



Neutral Citation Number: 2023:DHC:4948-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.05.2023

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Judgment delivered on: 18 .07.2023

+ **LPA 609/2022 and C.M. Nos. 46224/2022, 46226/2022 & 46227/2022**

KAMALJEET BAJWA & ORS. Appellant

Through: Mr. Tanmay Mehta, Mr. Vinay Kumar Dubey, Ms. Priya Dubey and Mr. Prateek Tiwari, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondent

Through: Mr. Sameer Vashisht, Additional Standing Counsel, GNCTD with Mr. Arjun Gupta, Advocate.
Ms. Shobhna Takiar, SC, DDA with Mr. Gaganmeet Sachdeva, Advocate.
Mr. Madan Lal Sharma, Ms. Shivani Kher and Mr. Rakesh Kr. Lakra, Advocates for R-3.

+ **LPA 618/2022 and C.M. Nos. 46523/2022, 46525/2022, 46526/2022 & 46527/2022**

KAMALJEET BAJWA & ORS. Appellant

Through: Mr. Tanmay Mehta, Mr. Vinay Kumar Dubey, Ms. Priya Dubey and Mr. Prateek Tiwari, Advocates.



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versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondent

Through: Ms. Hetu Arora Sethi, Additional Standing Counsel, GNCTD.
Ms. Shobhna Takiar, SC, DDA with Mr. Gaganmeet Sachdeva, Advocate.
Mr. Madan Lal Sharma, Ms. Shivani Kher and Mr. Rakesh Kr. Lakra, Advocates for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Appeals i.e. LPA No. 609/ 2022, *Kamaljeet Bajwa & Ors. v. Government of NCT of Delhi & Ors.* and LPA No. 618/ 2022, *Kamaljeet Bajwa & Ors. v. Government of NCT of Delhi & Ors.* are arising out of a common land dispute in respect of which demarcation proceedings have been ordered by the learned Single Judge and, therefore, they were heard together and are being disposed of by a common order. The facts of LPA No. 618/2022 are being dealt with hereunder.

2. The undisputed facts of the case reveal that M/s Padmavati Investment Limited preferred a Writ Petition before this Court i.e. W.P.(C.)



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No. 6916/2018 titled *M/s Padmvati Investment Ltd. Vs. Govt. of NCT of Delhi & Ors.* stating that a Company incorporated under the Companies Act *i.e.*, M/s Jayshree Land Development Ltd. had purchased land admeasuring 54 bighas 16 biswas situated in Village Kharera, Sub Tehsil at Police Station Mehrauli *vide* registered Sale Deed dated 25.11.1950.

3. The Petitioner M/s Padmavati Investment Limited further stated *vide* affidavit that by an order dated 21.11.1967 of the High Court of Calcutta passed in CP No. 281/1967 with CA No. 158/1967, M/s Jayshree Land Development amalgamated with M/s. Padmavati Raje Cotton Mill and in the year 1999, a fresh certificate was issued by the registrar of companies in respect of the newly amalgamated entity *i.e.* M/s. Padmavati Investment Limited, which thus, in the Writ Petition claimed itself to be the owner of 54 bighas 16 biswas of land.

4. The Petitioner in the Writ Petition further stated that out of the 54 bighas 16 biswas land, land acquisition proceedings were initiated and finally an award was passed on 22.03.1971 acquiring the land admeasuring 52 bighas 9 biswas, leaving behind 2 bighas 7 biswas from Khasra No. 402 in Village Kharera, Sub Tehsil, at Police Station Mehrauli.

5. The Petitioner further stated that compensation was paid in the matter and in respect of the remaining 2 bighas and 7 biswas, the Petitioner approached the Government for demarcation of the land. However, the same was not carried out, and, in those circumstances, the Petitioner came up before this Court by filing a Writ Petition *i.e.* W.P.(C.) No. 6916 of 2018.



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6. The Writ Petitioner on 15.11.2017 submitted an application to carry out demarcation of the subject land out of Khasra No. 402 and also prayed for issuance of appropriate direction to the Government to release the approved demarcation report and approved demarcation plan in respect of the land in question as well as to carry out the physical demarcation of the land in question.

7. The Writ Petitioner on 30.12.2017 also deposited demarcation fee and M/s Deeba Orthographics Pvt. Ltd. which was an approved agency of the Government was approached by the Writ Petitioner to carry out the demarcation.

8. The approved authorized agency of Government *i.e.* M/s Deeba Orthographics Pvt. Ltd. initiated the process of demarcation of the land in question in the presence of *patwari/* kanoongo of Tehsil Hauz Khas, New Delhi. During the said process, on 26.08.2019, Padmavati Investment Limited was converted into a private limited company keeping in view Section 18 of the Companies Act, 2013 and the name of the company was changed to Padmavati Investment Private Limited.

9. The Respondent No.1 in the writ petition (Government of NCT of Delhi through Sub Divisional Officer) *vide* letter dated 16.07.2021 requested M/s Nikon Survey & Engineering Services, LLP (Respondent No.4 herein) to initiate the demarcation proceedings in the presence of all concerned parties including the Respondent No.3 (Superintendent G.A.S.P.I.O (L.A.)).



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10. On 23.04.2022, demarcation proceedings were carried out by the Respondent No.4 (Additional District Magistrate). The Respondent No.1 submitted the demarcation report on 23.04.2022 along with Auto Cad Drawing before this Court in W.P.(C.) No. 6916/2018. The Hon'ble Court *vide* order dated 24.05.2022 has disposed of the said Writ Petition with a direction to Respondent No.1 to do the needful for fixing the pillar on the boundaries of the demarcated land.

11. On 05.07.2022, when the Respondent No.1 visited the shopping complex of the Appellant and started the process of demarcation within the said complex, the Appellants came to know about the demarcation notice. The Appellants on 13.07.2022 being aggrieved by notice dated 22.06.2022 filed an application for recalling order dated 24.05.2022 passed by this Court in W.P.(C.) No. 6916/2018. However, it was later withdrawn and the Appellants being aggrieved by the demarcation report dated 23.04.2022 preferred a Writ Petition *i.e.* W.P.(C.) No. 10851/2022, and the Learned Single Judge has disposed of the Writ Petition by granting liberty to the Appellants to file an appropriate representation/ application to the SDM of Hauz Khas, Mehrauli Badarpur Road, Saket, New Delhi.

12. The case of the Appellants Kamaljeet Bajwa and others is that Village Kharera is already urbanised *vide* notification dated 28.05.1966, and the Appellants are *bona fide* purchaser/ allottee of their respective shops and they are peacefully running their business uninterrupted since 1986. The land was acquired by the Government of NCT of Delhi, and subsequently



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handed over to the Delhi Development Authority (DDA), and the DDA had developed a complex *i.e.* convenience shopping complex in the year 1985 on the portion of land of Khasra No. 402 consisting of commercial shops, parking compound, park, plaza etc. The DDA allotted the shops by conducting a public auction and possession was also granted to the respective allottees. However, in spite of the aforesaid fact, Padmavati Investment Limited, knowing fully well that shopping complex was constructed way back in the year 1985 and that the land/shops have been allotted to the various persons did not disclose the aforesaid fact in the W.P.(C.) No. 6916/2018 nor did it implead the Appellants Kamaljeet Bajwa and others in the W.P.(C.) No. 6916/2018.

