2026 INSC 389

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP(Civil) No(s). 26487 of 2019)

PAWAN GARG & ORS. ....APPELLANT(S)

VERSUS

SOUTH DELHI MUNICIPAL CORPORATION ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. This appeal with special leave preferred by the appellants interdicts the final judgment and order dated 24th April, 2019 passed by the Division Bench of the High Court of Delhi[1] in Letters Patent Appeal No.369 of 2016, wherein the Division Bench reversed the judgment and order dated 3rd March, 2016 passed by the learned Single Judge of the High Court

[1] Hereinafter, referred to as the "Division Bench".

of Delhi[2] in W.P. (C) No.5382 of 2014, and, *inter alia*, upheld the decision of the Layout Scrutiny Committee[3] dated 19th May, 2014 and so also of the Standing Committee dated 17th July, 2014.

I. BRIEF FACTS

4. The dispute centers around a parcel of land admeasuring 1600 sq. yards[4], situated in the erstwhile village Yusuf Sarai Jat, now falling within the territory of Green Park Extension Colony, New Delhi.[5] The subject land forms part of a larger tract of land which was originally under the ownership and control of a coloniser, namely, Urban Improvement Company Private Limited.[6] It is stated that the coloniser surrendered the land to the Municipal Corporation of Delhi[7] along with a layout plan for the development of the colony. As per the original layout plan sanctioned on 3rd September, 1958, the subject plot of land was reserved for a High School, whereas the adjoining areas were earmarked for primary

[2] Hereinafter, referred to as the "Learned Single Judge".
[3] For short "LOSC".
[4] Hereinafter, referred to as the "subject land/subject plot".
[5] Hereinafter, referred to as the "colony".
[6] Hereinafter, referred to as the "coloniser".
[7] Predecessor of the present respondent; Hereinafter, referred to as the "MCD".

school and park. Thereafter, the coloniser submitted a revised layout plan, which was duly sanctioned by the MCD on 30th May, 1969, whereby the reservation of the land for a High School was deleted, while the lands earmarked for the primary school and the park were maintained. The principal reason for the deletion of the High School from the layout plan was that the area mandatorily required for establishing a High School was approximately 4000 sq. meters (roughly 4783.96 sq. yards), whereas the available land area measured only 1600 sq. yards. The decision of de-reservation was not questioned before any forum and has long since attainted finality.

5. The coloniser sold the subject land bearing Khasra Nos.5, 6 and 14 to five persons[8], namely, Mr. Govind Ram (700 sq. yards), Mr. Vasudev (250 sq. yards), Mr. Jagdish Lal Batra (250 sq. yards), Mr. Prem Nath (150 sq. yards) and Mr. Pearey Ram (250 sq. yards), *vide* duly registered sale deeds dated 18th June, 1975.

6. Alleging that the MCD was trying to interfere with possession and use of the subject land, the

[8] Hereinafter, referred to as the "erstwhile owners".

erstwhile owners instituted five separate civil suits before the competent civil Court, seeking perpetual injunction against the MCD. All the said suits were contested by MCD and were decreed *vide* separate judgments dated 1st October, 1988, whereby the civil Court directed that the MCD shall not interfere with the possession of the plaintiffs over the subject land, except in accordance with due process of law. The relevant extracts from the said judgment[9] are reproduced below: -

> "2. The case of the plaintiff in brief is that he is the owner of property comprising one room, boundary wall on a piece of land measuring 14 biswas falling in Khasra No.6 in village Yusuf Sarai Jat, Green Park Extension, New Dehi (hereinafter referred to as the suit property) by virtue of sale deed dated 18.06.1975 which was executed by M/s Urban Improvement Co. P. Ltd. (hereinafter referred to as the Co.). The sale deed was registered with the Sub Registrar on 19.6.1975.
> 3. The plaintiff is in possession of the aforesaid property for the last 19 years. No Objection Certificate was also obtained by the plaintiff from A.D.M. (Revenue) dated 5.6.75 which shows that the land is free from all encumbrances and requirements/requisitions of the Government or any local body.
> 4. The plaintiff is in use and occupation of the suit property for more than 19 years and this fact is duly endorsed in the sale deed of the plaintiff. All rights, both possessory and ownership vest in the plaintiff.

