

**IN THE COURT OF SH. SONU AGNIHOTRI DISTRICT JUDGE-07,
SOUTH-EAST DISTRICT SAKET COURTS, DELHI**

Ex. No. 395/2018

THE STATE OF UTTAR PRADESH

.....Decree Holder

Vs.

**DELHI PEASANTS CO-OPERATIVE MULTI PURPOSE SOCIETY
LTD.**

..... Judgment Debtor

19.11.2024

ORDER

1. Vide this order, I shall dispose of an application/objections filed by objector Shamshuddin under Section 151 CPC.
2. In the objections, it is stated that objector is the affected person and there are number of colonies in existence. DH surveyed the area on the directions of the Court and furnished report that more than 2500-3000 inhabitants are occupying structures in shape of houses and other structures.
3. It is stated that this Court was pleased to direct issuance of notice to occupants in consonance with Delhi High Court Rules. Delhi High Court Rules provide that details of occupants be submitted by DH and thereafter, prior notice be issued before taking coercive action

against occupants to remove them.

4. It is stated that in the present matter, land in question is in acres and boundaries of the same have not been defined till date.

5. It is stated that there were earlier directions to submit Masavi/Shijra with regard to specify the boundaries but the same have not been completed by DH till date.

6. It is stated that till boundaries of suit property are not completed in consonance with Order XX Rule 9 CPC, execution petition is not tenable in eyes of law.

7. It is stated that Order XX Rule 9 CPC provides that where subject matter of suit is immovable property, decree shall contain description of such property sufficient to identify the same and where such property can be identified by boundaries or numbers in a record of settlement or survey, same shall specify such boundaries or numbers. It is stated that Order VII Rule 3 CPC and Order XX Rule 9 CPC makes it clear that in a suit pertaining to immovable property, plaint as well as decree shall contain description of such property sufficient to identify the same and where such property can be identified by boundary, such boundary shall be provided including number of settlement or survey which may be used to identify suit property. If in either of the ways, decretal property is identifiable, decree can be executed in terms of Order XX Rule 9 CPC.

8. It is stated that in the present case, DH has not been able

to locate premises of objector and from documents available on record, the same cannot be cited before this Court to satisfy the fact that premises of objector falls in suit property.

9. It is stated that despite directions of Hon'ble High Court of Delhi, DH has failed to comply the same and till date, did nothing on record to identify boundaries in true spirit. It is stated that DH has also failed to comply with direction for issuing notices to occupiers as it is not having any knowledge about boundaries.

10. It is stated that the whole area is heavily built up and it is necessary to identify boundaries as matter is at preliminary stage. It is stated that it is case of DH itself that there are number of people and houses on the land measuring 8.48 acres but has failed to mention exact boundaries to identify suit property. DH has also failed to place on record super imposed boundaries on the site, google map. It is stated that it is true that there is no boundary marks available on the spot.

11. It is stated that objector is a poor person having small house and there are no boundary marks available at the site. It is well-settled that demarcation is to be done in presence of affected party. It is stated that no notice regarding demarcation was served upon objector which is sufficient to conclude that demarcation is not in accordance with law and is liable to be set-aside.

12. It is stated that DH in garb of present decree is hell bent to

remove and dispossess inhabitants of the area without ascertaining boundaries.

13. It is stated that objector is having prima-facie case in his favour and there is every likelihood that he will succeed in the matter. It is stated that acts of DH will cause irreparable loss and injury which cannot be compensated in any terms. Balance of convenience also lies in favour of objector and other inhabitants.

14. It is prayed to pass necessary directions to comply with mandate of Order XX Rule 9 CPC and to issue notices to occupants in the interest of justice.

15. Reply to the application was filed on behalf of DH wherein DH took some preliminary objections.

16. It is stated that present execution is gross abuse of process of law. Earlier objections of objector have been dismissed by this Court vide order dated 28.08.2024 and objector has filed same objections in order to avoid execution of decree. It is stated that objector earlier filed objections dated 13.12.2023 in the present execution and in the said objections also, objection regarding boundaries being not properly defined and specified were taken. After considering submissions of both the sides, this Court vide order dated 28.08.2024 in para No. 19 and 20 specifically held that properties have been clearly identified which include properties in Aali Village wherein objector is residing. It is stated that objector has taken the

same objection in present application and is seeking modification of decree dated 02.05.1975 passed by Hon'ble High Court of Delhi in original suit which has been upheld till Hon'ble Supreme Court of India. By way of present application, objector is seeking review of decree dated 02.05.1975 after 50 years.