13. Learned Counsel for the Appellant argued before this Court that the demarcation application, as it was in respect of urbanised land, was not maintainable at all before the Respondent No.1. The land was urbanised *vide* notification dated 28.05.1966. Further, the land was acquired by the Government of NCT of Delhi and then transferred to the DDA. A shopping complex was then constructed in 1985, and, therefore, by no stretch of imagination, could the demarcation have been ordered thereby posing a threat of eviction to the Appellants.

14. Learned Counsel appearing for Padmavati Investment Limited has vehemently argued before this Court that on account of amalgamation order passed by the High Court of Calcutta in CP No. 281/1967 Padmavati Investment Limited became the title holder of the property as the property in



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question *i.e.* 54 bighas 16 biswas was originally purchased *vide* Sale Deed 25.11.1950. Therefore, M/s Padmavati Investment Limited was the successor in-title of the entire land and as an award was passed acquiring 52 bighas 9 biswas out of 54 bighas 16 biswas, 2 bighas 7 biswas was the remaining land and by virtue of successor-in-title, M/s Padmavati Investment Limited was rightly claiming the land in question.

15. Heard Learned Counsel for the Parties at length and perused the record. The first Writ Petition which is subject matter of the present LPA was preferred by M/s Padmavati Investment Limited and was numbered as W.P.(C.) No. 6916/2018 titled ***Padmavati Investment Limited Vs. Government of NCT of Delhi and Others.*** The Writ Petition reflects that the statement on affidavit was made that Padmavati Investment Limited *i.e.* the Petitioner is the owner of land measuring to 2 bigha and 7 biswas situated at Khasra No. 402 (7-07) village Kharera.

16. The Writ Petitioner also made a statement on affidavit that the Petitioner Padmavati Investment Limited is a company incorporated under the Companies Act having its registered Office at Birla Building 9/19 1, R.N Mukherjee Road, Police Station-Hare Street , Kolkatta-70000. It was further contended in the writ petition that M/s Jayashree Land Development Ltd. purchased 54 bighas 16 biswas land comprising of various Khasras including Khasra No. 402 (7 bighas 7 biswas) situated in village Kharera sub Tehsil at Police Station Mehrauli *vide* registered Sale Deed dated 25.11.1950. Later on M/s Jayashree Land Development Ltd. amalgamated



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with M/s Padmavati Raje Cotton Mills Ltd. vide order dated 21.11.1967 passed by Calcutta High Court in C.P No. 281/1967 in connection with CA No. 158/1967. It was further stated in the Writ Petition that in the year 1999, *vide* Press certificate issued by the Registrar of Companies, the name of M/s Padmavati Raje Cotton Mills Ltd was amended to M/s Padmavati Investment Ltd (the Writ Petitioner).

17. The Writ Petitioner further contended that out of the total land comprising of 54 bighas 16 biswas land, the Land Acquisition Officer of Govt. of NCT vide Award dated 22.03.1971 acquired land measuring 52 bighas 9 biswas, and in the award, land measuring to 2 bighas and 7 biswas from Khasra No. 402 of Village Kharera (Petitioner's land) was not acquired.

18. The Petitioner further stated that as 2 bighas and 7 biswas of land was not acquired and the land acquisition proceedings have attained finality, the Petitioner kept on representing before the authorities to demarcate the land admeasuring to 2 bighas and 7 biswas of Khasra No. 402. The Petitioner submitted a letter on 15.11.2017 requesting the Respondents to carry out the demarcation and also deposited the demarcation fee on 30.12.2017.

19. The Petitioner further stated that in the month of February 2018, the Petitioner requested the Respondents to demarcate the land, and in turn the Petitioner was directed to approach M/s Deeba Orthographies Pvt. Ltd. which is an approved agency of the Government to carry out demarcation work of the total land, in order to indentify Petitioner's land.



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20. The Petitioner thereafter approached M/s Deeba Orthographies Pvt. Ltd. to carry out the demarcation works and deposited a sum of Rs.7,06,000/-, and demarcation was carried out by the M/s Deeba Orthographies Pvt. Ltd. on 15.02.2018. The Petitioner thereafter requested the authorities to issue an approved demarcation report and properly demarcated site plan to the Petitioner identifying the Petitioner's land, however, the same was not done, and, in those circumstances, the Petitioner came up before this Court praying for the following reliefs:

“(a) Issue a writ in the nature of mandamus or any other writ or direction of a similar nature thereby directing the Respondents to release the approved demarcation report and approved demarcation Plan to the Petitioner w.r.t the Petitioner land (2 Bigha 7 Biswas out of Khasra No. 402, Village Kharera); and/or

(b) Issue a writ in the nature of mandamus or any other writ or direction of a similar nature thereby directing the Respondents to carry out the physical demarcation at site by putting stone pillars on the Petitioner's demarcated land (2 Bigha 7 Biswas out of Khasra No. 402, Village Kharera); and/or

(c) Pass any other Order/orders which this Hon'ble Court may deem fit and proper in the interest of justice.”

21. It is pertinent to note that the Appellant before this Court was not initially made a party in the Writ Petition and this Court on 08.09.2020 passed the following order:

“The hearing was conducted through video conferencing.

CM APPL. 20262/2020 (by petitioner for directions)



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1. *The applicant seeks fresh demarcation of its lands. It had earlier paid Rs.7.99 lacs to M/s Deeba Orthographics (P) Ltd. for the said exercise but no Demarcation Report has been supplied to it. It is suffering on account of the delay. De hors it rights to recover the said money and/or be given a Demarcation Report apropos the previous demarcation exercise for which the monies were paid, the applicant is ready and willing to pay such fresh fees/monies as may be requisite for a fresh demarcation. Intimation in this regard will have to be furnished by the Department of Revenue, GNCTD.*

2. *The learned counsel for the petitioner submits that the petitioner has already moved an application on 15.11.2017 which was received in the Office of ADM. It is annexed at page no.137 of this petition. The Department of Revenue, GNCTD shall take the said application into consideration and pass appropriate orders apropos demarcation. The monies as may be required to be paid, shall be so paid by the applicant/petitioner as may be directed by the Department of Revenue, GNCTD. The Demarcation Report shall be supplied to the applicant/petitioner within eight weeks from today. The petitioner reiterates that the these monies will be paid, without prejudice to its rights and contentions, to pursue its claim for the earlier demarcation report and/or refund of the earlier paid monies.*

3. *Should the earlier demarcation be held to be valid, the subsequent amounts paid shall be refundable to the applicant/petitioner. The demarcation will obviously be carried out with reference to permanent reference points, in accordance with law.*

4. *The application is disposed-off in the above terms.*

W.P.(C) 6916/2018, CM APPL. 26218/2018, CM APPL. 16565/2019 CM APPL. 16566/2019 & CM APPL. 26288/2019



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5. List for further proceedings on 11.11.2020.

6. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.”

22. On 24.05.2022, it was brought to the notice of this Court that demarcation has been carried out in respect of land measuring 2 bighas and 7 biswas situated at Khasra No. 402 (7-07), village Kharera and pillars are to be fixed as per the demarcation report and the Learned Single Judge on 24.05.2022 has disposed of the Writ Petition. The order dated 24.05.2022 reads as under:

“1. Learned counsel appearing on behalf of petitioner as well for respondent nos. 1 to 3 inform the Court that as per directions of this Court, demarcation proceedings have already been completed on land measuring 2 Bigha and 7 Biswas sitated at Khasra No. 402 (7-07), Village Kharera.

2. Learned counsel for the petitioner submitted that pillars on the boundaries are to be fixed as per the demarcation. Learned counsel for respondent nos. 1 to 3 has assured the Court that same shall be done within four weeks.

3. In view of the above facts and circumstances, the writ petition is disposed of with a direction to the respondents to do the needful within four weeks from today. Nothing is left in the instant petition for further adjudication. Pending applications also stand disposed of.”

23. The present Appeal is arising out of the aforesaid orders and contention of the Appellants is that they are the owners of shops situated at Convenience Shopping Complex (CSE Complex), Hauz Khas which is built



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over the Khasra Number in dispute i.e. Khasra No. 402 village Kharera, and they are in peaceful possession from past 15-35 years.

24. The Appellants have stated that land measuring to 52 bighas and 9 biswas in village Kharera was notified under Section 4 of the Land Acquisition Act *vide* notification dated 24.05.1961 by the Government and a declaration was issued under Section 6 of the Land Acquisition Act on 18.10.1968. Finally an award was passed acquiring the land, and the Government took possession of the land.

25. The Land was handed over to DDA and in the year 1980-90, the DDA constructed a commercial complex *i.e.* Convenience Shopping Centre Complex upon the Khasra No. 402 village Kharera. Auction was carried out and shops were allotted by following the process of auction and now after about 35 years, the Petitioner is claiming rights over the land on which the Appellants are carrying out their business.

26. Learned Counsel appearing on behalf of the Appellants has vehemently argued before this Court that village Kharera, New Delhi has been urbanised on 28.05.1966, and, thereafter, the Revenue Department is not the authority for any land situated in the said village. The land in question is in possession of DDA, and, therefore, any process of demarcation or handing over of possession cannot be undertaken without the consent or approval of the DDA.



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27. Learned Counsel has drawn the attention of this Court towards a notification dated 28.05.1966. He has vehemently argued before this Court that the entire exercise of carrying out demarcation is *void ab initio*, and, heavy reliance was placed upon the judgment delivered in the case of ***K. Jayaram Vs. Bangalore Development Ltd.***, 2021 SCC Online SC 1194.

28. Learned Counsel has also argued before this Court that in spite of the fact that applications were preferred for dismissal of the Writ Petition, demarcation was carried out on the orders of the authority who were not competent to do so, and by no stretch of imagination, land in respect of which proceedings were initiated in 1961 can be demarcated at this juncture by the authorities who are not even the land owning authorities. He has vehemently argued before this Court that when the shop keepers have been in possession for the last 15 to 35 years, the question of dispossessing them based upon some demarcation report of the authorities, who are not competent to do so does not arise. The proper remedy for claiming title and possession of the land is a Civil Suit and not a Writ Petition. The Appellants have given details about the shop keepers and the Appellant No. 1 who is a senior citizen is in peaceful possession of shop for the last 36 years. It was allotted to the Appellant No. 1 by DDA on compassionate ground. The Appellant no. 2 is in possession of the shop in question since 1987. The Appellant No. 3 is in possession since 1997. The Appellant No. 4 has also established that his predecessor in title had purchased the shop in open auction from DDA and he is also in possession. The other Appellants have also furnished all minute details in respect of their possession and the same



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reflects that all the shops were allotted through a transparent process to the Appellants by the DDA, and they are *bona fide* purchasers.

29. Learned Counsel appearing on behalf of the Government of NCT of Delhi has also argued before this Court that the DDA is the land owning agency, and as the land falling in village Kharera stood urbanized on account of notification dated 28.05.1966, the only competent authority to carry out demarcation is DDA. It has been categorically stated that there cannot be any application under the Delhi Land Reforms Act and Delhi Land Revenue Act as the authorities under the aforesaid Acts cannot exercise a jurisdiction in respect of village Kharera as it has been urbanized.

30. Thus in short two main grounds have been raised by the Appellants in the present Appeal.

(a) That no application for demarcation was maintainable before the revenue authorities keeping in view the Delhi Land Revenue Act, 1954 (hereinafter to be referred as 'Land Revenue Act') and Delhi Land Reforms Act, 1954 (hereinafter to be referred as 'Land Reforms Act'), as the village in question was urbanized in the year 1966 and it is only DDA which can order for a demarcation being the land owning agency.

(b) The Appellants are *bona fide* purchasers of the shops in question. They are the title holder and a land in respect of which proceedings were initiated in 1961 can by no stretch of imagination be placed in



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possession of Padmavati Investment Limited based upon some application for demarcation, that too which was submitted to the authorities not competent to do so.

31. The most important question in the present case is the title of Padmavati Investment Limited in respect of the land in question.

32. The Writ Petition filed by M/s Padmavati Investment Limited reveals that the land in question was initially purchased by M/s Jayashree Land Development Ltd. admeasuring 54 bighas 16 biswas comprising of various Khasras including Khasra No. 402 situated at village Kharera, Sub Tehsil Police Station Mehrauli *vide* registered Sale Deed dated 25.11.1950. Undisputedly, in respect of land owned by M/s Jayashree Land Development Ltd. land acquisition proceedings were initiated and a notification under Section 4 of the Land Acquisition Act was notified on 24.05.1961. Declaration under Section 6 of the Land Acquisition Act was issued on 18.10.1968 and finally an award was passed.

33. The writ petitioner Padmavati Investment Limited has categorically stated that on account of an order of the High Court of Calcutta dated 21.11.1967 passed in CP No. 281 of 1967 in connection with CA No. 158, M/s Jayashree Land Development Ltd. amalgamated with M/s. Padmavati Rajee Cotton Mill Ltd.. It has been further stated that in the year 1999 *vide* certificate issued by the Registrar of Companies the name of M/s. Padmavati Rajee Cotton Mill Ltd was amended to M/s. Padmavati Investment Limited



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The order of the High Court of Calcutta dated 21.11.1967 is on record and the same is reproduced as under:

“President of the Union of India.

