

Karamvir Singh Nagar and anr. Vs. Delhi Development Authority and ors

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Court : Delhi

Decided On : Mar-18-2013

Judge : V. K. Jain

Appellant : Karamvir Singh Nagar and anr.

Respondent : Delhi Development Authority and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :

12. 03.2013 Judgment pronounced on :

18. 03.2013 CONT. CAS.(C) No.820/2012 ANJUMAN-E-HAIDER (REGD.)
Petitioner Through: Ms. Tasneem Ahmadi along with Mr. N.R. Thakur, Advs.
VERSUS CHAIRMAN NDMC, ARCHNA ARORA AND ORS..... Respondents
Through: + Mr. Rohan Tahwani, Adv. for respondent. Mr. Mehmood Pracha along
with Ms. Sneha Singh, Advs. for Waqf Board. Ms. Madhu Tewatia, Adv. for NDMC.
Mr. Ishwar Singh, SHO, Lodhi Road; SI Sanjiv Mahana, P.S. Lodhi Road. Mr.
Pankaj Batra, Adv. for Delhi Police. Mr. Rajiv Bansal along with Mr. Devvrat Singh
Raghav and Mr. Rahul Bhandari, Advs. for DDA. W.P.(C) No.646/2012
KARAMVIR SINGH NAGAR AND ANR. Petitioners Through: Mr. Vishesh
Issar, Adv. VERSUS DELHI DEVELOPMENT AUTHORITY AND ORS.....
Respondents Through: Ms. Tasneem Ahmedi, Adv. for R6. Mr. Rohan Tahwani,
Adv. for respondent. Mr. Mehmood Pracha along with Ms. Sneha Singh, Advs. for
Waqf Board. Ms. Madhu Tewatia, Adv. for NDMC. Mr. Ishwar Singh, SHO, Lodhi

Road; SI Sanjiv Mahana, P.S. Lodhi Road. Mr. Pankaj Batra, Adv. for Delhi Police. Mr. Rajiv Bansal along with Mr. Devvrat Singh Raghav and Mr. Rahul Bhandari, Adv. for DDA. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE V.K. JAIN V.K. JAIN, J.

CM No.3241/2013 in Cont. Cas.(C) No.820/2012 CM No.2254/2013 in W.P.(C) No.646/2012 1. WP(C) No.4907/2005 was filed inter alia seeking directions for demarcation of the boundaries of the properties, described in paras 6 and 7 of the petition, which were stated to be under the management and administration of the petitioner. The said writ petition was disposed of on 09.11.2005 with a direction to Government of NCT of Delhi to require its Revenue Assistant to demarcate the boundary of the said properties, i.e. Chhote Karbala (Khasra No. 23), Kanati Masjid (Khasra No. 29), Dargah Shah-E-Mardan (Khasra No. 39/1&39) (hereinafter referred to as Dargah) and Naqqar Khana (Khasra No.39). The demarcation was to be completed within six months from the date of the order. The respondent No.1 in the writ petition was directed to construct a boundary wall wherever needed so that the Wakf land could be protected.

2. CM No. 12048/2006 was filed by NDMC in WP(C) No. 4907/2005 seeking certain clarifications of the directions issued vide order dated 09.11.2005. While dealing with the said application vide order dated 03.04.2007, the learned Single Judge noted that in respect of the vacant land around Dargah measured about 09 bighas, Dargah was shown as the owner of Khasra No. 39 and the same was built up and under possession of Dargah. As regards Naqqar Khana, which was the fourth property, the learned Single Judge noted that as per Demarcation Report, DDA had claimed that the said portion of the land to be their site No. 8 and for that reasons, the said portion was not demarcated in the report dated 08.05.2006. It was further observed that another demarcation exercise was carried out on 13.06.2006 in respect of site No. 8 of DDA, in the presence of DDA officials and the demarcation of site No. 8 was found to be correct, as per map of the Survey and Settlement Branch II of DDA. Therefore, the demarcation of DDA site No. 8 had taken place without difficulty. It was also noted by the learned Single Judge that when NDMC commenced construction of boundary wall in regard to Dargah, it was found that one portion of DDA site No. 4 abutted that portion. The learned

Single Judge was of the view that since Naqqar Khana was not a Wakf property as per demarcation report, it was not possible to direct NDMC to erect a boundary wall in respect of that property. The learned Single Judge noted that as per Demarcation Report, the vacant land surrounding Dargah was also measured and indicated in the rough sketch enclosed to the report. He also noted the contention of DDA counsel that the right hand top portion of site No. 4 of DDA slightly overlapped the left hand corner of Dargah, and to the extent of such overlapping, DDA had an objection to the boundary wall being constructed, because some portions of DDA land were falling within the land of Dargah. The learned Single Judge also noted that during two exercise of demarcation, DDA had not raised the plea of the aforesaid overlapping. A controversy was raised before the learned Single Judge with respect to the vacant land surrounding Dargah. An internal note from the office of SDM, Defence Colony was produced before the learned Single Judge stating therein that the vacant land surrounding Dargah was also measured in compliance of the order of the Court though Government was shown owner of the said land in Revenue/Nazul record. A copy of Jamabandi was also enclosed to the said note.