[9] Suit No.444/78

[……]

20. The onus to prove this issue was on the plaintiff. The plaintiff appeared as PW2 and proved the sale deed Ext.PW2/1. This sale deed was executed in the presence of PW11 Shri Joginder Pal Advocate. The site plan Ext.PW2/2 was also proved by this witness. The sale deed was executed by the Co. in favour of the plaintiff. Thus, the ownership of the suit property has been proved in favour of the plaintiff without any iota of doubt. He has also constructed a boundary wall as well as a room on the property. It has come on the record that officials of the deft. Corpn. came for the purpose of taking possession, but could not take the same. No evidence has been led by the deft. MCD on the record that any notice has ever been served upon the plaintiff because the ownership of 14 biswas of land as per plan Ext.PW2/2 and the possession of Gobind Ram has been undoubtedly proved on the record. Merely stating that it was an encroachment upon the municipal land is not sufficient. It has also been proved on the record through the Local Commissioner's report appointed by the court that there is possession of the plaintiff. PW3 Chowkidar has also proved the possession of the plaintiff. The statement of PW1 and PW5 who were also plaintiffs in similar suits and have their property adjacent to the property of the plaintiff have proved on the record that plaintiff was the owner of the suit property and it was in possession of the plaintiff. Thus, the attempt on the part of deft. MCD to dispossess the plaintiff without any due process of law, is illegal and without jurisdiction. This issue Is decided in favour of the plaintiff as Khasra Nos. have also not been shown in Ext. DW2/1. The possession was also not taken in the presence of DW2. Khasra Nos. have also not been shown in Ext.DW3/2. He has also admitted that in Ext.DW3/1, there is a portion on which possession of MCD has not been shown. Thus, I am satisfied that plaintiff who is in possession of the suit

> property by virtue of sale deed has a right to use the same one cannot be dispossessed otherwise than by compliance of statutory requirement.
> 21. U/s 477 of DMC Act, no suit can lie against the MCD. The only limitation is that where the action of MCD is against the provisions of DMC Act, then the court has power to entertain the suit. In this case, the suit was filed by the plaintiff because there was an attempt on the part of deft. MCD to take forcible possession of the property from the plaintiff. Since this act of taking forcible possession is against the provisions of DMC Act because no notice has been served upon the plaintiff and he is the owner and in possession of the suit property through sale deed Ext.PW2/1 and site plan Ext.PW2/2, the suit is not barred U/s 477 of DMC Act.
> 23. In view of the above discussion, I am satisfied that the plaintiff was in possession of the suit property and also is the owner by virtue of sale deed Ext. PW2/1. Any forcible dispossession without compliance with the procedural requirements will be against the law. The suit of the plaintiff is accordingly decreed. The deft. MCD is hereby restrained from taking forcible possession of the property measuring 14 biswas forming part of Khasra No.6, in Village Yusaf Sarai Jat, New Delhi."

7. The MCD preferred separate appeals against the judgments of the civil Court in all the civil suits, *albeit* with significant delay. The learned appellate Court i.e., Additional District Judge, Delhi, refused to condone the delay and dismissed the aforesaid appeal/s *vide* order dated 21st March, 1992 on the ground of being time barred. Being aggrieved, the MCD filed second appeal/s before the High Court of

Delhi which also came to be dismissed on 4th November, 1992.

8. The erstwhile owners executed separate sale deeds in favour of six persons[10] namely, Dinesh Kumar (400 sq. yards), Mr. Surinder Kumar (400 sq. yards), Mrs. Surindra Kundra (150 sq. yards), Mr. Harish Kundra (250 sq. yards), Mr. Roshan Lal (150 sq. yards) and appellant No. 1- Mr. Pawan Garg (250 sq. yards) on 25th January, 1994 and 11th April, 1994.

