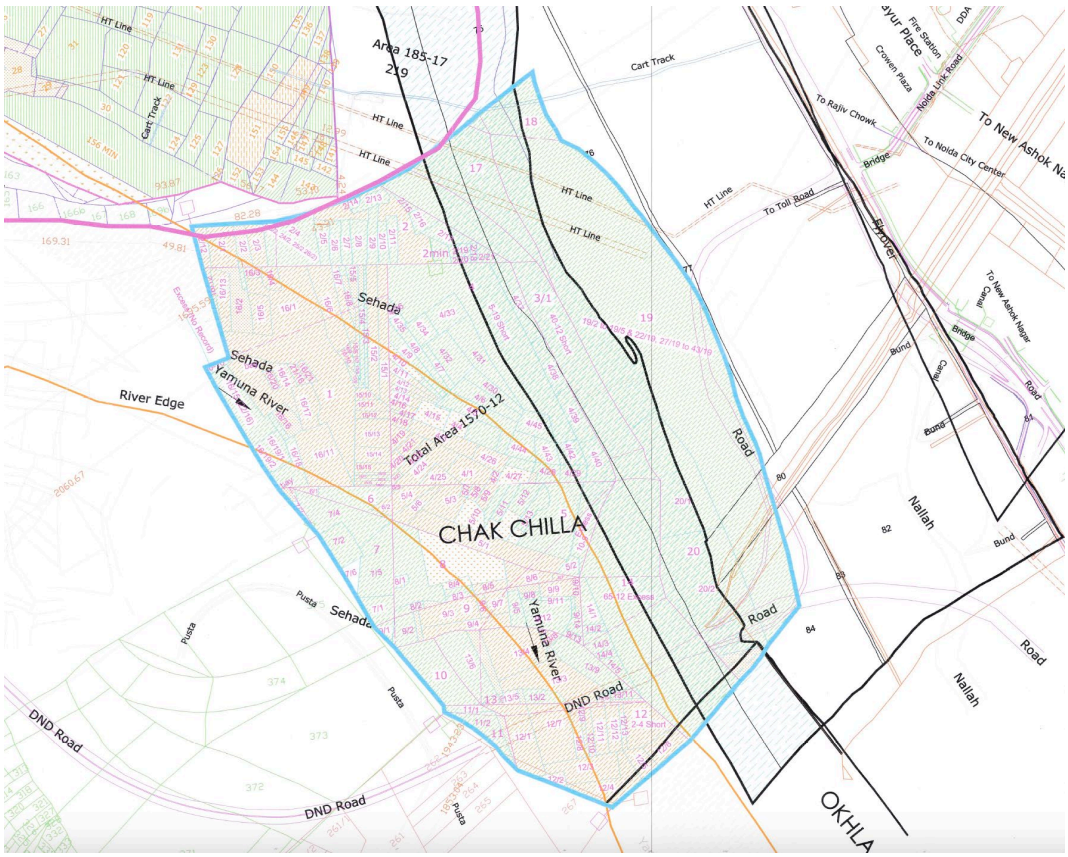
ANALYSIS AND DECISION

12. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties and on perusal of the record, I find that the petitioners are miserably failing to demonstrate any legal, right, title or interest in their favour so as to seek any protection from dispossession upon parcels of land claimed to be under their occupation since the time of their ancestors.

13. First things first, except for a bald reliance on the *jamabandi* record pertaining to the year 2012-13 (Annexure P-7) issued by *Halqa patwari,* there is no specific averment as to where the respective parcels of land are located. The petitioners even failed to mention the *khasra* number and the measurements of the subject property which are claimed to be in their occupation for the purpose of cultivation and growing vegetables. The petitioners not only fail to place on record any site plan but also any document to show the longitudinal and latitudinal positions of their respective parcels of land.

14. It is in the aforesaid backdrop that learned Standing Counsel for the respondent/ DDA referred to the demarcation report dated

24.03.2022 placed on record at the behest of the respondent No.4/SDM and the coloured version of the same is as under:



15. A larger version of the aforesaid site plan was also shown to this Court that goes on to show that a demarcation exercise was conducted by the concerned officials drawn from the office of SDM, South-East District, Delhi as well as DDA and it was pointed out that acquired portion measuring 1,272 bighas out of total 1779 bighas 1 biswa acquired *vide* Award No. 22/92-93 dated 19.06.1992 falls in the area shown in green colour and the de-notified portion measuring 506 bighas 18 biswa is shown in yellow/orange colour in the same. It was

pointed out that unacquired land measuring 506 bighas 18 biswas is mostly river bed area, and therefore, it stood de-notified.

