



2025:DHC:1755



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

+ RSA 16/2013

ADITYA NARULA

.....Appellant

Through: Mr. Rajat Sharma and Mr. Anil  
Lohchub, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

Through: Mr. Sanjay Vashishtha, Advocate for  
DDA  
Mr. Sunil Goyal, ASC with Mr. Nitin  
Kala and Mr. Rachit Gupta,  
Advocates for R-2/SDMC

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*Date of Decision: 18.03.2025***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)****CM APPLs. 22282/2019 (modification of order dated 29.04.2014),  
29293/2019 (directions/stay), 35339/2019 (impleadment)& 35340/2019  
(recall/modification of order dated 03.07.2019)**

1. The application bearing CM APPL. 22282/2019 has been filed by the applicant/appellant seeking clarification/modification in Para 8 of the judgment dated 29.04.2014 in RSA No. 16/2013 to the extent that the respondent authority's right to take possession is limited to 5 Bigha 8 Biswa of Khasra No. 31/7, as per the Land Acquiring Authority's Notification dated 30.10.1986, and does not extend to the remaining



- 0-4 Biswa. The reliance has been placed upon demarcation report dated 06.03.2018 and compensation records to emphasize that the remaining 0-4 Biswa was never acquired, no compensation was deposited for it.
2. The respondent-DDA, has sought dismissal of the present application on the ground that the applicant/appellant has no right, title or interest in the disputed land and by way of the present application, the appellant is trying to withdraw a prior admission made before the Court after a delay of 6 years. It is submitted that the matter was conclusively settled by the Court vide detailed judgment dated 29.04.2014 which recorded the Applicant's own admission regarding possession.
  3. CM APPL. 29293/2019 has been moved seeking directions that the respondent-DDA be restrained from taking any precipitative action against the property at Palam Extension, Sector 7, Dwarka, New Delhi, situated on land measuring 0-4 Biswa of Khasra No. 31/7 of Village Palam, till further orders.
  4. Learned counsel for the appellant submits that despite the orders passed in RSA No. 16/2013 and W.P.(C) No. 6835/2015, the respondent-DDA issued a demolition order on 14.06.2019, and officials unlawfully demolished part of the appellant's wall on 26.06.2019, making the action illegal and in contempt of Court.
  5. In reply, learned counsel for the respondent submits that the possession of the land has already been taken by the DDA following a valid demolition and the appellant has no right, title, or interest in the



disputed land.

6. CM APPL. 35339/2019 has been moved by the applicant- Mr.Phool Kanwar, seeking impleadment as respondent No.2 on the ground that he is the co-owner and in possession of 4 Biswa of land in Khasra No. 31/7, Village Palam, New Delhi, and his rights may be affected by the decision of this Court.
7. In reply, the respondent-DDA has sought dismissal of the application on the ground that the applicant is neither a necessary nor a proper party in the proceedings and the present application has been filed in collusion with the appellant to encroach upon the government land.
8. CM APPL. 35340 /2019 has been moved on behalf of the applicant/proposed respondent- Mr.Phool Kanwar, for recalling/clarification/modification of order dated 03.07.2019 seeking vacation of status *quo* order.
9. In response to the same, the respondent-DDA has sought dismissal of the application as having been baseless and further, that the applicant has no right, title, or interest in the disputed land.
10. Learned counsel for the applicant/appellant submits that in pursuance of the directions of this Court to identify/location of the land underneath the appellant's property, the Revenue Authority/DDA published a report on 06.03.2018, thereby showing that not 200 sq. yds. but only part thereof measuring 185 sq. yds. of the appellant's property situate on land measuring 332 sq. yds. falls in khasra no. 31/7 and as to the status of compensation deposited by no . 1 & 2, on 04.03. 1987 a sum of Rs. 76,444/- was deposited in RD, but the same



does not include compensation for 4 Biswa of land in khasra no. 31/7 Palam Extension, Sector-7, Dwarka, New Delhi. It is submitted that in the report, it was also stated that the possession, thereof, has also not been taken by the appellant. It is further submitted that thereafter, the appellant had filed W.P. (C) 7196/2018, invoking provision Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. In the said writ petition, vide order dated 13.07.2018, the appellant's title possession and construction of subject land was protected. However, subsequently, the said writ petition was withdrawn by the appellant with liberty to file afresh. Thereto, the appellant filed a fresh writ petition W.P. (C) 4667/2019, whereby, an order dated 01.05.2019 was passed by the Coordinate Bench of this Court, wherein, the Court opined that the appellant herein to move for clarification/modification of para 8 of judgement dated 29.04.2014. Thereupon, the appellant has filed the application bearing C.M.APPL. No. 22282/2019, in which, vide order dated 03.07.2019, status *quo* order was passed. Subsequently, an additional application C.M. APPL. No. 29293/2019 was filed by the appellant for stay against the respondent with regard to appellant's property.

