



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

Reserved on: 15th September, 2023
Pronounced on: 08th November, 2023

+ **W.P.(C) 840/2023**

DARGHA NAJEEBUDDIN FIRDOUSI

..... Petitioner

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

With

W.P.(C) 17480/2022, W.P.(C) 378/2023, W.P.(C) 1770/2023,
 W.P.(C) 1779-1780/2023, W.P.(C) 1845/2023, W.P.(C) 1858/2023,
 W.P.(C) 1861-1862/2023, W.P.(C) 1869-1871/2023, W.P.(C)
 1880/2023, W.P.(C) 1882/2023, W.P.(C) 1894/2023, W.P.(C) 1947-
 1948/2023, W.P.(C) 1953/2023, W.P.(C) 2001/2023, W.P.(C)
 2017/2023, W.P.(C) 2536/2023 & W.P.(C) 5359/2023.

For Petitioners: Mr. Samrat Nigam and Mr. Amit Punj, Advocates
 in Item 43.
 Mr. Ankit Jain, Mr. Vidit Gupta, Mr. Aditya
 Chauhan and Mr. Chetan Singh, Advocates.
 Ms. Smita Maan and Mr. Vishal Maan, Advocate
 in Item 29, 39.
 Mr. M.S. Khan, Mr. Daniyal Ayyuri and Mr. M.
 Arshya, Advocates on Item 20.
 Mr. Kamlesh Kr. Mishra, Mr. Aditya, Ms. Anjani
 Kr. Mishra and Mr. Bibhuti Bhushan Mishra,
 Advocates in Item 23, 26, 35.
 Mr. Ashish Dholakia, Senior Advocate with
 Mr. Kotla Harshvardhan, Mr. Divyanshu Rai,
 Ms. Rishbita Arora, Mr. Arpit Kumar and
 Mr. Vishal, Advocates in Item 23.
 Mr. Amresh bind, Ms. Tusharita Sharma and
 Ms. Richa Kapoor, Advocates in Item 37.



Mr. Anshuman Upadhyay and Mr. Naseem, Advocates in Item 38.

Mr. Sidhant Kumar, Mr. Shivankar Rao, Ms. Manyaa Chandok, Ms. Muskaan Gopal and Ms. Vidhi Udayshankar, Advocates.

Ms. Garima Prashad, Senior Advocate with Ms. Roohe Hina Dua, Mr. Harshit Khanduja, Mr. Manish Gupta, Mr. Govil Upadhyaya and Mr. Kapil Dev Yadav, Advocates in Item 23.

Mr. Varun Singh, Mr. Himanshu Yadav, Ms. Kajal Gupta, Ms. Somesha Gupta, Mr. Ytharth Kumar, Ms. Alankriti Dwivedi, Ms. Smriti Wadhwa and Ms. Pankaj Kumar Modi, Advocates in Item 28.

For Respondents: Mr. Sanjay Kumar Pathak, SC with Mr. Sunil Kumar Jha, Mr. M.S. Akhtar, Ms. Rini V. Tigga and Ms. Nidhi Thakur, Advocates for L & B.
 Ms. Shobhana Takiar, Ms. Kritika Gupta and Mr. Kuljeet Singh, Advocates for R-DDA.
 Mr. Sanjay Katyal, SC with Mr. Chand Chopra, Ms. Devika Mohan and Mr. Nikhil Singh, Advocates for DDA.
 Mr. Divyam Nandrajog, Panel Counsel-GNCTD with Mr. Divyam Kamra, Advocate.
 Mr. Tushar Sannu, SC for MCD with Mr. Abhishek Singh, Advocate.
 Mr. Harshal Arora, Advocate for BSES.
 Mr. Ajay Diggpaul, SC for MCD with Ms. Swati Kwatra, Ms. Ishita Pathak and Mr. Kamal Rattan Diggpaul, Advocates.
 Mr. Tanmay Mehta, Mr. Hemant Shah, Mr. Akshay Rana and Mr. Himanshu Yadav, Advocates.
 Mr. Virender Pratap Singh Charak, Mr. Pushpender Singh Charak, Ms. Shubhra Parashar and Ms. Pinki Yadav, Advocates for UOI.
 Ms. Mehak Nakra, ASC (Civil) with Mr. Abhishek Khari and Ms. Disha Choudhary, Advocate for



GNCTD.

Mr. Sandeep Tyagi, Advocate for R-3 in Item 21.

Mr. Rishikesh Kumar, ASC GNCTD with Ms. Sheenu Priya, Mr. Sudhir Kumar Shukla, Mr. Muhammad Zaid, Mr. Sudhir and Mr. Sumit Choudhary, Advocates for GNCTD.