16. The sketch record and the larger site plan have been shared with the learned counsel for the petitioners on 17.01.2025 as well as on 31.01.2025 and it must be stated that he is unable to pinpoint as to where exactly the petitioners claim their properties are located. The plea raised by the learned Standing Counsel for the DDA that the petitioners are purposely encroaching upon the green area, which stands acquired, has not been refuted. Evidently, the acquired land measuring 1,272 bigha in village Chak-Chilla has since been handed over to the DDA for construction of the Mayur Park Project, which admittedly falls in the Yamuna Flood Plains area where Eco-Restoration Plantation has to be undertaken by the DDA as part of a Public Project, namely 'Restoration and Rejuvenation of River Yamuna Project'.

17. In view of the aforesaid discussion, the plea raised by the learned counsel for the petitioners that their land falls in the de-notified area of village Chak-Chilla cannot be sustained. The mischief being orchestrated by the petitioners is apparent as it is evident that that after demolition action was taken for removal of unauthorized encroachment and construction, the petitioners have attempted to re-claim the property by not leaving the site and carrying on cultivation in the nature of growing of vegetables. Their reliance on the *jamabandi* records hardly cuts any ice. It is well settled that entries in the revenue record suggesting an inference of possession of any party/cultivator/asami to any land is no conclusive evidence of any

claim of ownership, bhumidar ship or otherwise permissive possession in ones own right.

18. Reliance in this regard can be place on the decision of this Court in the case of **Nathu Ram v. DDA**[6] wherein this Court observed as follows:

> **"23.** As for the other contentions made by the parties and evidence presented, this Court observes first, that the plaintiffs have heavily relied upon their and their family members' names reflecting in certain revenue records such as khasra girdawaris to establish that they have been in ownership and possession of the suit property. However, it is the settled position in law that reflection of a party's name in the revenue records cannot confer title. This was most recently upheld in *Prabhagiya Van Adhikari Awadh Van Prabhag* v. *Arun Kumar Bhardwaj (Dead) Thr. Lrs. [Civil Appeal No. 7017 of 2009, decided on 5th October, 2021]*, where the Supreme Court held:
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> "*26. This Court in a judgment reported as Prahlad Pradhan* v. *Sonu Kumhar*, *negated argument of ownership based upon entries in the revenue records. It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title*. The Court held *Prahlad Pradhan* v. *Sonu Kumhar* as under:
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> "*5*. The contention raised by the appellants is that since Mangal Kumar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. *The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property.*"
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> 27. The six yearly khatauni for the fasli years 1395 to 1400 is to the effect that the land stands transferred

[6] 2022 SCC OnLine Del 315

according to the Forest Act as the reserved forest. Such revenue record is in respect of Khasra No. 1576. It is only in the revenue record for the period 1394 fasli to 1395 fasli, name of the lessees find mention but without any basis. *The revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as a lessee of the Gaon Sabha*."

x x x

24. In the present case also, similar to the decision in Prabhagiya Van Adhikai (supra), the manner in which the possession of Plaintiff/his family members is shown in some khasra girdawaris, that too as agriculturists and cultivators, for some sporadic periods but not continuously, does raise doubts as to whether they were in continuous possession or not. Therefore, the mere mention in some years of khasra girdawari showing possession, cannot by itself confer ownership and title in respect of such precious land.

25. In so far as the Trial Court's finding stating that DDA cannot dispossess the Plaintiffs without due process of law, is concerned, this is clearly an erroneous approach inasmuch as even if the Plaintiffs are stated to be in settled possession, it is not necessary for the DDA to file a suit to take possession from them. The DDA can, as a Defendant, establish before the Court that the Plaintiffs are in possession of a government land and the same can result in dismissal of the suit. Due process of law, as is settled in several judgments of the Supreme Court and this Court, does not always require initiation of action by the owner/ Government. Dismissal of a suit by a competent Court of law after affording proper opportunity to the parties, is also a recognized mode of following the due process of law. On this issue, the observations of the Supreme Court in Maria Margarida Sequeira Fernandes & Ors. v. Erasmo Jack De Sequeira (Dead) through LRs, (2012) 5 SCC 370, are as under:

"81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the Defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

82. The High Court of Delhi in a case Thomas Cook (India) Limited v. Hotel Imperial, 2006 (88) DRJ 545 : (AIR 2007) (NOC) 169) held as under: "28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing - ejectment from settled possession can only be had by recourse to a court of law**. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.**

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence."