11. Learned counsel for the applicant/appellant submits that modification has been sought in terms of the order passed by the Coordinate Bench of this Court in W.P. (C) 4667/2019 dated 01.05.2019.
12. *Per contra*, learned counsel for the respondent-DDA submits that CM APPLs. 22282/2019 and 29293/2019 are gross abuse and misuse of



process of the Court. To re-establish its right over the subject property measuring 4 Biswa falling under Khasra no. 31/7, which has already been adjudicated by this Court vide order dated 29.04.2014. It is submitted that the appellant has no right, title, or interest to claim in the disputed land. It is further submitted that in the order dated 29.04.2014, it was specifically clarified that even if the possession of an acquired land was not taken by the concerned authority, it would be open for such authority to take the possession at a later stage. It is submitted that as per the Demarcation Report dated 16.03.2018, part of the school of the Appellant which falls under Khasra No. 31/7, is an encroachment. It is further submitted that demolition drive was conducted on 26.06.2019 and the structure at the remaining 04 Biswas was demolished and the land is now in possession of the respondent. It is also submitted that the compensation for the disputed land is already been deposited with the LAC.

13. Regarding the application bearing CM. APPLs. 35339-40/2019 moved by Mr. Phool Kanwar, it is submitted that it is a collusive attempt by the applicant and the appellant to retain government land. It is submitted that the pleas taken by the applicant and the appellant are contradictory. It is further submitted that though, the possession of the subject land was not formally handed over, it is undisputed that the entire land bearing Khasra No. 31/7 was acquired, and therefore, the compromise deed of the year 2004 has no relevance.

14. In rebuttal, learned counsel for the appellant, in support of his arguments, has placed reliance upon the judgment of the Supreme



Court in *Lehna Singh (D) by LRs vs. Gurnam Singh (D) by LRs & Ors.* in Review Petition (C) No. 1025/2019 in Civil Appeal No. 6567/2014. At the outset, the reliance placed by the learned counsel for the applicant/appellant in *Lehna Singh (D) (Supra)*, is totally misconceived as the judgment passed in the said case is on entirely different point. The Apex Court in this case, was dealing with a review petition seeking review of the order dated 13.03.2019, passed in Civil Appeal No. 6567/2014. In the order under review, the Civil Appeal was allowed and the judgment and decree passed by the High Court of Punjab and Haryana on 27.11.2007 in Civil Regular Second Appeal No. 2191/1985 was set aside. In the judgment under review, this Court held that the judgment and decree passed by the Punjab and Haryana High Court is beyond the scope and ambit of Section 100 of the CPC, 1908, on the ground that in exercise of such power, the High Court could not have re-appreciated the entire evidence on record to unsettle the finding of facts recorded by the First Appellate Court, by substituting its own opinion for that of the First Appellate Court.

15. However, the Apex Court, in *Pankajakshi (Dead) Through Legal Representatives & Ors. vs. Chandrika & Ors.*, (2016) 6 SCC 157, had upheld the validity of Section 41 of Punjab Courts Act, 1918 and overruled the earlier judgment in *Kulwant Kaur & Ors. vs. Gurdial Singh Maan (Dead) by Lrs. & Ors.*, (2001) 4 SCC 262. In *Pankajakshi (Supra)*, it was, *inter alia*, held that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Act, therefore, Section 41 of



the Punjab Act would necessarily continue as a law in force and the second appeal before the High Court has to be heard within the parameters of Section 41 of the Punjab Act, and not under Section 100 CPC.

16. The Apex Court, noting that since there was an error apparent on the face of the record, in view of the law laid down in *Pankajakshi (Supra)*, the judgment passed in Civil Appeal No. 6567/2014 was reviewed and the said review petition was allowed.
17. The Code of Civil Procedure, 1908, confers power upon the Court for review of its order under Order XLVII Rule 1 CPC, the present application has admittedly not been filed for review of the order. Another recourse available for the Court is to exercise its power under Section 152 CPC which permits the Court to correct the clerical or arithmetical mistake in judgment or error on account of any accidental slips or omissions, either on its own motion or on the application from any of the parties. Though, Section 153 CPC also confers general power to amend, but that also, only in regard to any defect or error in any proceeding in a suit. Admittedly, the present application has not been moved under Order XLVII Rule 1 CPC or Sections 152 and 153 CPC.
18. The order dated 29.04.2014 has been passed on the merits by this Court, the relevant part of which is reproduced hereinbelow:-

*“5. Counsel for the appellant, on instructions from the appellant, states that the appellant does not claim possession with respect to 4 biswas of land forming part of khasra No.31/7 and if any part of property of which the*