Mr. Abhinav Singh, Ms. Swega Agarwal, Mr. Rajat M. Dwivedi and Ms. Bhavi Garg, Advocates for GNCTD in Item 21.

Ms. Rachita Garg, Advocate for GNCTD.

Mr. Vineet Dhanda, Advocate for R-3 in Item 28.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGEMENT

SANJEEV NARULA, J:

1. Asserting their claim of ownership over properties purportedly falling in khasra No. 1151/3 of Village Mehrauli, New Delhi, the Petitioners have raised a challenge to the demolition process of removing encroachments upon the Mehrauli Archaeological Park, New Delhi [*“Park”*], being undertaken by Delhi Development Authority [*“DDA”*] to protect and preserve the Park’s heritage. The Petitioners’ primary grievance is that DDA’s demolition order targets unauthorized occupations specifically in the vicinity of Village Ladha Sarai, rather than Village Mehrauli. Consequently, they argue that such orders should not extend to, nor affect, their properties.
2. During the course of proceedings, it came to the Court’s attention that there are several petitions pending on the subject matter at hand before the



Bench of Single Judge of this Court. Additionally, this Bench is concurrently considering a Public Interest Litigation [“PIL”],¹ that has significant relevance to the ongoing demolition operations conducted by the DDA. Thus, in order to avoid any conflicting directions and also given the commonality and overlap in the issues and contentions urged in all these petitions, we considered it apposite to tag all the matters and render a consolidated judgement. To ensure clarity and with consensus of all parties, this judgment will predominantly address the facts and arguments presented in W.P.(C) 1845/2023.

FACTUAL BACKGROUND

3. The facts and proceedings germane for contextual understanding of the present *lis*, are as follows:

3.1. Driven by their commitment towards conservation of cultural legacy of the Park, in 2015, the Indian National Trust for Art and Cultural Heritage, Delhi instituted the afore-noted PIL for restoration of the defaced and encroached monuments situated within the Park, and for formulation of a Comprehensive Conservation Management Plan. In the said proceedings, this Court ordered the DDA to secure the entire area and remove encroachments therefrom.² To this effect, the Government of National Capital Territory of Delhi [“GNCTD”], through the Sub-Divisional Magistrate, was directed to initiate demarcation process of the Park.³ Consequently, demarcation report(s) and site map(s) were prepared, basis

¹ W.P.(C) 4302/2015.

² *Vide* order dated 29th April, 2015.

³ On 27th May, 2015.



whereof unauthorized constructions were identified and DDA proceeded with the demolition process.

3.2. On 12th December, 2022, the DDA notified the impugned demolition order, calling upon the persons occupying the land illegally, to vacate the premises within ten days from the date of said order. In the event of non-compliance, the DDA would then initiate removal/ demolition of the encroached structures. This notice was appended to the walls of *inter alia* Petitioners' properties, thus requiring them to evacuate the premises or experience the consequences.

3.3. Contending that their properties are situated in Village Mehrauli, and not Village Laddha Sarai, Petitioners submitted several representations to the Deputy Director, DDA. However, the same did not yield a positive response. DDA maintained that the Petitioners' properties lie within the bounds of Government land, and therefore, must be demolished.

3.4. The above-noted stand of the DDA prompted the filing of W.P. (C) 17480/2022 against the demolition order dated 12th December, 2022. In the said petition, on 23rd December, 2022, learned Single Judge of this Court restrained DDA from taking any coercive steps pursuant to the demolition order, in respect of the concerned Petitioners. The remaining Petitioners also resorted to filing of their respective writ petitions, wherein similar orders instructing DDA to maintain *status quo* were issued by learned Single Judge.

3.5. Later, in view of the fact that the impugned demolition order was premised on the demarcation report dated 21st December, 2021 prepared consequent to the PIL, the DDA preferred an application [C.M. APPL. 24888/2023] in W.P. (C) 4302/2015 (the PIL), requesting for transfer of the



matters from the Single Bench to this Court, for a consolidated hearing. The request was allowed on 18th August, 2023, and the present batch of petitions was relegated to us for consideration.

CONTENTIONS

On behalf of Petitioners

4. Counsel for Petitioners mentioned in appearance above, collectively urged the following:

4.1. Petitioners are the rightful owners and occupants of their respective properties. The documents in their possession conclusively establish their rights over the properties.