9. In the meanwhile, the MCD again sought to interfere with the possession over the subject land, whereupon the subsequent purchasers preferred contempt petitions before the Court of learned Civil Judge, Delhi. In the said contempt proceedings, the officials of the MCD tendered unconditional apology, and accordingly, the contempt petitions were dismissed as withdrawn on 28th September, 1995.

10. In August, 1996, the subsequent purchasers, including appellant No.1, filed applications before the MCD for incorporation of their plots[11] in the layout plan of "the colony". The standing committee of the

[10] Hereinafter, referred to as the "subsequent purchasers".
[11] The plots referred to herein form part of the subject land.

MCD, *vide* Resolution bearing No.210 dated 19th August, 1998, rejected the said applications for incorporation of the plots in the layout plan.

11. In the year 1999, appellant No.1 filed fresh application seeking reconsideration of prayer for incorporation of the subject land in the layout plan of "the colony". The LOSC of the MCD approved the said application on 28th October, 2002 and recommended incorporation of the plots in the layout plan of the colony, subject to obtaining proper clearance from the Delhi Development Authority[12]. However, it appears that for number of years thereafter, no further action was taken on the said prayer of appellant No. 1.

12. In the year 2006, the subsequent purchasers moved an application for sanctioning a building plan for the construction of a nursery school. The said application was dismissed on 30th November, 2006. In the interregnum, *i.e.*, between the years 2006 and 2008, the subsequent purchasers executed two gift deeds in favour of appellant Nos.1 & 2 respectively

[12] For short "DDA".

and registered sale deeds in favour of appellant No.3, in respect of the subject plots.

13. Upon receiving comments from the DDA and in view of the report of the Land and Estate Department, the LOSC gave a negative opinion on the applications for incorporation of the plots in the layout plan of the colony *vide* order dated 19th May, 2014, observing that there stood recorded an entry in the immovable properties register of MCD indicating that the land was entered in its name. Subsequently, on 17th July, 2014, the Standing Committee *vide* its Resolution No.74 rejected the application of the appellants and upheld the order dated 19th May, 2014 passed by the LOSC.

14. Being aggrieved, the appellants preferred a writ petition[13] in the High Court of Delhi. The learned Single Judge, by a detailed well-reasoned order, allowed the writ petition by setting aside the orders dated 19th May, 2014 and 17th July, 2014 and directed the respondent-South Delhi Municipal Corporation[14] to objectively consider the application for incorporation preferred by the appellants and

[13] W.P. (C) No.5382 of 2014.
[14] Hereinafter, referred to as "respondent-Corporation".

decide the same within a period of 60 days. The relevant observations made and directions given in the order dated 3rd March, 2016 are reproduced hereinbelow: -

> "45. Interestingly, the decision of the Lay Out Scrutiny Committee dated 19th May, 2014 itself shows that the ownership was verified in the name of the applicants by concerned Tehsildar in 1997. Mere entry in the I.P. Register does not entitle the Corporation to become the owner of the land in question. The own documentation of the respondent Corporation itself frustrates the stand taken by the MCD that the land is owned by them.
> 46. In my considered view, in light of the aforesaid discussion, the decision taken by the Lay Out Screening Committee can hardly be considered rational. The result is that the petitioners cannot utilise their land despite fighting for their rights since 1975. Thus the decision of the Lay Out Scrutiny Committee dated 19th May 2014 qua the petitioners" land is set aside. Consequently, the decision of Standing Committee dated 17.7.2014 qua the petitioner's land is also set aside. The respondent, South Delhi Municipal Corporation is directed to consider the petitioner's plots in question in the layout plan within a period of sixty days from today in accordance with law."

15. Aggrieved, by the judgment and order passed by the learned Single Judge, the respondent-Corporation preferred a Letters Patent Appeal[15], which stands allowed by the Division Bench *vide* judgment dated 24th April, 2019, which is interdicted

[15] Letters Patent Appeal No.369 of 2016.

at the instance of the appellants in this appeal with special leave.

