

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION 355/2022

IN THE MATTER OF:-

HARI

...PETITIONER

VERSUS

GNCTD AND ORS.

...RESPONDENTS

NDOH: 02-11-2023

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New Delhi

Dated: 01-11-2023

FILED BY :


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Counsel for DDA
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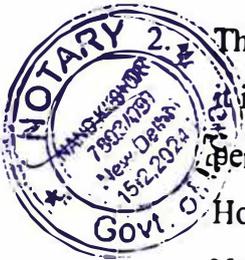
...RESPONDENTS

SECOND STATUS REPORT ON BEHALF OF
RESPONDENT/DDA

Affidavit of Mr. Rajesh Kumar  [Signature]

aged about 57 years, presently posted as Deputy Director,
Survey and Settlement-II/LM, DDA, do hereby solemnly affirm
and declare as under:-

1. That I am working with the Respondent/DDA, as such competent and authorized to sign the present affidavit. I am well conversant with the facts and circumstances of the present case in my official capacity.



That as per the anonymous letter received by the Hon'ble NGT, it is alleged that one Mr. Dharam Singh alias Doctor and 10 other persons have encroached upon land behind graveyard near Max Hospital Saket, New Delhi and the above said persons have cut Neem, Babool, Peepal and other trees from the green-belt and have stored scrap material and they are also burning plastic, polythene bags and electricity wires which results in emission of poisonous gases causing air pollution.

3. That the present Status Report is being filed in compliance of the

order dated 21.07.2023 passed in this matter wherein DDA was directed to identify the land and ensure to take action against the person who are violators of the law and to calculate the compensation/cost of the trees and plantation and submit the report within 2 months.

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4. That as per the records of the Respondent/DDA, the land in question in the present matter falls is Khasras No. 197 (5-11) and 198 (2-10) of Village Hauz Rani, Delhi where unauthorized encroachment exists.
5. That as per Order/Judgment dated 14-01-2010 passed Hon'ble SCJ-cum-RC(Central)/Delhi in Suit No. 1144/06/79 titled *Muslim Kabristan Village vs UOI*, the DDA was restrained from taking possession of land in Khasra No. 184(3-02), 194(9-07), 197(5-11), 231(9-16), 513/150(2-18) of village Hauz Rani, Delhi. True Copy of order dated 14.01.2010 of Hon'ble SCJ cum RC(Central)/Delhi in Muslim Kabristan Village vs UOI is attached herewith as Annexure R-1.
6. That a regular second appeal, being RSA 98/2012 titled '*DDA Vs Muslim Kabristan*' has been filed pursuant to the said Order/Judgment dated 14-01-2010 of Hon'ble SCJ cum RC(Central)/Delhi.



That as per Order/Judgment dated 14-01-2010 DDA was restrained from taking possession of said khasras or removing the graves from said land or converting the said land into garden except in due course of law. Therefore, DDA has been restrained by Hon'ble court from taking any action with respect to Khasra No.197 (5-11) of Village Hauz Rani. There is no stay granted by

the Hon'ble Court with respect to Khasra No.198 of Village Hauz Rani, however, a demarcation of Khasra No.198 of Village Hauz Rani is required in order to identify the extent, limits or boundaries of Khasra No.198 so as to remove the encroachment existing at Khasra No.198 of Village Hauz Rani. Demarcation of said Khasra is to be done by Revenue Department, GNCTD and DDA shall take the matter with Revenue Department, GNCTD to provide the demarcation report of said Khasra at the earliest.

- 8. That it is pertinent to mention regarding calculation of cost/compensation of trees and plantation, it is submitted that as per report of site inspection of Joint Committee constituted by Hon'ble NGT and as per report of site inspection carried out by LM/S&S-II alongwith Engineering Wing/DDA, naturally fallen trees were found and no tree was found being manually cut or fallen by encroachers at said land.

*Identified by me
5/10/2023
I identify the Executant in my presence
01 NOV 2023*

Lajju

DEPONENT

उप निदेशक (सर्वे एवं सेटलमेंट)
Deputy Director (Survey & Settlement)
दिल्ली विकास प्राधिकरण / Delhi Development Authority
ए-ब्लॉक, तीसरी मंजिल / A-Block, 3rd Floor
विकास सदन, आई.एन.ए. / Vikas Sadan, I.I.E.
नई दिल्ली-110023 / New Delhi-110023

VERIFICATION:- Verified at New Delhi on this 01 day of NOV

2023 that the contents of the above Affidavit are true and correct to the best of my knowledge and based on the official records of the Respondent. No part of it is false and nothing material has been concealed therefrom.