4.2. Imposition of a demolition order, without giving a show-cause notice and affording a hearing, is perverse to the principles of natural justice as also to the procedure established under Section 30 of the Delhi Development Authority Act, 1957 [*“DDA Act”*], which elucidates the process for demolition of a building and the Delhi Land Revenue Act, 1954 and rules framed thereunder.⁴ On the contrary, the demolition notice does not disclose the relevant provision of law invoked by DDA to support the impugned action.

4.3. The Petitioners’ properties fall entirely within the bounds of khasra No. 1151/3, which is not the subject matter of the demolition notice. Their sale certificates/ other documents exhibiting Petitioners’ rights record “Village Mehrauli” to identify the properties in dispute.

4.4. DDA’s demarcation of the seam line between Villages Mehrauli and

⁴ In this regard, reliance was placed on the judgement in W.P.(C) 1710/2005 titled *Harbans Lal Gambhir*



Ladha Sarai is erroneous. Residents of the area were neither informed of the demarcation process, nor were they allowed to present their objections to the DDA's conclusions.

4.5. Previously, land acquisition proceedings were initiated in respect of some of the properties forming the subject matter of these petitions. In these proceedings, which eventually travelled to the Supreme Court, it was held that these properties, constituted in khasra No. 1151/3, had been wrongly marked for acquisition and accordingly, the lands were de-notified. Despite this judicial imprimatur, of which the DDA is aware, demolition action has been initiated against private properties of these Petitioners on the basis of a faulty demarcation.

4.6. In July, 2021, a survey was conducted by a private agency [M/s Integrated Techno Systems Pvt. Ltd.] at DDA's behest, which determined that the Petitioners' lands belong to Village Mehrauli. This report was however, surreptitiously superseded by the demarcation report dated 21st December, 2021 prepared by M/s Dhyani Consultants Inc., without any reason. Further, the maps drawn for the concerned areas by the two agencies vary significantly. The two maps are also incongruent to the map/ Masavi prepared by the Revenue Department (as available on their website), which buttresses some of the Petitioners' stand that their properties are situated in Village Mehrauli. Reference points used in the demarcation report dated 21st December, 2021 are also inconsistent with the revenue documents.

4.7. As per the demarcation report, the revenue officials of Village Ladha Sarai were not in possession of any authenticated revenue records of the

and Ors. v. Delhi Development Authority, dated 03rd September, 2005.



village, except photocopy of shizra plan, which could not be digitized. The entire demarcation exercise has been conducted on the basis of a photocopy of survey drawing of Village Ladha Sarai, prepared in 1872. This drawing formed the basis for matching of old and new khasra numbers. However, the same could only be relied upon for comparing the ground features, and not for ascertaining khasra numbers.

4.8. The zones in question form a part of Lal Dora Abadi Land of Village Mehrauli. In the event of a re-survey caused by uncertainty as to the positioning of the properties, first, the overall boundaries of the khasra of Lal Dora Abadi Land should be determined on the basis of already formulated markings, maps, and other relevant records. The demarcation of December 2021 does not take into account actual physical boundaries of roads, passages, existing residential houses etc.

4.9. The DDA has not annexed the settlement field map along with a detailed report satisfying the correctness of the report, in terms of Punjab Land Revenue Act, 1887 and Delhi High Court Rules, 1966. This raises additional concerns over the legitimacy of the demarcation report.

4.10. Pursuing a civil suit for determination of Petitioners' rights as well as the precise location of their properties is not an efficacious remedy. As the demarcation report dated 21st December, 2021 is liable to be set aside for contravening the established procedure, the foundation of the impugned action does not hold good. Relegating parties to civil courts for redressal would unnecessarily evoke multifarious litigation and divergent opinions.

On behalf of the DDA

5. Mr. Sanjay Katyal, counsel representing the DDA, brought forth the



following contentions:

5.1. Lands in question comprise within the Southern Central Ridge, particularly the Park, which bears immense historical and cultural appeal. As such, every citizen and governmental authority is endowed with the responsibility to protect and maintain the Park.

5.2. As per the available records, lands specified in the demolition notice were acquired by the Government in 1975, and thereafter placed at DDA's disposal in terms of Section 22 of the DDA Act. These lands have been earmarked as 'green' in the Master Plan of Delhi and are being maintained to conserve the Mehrauli Heritage Zone.

5.3. Pursuant to directions issued in the PIL, the GNCTD executed a demarcation of the seam line of Villages Mehrauli and Ladha Sarai through M/s Dhyani Consultants Inc., and submitted the demarcation report dated 21st December, 2021. Total Station Machine was utilized in the presence of Revenue Officials and DDA personnel for compiling information regarding topographical features such as boundary walls, landscape elements, building corners etc. The Revenue Officials provided the reference points, and the markings were drawn at site using DGPS (RTK) machine through yellow paint and pegs. The geo-coordinates of the subject properties were also superimposed on the demarcation map and marking points were accordingly formulated. The entire process was overseen by the officials of Revenue Department, GNCTD, LM Department, DDA's Horticulture Department, and the Delhi Police.