3. The following directions were then issued by the learned Single Judge on 03.04.2007:(i) As regards two of the wakf properties i.e. the Chhote Karbala and the Kanati Masjid, the NDMC should immediately proceed to construct the boundary wall within a definite time frame and the exercise should be completed by 30.6.2007. The question of reimbursement of the expenses incurred by NDMC in constructing the boundary wall, will be decided at a later date. If the NDMC requires any police protection for performing this exercise, it should immediately write to the Commissioner of Police enclosing copies of the orders dated 9.11.2005 and today's order. If such request is made, the Commissioner of Police will provide adequate police protection to ensure the completion of the exercise of constructing the boundary wall in relation to the abovementioned two properties. (ii) The NDMC will now file an affidavit in this Court within two weeks indicating the time frame for completion of the exercise as directed in (i) above on or before 30.6.2007, and also the approximate estimated cost which will be incurred in constructing the boundary wall in terms of para (i) above. (iii) As regards the controversy regarding the vacant land surrounding the Dargah Shah-eMardan, an

additional affidavit will now be filed by the SDM, Defence Colony within four weeks explaining inter alia as to why the note produced in the Court for the first time today by counsel for the GNCTD was withheld so far. The affidavit and copies of the extracts from the Jamabandi and other records be also annexed to the affidavit. The counsel for the Petitioner and the Delhi Wakf Board are permitted to file replies to this additional affidavit within two weeks thereafter.

4. A number of CMs, thereafter, came to be filed in WP(C) No. 4907/2005. Taking note of the orders dated 09.11.2005 and 03.04.2007, the matter was closed by the learned Single Judge vide order dated 11.01.2012. WP(C) No. 646/2012 was then filed as a Public Interest Litigation, alleging grabbing of open spaces/parks inside and around B.K. Dutt colony. This is also the case of the petitioners in WP(C) No. 646/2012 that demarcation was carried out behind the back of the residents of the colony and it was falsely held out during demarcation that the said lands were of religious significance to a particular community. They inter alia sought direction to the respondents to evict all encroachers from DDA/L&DO/Government owned spaces/parks/unused land in the area of B.K. Dutt Colony and destruction of illegal sign boards, etc. on the aforesaid land.

5. It would thus be seen that according to the petitioners in WP(C) No. 4907/2005, the lands in question were of religious significance to a particular community and were under the management and administration of the petitioners in the said petition, whereas the case of the petitioners in WP(C) No. 646/2012 is that the aforesaid lands were open spaces/parks, etc. owned by DDA/L&DO/Government and meant for the residents of B.K. Dutt Colony.

6. Vide order dated 12.03.2012 passed in WP(C) No. 646/2012, this Court referred the parties to mediation and directed status quo as of that date to be maintained during the conciliation proceedings.

7. When WP(C) No.646/2012 came up for hearing on 17.05.2012, this Court noted, from the Status Report filed by NDMC, that it had invited tenders on 24.02.2012 for construction of the boundary wall, but the work could not be awarded in view of status quo order passed by the Court in the meanwhile on 12.03.2012. The learned counsels for the parties agreed before this Court that the

boundary wall as per Demarcation Report be constructed by NDMC and on construction of the boundary wall much of the problem would be resolved. The NDMC was accordingly permitted to go ahead with the construction of the boundary wall, without prejudice to the rights and contentions of the parties. Vide order dated 25.09.2012, this Court noted that NDMC had not completed the construction of the boundary wall.

8. Contempt Case (C) No. 820/2012 was filed by respondent No. 6 in WP(C) No. 646/2012, alleging disobedience of the order dated 17.05.2012. On notice of the said petition being issued to NDMC, certain difficulties were expressed with regard to Dargah. It was, however, stated by the counsel for NDMC that it had already constructed the boundary wall in regard to two properties, i.e., Chhoti Karbal and Kanti Masjid. Vide order dated 17.01.2013, this Court noted that the order dated 17.05.2012 was a consent order and NDMC had not approached the Court for any modification/clarification of the said order. The contempt petition was, therefore, disposed of with directions to NDMC to construct the boundary wall in accordance with the Demarcation Report, within one month.