II. SUBMISSIONS ADVANCED BY COUNSEL FOR THE PARTIES

16. Shri Siddharth Bhatnagar, learned senior counsel appearing on behalf of the appellants, vehemently and fervently contended that the findings recorded by the civil Court in the suit for perpetual injunction, instituted by the predecessors-in-interest of the appellants, whereby a decree of permanent injunction was granted, had attained finality. It was submitted that the Division Bench without the issue of title being subject matter of the proceedings before the High Court, unjustly delved into the findings recorded by the civil Court and proceeded to make unwarranted observations with respect to the title of the appellants over the subject plots of land. In this regard, Shri Bhatnagar referred to the following excerpts from the impugned judgment of the High Court: -

> "46. On an overall consideration of the findings of the learned Single Judge, and having regard to the submissions of the parties, the question which this court has to decide are:

> (i) firstly, whether the findings of the five previous suits are conclusive on the issue of title- alive to it is the RV sale deeds executed by the coloniser in favour of the writ petitioners' predecessors in 1994;
>
> (ii) Secondly, whether the communication by the DDA that the Master Plan- and the consequential Zonal Development Plan requirements no longer stipulated that the land was needed for a secondary school and, therefore, consequently, the SDMC could change the purpose to residential. Alive to this is the nature of the MCD's obligation to carry out the necessary correction in the layout plan.
>
> (iii) The third would be the interpretation of Sections 312 and 313 of the Act, having regard to the decision of the Supreme Court in *Pt. Chet Ram Vashist (supra)* etc. and whether the MCD is correct in asserting that it has the right to manage the property as its custodian.
>
> (iv) Lastly, whether the issue of title- in the light of the contentions of the parties has to be decided in favour of the writ petitioners."

17. It was urged that there was no occasion for the High Court to have delved into or adjudicated upon the issue of title, particularly when the title was never under dispute and the writ petition had been filed by the appellants for the limited purpose of seeking a direction to the respondent-Corporation to incorporate the plot in the layout plan of the colony.

18. He further submitted that the Division Bench has recorded self-contradictory findings in the

impugned judgment on the issue of title. It was, thus, contended that the finding recorded by the Division Bench that the appellants' title over the land in question was doubtful, is absolutely unjustified. It was further submitted that the Division Bench recorded adverse findings regarding the deletion of the High School from the original layout plan without taking into account the fact that the deletion took place in the year 1969 and the very reservation of the subject land for High School was impermissible because the total available land area was only 1600 sq. yards, on which the High School could not be built as the same required minimum land area of nearly 4000 sq. meters (roughly 4783.96 sq. yards). Thus, the land was de-reserved in the year 1969 and reverted back to the original owners.

19. Shri Bhatnagar submitted that all that the learned Single Judge had directed was that the prayer of the appellants for incorporation of the subject land in the colony be considered. Issue of title was never a subject matter of the dispute before the High Court. He thus, urged that the impugned judgment is perverse and illegal on the face of the record and, therefore, deserves to be set aside and

the judgment of the learned Single Judge directing the respondent-Corporation to consider the prayer of the appellants for incorporation of the subject land in “the colony” ought to be affirmed.

20. *Per contra*, Shri Ashwani Kumar, learned counsel appearing for the respondent-Corporation, vehemently opposed the submissions advanced on behalf of the counsel for the appellants. He contended that the suits instituted by predecessors-in-interest of the appellants, were confined to seeking perpetual injunction, and no relief of declaration of title was sought in respect of the plots in question. Thus, the civil Court clearly exceeded the scope and ambit of the suit while making observations on title, without the same being an issue in the case.

21. It was further submitted that the original coloniser had surrendered the larger chunk of land for the development of a colony and, in the approved layout plan, the land area in question was reserved for the construction of a High School. However, owing to insufficiency of area, the school could not be constructed and consequently, the respondent-Corporation passed a revised layout plan in which the land was no longer shown as reserved for a High

School. Notwithstanding the same, it was fervently contended that even if the specific reservation for a High School stood deleted, the nature of the de-reserved land continued to be for public purposes and thus, it could not have been subjected to any private ownership.

On these grounds, learned counsel for the respondent-Corporation implored the Court to dismiss the appeal and affirm the judgment of the Division Bench.