In the matter of Companies Act 1956

And

In the matter of Companies Act, 1956 and in the matter of The Jayshree Land Development Limited an existing company within the meaning of the Companies Act, 1956 and having its registered office at No. 15 India Exchange Place Calcutta within the jurisdiction aforesaid

And

In the matter of Padmavati Raje Cotton Mills Ltd. an existing company within the meaning of the companies Act, 1956 and having its registered office at No. P 46A Radha Bazar Lane Calcutta within the jurisdiction aforesaid

And

The Joy Shree Land Development Limited and padmavati Raje Cotton Mills ltd.

Applicants.

The above petitioner coming on for hearing on this day upon reading the said petition, the order dated the twenty first day of August last whereby the abovenamed the Joy Shree Land Development Limited (herein after referred to as the said transferor company) and padmavati Raja cotton Mills Limited (hereinafter referred to as the said transferee company) were ordered to convene separate meeting of the equity shareholders of the said transferor and transferee companies for the purpose of considering and if thought fit, approving with or without modification the scheme of Amalgamation proposed to be made between the said transferor and transferee companies and annexed to the joint affidavit of Makhan Lal Jain and Bhagwati Prosad Goenka filed on the twenty ninty day of September last, “the statesman” dated the fourth of day of September last and “the Sanmarg” dated the third day of September last each containing the advertisement of the said notice convening the



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said meeting directed to be held by the said order dated the twenty first day of August last, the affidavit of Nabin Ranjan Guha filed on the twentieth day of September last showing the publication and despatch of the notices convening the said meetings and an affidavit of puranjoy chahbe filed on the fourteenth day of November last and the exhibits therein referred to and the order made herein and dated the twentyninth day of September last the report of the Chairman of the Said meeting dated the twentyninth day of September last as to the result of the said meeting and upon hearing Mr. S. C. Sen advocate for the said transferor and transferee company and Mr. P. K. Sen advocate for the Central Government and it appearing from the report that the proposed scheme of the Amalgamation has been approved unanimously.

This Court doth hereby sanction the said scheme of Amalgamation set forth in paragraph 4 of the said petition herein and in the schedule 'A' hereunder written and doth hereby declare and the same to be binding with effect from the first day of September in the year one thousand nine hundred and sixty seven on all the shareholders and creditors of the said transferor and transferee companies.

This Court doth order

(1) That all the property rights and powers of the said transferor company specified in the first, second and third parts of the schedule 'A' hereto and all other properties, rights and powers of the said transferor company be transferred without further act or deed to the said transferee company and accordingly the same shall pursuant to section 394(2) of the Companies Act 1956 be transferred to and vest in the said transferee company for all the estate and interest of the said transferor company therein but subject nevertheless to all charges now affecting the same and

(2) That all the liabilities and duties of the said transferor company be transferred without further act or deed to the said transferee company and accordingly the same shall pursuant to section 394(2) of the Companies Act 1956 be transferred to and



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become the liabilities and duties of the said transferee company and

(3) That all proceedings now pending by or against the said transferor company be continued by or against the said transferee company and

(4) That the said transferee company shall allot to every member or the nominee or nominees of every member of the said transferor company who shall require the transferee company to do so one 9.5% Redeemable cumulative preference share of Rupees one hundred each fully paid for every two equity shares of Rupees one hundred each fully paid held by them and

(5) That the said transferor company do within fourteen days from the date hereof cause a certified copy of this order to be delivered to the Registrar of Companies West Bengal Calcutta for registration and on such certified copy being so delivered the said transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the said transferor company and registered with him that file kept by him in relation to the said transferee company and the files relating to the said two companies shall be consolidated accordingly and

(6) That any person interested shall be at liberty to apply to the court in the above matter for any directions that may be necessary

(7) That the costs of and incidental to this application to be taxed if necessary by the taxing officer of this Court be paid by the said transferee company and

(8) that the said transferor and the transferee companies do pay to the Central Government its costs of and incidental to this application assessed at ten gold mohurs.

Witness :- Shri Deep Narayan Sinha Chief Justice at Calcutta aforesaid this twentyfirst day of November in the year one thousand nine hundred and sixty seven.

Hatian & co. – Attorneys.

S. D. Pyne-Attorney.”



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“Schedule ‘A’ above referred to
Scheme of Amalgamation
The Joy Shree Land Development Limited
And
Padmavati Rajee Cotton Mills Ltd.
Part-1

- 1. That all the properties, rights and powers of the Joy Shree Land Development Limited (hereinafter called "the Transfer or company) Specified in the first second and third schedules hereto and all other properties rights and powers of the Transfer or company be transferred without further act or deed to padmavati Rajee Cotton Mills Limited (hereinafter called the Transferee Company") and accordingly the same shall pursuant to Section 394 (2) of the Companies Act 1956 be transferred to and vest in the Transferee company for all the estate and interest of the said Transfer or company but subject nevertheless to all charges now affecting the same and*
- 2. mat all the liabilities and dues of the said Transferor company be transferred without further act or deed to the said Transferee company and accordingly the same shall pursuant to section 394 (2) of the Companies Act 1956 be transferred to and become the liabilities and duties of the transferee company and*
- 3. The said transferee company shall allot to every member or the nominee or nominees of every member of the transferor company who shall require the Transferee Company to do so. 9.5% Redeemable cumulative Preference shares of Rs. 100/each fully paid in respect of every 2 equity' shares of Rs. 100/each fully paid up and held by him,*
- 4. The Redeemable cumulative Preference shares shall confer upon the holders thereof a right out of the profits of the company calculated for the purpose of distribution to a fixed cumulative divided on the capital at the rate of 9.5% per annum for the time being paid thereon (free of company's tax but subject to deduction of tax at source) with effect from 1st*



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September 1967 and in the event of winding up they shall rank both as regards dividend and claim on capital in priority to the Equity shares but shall have no further rights to participate in surplus profits or assets. The company shall have the right to redeem in whole or in part of the said Redeemable cumulative Preference shares at par at any time after five years but not exceeding seven years from 1st September 1967 by giving not less than one month's prior notice in writing and in the case of partial redemption the number of shares to be redeemed.

5. The 3.9. 70 Equity shares of Rs. 100/- each in The Joy Shree Land Development Limited held by padmavati Raje Cotton Mills limited shall stand cancelled and no shares will be issued in respect thereof.

Part II

1. The transfer company and the Transferee company shall make necessary petition to the Hon'ble High Court at Calcutta for the sanction of the scheme and the scheme shall become operative from 1st September 1967 or such date as may be directed by the said Hon'ble court at Calcutta and/or decided by the Directors of the said companies,

2. Until the scheme is sanctioned and the transfers are effected as aforesaid the Transferor company shall by their Directors carry on business thereof in the same manner as heretofore so as to maintain the same as a going concern.

4. The Transferee company shall pay on the costs, charges and expenses of or incidental to the scheme and the carrying out of the same into effect.

