

[A.F.R.]

[Reserved]

Court No. - 3

Case :- WRIT - C No. - 279 of 2002

Petitioner :- Smt. Sheela Srivastava

Respondent :- Housing Commissioner U.P. Housing And Dev. Board
And Others

Counsel for Petitioner :- B R Singh, Ishan Baghel, Mukesh Kumar

Counsel for Respondent :- Mahesh Chandra, Km. Vishwa
Mohini, Ratnesh Chandra, Vimal Kumar

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(As per Om Prakash Shukla, J.)

1. Heard Sri I.B. Singh, learned Senior Advocate assisted by Sri Avinash Singh Baghel, learned counsel for the petitioner and Sri Ratnesh Chandra, learned counsel for respondent no.1. None appeared on behalf of respondent no.2 and 3.
2. Before, this Court embarks into the narration of the facts of the present case, it is implicit to enunciate that this writ petition raises an interesting aspect, wherein the old adage “a stitch in time saves nine”, is squarely applicable to all the four corners of the present case. Essentially a dispute of demarcation between the U.P. Housing & Development Board and Navneet Sahkari Grih Nirman Samiti Limited has

metamorphosed into a never ending dispute of right, title, entitlement and possession over a piece of land/plot between two warring private individuals. Alas!, even during pendency of the present issue before this Court for nearly two decades, neither the private individuals nor the public authority and not to speak of the Navneet Sahkari Grih Nirman Samiti Limited have taken any steps which would have resolved the issue of demarcation and made the disputed land/plot readily identifiable with the ownership right of either of the parties.

3. Briefly stating, the petitioner as being aggrieved against alleged inaction on the part of the U.P. Housing and Development Board for selling/allotting her Plot No.-17, Sector-12, Indira Nagar, Lucknow falling in khasra No.131 to private respondent no.2 and 3, has filed the present petition under Article 226 of the Constitution of India for the following reliefs:-

“(a) to issue a writ order or direction in the nature of mandamus commanding the Opp. Parties not to interfere in the peaceful possession of the Plot in question of the petitioner situated at Khasra 131 Sector 12 Indiranagar Lucknow.

(b) to issue a writ order or direction in the nature of mandamus commanding the Opp. Party No. 2 & 3 not to takeover possession of the piece of land of Plot No.17 of the petitioner/

(c) to issue a writ order or direction in the nature of mandamus commanding the Opp. Party No.1 not to allot the plot of petitioner in

question without being acquired to anyone else and to pay compensation thereof of mental agony and loss incurred to the petitioner.

4. It is the case of the petitioner that one Navneet Sahkari Grih Nirman Samiti Limited, a society registered under the provisions of the Society Registration Act (hereinafter to be referred as “Samiti”) had purchased two plots of land, including khasra No.131, Sector-12 Indiranagar ad-measuring about 2 bighas, which was demarcated by the society into 18 plots. The petitioner claims to have purchased one such plot being Plot No.17, ad-measuring about 2275 sq. feet vide a sale deed dated 19.05.1980. The petitioner has averred in her writ petition that the respondent no.1 permitted constructions on these plots in the year 1982 subject to deposit of development charges with respect to the said khasra by the persons who had been allotted these plots. Admittedly, construction had been made in all the aforesaid 18 plots, except for Plot No.17 belonging to petitioner, which could not be constructed due to bona fide reasons and as such the plot was lying vacant.
5. It is the contention of the petitioner that Plot No.17 allotted to her by the Samiti in the year 1980 was again allotted/sold by respondent no.1 to the private respondents no.2 and 3 without any notice either to her or the Samiti. She alleges that the respondent no.1 has allotted her plot to respondents no.2 and 3 under some wrong perception and she came to knowledge of

the same, when respondent no.2 and 3 tried to take possession and construct over the said plot. Thus, the fulcrum of the argument of the petitioner is three-fold:-