9. CM No. 2254/2013 has been filed by NDMC for modification of the order dated 17.05.2012, whereas CM No. 3241/2013 has been filed by the petitioner in Contempt Case (C) No. 820/2012, alleging disobedience of the order dated 17.01.2013, by NDMC.

10. It has been stated in CM No.2254/2013 filed by NDMC that the exact location of all the boundaries walls as shown in the Demarcation Report could not be translated on ground after measurements, since the existing physical status at site was not found matching with the demarcation report, inasmuch as a number of variations, encroachments, etc. were found existing at site. It is further stated that after measurements as per demarcation report were made, it was noted that construction of boundary wall would engulf the entire width of the public street/road, with no space left for ingress and egress to the houses/residences constructed at site and if straight boundary walls as per report were to be constructed, after joining the identified corners towards east and south side, then complete 12-0 wide existing public street of the colony would have to be sacrificed

and all the structures/houses falling in the alignment of the boundary wall shall first be required to be demolished by DDA/L&DO. With respect to Naqqar Khana, it is stated that land of site No. 8 as per Demarcation Report belonged to DDA and on measurement as per the Status Report, it was noted that the exercise would involve demolition of built up area of residential flats, Arya Samaj Mandir and complete coal depot by the L&DO/DDA. NDMC has accordingly expressed the following difficulties in construction of boundary wall: i) The close boundary of the surrounding land of Dargah Shah-E- Mardan and Naqqar Khana are not identified by the SDM (Defence Colony) for the construction of boundary wall as per the demarcation report. ii. Only the corner point (A), (B) and (F) drawn on the Nazari Naksha attached with the demarcation report are identified by the SDM for the surrounding land of Dargah Shah-E-Mardan and the other corners point (C), (D) and (E) are fallen on the built up area. iii. The measurements shown in the demarcation report are not fully identified/verified at site by SDM for the construction of boundary wall and location of wall as per the measurements shown in demarcation report could not be translated on ground by the SDM. iv. The SDM had actually identified on site the points (A) & (B) and verbally stated that the straight wall after joining these aforesaid points (A) & (B) for this north side wall of surrounding wall of Dargah Shah-EMardan of about 260 ft. be drawn for the construction of boundary wall. It was further stated that the opening for the passage existing width about 23 ft. for gate be left in the boundary wall for the access to the Dargah Shah-E-Mardan. v. The Eastern wall had been identified at site in Z shape whereas it has been shown straight line in the demarcation report of length about 344 ft. vi. From point (B), if measured point (C) at 344 ft. then it falls into the built up area and the entire width of street have to be scarified and the access to the residential premises in vicinity will be closed. vii. In the eastern wall, there are encroachment by the kabaris that have to be removed for the construction of boundary wall. viii. For considering the southern wall after joining the points (C) to (D) the part of the residential flats have to be demolished and ingress and egress to be closed for these residential flats. ix. Portion of the western wall from south west corner is shown as 45 ft. for construction of this wall, the portions of existing residential flats have to be demolished. x. SDM (Defence Colony) could not identify at site the point (E) at 231 ft. as shown in demarcation

report from point (A). Since no such straight line alignment along the western boundary of Dargah Shah-EMardan is found and the point (E) falls on the residential area. xi. No location of boundary wall of Dargah Shah-E-Mardan built up area has been identified at site. Portion of the southern wall of Dargah Shah-E-Mardan mentioned length about 21 ft. in the Nazari Naksha attached with the demarcation report has not fully existed at site now.

11. With respect to Naqqar Khana, the contention of NDMC is as follows: i. Demarcation report dated 13.06.2006 enclosed Nazari Naksha was only for site No. 8 of Department DDA in Khasra No. 39 and no site for Naqqar Khana was demarcated as per the demarcation report dated 13.06.2006. Only site No. 8 of DDA was demarcated as per demarcation report and agreed by all. ii. Only the points U, V, W, X, Y & Z drawn on the Najri Naksha attached with the demarcation report for site No. 8 of DDA were identified besides the other factual error were noticed by SDM at site. iii. The points Y, Z, U and V fall on the built up area including Coal Dport, Arya Samaj Manir and Residential area. iv. SDM (Defence Colony) found at site that the side V-W and W-X marked on site No. 8 of DDA are to be clear for Naqqar Khana, the side wall V-W if constructed as per the identification report, the entry to coal depot shall be closed. v. Old existing M.S. Post fencing of DDA exists incise the site for the Naqqar Khana as identified by the SDM. vi. Commissioner (Land Management) DDA informed vide letter No. HC/LM (5775)/2011/Legal/S&S-II/DDA/54 dated 16.02.2013 that the construction of Boundary wall shall be as per the clarification given by this Honble Court vide order dated 03.04.2007 and as under: Site No. 4 which DDA claim overlaps with the Dargah-Sheh-EMardan..... There is no question of encircling site No. 4 at all..... Site No. 8 stands outside the ambit of the order dated 09.11.2005 as held herein above. There is no question of a boundary wall being constructed on site No. 8 as well.