5. The Directors of the said companies may assent to any modification to this scheme or to any condition which the court may think fit to approve or impose before granting sanction,

5.D. Mitra

10.268

For Register

Schedule "above referred to

Part-I



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Free hold property of the transferor company

1.	<i>Land at 2 Judges Court Road, Calcutta</i>	<i>b.</i>	<i>Kt.</i>	<i>Cn.</i>	<i>Sft.</i>
		2	13	0	6
2.	<i>Land at 17c Darga Road Calcutta</i>	1	2	11	20
3.	<i>Lend at bamunary</i>	20	1	10	26

<i>Khaitan No.</i>	<i>Plot No.</i>	<i>B. K. CH. SFT.</i>
173	506	
493	507	
	505	
293	519	
175	522	
849	523	
878	514	
293	516	
	517	
293	518	<i>Mouza Bamunary, Dist. Hoogly</i>
430	520	
293	513	
292	578	
293	512	
	576	
78	527	
	529	
174	556	
	559	
618	555	
1044	521	
	557	
	558	
1039	515	



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1035	569
	544
1040	560
	566
292	517
	573
	574
292	567
	579

4. land At Makhala

Touzi No.	Khatian No.	Plot No.	B.	Kt.	Ch.	Sft
182 Mouzi Makhala P.S. Uttarpara, Dist. Hooghly	41	1718	0	2	4	0

5. land at liluah

Dag. No. 1989 and 1990 Khatian No. 1719, J.L. No. 12, R.S. No. 1975, Tauzi NO. 3989, Mouza Liluah			1	0	13	42
--	--	--	---	---	----	----

6. land at 37 Diamond Harbour Road

Lot 'A'			3	2	4	7
---------	--	--	---	---	---	---

7. Land at Rishra

(of which 3 Bighas have been sold but not yet conveyed)			4	16	3	05
---	--	--	---	----	---	----



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8. *Land at kutas Mehrauli road delhi
(of which 12400 sq. yds. have been
Sold but not yet conveyed)*

55,238 sq. Yds.
(approximately)

Part-II

LEASEHOLD PROPERTY

<i>LAND AT KALIMBONG PLOT No. 455 Situated in the development Area Part-II at Kalimpong in the P.S. kalimpong, District- Darjeeling</i>			4	16	3	05
---	--	--	---	----	---	----

Part III

Stocks, shares debentures and other choses in action

<i>Compensation claim in respect of rishra land</i>			68	4	0	0
---	--	--	----	---	---	---

*S. B. Mitra 15.2.68
For Registrar*

“C.P. No. 281 of 1967

Connected with C.A.

Suit No. 158 OF 1967

IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

In the matter of Companies Act 1956

And

In the matter of The Jayshree Land Development Limited



Neutral Citation Number: 2023:DHC:4948-DB

- | | | |
|-------|---|--|
| (i) | <i>Date when the decree or order was completed</i> | <u>16.2.68</u> <i>B</i> |
| (ii) | <i>Date of application for Copy</i> | <u>20.3.96</u> <i>B</i> |
| (iii) | <i>Date of notifying the requisite number of folios and stamp</i> | <u>21.3.96</u> <i>B</i> |
| (iv) | <i>Date of delivery of the Requisite folios and stamp</i> | <u>21.3.96</u> <i>B</i> |
| | | <i>Order/ Decree of Filed this The 21st day of November 1967 day of 16th February 1968</i> |
| (v) | <i>Date on which the copy is Ready for delivery</i> | <u>26.3.96</u> <i>B</i> |
| (vi) | <i>Date when delivery was Taken of the copy by the Applicant</i> | <u>26.3.96</u> <i>B</i> |
| | | <i>Superintendent, Order Department</i> |
| | <i>Superintendent, Copyists' Department, High Court, O.S.</i> | <i>Advocate.”</i> |

34. The amalgamation order passed by the High Court of Calcutta nowhere includes the land situated in Delhi.

35. In the considered opinion of this Court, as land acquisition proceedings were initiated in the year 1961, and the Calcutta High Court has passed an order on 21.11.1967, the predecessor in title M/s Jayshree Land Development Ltd. rightly did not offer the land situated in Delhi as the Section 4 notification was issued in the year 1961 in respect of the Delhi Land.



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36. Keeping aside the abovementioned fact, on account of the amalgamation order as the land in question does not form part of the properties mentioned in the amalgamation order and, therefore, by no stretch of imagination can it be said that M/s Padmavati Raje Cotton Mill Ltd. (petitioner) became the title holder of the land in question. Meaning thereby, the Writ Petition was preferred by a stranger who has not been able to establish any right in respect of the land in question before this Court.

37. The Learned Counsel appearing on behalf of the M/s Padmavati Investment Limited confronted with the aforesaid situation has admitted in the open Court that the order passed by the High Court of Calcutta dated 21.11.1967 does not include the land which is the subject matter of the present litigation.

38. It is really strange and shocking that a total stranger to the land has filed an application before authorities not competent to order for demarcation, and by filing frivolous application in respect of the urbanized land, is making an attempt to dislodge *bona fide* purchasers who have purchased the property through open auction from the DDA.

39. The present case is a classic example of the land grabbing *modus operandi* for depriving the legitimate owners from continuing in possession.

40. M/s Padmavati Investment Limited is guilty of misleading this Court and is also guilty of suppression of facts as an incorrect statement was made in the Writ Petition that on account of amalgamation order passed by the Calcutta High Court, the land was transferred to Padmavati Investment Limited.



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41. A person who does not come with clean hands is not entitled for any relief of whatsoever kind. The Hon'ble Supreme Court in the case of ***K.D. Sharma v. SAIL***, (2008) 12 SCC 481 : 2008 SCC OnLine SC 1025 in paragraph Nos. 34 and 38 has held as under:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.”

42. The Hon'ble Supreme Court in the case of ***Ramjas Foundation v. Union of India***, (2010) 14 SCC 38 in Paragraph 21 has held as under:



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“21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

43. The Hon’ble Supreme Court in the case of **Ram Saran v. IG of Police, CRPF**, (2006) 2 SCC 541 in Paragraph 19 has held as under:

“19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste



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candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.”

44. In light of the aforesaid judgment as the Writ Petition has not come with clean hands, the Petitioner is not entitled for any relief.

45. The other important aspect of the case is whether the land in question is an urbanized land as village Kharera, New Delhi had already been notified for urbanization in the year 1966. The notification issued in the year 1966 reads as under:

सत्यमेव जयते



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COMPLET

No. 1620 भारत सरकार
 RED NO. D. 1620 GOVERNMENT OF INDIA
 दिल्ली प्रशासन DELHI ADMIN.

दिल्ली राजपत्र Delhi Gazette

EXTRAORDINARY
 भाग IV
 PART IV
 प्राधिकार से प्रकाशित
 PUBLISHED BY AUTHORITY

दिल्ली, शुक्रवार, जून 3, 1966/ज्येष्ठ 13, 1888
 DELHI, FRIDAY, JUNE 3, 1966/JYAISTHA 13, 1888

DELHI ADMINISTRATION, DELHI
 (Local Self Government Department)
 NOTIFICATIONS
 Delhi, the 3rd June 1966

No. F/2(49)/65-LSG.—The following is published for general information:—
 NOTIFICATION
 Delhi, the 28th May 1966.