- (i) Plot No.17 (new number-12/678) was allotted to her by Nanveet Sahkari Grih Nirman Samiti in the year 1980 and ever since then the plot had been lying vacant under her possession;
 - (ii) Plot No.17 was never acquired by respondent no.1 under the scheme known as Grihsthan Yozna and it was left as it belonged to the housing society and it is for this reason that even the lay out plan of Sector-12 of Indiranagar does not include the plot of the petitioner;
 - (iii) In any case, there was no notice of acquiring the said plot given by the respondent no.1 to her or to the housing society from whom she has purchased the said plot.
6. Notice were issued by this Court to respondents on 16.01.2002 and a direction was issued to maintain status-quo with regard to the plot in question.
 7. The respondent no.2 and 3 have filed a joint counter affidavit on 08.04.2002 and have stated that khasra no.131 is about 2 bighas, which translates into about 54450 sq. feet, however, the Samiti has occupied an area more than 2 bighas in an unauthorized and

illegal manner, as it has submitted a lay out plan for an area of 55309 sq. feet land. It is their case that the Samiti has illegally occupied the excess area of 859 sq. feet, which actually belongs to the respondent no.1. Thus, it is their case that the sale deed dated 29.05.1980 executed in favour of the petitioner is a void document and does not confer any right or title on the petitioner. They went on to dispute the total area in possession of the petitioner and claimed that the respondent no.1 has prepared the lay out plan for the land acquired. It was pursuant to the said acquisition that auction for allotment was held on 01.04.2001 as advertised in Daily Dainik Jagran. It is the case of the respondent no.2 and 3, they have participated in the said auction and as such Plot No.12/678 ad-measuring about 152.23 sq. meter (1621.24 sq. feet) was allotted and registered in their favour vide sale deed dated 22.11.2001 and armed with the said sale deed they have taken possession of the said land and started construction. They say that the four walls of the house have already been constructed as per photographs filed by them and only the roof was to be constructed and the same was within the knowledge of the Samiti. According to them khasra no.131 adjacent to khasra no.127 is situated in Village-Ismailganj, District-Lucknow and the said Plot No.17 has been illegally carved out in the lay out plan of khasra no.131, which is actually

not on the land purchased by the Samiti. They say that in fact the said Plot No.17 is situated on the land of khasra no.127 which had been acquired by the U.P. Awas Evam Vikas Parishad, Lucknow under Section 28 of the U.P. Awas Evam Vikas Parishad Act. The sum and substance of their argument is:-

- (i) The Samiti has got no right to illegally occupy and to submit the lay out plan on the land of the area more than what has been purchased by them from agriculturists;
- (ii) The said Samiti has got no right to sell said Plot No.17 of its own scheme, which does not belong to it and which is a part of land of khasra no.127;
- (iii) The land of Plot No.17 is not situated on khasra no.131 of Village-Ismailganj, District-Lucknow, rather it is situated on khasra no.127 of Village-Ismailganj, District-Lucknow which has been acquired by Awas Evam Vikas Parishad;
- (iv) U.P. Awas Evam Vikas Parishad had developed Sector-12 in Village-Ismailganj, District-Lucknow after acquisition of the said land as aforesaid;
- (v) The entire khasra no. 127 was allotted to respected allottees but some of the plots carved out were left vacant as such auction of Plot Nos.714, 677, 678 of Sector-12 was conducted by the Parishad, wherein

respondent no. 2 and 3 were allotted Plot No.678 in Sector-12, Indiranagar, Lucknow;

- (vi) The respondent no.2 and 3 are rightful owners of Plot No.12/678 purchased from U.P. Awas Evam Vikas Parishad and in total they have spent Rs. 9 lakhs on the said plot;
- (vii) They further say that the plot in question was never in actual possession of the petitioner, whereas they have been in actual physical possession of the plot and had started constructing their house on the plot;
- (viii) The respondent no.1 was functus-officio after the sale of the said land to them as they are main affected parties who are holding title of the plot in question;
- (ix) Thus, according to them the matter is a purely civil dispute involving ascertaining of boundaries of the property in dispute as well as for possession for which only civil court is competent and writ was not maintainable.