5.4. During the proceedings in the PIL, this Court instructed the DDA to construct a boundary wall to the Park and remove all encroachments to the Government/ forest land. Based on the findings of the demarcation report



and court directions, the DDA issued the impugned demolition notice.

5.5. Despite opportunity, several of the Petitioners have failed to establish their rights, title, or interest in the subject properties.

ANALYSIS AND FINDINGS

6. The Petitioners contend that the crux of the dispute rests on the legality of the demolition notice issued on 12th December, 2022. They hypothesize that their case warrants favourable consideration on the grounds of non-compliance by the DDA with the legal requisites, while issuing the said notice. While the challenge is focused on the notice itself, they also challenge the demarcation report dated 21st December, 2021.

7. In view of the above, the Court is compelled to first consider a foundational issue relating to jurisdiction under Article 226 of the Constitution of India, 1950 in relation to concerns over the legality of a demarcation report. The resolution of this preliminary issue is pivotal, for it is upon this determination that the Court's jurisdiction to scrutinize the demarcation report hinges. Article 226 of the Indian Constitution confers upon the High Court the authority to issue directions, orders, or writs, which includes but is not limited to writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This grant of power is not confined solely to the protection of fundamental rights, but extends to any other purpose deemed necessary for the cause of justice. The expansive phrase "for any other purpose" has been interpreted liberally, allowing the court to intervene in situations where it is imperative to ensure administration of justice, and to preserve the rule of law.

8. However, in the context of the current cases, wherein a challenge has



been raised in writ jurisdiction against a factual demarcation report pertaining to a land dispute involving encroachments, it is essential to recognize that while Article 226 endows the High Court with broad authority, its scope is not without limits. The Court's intervention should be guided by the principles of legality, necessity, and avoidance of undue interference in matters of fact and discretion. If the Court discerns that such jurisdiction is within its constitutional ambit, it will then be incumbent upon it to examine the veracity and lawfulness of the demarcation report in question.

Brief overview of the Demarcation Report

9. Nonetheless, we must briefly take note of the demarcation report in order to trace the controversy and contextualize our findings. The demarcation for the seam line between Village Mehrauli and Village Ladha Sarai was executed under the aegis of the Tehsildar (Executive Magistrate), Saket, using the tools explained in the report. As stated in the report, reference points were identified by the field Kanungo and Patwari from the office of SDM (Saket), New Delhi, and Masavis/ maps prepared after the process were also verified by the Revenue and DDA officials. The crux of the findings of the team inspecting the areas in question, that are relevant to the present controversy, is encapsulated in following demarcation drawing contained in the demarcation report:



The essence of the contention, therefore, lies in the delineation of boundaries as recorded in the demarcation report dated 21st December 2021. On one side, the Petitioners assert that their properties lie within the confines of Village Mehrauli, while on the other, the DDA asserts that these properties infringe upon Government or forest land which, by the directives of this Court, are under the protection and conservation mandate of the DDA.

12. The core of Petitioners' grievances is the actual location of their properties, as depicted on the maps utilized by the authorities to carry out the demarcation. They challenge the accuracy of these cartographic representations and, consequently, the validity of the demarcation report that followed. The import of this discourse is that the adjudication of the veracity of such documents and reports would necessitate the Court to engage in a detailed scrutiny and juxtaposition of various demarcation reports. This task would require an in-depth evaluation of technical details that are typically outside the purview of judicial examination by a writ court. The determination of such technical and specialized matters, involving interpretation of maps and analysis of geographical data, is a function that goes beyond the traditional role and expertise of this Court, while exercising writ jurisdiction. It calls for the application of specialized knowledge that is usually the domain of expert bodies designated for land survey and demarcation.

13. In our view, the ambit of a writ court does not extend to resolving such intricate disputes over boundary delineations, which necessitate a thorough examination of a plethora of documents, surveys, maps, an assessment of their validity and accuracy, resolution of disputed facts, and an on-the-ground study of the areas implicated. These tasks squarely fall



within the expertise and jurisdiction of the statutory authorities, as constituted under the relevant land statutes enacted by the State legislature. These specialized bodies are better equipped with the necessary technical expertise to navigate the complexities of land demarcation and are statutorily authorized to resolve such disputes, including considering the objections submitted by any aggrieved parties. Therefore, this Court finds itself constrained by its constitutional limits and the nature of jurisdiction invoked from delving into such technical assessments.