No. F.9(2)/66-Law-Corp.—In exercise of the powers conferred by clause (a) of Section 507 of the Delhi Municipal Corporation Act, 1957 (66 of 1957) the Corporation, with the previous approval of the Central Government, hereby declares that the following localities mentioned in the Schedule given below, hitherto, forming part of the rural areas, shall cease to be rural areas:—

SCHEDULE

Name of the Zone	Name of the Revenue Estate	Particulars of the area proposed to be urbanised
West Delhi.		
1.	Khampur Raya	The entire remaining area of the said Revenue Estate which has not so far been urbanised.
2.	Shadipur	
3.	Narsina	
4.	Tatarpur	



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Sj No	Name of the Zone	Name of the Revenue Estate	Particulars of the area pro- posed to be urbanised
5.		Choukphandi	The entire remaining area of the said Revenue Estate which has not so far been urbanised
6.		Tehar	—do—
7.		Nangal Raya	—do—
8.		Assalapur	—do—
9.		Possangipur	—do—
10.		Nangli Jalab	—do—
11.		Budhela	—do—
II. South Delhi.			
1.		Kilokri	—do—
2.		Bahle-pur Bhaddar	—do—
3.		Kotla Mubarakpur	—do—
4.		Tamur Nagar (Revenue State of Kilokri)	—do—
5.		Khizrabad	—do—
6.		Serei Juliana (Revenue Estate Bahapur)	—do—
7.		Masihgarh (Revenue Estate Bahapur)	—do—
8.		Jogs Bai	—do—
9.		Okhia	—do—
10.		Gathi Jharla Maria	—do—
11.		Zamrudpur	—do—
12.		Masjid Moth	—do—
13.		Shahpur Jat	—do—
14.		Humayunpur	—do—
15.		Hauz Khas	—do—
16.		Yusuf Sarai	—do—
17.		Mohammadpur	—do—
18.		Munirka (In Revenue State of Mohdpur)	—do—
19.		Jasla	—do—
20.		Madanpur Khadar	—do—
		Tekhand	—do—

सत्यापित 12-7-22
सहायक निबन्धक (इशासन)
भारत सरकार, प्रकाशन विभाग
आवासीय एवं शहरी कार्य मंत्रालय
सायबल लाईन्स, दिल्ली-54



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Sl. No.	Name of the Zone	Name of the Revenue Estate	Particulars of the area proposed to be urbanised
22.		Sheikh Sarai	The entire remaining area of the said Revenue Estate which has not so far been urbanised.
23.		Begumpur	-do-
24.		Seral Shahji	-do-
25.		Hauz Rani	-do-
26.		Ad. chini	-do-
27.		Kalu Seral	-do-
28.		Ber Seral	-do-
29.		Chiragh Delhi	-do-
30.		Katwaria Seral	-do-
31.		Basant Nagar	-do-
32.		Madangir	-do-
33.		Badarpur	-do-
34.		Harinagar Ashram (In Revenue State of Kilokri)	-do-
35.		Kharara	-do-
36.		Arakpur Bagh Mochi (Nazul)	-do-
37.		Kishan Garh (In revenue Estate of Mehrauli)	do
38.		Khanpur (part)	-do-
39.		Tughlakabad	-do-
III. North Delhi.			
1.		Dhirpur	-do-
2.		Malikpur	-do-
3.		Rajpur Chhawani	-do-
4.		Bharola	-do-
5.		Peepal Thala	-do-
6.		Rampura (Revenue Estate of Shakurpur)	-do-
7.		Wazirpur	-do-
V. Shahdara Side.			
1.		Kaitwara	-do-
2.		Ghonda	-do-

संत - 1
 12-7-22
 सत्यापित सहायक निबंधक (पशासन)
 भारत सरकार, प्रकाशन विभाग
 आवासन एवं शहरी कार्य मंत्रालय
 सिविल लाईन्स, दिल्ली-54



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DELHI GAZETTE EXTRAORDINARY

Sl. No.	Name of the Zone	Name of the Revenue Estate	Particulars of the area proposed to be urbanised
3.		Mauzpur	The entire remaining area of the said Revenue Estate which has not so far been urbanised.
4.		Jhilmila, Tahirpur (Nazul)	—do—
5.		Karkar Duman	The entire area except the village shadi area which has already been declared urban vide notification No. P.9/5/59 —R & S, dated 28-12-1959.
6.		Seelampur	—do—
7.		Shahdara	The entire remaining area of the said Revenue Estate which has not so far been urbanised.
8.		Ghondli	—do—
9.		Mandali Fazalpur	—do—
10.		Ghazipur	—do—
11.		Kachhimpur	—do—
12.		Hasanpur	—do—
13.		Shakarpur, Khas	—do—
14.		Saholi	—do—

(Sd.) K. L. RATHEE,
Commissioner,
Municipal Corporation of Delhi.

By Order,
G. D. BAHRI,
Officer on Special Duty (LSG),
Delhi Administration, Delhi.



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”

46. In light of the aforesaid notification, the authorities under the Delhi Land Reforms Act or Delhi Land Revenue Act do not have jurisdiction in respect of the Village Kharera to order for any demarcation.

47. In the considered opinion of this Court, as the land was urbanized, the Land Reforms Act or the Land Revenue Act were not at all applicable, no such demarcation application could have been preferred before the revenue authorities.

48. In the case of *Indu Khorana Vs. Gram Sabha and Ors.* in W.P.(C.) No. 4143/2003, the Division Bench of this Court in Paragraph Nos. 6 to 11 has held as under:

“6. We have considered the submissions made by the learned counsels for both the parties.

7. In Trikha Ram v. Sahib Ram & Anr. (supra), it has been categorically held that once by virtue of notification issued under Section 507 (a) of Delhi Municipal Corporation Act the land is declared to be an urban land, it could no longer be classified as village abadi land within the definition of land under Delhi Land Reforms Act and the provisions of Delhi Land Reforms Act would not be applicable. Similar view is taken in Madho Prasad v. Sh. Ram Kishan & Ors. (supra).

During arguments, learned counsel for the petitioner has also referred to two more judgments of this court, one is W.P.(C) No. 479/2004 Ashok Kumar v. Union of India & Ors., decided on 12.04.2004 by Single Judge of this court wherein it is held that once land ceased to be rural area, provisions of DMC Act would apply.

8. The other judgment is CS(OS) No.379/2003 Sh. Sis Ram & Ors. v. Sh. Lallu Singh & Ors., decided on 09.05.2006 wherein a suit for partition was filed in respect of an abadi land of a



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village Mauzpur, Delhi which by notification issued by Municipal Corporation of Delhi approved by Central Government in exercise of powers conferred by Clause (a) of Section 507 of MCD Act, 1957 was declared as an urban area. The court held that once, on urbanization of land by the said notification, the same will not be governed by provisions of Delhi Land Reforms Act.

Above is the consistent view of this court as has been noted above in four different judgments mentioned above.

9. The question of charging Property Tax by the MCD in an urbanized area has been considered and concluded by Division Bench of this Court in Brig. S.C.L. Malik v. MCD, 61(1996) DLT 661 (DB).