III. DISCUSSION AND ANALYSIS

22. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties and have gone through the impugned judgment and other material placed on record.

23. The proceedings before the civil Court, seeking perpetual injunction, were contested by the MCD, and upon adjudication, a decree of permanent injunction was passed in favour of the predecessors-in-interest of the appellants and other landowners, restraining the MCD from interfering with their possession, except in accordance with due process of law.

24. Aggrieved by the judgments and decrees passed by the civil Court, the MCD preferred a first appeal *albeit* with a significant delay. The learned Additional District Judge, Delhi, by order dated 21st March, 1992, dismissed the said appeals on the ground of delay. The MCD thereafter preferred second appeals before the High Court of Delhi, which also came to be dismissed *vide* judgment dated 4th November, 1992. The said decision was never challenged any further and thus, the findings recorded by the civil Court attained finality. There is no dispute that the appellants and their predecessors have always been in peaceful possession over the plots in question. Except for a random entry in its property register, the MCD never asserted title over the plots in question before any forum. In such circumstances, the Division Bench was not justified in rendering observations so as to virtually unsettle the decree of the civil Court passed way back in 1988 and thereby, cause the title to be brought under dispute. In this regard, reference may be made to the observations contained in paragraph 55 of the impugned judgment, which reads as below: -

> "55. In the light of the above discussion, it is held that the impugned judgment to the extent it assumes that question of ownership and title were conclusively determined in the previous suit by the Senior Sub judge and had been endorsed in appeal and further on second appeal by this Court, is clearly erroneous. It is also important to notice here that the appeal preferred before the District Judge appears to have been time barred. That was the primary ground for rejection of the application for condonation. The consequent refusal by this Court to set aside the findings of the lower courts on the ground that no substantial question of law arises was in no manner conclusive on the issue of title as well. For these reasons, it is held that the Single Judge fell into error in accepting the writ petitioners" plea that the question of title had been decided affirmatively in favour of their predecessors in interest and that issue had the effect of estopping SDMC from questioning their rights and interest over the land, as subsequent transferees."

25. In stark contradistinction to the aforesaid findings, the Division Bench at Paras Nos. 67 and 72 of the impugned judgment recorded that the title and interest in the land does not vest in the respondent-Corporation. Notwithstanding the above finding, it was observed that the respondent-Corporation acts as a custodian of public interest of the said land for the management and interest of the society in general. The aforesaid paras are quoted hereinbelow:-

> "67. **It is clear from the above passage that the title and interest in the land does not vest in the public corporation (in this case, SDMC):**

however it has *"a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself*.*" This enunciation is supported by the earlier observation that this custodial nature of the right amounts to "*creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay-out plan."* The facts in this case, no doubt are different: it is that the layout plan continued to be the same, i.e. the area was earmarked for a school. The MCD in that case <u>had compelled a transfer to itself of the public spaces</u>; in this case, it refused to amend the layout plan.

[……]

72. **Here, the land no doubt does not belong to SDMC; the minimum area required for Sr. Secondary School is 4000 sq. mts., which is roughly 4783.96 sq. yds. and the land in question is 1600 sq. yds**. The stand of SDMC with regard to the land being transferred to MCD in 1969 is correct. The layout plan of the area in question was originally approved in the year 1958 by Resolution No. 7 dated 03.09.1958 of the SC. Thereafter, the layout plan was modified in the year 1959. Thereafter, by Resolution No. 183 dated 30.05.1969, the demarcation plan of the area in question was approved. The land in question, which is the subject matter of the present petition, was always shown as earmarked for school. Possession of the land in question was also handed over to the Municipal Corporation way back in the years 1967 and 1968, as reflected from the record. These facts, ipso facto, in the opinion of this Court, did not compel the SDMC to permit residential use.

> SDMC undoubtedly cannot – like in *Pt. Chet Ram Vashist's case* compel transfer of the lands unto itself. However, it has to formally accept the proposal to convert the use. Here, the petitioners are not on sound footing." (Emphasis supplied)

26. Apparently, the discretion of the Division Bench was heavily clouded by the fact that, in the original layout plan, the subject land was originally earmarked for a public purpose, namely, for a High School, and once the land stood earmarked for a public purpose, the same could not thereafter be validly transferred to the appellants.