17. It is stated that present objections/application is nothing but repetition of earlier application dated 13.12.2023 filed by objector with view to delay and frustrate the decree which was passed about 50 years ago. Present application is barred by principles of *res judicata* as issues raised in the present application have already been adjudicated vide order dated 28.08.2024 passed by this Court.

18. It is stated that major portion of decree dated 02.05.1975 already stands executed as land measuring 371 acres out of 379.45 acres which was subject matter of decree has already been taken possession by DH and remaining 7.8 acres, possession of which is being sought by way of present execution has already been identified in demarcation proceedings carried out pursuant to order dated 10.09.2013 passed by Hon'ble High Court of Delhi as already mentioned in earlier orders dated 04.01.2022 and 28.08.2024 passed by this Court.

19. It is stated that in compliance of orders passed in present execution, site inspection report with measurements through Tehsildar, Sarita Vihar was prepared and furnished before Hon'ble

High Court of Delhi and during this inspection, property in question was found to be in the portion forming part of land covered under the decree. All these objections of objector have been dealt with by this Court in order dated 28.08.2024. It is stated that by detailed order dated 08.02.2013, Hon'ble High Court of Delhi ordered issuance of warrants of possession of present land measuring 8.48 acres.

20. Certain preliminary submissions were also made by DH in reply.

21. It is stated that Irrigation Department of State of U.P. is owner of land measuring 379.45 acres situated in three villages namely Madanpur Khadar, Saidabad and Aali, Delhi and land in question is also part of land owned by State of U.P. Entire land was given on lease by State of U.P. to JD which is a Co-operative Society for period of 9 years and 8 months w.e.f. 01.11.1959 vide lease deed dated 30.06.1959. When after expiry of lease period, JD did not vacate lease land, State of U.P. filed suit for recovery of possession of land against JD bearing Suit No. 13/1969 before Hon'ble High Court of Delhi which was decreed in favour of DH vide judgment and decree dated 02.05.1975. Against the said decree, JD filed appeal before Division Bench of Hon'ble High Court of Delhi vide RFA (OS) No. 10/1976 which was dismissed by Division Bench vide order dated 29.11.2000. Some of the members of JD society filed SLP (C) No. 11169-70/2001 before Hon'ble Supreme Court of India which was

dismissed on 09.07.2001. However, time was granted to JDs to vacate land under possession on or before 30.06.2003 on they furnishing usual undertaking in this regard. When JDs did not hand over possession of decreed land, State of U.P. filed present execution. Pursuant of dismissal of SLP by Hon'ble Supreme Court of India, JD society handed over possession of land measuring 371 acres out of total land of about 380 acres to DH on 26.02.2005. Land measuring about 8.48 acres situated in Village Aali, Delhi, however, remained in illegal possession of JD.

22. It is stated that CS (OS) No. 13/1969 was filed against Delhi Peasants Co-operative Multi-Purpose Society Ltd. which was tenant of DH and objector herein was neither member of said society nor was successor in interest of any member of said society. Objector was very well aware of pendency of suit and passing of decree therein and cannot claim any right of being heard at this stage when the decree has become final till Hon'ble Supreme Court of India.

23. It is stated that despite in knowledge of pendency of present suit, objector indulged in illegal construction on land belonging to DH and as such, DH is not entitled to any protection under any law. It is prayed to dismiss objections filed by objector with costs.

24. I have heard arguments addressed by respective counsels and perused the Court record including written submissions and judgments filed on behalf of objector.

25. Objector in written submissions has raised objections regarding the manner in which demarcation was carried out by Revenue Authorities in present case but objector has not mentioned as to how did he come to know that Revenue officials did not carry out demarcation in accordance with provisions of law. On one hand, objector is stating that he did not receive any notice of demarcation and at the same time, he is raising questions regarding methodology followed by Revenue officials in present case which in facts and circumstances of present case appeared to be strategy of objector to delay execution of decree passed in present matter. This contention of objector is accordingly rejected.