In the above case, the petition was filed seeking quashing of the levy and demand of General Tax on the farm premises of the petitioner situated in village Khirki, tehsil Mehrauli, New Delhi, known as 36, Sainik Farms, New Delhi. In the aforesaid case also notification dated 23.05.1963 was issued by the Delhi Administration in exercise of powers conferred by Clause (a) of Section 507 of the Act, the Corporation with the previous approval of the Central Government had declared that localities mentioned in schedule appended therewith and forming part of the rural areas shall cease to be the rural areas including petitioner's land.

The question of levy and demand of the General Tax on the said land of the petitioner arose. The Division Bench of this Court perused the relevant statutory provisions of Delhi Municipal Corporation Act, 1957 in this regard and relied upon the judgment of another Division Bench decision of this Court in Naresh Kumar v. Union of India & Ors. 56 (1994) DLT 746 and held that house alone and not the large tract of agricultural land over which it stood would be liable to be taxed. The relevant portion of the said judgment is as under:-

"When the legislature exempts 'agricultural lands' and buildings used substantially for agricultural purposes from the purview of the property tax as stated by us and



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makes only 'dwelling houses' located therein subject to tax, it will not, in our opinion, be permissible for the assessing authority to take the entirety of the agricultural land - whatever be its extent - on which the building or farm house is located, for purposes of levying property tax. We are of the view that only such land around the dwelling house which can be said to be reasonably required for the beneficial enjoyment of the dwelling house or farm house, must alone be the subject matter of the tax. This will again depend on the facts and circumstances of each case to be decided by the assessing authority or by the appellate authority before which the matters may be pending. We notice that the Delhi Act does not contain any definition of 'appurtenant land' and therefore the question as to what is 'appurtenant land' in the context of each dwelling house will have to be determined with reference to the size and extent of the dwelling house and on the basis of what can be said to be the land reasonably required for the beneficial enjoyment of the dwelling house. The remaining part of the agricultural land cannot be subjected to property tax." The Division Bench concluded that in case of a farm house the above said will be the principles for assessing the building and appurtenant land to tax."

10. The view taken by the Division Bench is binding on this Bench. No sufficient reason has been shown to us for taking a different view other than what has already been taken by Division Bench earlier. As regards the issues under the Income Tax Act about the capital gains, being exempt when agricultural lands are acquired and what would be the position while valuing the capital cost of the land under the Wealth Tax etc. are concerned, these issues do not directly arise in this case. As and when such issues will arise, the concerned authorities would examine the same in accordance with law.



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11. We thus hold that once rural area is urbanized by issuance of notification under section 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of Delhi Reforms Act will cease to apply. The reference stands answered accordingly. The file be placed before the Acting Chief Justice for sending the same to the learned Single Judge for deciding the case on merits.”

49. In light of the aforesaid judgment once, by virtue of Notification No. F.9(2)/66/Law/ Corpn. dated 28.05.1966, the land is declared to be urbanized land, it can no longer be classified as village body land and the provisions of Land Reforms Act and the provisions of Land Revenue Act are not at all applicable.

50. In the present case, the application was preferred for demarcation under the Land Reforms Act. The application itself was not maintainable, and, therefore, in light of the judgment of Division Bench of this Court, the subsequent demarcation report deserves to be quashed and is, accordingly, quashed and the order passed by the Learned Single Judge is hereby set aside.

51. A similar view has been taken by this Court in the case of ***Trikha Ram Vs. Sahib Ram*** in Civil Revision Appeal No. 373/1995 and ***Shri Neelpadmaya Consumer Products Pvt. Ltd. Vs. Satyabir and Ors.*** in CS(OS) No. 78/2007.

52. The land situated in village Khaera has already been urbanized by notification of the year 1966 and also forms part of the notification of the master plan/ zonal plan under the Delhi Development Act. It ceases to be agriculture in nature and the authorities under the Land Revenue Act and



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Land Reforms Act were not having the requisite jurisdiction to carry out the demarcation, hence, the entire exercise at the behest of Revenue authorities under the Land Reforms Act and Land Revenue Act demarcating the land and putting pillars almost after 50 years is bad in law.

53. The Writ Petition filed by Padmavati Investment Limited for issuance of a direction in respect of demarcation was certainly a frivolous petition, and an attempt was made to dispossess the title holders who are running their shops in a shopping complex constructed by the DDA after a lapse of about 35 years. Any dispute in respect of title in the peculiar circumstances of the case cannot be resolved in a Writ Petition proceeding and the proper remedy for Padmavati Investment Limited was to file a Civil Suit claiming title in respect of the land in question that too by impleading persons who are in possession of the land.

54. The Hon'ble Supreme Court in the case of *Dwarka Prasad Agarwal v. B.D. Agarwal*, (2003) 6 SCC 230, in Paragraph 28 has held as under:

“28. A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contradistinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writers & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived at or not, were



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pending adjudication before the civil courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved around the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.”

55. The Hon’ble Supreme Court in the case of ***State of Rajasthan v. Bhawani Singh***, 1993 Supp (1) SCC 306, in Paragraph No. 7 has held as under:

“7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.” (emphasis supplied)

56. In light of the aforesaid judgment, as the appellants were seriously disputing the title of M/s Padmavati Investment Limited, the writ petition preferred by M/s Padmavati Investment Limited was not at all maintainable. M/s Padmavati Investment Limited has prayed for demarcation claiming itself to be title holder of the property, and once the title was seriously disputed, the writ petition should have been dismissed as disputed questions of fact were involved.

57. Another important aspect of the case is that at no point of time was the registered convenience deeds in respect of the Appellants the subject matter of the Writ Petition. The convenience deeds were executed by the



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DDA conferring ownership right in favour of the Appellants and dispossessing the lawful claimants and title holder of the property by taking shelters of the orders passed in a writ petition is un-heard off. The demarcation carried out in the matter deserves to be set aside and is accordingly set aside.

58. Once the land in question was urbanized vide notification dated 28.05.1966, the authorities were not at all competent to carry out demarcation as it has been done in the present case and, therefore, the orders passed in the Writ Petition dated 08.09.2020 and 24.05.2022 are hereby quashed.

59. The present case reflects a very disturbing trend which is prevalent in the society of grabbing Government land by creating documents. The Company who is not the title holder of the property by making false averment that it is title holder of the property, made an application for demarcation to the authorities which were not competent to carry out demarcation and gradually documents were created to establish title, with the view to, therefore, claim possession.

60. In the considered opinion of this Court, the Padmavati Investment Limited has played a fraud in the matter and fraud vitiates all proceedings.

61. The Hon'ble Supreme Court in the case of ***S.P. Chengalvaraya Naidu v. Jagannath and Ors.***, (1994) 1 SCC 1, in Paragraphs 1 and 5 has held as under:

“1. “Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a



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judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

Xxxxxx

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that —there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence. The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

62. The Hon’ble Supreme Court in the case of **Ram Chandra Singh v. Savitri Devi**, (2003) 8 SCC 319, in Paragraphs 15, 16, 17, 18, 23, 25 and 37 has held as under:

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.