12. In view of the above-referred difficulties, NDMC has expressed its inability to construct the boundary wall as per Demarcation Report since factual position at the site is different and at variance with Demarcation Report dated 08.05.2006 and 13.06.2006 and extensive demolitions are required to be effected at site. This is also the contention of NDMC that as of now a clearly constructible site has not

been provided and in the light of the difficulties stated above, it is impossible for it to construct the boundary wall as per Demarcation Report, thereby rendering the order incapable of implementation. NDMC has, therefore, sought modification of the order dated 17.05.2012 to the extent it pertains to construction of boundary wall as per Demarcation Reports.

13. It would thus be seen that as far as two properties i.e. Chhote Karbala and Kanati Masjid are concerned, the order passed by the Court already stand complied. As far as Naqqar Khana (Khasra No.39) is concerned, we note that vide order dated 3.4.2007, the learned Single Judge after noticing that since Naqqar Khana was not a WAQF property as per demarcation report, took the view that it was not possible to direct NDMC to remove the boundary wall in respect of that property. It was also noted by the learned Single Judge that Delhi Waqf Board and Anjuman-E-Haider had not produced any proof of their claim and that is why another demarcation had to be carried out on 13.6.2006 in respect of site no.8 of DDA. He, therefore, held that since Naqqar Khana was not shown to be Waqf property as per demarcation report, it was not possible to direct NDMC to erect a boundary wall in respect of that property. That is why no direction was given by him for construction of the boundary wall with respect to Naqqar Khana.

14. Considering the fact that even as per demarcation report, the Naqqar Khana was not found to be a Waqf property and the order of the learned Single Judge dated 3.4.2007 holding that it was not possible to direct NDMC to erect a boundary wall in respect of that property has become final, we are of the view that for the present NDMC need not construct boundary wall in relation to the property described as Naqqar Khana.

15. As regards Dargah property, we are of the view that the issues raised in the application of NDMC involve detailed examination of the matter, in the light of relevant documents, and the actual position prevailing at the site, and such an exercise, which may also involve inspection of the site in question, cannot be carried out by the Court. Therefore, considering the averments of NDMC that (i) from point (B) if measured at 344 ft, then the wall falls into the built up area and the entire width of the street have to be sacrificed and the access to the residential

premises in the vicinity will be closed (ii) In the eastern wall, there are encroachment by rag pickers which have to be removed for construction of boundary walls (iii) for constructing the southern wall after joining Points (C) and (D), the part of the residential plots have to be demolished and ingress and egress have to be closed in these residential plots and, (iv) for construction of portion of western wall from south west corner, certain portions in respect of residential flats have to be demolished, and also taking into consideration that no opportunity of hearing was given to the occupants of the residential flats/ houses referred to above or to the rag pickers who have made encroachments towards eastern wall, we are of the considered view that the matter needs to be examined in detail by the Chief Secretary, Govt. of NCT of Delhi in consultation with Delhi Waqf Board, Delhi Development Authority and NDMC, to report to the Court as to in what manner the order for construction of boundary wall in respect of Dargah property including the land around Dargah can be best implemented, so as to enable the Court to take a considered view in the matter in the light of such report. The Chief Secretary shall also give opportunity of hearing to the petitioner in WP(C) Nos. 4907/2005 and 646/2012 before submitting his report. The report in terms of this order shall be submitted by the Chief Secretary within three months from the date of receipt of this order. The Chief Secretary shall also examine all such documents which he finds relevant for the purpose of submitting his report in the matter and may, if felt necessary, also carry out inspection of the site, in the presence of all concerned parties. He shall also be entitled to hear other stakeholder(s) if any, whom he may deem appropriate, irrespective of whether such person is a party to these proceedings or not. List on 08.07.2013, awaiting the report. V.K.JAIN, J
CHIEF JUSTICE MARCH 18 2013 BG/rd

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