*appellant/plaintiff is in possession falls in any part of khasrano.31/7 of 5 Bighas and 12 biswas, respondent/defendant is free to take action with respect to possession of the balance 4 biswas which is about 200 sq yds. It is further clarified that since it is not disputed on behalf of the appellant/plaintiff that the entire khasrano.31/7 has been acquired, the appellant/plaintiff will not object to taking over possession of any part of khasrano.31/7 by the respondent/defendant.*

*6. So far as the second track of land which is comprised in khasra no.31/14-17 is concerned, it is admitted by both the parties that this land is Gaon Sabha land. Once the land comprised in khasra no.31/14-17 is Gaon Sabha land, onus of proof was upon the appellant/plaintiff to show that the land in this khasra number was legally allotted by the Gaon Sabha to the predecessors-in-interest of the appellant/plaintiff, and from whom the appellant/plaintiff purchased the land. In the record of trial court, no evidence has been led as to any legal allotment made by the Gaon Sabha of the land comprised in khasra no.31/14-17 of village Palam and therefore so far as this land is concerned, again the appellant/plaintiff would have no right whatsoever, and the counsel for the appellant states that the appellant/plaintiff does not claim any right in the land comprised in khasra no.31/14-17 which belongs to Gaon Sabha.*

*7. That takes us to the third part of the land which is comprised in khasra no.31/24-25. There is no case of the respondent/defendant in these proceedings that this area has been acquired under any Award under the Land Acquisition Act or that the respondent/defendant claims any right in this particular khasra number. Therefore, so far as land comprised in khasra no.31/24-25 is concerned, respondent/defendant will have no right to dispossess the appellant/plaintiff of course provided the land comprised in khasra no.31/24-25 is not the subject matter of any Award passed under the Land Acquisition Act, 1894.*



8. Accordingly, the sum and substance of the discussion with respect to the issues is that the appellant/plaintiff will have no rights whatsoever in the land comprised in khasra nos.31/7 and 31/14-17 and if the appellant/plaintiff is in actual possession of any part of these khasra numbers, respondent/defendant on demarcation so finds that the appellant/plaintiff is found on any part of khasra nos.31/7 or 31/14-17, the respondent can take possession of such land or that authority can which is entitled in law to take possession of the land in khasra nos.31/7 and 31/1417.

9. Accordingly, this appeal is disposed of by holding that if the property of the appellant/plaintiff is actually situated in khasra no.31/24-25 of village Palam, then the respondent/defendant will not be entitled to take possession of any part of the land comprised in khasra nos.31/24-25, since the respondent/defendant is not claiming any right to this particular khasra number. Both the judgments of the courts below are sustained subject to modification with respect to khasrano.31/24-25, village Palam, New Delhi by holding that so far as the land in this khasra number is concerned, respondent/defendant will not have a right to take land comprised in this khasra number from the appellant/plaintiff. Otherwise the impugned judgments of the courts below are sustained. It is clarified that before any steps are taken by the respondent/defendant pursuant to this order, the respondent/defendant will conduct demarcation as per the total station method to determine the area and khasra numbers where the appellant/plaintiff is actually in possession of, and only if the appellant/plaintiff is in possession of land other than the land comprised in khasrano.31/24-25 situated in village Palam, New Delhi, the respondent/defendant will be entitled to take possession of such land from the appellant/plaintiff. It is required to be noted that these observations in favour of the appellant/plaintiff are made only so far as khasra no.31/24-25 is concerned because there is no case of the respondent/defendant in these proceedings that there is any



*acquisition proceedings with respect to land comprised in khasrano.31/24-25.”*

19. Thus, the Court has taken into account the admissions being made by the appellant and specifically recorded that the appellant/plaintiff would not object to the respondent taking over possession of any part of Khasra No. 31/7. It was further recorded that in case any proceedings were initiated by the respondent, the appellant would not oppose the same.
20. Learned counsel for the applicant/appellant has heavily relied upon the observations made by the Coordinate Bench of this Court in W.P.(C) 4667/2019, wherein it was, *inter alia*, observed that the petitioner may move an application for clarification/modification of para 8 of the judgment dated 29.04.2014. However, respectfully, this Court considers that in the present proceedings, the observations made in para 8 of the judgment dated 29.04.2014 cannot be modified as the order dated 29.04.2014 has to be read in totality. Para 8 of the said order cannot be read in isolation. This Court has passed the order after taking into account the material on record and admissions made by the appellant. It is a settled proposition that what cannot be done directly also cannot be done indirectly. The Court, is therefore, not persuaded by the arguments advanced by the learned counsel for the applicant/appellant. The Court also considers that the applicant- Mr. Phool Kanwar, has no right, title, or interest to justify his impleadment.
21. In view of the foregoing discussions, all the applications stand



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dismissed and the interim order passed on 03.07.2019 stands vacated.

**MARCH 18, 2025**

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**DINESH KUMAR SHARMA, J**