26. In order dated 28.08.2024, this Court observed that objections filed by objector are liable to be dismissed in limine primarily because no ownership proof qua H.No. 410, Masjid Colony, Aali Village, Sarita Vihar, New Delhi has been filed by objector with the objections filed by him. Same is the position qua present objections also and objector has not filed any ownership proof of his alleged property. Objector has not been able to show his locus to file present objections i.e. in what capacity, he is in possession of property alleged to be his property. No registered sale deed which is the only approved way to own a piece of land in absence of inheritance or any bequeath has been filed by objector on record. Name of objector finds mentioned at Serial No. 42 of demarcation

report carried out in pursuance of order dated 18.09.2021. Demarcation proceedings dated 13.04.2015 were carried out in pursuance of directions of Hon'ble High Court of Delhi bearing signatures of Tehsildar, AE, Head Works Division, Agra Canal, Okhla, New Delhi. Schedule A and B annexed with the decrees passed in Suit No. 13/1969 as well as RFA No. 10/1976 as has come in order dated 01.04.2022 clearly identifies properties which are to be handed over to DH which includes Aali village. Property occupied by objector has been marked during demarcation by Govt. authorities. Possession of adjoining properties of property of objector has also been stated to have been taken over by DH. Hence, contention of objector that property which was to be taken over by DH has not been properly identified in terms of Order XX Rule 9 CPC becomes redundant.

27. Objector has relied upon judgment in case titled as ***“Harbansh Lal Gambhir & Ors. Vs. DDA WP (C) No. 1710-11/2005 decided on 22.08.2005”*** wherein Hon'ble High Court of Delhi observed that *“demarcation without opportunity to effected person is not tenable and demarcation is not as per rules”*.

28. Perusal of record shows that this is third set of objections filed by objector, first being dismissed vide order dated 01.04.2022 and second being dismissed vide order dated 28.08.2024. Similar objections of objector have already been dealt with but objector is filing objections again and again may be to delay present execution

which cannot be tolerated and in case, he was aggrieved by any of earlier orders, he should have filed an appeal but filing objections again and again before this Court show that purpose of objector is to derail present execution.

29. Objector has relied upon judgment in case titled as ***“Nahar Singh Vs. Harnek Singh & Ors. 1996 (6) SCC 699”*** wherein Hon'ble Apex Court observed that *“it is well settled that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same”*.

30. In order dated 01.04.2022, my Ld. Predecessor has observed that because Schedule A and B annexed with the aforesaid two decrees, clearly identified the properties that are to be handed over to DH and include Aali Village and because Annexure D filed along with this execution petition on 11.04.2001 clearly identifies properties of Aali Village that have to be handed over to DH. In these circumstances, when there are already observations of this Court come in order dated 01.04.2022 wherein objector also raised similar objections, filing of objections again on same parameters very well show intention of objector which seems nothing but to delay present execution which cannot be permitted particularly when objector has not challenged order dated 01.04.2022 and the said order has attained finality so far as objector is concerned. Hence, the aforesaid judgment is not applicable in facts and circumstances of present case.

31. Objector has further relied upon judgment in case titled as ***“Asola Homes Welfare Association Ltd. & Anr. Vs. Government of NCT of Delhi & Ors. decided by Hon'ble High Court of Delhi on 23.05.2022”*** wherein Hon'ble High Court of Delhi held that *“demarcation should be as per law”*.

32. As observed above, I am at loss to understand that how objector concluded that demarcation proceedings carried out in present matter are not in accordance with law when his stand is that he was not intimated regarding demarcation proceedings. Therefore, this judgment is of no help to objector.

33. Objector has relied upon judgment in case titled as ***“Jasbir Singh Vs. DDA decided on 01.07.2014”*** wherein Hon'ble High Court of Delhi observed that *“demarcation not on fixed point but on earlier demarcation is not tenable in the eyes of law”*.

34. This judgment is again of no help to objector as stand of objector is that he did not receive any notice of demarcation. Objector in view of his alleged stand of non-participation cannot challenge the manner wherein demarcation proceedings were conducted in present case though it is stand of DH that demarcation proceedings were carried out after due intimation to objector and other people residing over encroached property.

35. Some other judgments have also been filed by objector but

they as such are not applicable in facts and circumstances of present case. Objector despite not having any ownership proof qua property allegedly owned by him has been filing objections repeatedly to delay present execution which cannot be permitted and objections filed by objector are therefore, dismissed on account of locus of objector to file the same as he seems to be encroacher on land belonging to Government.

**Announced in open Court
today on 19.11.2024**

**(Sonu Agnihotri)
DJ-07, South East District,
Saket Courts/Delhi**