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY TO
UNDERSTAND AFFIRMED & DEPOSED BEFORE ME AT NEW DELHI

Mand Kishor
I IDENTIFY THE EXECUTANT/DEPONENT WHO HAS
SIGNED IN MY PRESENCE
MAND KISHOR AGARWAL Advocate
NOTARY PUBLIC (NEW DELHI)

01 NOV 2023

Lajju

DEPONENT

उप निदेशक (सर्वे एवं सेटलमेंट)
Deputy Director (Survey & Settlement)
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नई दिल्ली-110023 / New Delhi-110023

Delhi District Court

Muslim Qabristan Village Hauz ... vs Union Of India To The Served ... on 14 January, 2010

Author: Sh. Ajay Goel

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IN THE COURT OF SH. AJAY GOEL: SCJ CUM RC(CENTRAL):DELHI

S.NO. 1144/06/79

(CASE PERTAINING TO YEAR 1979: OLD CASE)

1. Muslim Qabristan village Hauz Rani, Malviya Nagar, New Delhi, through Sh. Mohd. Zaharia, Mutwalli(Trustee) Village Hauz Rani, New Delhi.
2. Mohd. Zakaria s/o Azam Ali, Deceased through following LR:-
 - i) Mohd. Hanif-son
 - ii) Mohd. Ali-son
 - iii) Mohd. Zafar-son
 - iv) Mohd. Javed-son
 - v) Hanifa Begum-Daughter
 - vi) Asia Begum-Daughter
 - vii) Zahida Begum-Daughter
 - viii) Salma Begum-Daughter
 - ix) Nazma Begum-Daughter
 - x) Mst. Khairunisa-Widow
 All r/o H.No. 113, Hauz Rani, New Delhi
3. Mohd. Khalil s/o Sh. Ibrahim r/o H.No. 194, Hauz Rani, New Delhi
4. Abdul Wahab s/o Risal Khan through his LR Jainam Nisha, who also expired and now through Mohd. Iqbal r/o H.No. 248, Hauz Rani, New Delhi
5. Istiaq Ahmad s/o Mohammadi r/o H.No. 60, Hauz Rani, New Delhi.
6. Mohd. Idrees s/o Niwaz Khan, deceased through his following LR:-
 - i. Abdul Qayyum-son
 - ii. Mohd. Salim-son
 - iii. Mohd. Fahim-son
 all r/o 274/A Hauz Rani, Malviya Nagar, Delhi-17.
 - iv. Sarwari Begum w/o Riazuddin-daughter village khadawali, Post Ballabgarh, Faridabad
 - v. Akila Begum w/o Daood Khan village Jakko Post Dhauj, Faridabad.

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- vi. Rasida Begum w/o Sarfuddin
 - vii. Jakko, Post Dhauj, Faridabad
 - viii. Salma Khatoon w/o Mohd. Sharif
 - ix. Jakko, Post Dhauj, Faridabad
 - x. Razia Begum w/o Nazar Mohd.
 - xi. Badkhal, Faridabad
 - xii. Rabia Khatoon w/o Mohd. Rashid village Sakatpur, Post Badshahpur, Gurgaon
- On behalf of themselves and the entire muslim community of village Hauz Rani, New Delhi.

..... Plaintiff

VERSUS

1. Union of India to the served through the Secretary,
Ministry of Works, Housing and Supply, New Delhi.
2. Delhi Development Authority to be served through
the Secretary, DDA, Vikas Minar, New Delhi.
3. Delhi Administration to be served through the Chief Secretary, Alipur Road,
Delhi.