27. We are of the considered view that the aforesaid finding was not only out of context but also unsupported by any cogent or plausible material on record. A mere entry in the list of properties maintained by the MCD cannot, by itself, constitute a valid proof of title over the subject land.

28. The competent authority had admittedly de-reserved the land admeasuring 1600 sq. yards, which was originally earmarked for a High School, way back in the year 1958. There is no material on record to show that notwithstanding such de-reservation, the land would continue to retain the character of being reserved for a public purpose. In this background,

and having regard to the fact that based on registered conveyances executed in respect of the land in question, the land changed multiple hands over a period of time and as issue of title was never agitated by the respondent-Corporation before any forum, the finding recorded by the Division Bench in the impugned judgment, to the effect that the land was required to be retained for a public purpose, is unsustainable on the face of the record.

29. On a perusal of the order passed by the civil Court dated 1st October, 1998, it is evident that no contest was made by the MCD in the said civil suit disputing the title of the predecessor-in-interest of the appellants. In such circumstances, the observations of the High Court that the respondent-Corporation became the custodian of public interest to manage the land, which was originally reserved as a High School in the layout plan, are wholly perverse and unsupported by tangible evidence. The issue of title or public purpose having never been raised by the respondent-Corporation before any forum, the only issue that required adjudication by the Division Bench was whether the direction given by the learned Single Judge to the respondent-Corporation to

consider the prayer of the appellant to incorporate the land in question in the layout plan of “the colony” was justified or not. The issue of title neither arose for consideration before the learned Single Judge, nor did the facts and circumstances of the case warrant any such adjudication.

30. At this stage, we may record the submission of the learned counsel for the appellants that the possession over the subject land remains with the appellants who have constructed residential buildings thereupon. The attempts made by the Corporation to interfere in the possession over the plot always met a dead end.

31. The learned Single Judge, while reversing the decision of the LOSC dated 19th May, 2014 and that of the Standing Committee dated 17th July, 2014, merely directed the respondent-Corporation to consider the prayer of the appellants for incorporating their plots in the layout plan within 60 days. For passing the said direction, the learned Single Judge referred to the counter affidavit filed by the MCD in W.P. (Civil) No. 4788 of 2000 wherein a clear admission is recorded that the subject land is owned by the other parties who had filed civil suits

against the MCD and the civil Court had declared them to be the owners. There may be some incongruity in the language of the affidavit but the long-standing possession of the appellants and their predecessors over the plots comprising 1600 sq. yards area is not in dispute.

32. In this background, there was neither any occasion for the learned Division Bench to have gone into the issue of title over the subject land nor was it justified in non-suiting the appellants on the premise that the subject land was earmarked for public purpose. The scope and adjudication of the appeal/s had to be confined to the direction given by the learned Single Judge, namely, to consider the prayer of the appellants for incorporation of the plot in the layout plan of the colony, and nothing beyond that.

IV. CONCLUSION

33. In wake of the above discussion, we are of the considered view that the direction issued by the learned Single Judge, *vide* judgment and order dated 3rd March, 2016, does not suffer from any infirmity whatsoever. Consequently, the impugned judgment and order dated 24th April, 2019 passed by the

Division Bench upsetting the judgment of the learned Single Judge is unsustainable in facts as well as in law and hence, the same is hereby set aside.

34. The judgment rendered by the learned Single Judge is restored. The respondent-Corporation shall consider the application of the appellants for incorporation of the plots in the layout plan of the colony within 60 days by passing a speaking order. The disposition, as directed above, shall not be influenced or prejudiced by any of the observations made in the order passed by the Division Bench or in this order.

35. The appeal is allowed accordingly. No costs.

36. Pending application(s), if any, shall stand disposed of.

……………………….J.
(VIKRAM NATH)

……………………….J.
(SANDEEP MEHTA)

NEW DELHI;
APRIL 20, 2026.