X X X

30. This brings the Court to the question of the onus of the Plaintiffs of proving their ownership of the suit property. **It is well-settled that in cases of government land, there is a greater responsibility of Courts in ascertaining title of third parties. In fact, the plaintiff in such cases must establish his clear right, title and nature of possession in the property, superior to that of the Government authority and there is a presumption in favour of the Government. In such cases, the Supreme Court has clearly observed that it is not sufficient to show possession or adverse possession merely by some stray revenue entries or records.** This position was elaborated upon by the Supreme Court in ***R. Hanumaiah and Ors. v. Secretary to Government of Karnataka, Revenue Department and Ors., (2010) SCC 203***:

"Nature of proof required in suits for declaration of title against the Government

15. Suits for declaration of title against the government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the government. All lands which are not the property of any person or which are not vested in a local authority, belong to the government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against government. This follows from Article 112 of Limitation Act, 1963 which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is obvious. **Government properties are spread over the entire state and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.**

16. Many civil courts deal with suits for declaration of title and injunction against government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the government contests the suit or not, before a suit for declaration of title against a government is decreed, the plaintiff should establish, either his title by

producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. **In such suits, courts cannot, ignoring the presumptions available in favour of the government, grant declaratory or injunctive decrees against the government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted.** A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the government : whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession - authorized or unauthorized; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

17. **Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government.** To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or

> sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government. Be that as it may."
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> **32.** The plaint in the present case is bereft of any pleadings as to how ownership/title was acquired by the Plaintiffs to the land in question. It is relevant to note that even paragraph 2 of the plaint shows the manner in which the Plaintiffs state that the suit property is not acquired by the Land Acquisition Collector and was not handed over to the DDA. This reflects the state of mind of the Plaintiffs who seem to have themselves had an apprehension that the suit property may be falling in the acquired portion of the land.
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> x x x
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> **36. In view of the above settled legal position, that mere sporadic or stray entries in the revenue records cannot confer title, and the facts mentioned above, this Court is of the opinion that the Plaintiff has failed to establish that there is any substantial question of law which deserves to be adjudicated upon in the present second appeal.** In fact, from the evidence which has emerged from the record, it is clear that apart from some mention in khasra girdawaris, there are no other concrete documents which have been filed by the Plaintiff to discharge the heavy onus that is placed on him."
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> **{Bold portions emphasized}**

19. In view of the aforesaid discussion, what is clearly decipherable in law is that mere sporadic and stray entries in the revenue records cannot be said to confer any title. It is clearly borne out from the material placed on record by the petitioners that except for a mere *jamabandi* record for the year 2012-13, there are no other tangible documents which could substantiate the claim of the petitioners of

them being in possession of the subject land in their own rights. Their plea that they should not be dispossessed except by due process of law on the face of it is fallacious. At this juncture, it would be expedient to refer to decision by the Supreme Court in the case of **Land and Building Department Through Secretary v. Attro Devi**[7]**,** which overturned the decision of this Court to the effect that the acquisition proceedings in respect of the land in question had lapsed in view of the applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for *the reason that the Government had not taken possession of the land*. It was in the aforesaid background that the Supreme Court held as under:

> **"12.** The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in *Indore Development Authority's case* (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:
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> > ***244.*** *Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section*

[7] 2023 SCC OnLine SC 396

17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

***245.** The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and drawns up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.*

xxxx

***256.** Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under*

> *Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner."* ***(emphasis supplied)***

20. As regards the plea of the petitioners that they have the right to cultivate vegetables in the area, it would be relevant to point out that the National Green Tribunal, Principal Bench, New Delhi in a case titled **Manoj Mishra v. Union of India**[8] *vide* Judgment dated 13.01.2015 had an occasion to make the following observations:

> "(e) It is an established fact that presently, vegetables, fodder grown and allied projects at the flood plain of River Yamuna are highly contaminated. Besides containing ingredients of high pollutants, such produce is even found to contain metallic pollutants. Thus, it is an indirect but a serious public health issue as the persons eating or using such agricultural produce can suffer from serious diseases including cancer. Therefore, we direct that no authority shall permit and no person shall carryout, any edible crops /fodder cultivation on the Flood Plain. This direction shall strictly be adhered to till Yamuna is made pollution free and is restored to its natural wholesomeness."

21. In summary, the petitioners not only woefully fail to identify the exact location, measurements, longitudinal & latitudinal position of their respective occupation over the subject properties, but they also appear to be encroaching upon the acquired land of village Chak-

[8] Original Application No. 6 of 2012 and M.A. Nos. 967/2013 & 275/2014

Chilla that evidently falls in Zone ‘O’ i.e., Yamuna Flood plain areas, thereby causing delay in the implementation of the Public Projects referred to hereinabove entailing huge national costs and loss to the revenues of the State and its instrumentalities. The petitioners have no right to continue to occupy and possess any part of the subject land in the larger public interest. Resultantly, the present writ petition is dismissed with token costs of Rs. 5,000/-upon each of the petitioner for indulging in gross abuse of the process of law.

22. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

FEBRUARY 03, 2025
Sadiq