..... Defendants

Date of institution:-19.9.79

Date of assignment to this court:- 29.1.09

Date of arguments:-14.1.2010

Date of decision:-14.1.2010

JUDGMENT

1. Vide this judgment I shall dispose of the instant suit for permanent injunction filed by the plaintiffs against the defendants stating that khasra no. 184 measuring 3 bighas 02 biswas, 194 Min measuring 9 bighas 7 biswas, 197, measuring 5 bigha 11 biswas and 231, measuring 9 bighas 16 bighas 14 biswas, Idgah 513/150(2□8) situated in village Hauz Rani, New Delhi are public graveyard i.e. Qabristan and Idgah for the last more than 50 years. Part of said land was a qabristan and part of it is Idgah so the said land as stated was not acquired by Custodian or Union of India under Re□ settlement of Displaced Persons Land Acquisition Act of 1948 and accordingly when the Delhi Land Reforms Act came into force in July, 1954 the said khasra numbers were shown vested in the Gaon Sabha Village Hauz Rani under the provisions of Section 7, DLR Act. The said khasra numbers are duly declared Wakf properties and the plaintiff no. 2 is the mutwalli appointed for the said wakf property by Gazettee Notification issued by Delhi Administration at page no. 354 dated 16.4.70 regarding kh. nos 184, 194 min, 197 and 231 and notification at page 15 dated 10.4.75 regarding khasra no. 513/150. As stated from time immemorial the land of aforesaid khasra nos. is being used by Mohammadons of village as burial ground/grave yard and Idgah and hundred of graves are already there, however the DDA now wants to remove the graveyards and idgah from the said land and wants to raise a garden thereon. The said land was never acquired by DDA or Delhi Administration or Union of India and no notice was ever given to the plaintiff no. 1 and 2 regarding acquisition of the said land either under Resettlement of Displaced Persons Land Acquisition Act 1948 or under the Land Acquisition Act of 1894 and no compensation was ever assessed or paid to the plaintiffs no. 1 and 2. It was stated that officials of Delhi Development Authority came on the spot and started taking measurement to which the plaintiffs protested but to no effect and they are bent upon in carrying on their illegal acts. Defendants as stated have not acquired the said land and therefore have got no right, title or interest to take possession of the said land and to remove graves from the said land. It was accordingly prayed that decree for permanent injunction be passed in favour of the plaintiffs and against the defendants restraining defendants or its officials from taking possession of land detailed in para no. 1 of the plaint or removing any graves from the said land or converting the said qabristand and Idgah into a garden.

2. Separate Written Statements were filed on behalf of defendants no. 1 & 3 and defendant no. 2. In the WS filed by defendants no. 1 and 3 preliminary objections were raised stating that Union of India through Secretary, Ministry of Works Housing and Supply has nothing to do with the acquisition work in Delhi which is done by Delhi Administration which is not a legal entity for the purpose of suit. The proper defendant in their place as stated is Union of India through Administrator(Lt. Governor). No notice u/s80 CPC was served on defendants. Plaintiffs as stated have no cause of action. On merits it was stated that khasra no. 184,197 and 231 have been acquired through Award no. 1027 and khasra no. 194 min (1□0) and 513/150(2□8) was acquired through award no. 1595. Khasra no. 194 min was recorded as Gher Mumkin Khal as per khasra girdawari and khasra no. 513/150(2□8) was recorded as Rosli as per khasra Girdawari for the year 1959□60. Rest of contents were denied and it was prayed that suit of the plaintiff be dismissed. In WS filed by defendant no. 2 preliminary objections were taken stating that plaintiff wants a declaration in the garb of permanent injunction and the suit is also bad for misjoinder of parties as well as no cause of action against the defendants. No notice u/s53(B) of Delhi Development Act 1957 has been served on defendants. It was stated that the land falling in khasra no. 184,194 min, 197 and 231 of village Hauzrani belongs to the Gaon Sabha which vested with the Central Government. On the urbanisation of the village under Section 507 of Delhi Municipal Corporation Act 1957 through a notification dated 3.6.1966, the land under reference alongwith other Gaon Sabha land has been placed at the disposal of defendant no. 2 u/s 22(i) of Delhi Development Act, 1957 for the purposes of development and maintenance by virtue of notification no. 2190 dated 20.8.74. These khasra numbers as per revenue records have been recorded as Gair Mumkin Qabristan. Khasra no. 513/150 of village Hauzrani is not under the control and management of defendant no. 2. Rest of the contents were denied and it was prayed that suit of the plaintiff be dismissed.

3. Separate replications were filed to the Written Statements of defendants in which contents of the plaint were reiterated and those of the WS were denied.

4. From the pleadings of the parties following issues were framed :□

1) Whether the suit is bad for misjoinder of parties? OPD

2) Whether the suit land has been acquired leaving the plaintiff with no cause of action? OPD

3) Whether the plaintiffs have locus standi to file the suit and in the present form? OPP

4) Whether the suit is bad for want of notice u/s 53 B of the DDA Act? OPD

5) Whether the threatened act of the defendants of beautifying the suit premises is ultra vires and without jurisdiction? OPP

6) Relief.

5. Plaintiffs in support of their case examined PW□ Surinder Singh Patwari, PW□2 Mohd. Zakira, PW□3 Noor Mohd and Pw□4 Mohd. Khalil. In the statement of PW□2 copy of field book was Ex.

PW□2/1, PW□2/2 is zamabandi for the year 47□48, ex. Pw□2/3 was khotani for the year 1964□65, ex. PW□2/4 is the khatoni for the year 68□69, Ex. Pw□2/5 is the copy of Girdawari for the year 1974□75, Pw□2/6 is copy of girdawari for 75□76, Pw□2/7 is the copy of girdawari for 77□78, Pw□2/8 is the girdawari for 1978□79. Ex. Pw□2/9 is the copy of gazettee. Pw□2/10 to PW□2/12 are the copies of gazettee, copy of wazib bull urge was Ex. Pw□2/14.