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16. *Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.*

17. *It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.*

18. *A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.*

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23. *An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.*

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25. *Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.*

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37. *It will bear repetition to state that any order obtained by practising fraud on court is also non est in the eye of the law. (emphasis supplied)*

63. The Hon'ble Supreme Court in the case of ***Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.***, (2005) 7 SCC 605 in Paragraph Nos. 9 & 11 has held as under:

“9. By “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression —fraud



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involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Vimla (Dr.) v. Delhi Admn. [1963 Supp (2) SCR 585 : AIR 1963 SC 1572] and Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550]]

11. *“Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319] .)*

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64. In light of the aforesaid judgments, as a fraud has been played upon by M/s. Padmavati Investment Private Limited, the present Appeal deserves to be allowed with heavy cost, and, therefore, the impugned order is hereby set aside and the Appeal is allowed with a cost of Rs. 10 Lakhs to be paid by M/s Padmavati Investment Private Limited within a period of 60 days to the Armed Forces Battle Casualties Welfare Fund. The matter shall be listed before the Registrar General for reporting compliance of the present order in the matter of payment of cost.

65. The present LPA stands allowed and is accordingly disposed of.

LPA 609/2022 and C.M. Nos. 46224/2022, 46226/2022 & 46227/2022

66. The present LPA is arising out of an order dated 19.07.2022 passed by the Learned Single Judge in W.P.(C.) No. 10851/2022 titled ***Kamaljeet Bajwa & Ors. Vs. Government of NCT of Delhi & Ors.***

67. The facts of the case reveal that the Respondent Padmavati Investment Limited filed a Writ Petition i.e. W.P.(C.) No. 6916/2018 stating that they are owners of the land situated in Khasra No. 402 (7 bighas and 7 biswas) located at village Kharera, Sub Tehsil in Police Station Mehrauli. It was stated by them that M/s Jayashree Land Development Ltd. has purchased the land totalling to 54 bighas and 16 biswas situated at Village Kharera, Sub Tehsil Police Station Mehrauli vide registered sale deed dated 25.11.1950 and on account of an order passed by Calcutta High Court dated 21.11.1967 passed in CP No. 281 of 1967 M/s Jayashree Land Development Ltd. amalgamated with M/s Padmavati Raje Cotton Mill Ltd. In the Writ Petition it was stated that thereafter the name of the Company was changed



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from M/s Padmavati Raje Cotton Mill Ltd. to M/s Padmavati Investment Limited.

68. The Writ Petitioner Padmavati Investment Limited came before this Court stating that total land of 54 bighas and 16 biswas owned by M/s Jayashree Land Development Ltd. which subjected to land acquisition proceedings and land admeasuring to 52 bighas and 9 biswas was acquired and an award was passed on 22.03.1971 leaving behind 2 bighas and 7 biswas from Khasra No. 402 Village Kharera.

69. M/s Padmavati Investment Limited submitted representations for demarcation of the remaining land i.e. 2 bighas and 7 biswas and as no demarcation was carried out, a writ petition was preferred being W.P.(C.) No. 6916/2018.

70. The demarcation report was finally submitted on 23.04.2022 qua the properties of the Appellants herein (Petitioners in W.P.(C.) No. 10851/2022), and the present appellants came up before this Court for quashment of demarcation proceedings.

71. The Learned Single Judge has dismissed the Writ Petition by passing order dated 19.07.2022 and the order passed by the Learned Single Judge dated 19.07.2022 reads as under:

“CM APPL. 31545/2022

Exemption allowed subject to just exceptions. The application stands disposed of.

W.P.(C) 10851/2022

1. The instant petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:



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“a) That this Hon'ble Court be pleased to issue a writ, order or directions in the nature of certiorari thereby quashing the Demarcation Report dated 23.04.2022 qua the Petitioners property;

b) That this Hon 'ble Court be pleased to issue a writ, order or directions in the nature of certiorari quashing the impugned Notice bearing F. No. SDM/ HK/ Demarcation/Kharera402/(2018)/2020/738 dated 22.06.2022 issued by Respondent No. I qua the Petitioners' property;

c) That this Hon'ble Court be pleased to issue a writ, order or directions in the nature of mandamus thereby directing the Respondent No. I to not to proceed with the demarcation during the pendency and final disposal of the present Writ Petition;

d) For cost of the Petition and;

e) For such other and further reliefs as the nature and circumstances, as the case may require.”

2. After some length of arguments on behalf of the parties and after perusing the contentions made in the instant petition, this Court is not inclined to invoke its extraordinary writ jurisdiction in the instant matter as the learned senior counsel for the petitioner has failed to establish any cogent reasons to prove its case.

3. At this juncture, learned senior counsel for the petitioner made an innocuous prayer to grant liberty to approach the SDM of Hauz Khas, Mehrauli Badarpur Road, Saket, New Delhi and file an appropriate application/representation.

4. Learned counsel appearing on behalf of the respondent has no objection to the innocuous prayer made by the learned senior counsel for petitioner.

5. Heard learned counsel for the parties and perused the record.

6. In view of the innocuous prayer on behalf of the petitioner and no objection on behalf of the respondents, the petitioner is granted liberty to file an appropriate



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representation/application along with the copy of this order before SDM of Hauz Khas, Mehrauli Badarpur Road, Saket, New Delhi within one week. After receiving of the said application/representation, the respondent is directed to dispose of the application/representation after hearing the petitioner and pass a detailed and speaking order in accordance with law, expeditiously, preferably within three weeks.

7. Accordingly, the instant petition is disposed of with the aforesaid directions.”

72. Against the aforesaid order the present LPA has been filed.

73. This Court while deciding the LPA No. 618/2022 has held that M/s Padmavati Investment Limited was not the title holder of the property. The property was not a part of the assets transferred to the Padmavati Investment Limited and the application for demarcation was preferred by a total stranger. Henceforth, in the considered opinion of this Court the demarcation report dated 23.04.2022 which was prepared on an application preferred by M/s Padmavati Investment Limited deserves to be quashed and is accordingly quashed.

74. The other important aspect of the case is that the Appellants before this Court are *bona fide* purchaser of the property. They have purchased the property. Their shops are located in CSE complex, Hauz Khas and property was transferred to them through a public auction.

75. The land was acquired by the Government of NCT of Delhi, and was handed over to DDA, which has constructed a shopping complex and finally the shops have been allotted to the present Appellants.



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76. This Court is of the considered opinion that the demarcation was carried out at the behest of the person who is not title holder. The application for demarcation was not at all maintainable as it was a case of urbanized land, and, therefore, the prayer in the Writ Petition *i.e.* W.P.(C.) No. 10851/2022 by Kamaljeet Bajwa deserves to be allowed, and, is, accordingly, allowed.

77. The demarcation report dated 22.06.2022 is hereby set aside.

78. The present LPA stands allowed, and, is accordingly, disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JULY 18, 2023

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