

**M.K. Gupta and anr. Vs. Delhi Development Authority**

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**Court :** Delhi

**Decided On :** Aug-20-2014

**Judge :** Suresh Kait

**Appellant :** M.K. Gupta and anr.

**Respondent :** Delhi Development Authority

**Judgement :**

\$~20 \* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

20. h August, 2014 + W.P.(C) 7531/2013 M.K. GUPTA & ANR. Represented by: ..... Petitioners Mr.Sumit Sharma for Mr. M.K. Gupta, Advocate. Versus DELHI DEVELOPMENT AUTHORITY ..... Respondent Represented by: Mr. Sanjeev Sabharwal, Standing Counsel for DDA. Mr.Pramod Ahuja and Mr. Ritesh Khatri, Advocates. CORAM: HONBLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Vide the instant petition, the petitioners are seeking mandamus directing the respondent DDA to demolish unauthorized and illegal construction which is being built on the east side of the house of the petitioners.

2. Admittedly, demolition for the property forming part of Khasra No.48/7 is being sought in the present petition.

3. Mr.Sumit Sharma, learned counsel appearing on behalf of the petitioners submits that in para 19 of the judgment bearing RSA No.28/2001, titled as Smt.

Subhadra & Another Vs. Delhi Development Authority, decided on 11.11.2010, this Court observed as

19. The plaintiffs had alleged that the suit land falls in Khasra No.48/7; the onus was upon him to prove it. They had failed to discharge this onus. This Court is not a third fact finding Court.

4. The issue regarding Khasra No.48/7 in the Revenue Estate of Village Humayunpur, New Delhi, came up before this Court in the case bearing W.P.(C) No.824/2012, titled as Subhadra & Anr. Vs. GNCT of Delhi & Ors., wherein held as under:

11. Be that as it may, this issue is still not resolved. Therefore, I direct the Deputy Director (LM) and SDM (Hauz Khas) to sit together and deliberate upon the demarcation proceedings and if it is found that it is a faulty one, then the same shall be carried out jointly by both the parties. The cost on the demarcation proceedings shall be borne as per law.

12. It is admitted that on the property of the petitioners neither any award has been passed, nor any compensation has been received by the petitioners, nor possession of the property has been taken by the respondents.

13. Therefore, if the respondents come to the conclusion that the property of the petitioners is required to be acquired / demolished, then the respondents shall adopt the course as per the Land Acquisition Act.

14. I here make it clear that the petitioners shall not be dispossessed without due process of law.

15. I further make it clear that if both the parties, i.e., respondent nos. 1 and 3 come to the aforesaid conclusion then petitioners shall be put to the notice by giving three weeks time. If the petitioners are still aggrieved with the said notice or so, they are at liberty to approach the appropriate forum.

16. Further, I here make it clear that if the demarcation is defective in the eyes of the petitioners, they are at liberty to challenge the same under Section 28 and 64

of Delhi Land Revenue Acts and Rules and Rule 403 of Delhi Land Revenue Rules.

17. Accordingly, the decision taken by the DDA on the representation made by the petitioners is hereby set aside.

18. Keeping in view the facts and circumstances of the case and statement of Id. Counsel for the petitioner, I direct the respondents, not to dispossess the petitioners from the property bearing nos. 20-H and 20-I, Krishna Nagar, New Delhi, which are part of Khasra No.48/7 in the Revenue Estate of village-Humayunpur, New Delhi.

19. Consequently, a fresh decision shall be taken on the representation of the petitioners, after the joint demarcation is carried out by the parties as directed by this court.

5. Since this Court directed the respondent to carry out fresh demarcation in the case of Subhadra (Supra), further directed that, if any person is found in illegal occupation or any unauthorized construction, the respondent is at liberty to take action as per law.

6. No further order is required to be passed in the present petition.

7. Accordingly, the present petition is dismissed.

8. A copy of this order be given dasti to the learned counsel for the parties.  
SURESH KAIT (JUDGE) AUGUST20 2014 sb

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