DDA's objections to Petitioners' entitlement over subject properties

14. In respect of several of the Petitioners, the DDA has controverted their assertions of ownership over the concerned lands.⁵ Although voluminous documents have been produced on record by the Petitioners to justify their rights over the subject properties, we do not, in these writ proceedings, find it apposite to adjudicate over this factual issue. It is trite law that contested factual issues cannot be settled by the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. Additionally, it is important to highlight that on 14th February, 2023, the learned Single Judge, acknowledging the complexity of the dispute, granted the Petitioners the opportunity to prove their claims using possessory documents and demarcation reports, if any were available. This was done without prejudice to the rights and contentions of all parties involved. Subsequently, on 15th February, 2023, DDA's authorized

⁵ As per affidavits filed in W.P.(C) 378/2023, W.P.(C) 1780/2023, W.P.(C) 1779/2023, W.P.(C) 1858/2023, W.P.(C) 1861/2023, W.P.(C) 1862/2023, W.P.(C) 1869/2023, W.P.(C) 1870/2023, W.P.(C) 1871/2023, W.P.(C) 1880/2023, W.P.(C) 1882/2023, W.P.(C) 1894/2023, W.P.(C) 1947/2023, W.P.(C) 1948/2023, W.P.(C) 1953/2023, W.P.(C) 2001/2023, and W.P.(C) 2017/2023.



personnel conducted hearings for each Petitioner. Upon consideration of the evidence presented, the DDA responded with individual affidavits for each petition, articulating their position regarding the Petitioners' claimed title or possessory rights. Despite being afforded this opportunity to substantiate their claims, certain Petitioners failed to conclusively establish their purported rights and entitlements over the properties in question.

15. Given these circumstances, this Court is not in a position to act as a civil court to affirm the Petitioners' status as owners or lawful occupants of the properties in dispute, especially in light of the DDA's strong opposition, based on their evaluation of the evidence provided. Such declarations are rightly within the jurisdiction of civil courts, where, through an appropriate trial, all evidence can be considered in its entirety.

Re: violation of Section 30 of the Delhi Development Act, 1957

16. The Petitioners arduously asserted that the decision to demolish their properties was made without affording them the fair hearing required by Section 30(1) of the DDA Act. They argue that they were denied the procedural right to a show-cause notice against the demolition, which they deem essential to the legality of the process. The DDA, in its defence, maintains that the demolition is being conducted as an effort to conserve the forest area and the Park, and that they are proceeding under the auspices of this Court's supervision.

17. However, it remains unchallenged that the persons affected by the demolition drive were not given the opportunity to present their case before the authorities, which is a procedural safeguard enshrined in the DDA Act. The Court's involvement in overseeing the conservation efforts does not



exempt the DDA from adhering to the statutory procedures laid down by the legislature. Principles of natural justice demand that those whose interests are adversely affected by an administrative action, must be given a chance to be heard, particularly when such action carries the significant repercussion of depriving them of their property. In this aspect, the Petitioners' arguments hold weight. Regardless of the environmental imperatives or the Court's prior orders, the obligation of the DDA to act within the framework of the law and ensure procedural fairness to those affected by its actions, remains intact. The Court finds that this procedural infraction stands in need of rectification, and the Petitioners' objection on this ground is upheld.

CONCLUSION AND DIRECTIONS

18. The Petitioners' challenge to the impugned demolition notice dated 12th December, 2022 is intricately connected with the authenticity of the demarcation report 21st December, 2021, which forms the basis of DDA's decision. Reflecting upon the extent of this Court's writ jurisdiction, as explicated by a plethora of precedents, we abstain from adjudicating on the disputes rooted in the factual determinations and outcomes embodied in the demarcation report. Instead, we grant the Petitioners the right to present their case before the competent authority or courts of jurisdiction, which possess the statutory mandate to resolve such matters.

19. However, since it is an admitted position that no intimation was issued to the Petitioners prior to the demolition notice as mandated by the provisions of the DDA Act, we hereby quash the demolition notice issued on 12th December, 2022. Consequently, we direct the DDA to commence the process anew, ensuring that all Petitioners are accorded a fair and reasonable



opportunity to be heard in accordance with proviso to Section 30(1) of the DDA Act, before any further demolition action is initiated. This exercise shall be completed within a period of three months from today.

20. With the above directions, the present petitions are disposed of.

21. It is clarified that we have not examined the merits of the demarcation report dated 21st December, 2021. All rights and contentions of parties to that effect are left open.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

NOVEMBER 08, 2023

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