6. During the proceedings defendant no. 2 was proceeded ex□parte vide order dated 21.7.1986 but Ld. Cl. for defendant no. 2 appeared for arguments. Application for leading evidence was moved which was dismissed vide order dated 6.1.97 and again on 5.12.00 and the said order was upheld by Hon'ble High Court.

7. Defendant examined only one witness Lal Singh whose examination in chief was deferred as he has not brought certain documents and thereafter his examination was not concluded neither DE was concluded despite opportunities given and DE was closed vide order dated 18.10.96.

8. There were three contempt applications filed by the parties, however during the course of the arguments same were not pressed and accordingly they are dismissed as not pressed.

9. I have Ld. Cl. for both the parties as well as perused the record. My issuewise findings are as follows:□

10. Issue no. 1 : Whether the suit is bad for misjoinder of parties? OPD :□The onus of proving this issue was on the defendants, however no evidence was lead by the defendants to prove the same. Even otherwise suit has been filed u/o1 Rule 8 CPC in representative capacity which was allowed by my Ld. Predecessor . It has also not been placed on record as to who are the parties which have not been joined. Accordingly this issue is decided in favour of the plaintiff and against the defendants.

:□Whether the suit land has been acquired leaving the plaintiff

11. Issue no. 2&5 with no cause of action? OPD & Whether the threatened act of the defendants of beautifying the suit premises is ultra vires and without jurisdiction? OPP :□The onus of proving issue no. 2 was on defendant and onus of proving issue no. 5 was on plaintiff but both of them are taken together. No evidence has been lead by defendants to prove issue no. 2. It has not been brought on record that land has been acquired. Though award number has been averred in the WS but has not been proved. Ld. Cl. has relied upon the WS wherein it has been made out that khasra no. 194 min is not totally acquired. Even as per the WS as in para no. 4 of the WS of defendant no. 1 and 3 it has been mentioned that khasra no. 194 min(1□10) was acquired but the plaintiff has claimed injunction regarding 9 bigas 7 viswas. It was suggested to the defendant that possession has been handed over to DDA but no such possession letter has been placed on record. The plaintiff has relied upon number of jamabandies showing that giarmumkin kabristan is mentioned against khasra no.. Khasragirdawari of 1978□79 Ex. PW□2/8 is available on record and khatoni of 1968□69 Ex. PW□2/4 also shows that kabristan in the name of khatedar. Ld. Cl. has relied upon award no. 1595 placed on record by defendants though not proved, however therein it has been mentioned that field no. 231 was included by oversight and it has not been acquired under this award. Despite the

abovsaid defendants have averred in the WS that it has been acquired thus clear factual position has not been brought by the defendant before this court and that document has been placed on the record by the defendants even though has not been proved as per law still can be taken into consideration against the defendants. Ld. Cl. for Plaintiffs has argued that even though if it is taken on record as such that land has been acquired but still possession has to be taken as per law and for this reliance is placed upon AIR 1987 SC page 2421 and till that time acquisition is not complete. Thus it is clear from the testimony of witnesses and overwhelming documentary evidence that area in question was kabristan and thereafter possession has not been taken over by the defendants. Accordingly it is observed in both the issues without determining as to whether land has been acquired or not as simple injunction against dispossession without due process of law is sought then the plaintiff has been able to establish the continuation of possession. It cannot be held that defendants cannot beautify the area or that order is ultra virus and without jurisdiction but if the land has been acquired the possession can be taken in due course of law. These issues are decided accordingly.

Whether the plaintiffs have locus standi to file the suit and in

12. Issue no. 3: the present form? OPP : The onus of proving this issue was on plaintiffs. Instant suit has been filed u/o 1 Rule 8 CPC and plaintiffs are inhabitants of the area and are interested in protection of kabristan and they are being dispossessed without due process of law and there is no alternative remedy available to them, hence they have locus standi to file the instant suit. Accordingly this issue is decided in favour of the plaintiffs and against the defendants.

13. Issue no. 4 : Whether the suit is bad for want of notice u/s 53 B of the DDA Act? OPD: The onus of proving this issue was on defendants, however no evidence has been lead to prove the same and accordingly this issue is decided in favour of the plaintiffs and against the defendants.

14. Relief: In view of the above observations, instant suit is decreed in favour of the plaintiffs and against the defendants and defendants and its officials are restrained from taking possession of land detailed in para no. 1 of the plaint or removing the graves from the said land or converting the said qabristan into garden except in due course of law. If the land is already acquired then they have to take the possession as per law and then only can proceed further. Decree sheet be prepared. File be consigned to record room.

Announced in open court
on 14.1.2010

(Ajay Goel)
SCJ cum RC(Central)/Delhi