- 8.** The respondent no.1 filed their counter affidavit on 12.01.2011 primarily premised on the ground that the petitioner has to establish the rights of the society as well as her rights over the ownership of the plot in question. The petitioner was called upon to show the sanctioned or approved lay out plan of the plots of the Samiti as it was stated by respondent no.1 that the lay out plan of the Samiti was not

sanctioned by the Parishad and in any case the petitioner ought to have impleaded the Samiti in the present writ petition. It is their submission that the issue relating to possession of the petitioner should be taken up with the Samiti and non-joinder of Samiti in the present petition is fatal. The respondent no.1 has further stated that the petitioner cannot take advantage of the illegal acts of the Samiti and the Parishad is the owner of the plot in question from much before and as such there cannot be two numbers of the same plot in same scheme. As per their averments in the counter affidavit, Plot No.12/678 was allotted in favour of respondent no.2 and 3 and if according to the petitioner any dispute relating to plot in question arose she should have raised the dispute before the proper forum, against the co-operative society from whom possession was allegedly taken by her. According to them the illegal plot had been sold to the petitioner by the Samiti and not by them and as such there is no cause against them for filing the present writ petition.

9. In rejoinder affidavit filed on 11.10.2004, the petitioner has stated that the contention of respondent no. 2 and 3 are based on surmises & conjectures. They reiterate that they are owner of the plot in question and the claim that the plot had been sold illegally to the respondent no.2 and 3 by respondent no.1 without acquiring the same. No

records have been filed by respondent no.1 to show that the plot in question is falling in khasra no.127. She says that the Samiti has taken possession of the land which was left by the Awas Evam Vikas Parishad and not included while the land was acquired. They reiterate that the plot falls in khasra no.131 for which sale deed had been executed in her favour by the Samiti by total area of 2275 sq. feet. As regards filing of the lay out plan of the plot in question, she says that she is owner of the plot by virtue of a registered sale deed and filing of the lay out plan is not her duty. She also reiterates that till 21.04.2001 the land in question was vacant and it was not developed by Awas Evam Vikas Parishad, which says that the land was in possession of the petitioner and it belongs to khasra no.131 as land belonged to Sector-12 of Awas Evam Vikas Parishad, Indiranagar was sold during the decade of 1980. They say that the respondents are not rightful owner of Plot No.12/678 to the extent to which they have illegally taken the possession of the petitioner's land.

10. The respondent no.2 and 3 have filed supplementary counter affidavit dated 09.11.2004, in response to the rejoinder affidavit of the petitioner. Besides reiteration of earlier stand taken by them in their counter affidavit, they have also stated that the disputed land was developed by the Awas Evam

Vikas Parishad much earlier in 1985 before the execution of the sale deed in favour of respondent no.2 & 3 and 9 meters wide road has been developed by the Awas Evam Vikas Parishad. They state that the plots developed by the Samiti having narrow road about 25 sq. feet wide is a stark difference and there is no confusion between the plot of the respondent no.2 and 3 which is existing near Nandini Montessori School and park on the other hand is situated on 9 meters wide road of Awas Evam Vikas Parishad from two sides of the plot and there is no question as to how can the disputed plot be termed to belong to the Samiti.

- 11.** In the interregnum, the petitioner left for her heavenly abode on 04.11.2013 and as per the application preferred she was survived by five legal heirs namely:- (i) Ravindra Nath Srivastava, (ii) Anurag Srivastava, (iii) Nishi Srivastava, (iv) Richa Srivastava, (v) Shikha Srivastava. It was on 12.08.2017 the legal heirs of petitioner chose to file a rejoinder affidavit to the counter affidavit filed by respondent no.1. The petitioners denied the contention of respondent no.1 as made out by them in the counter affidavit and also submitted that they have collected information through R.T.I. and other sources, wherein it is invariably available that:-
- (i) respondent no.1 and his officers created far higher number of plots in the extension of Parishad's

housing colony in Indiranagar, Lucknow than 656 plots of different sizes envisaged in relevant control and development plan of the Parishad in the year 1985;

- (ii) Respondent no.1 did not exercise due diligence for demarcation of boundaries and table survey;
- (iii) The process of allotment of plots in the Parishad's housing colony continued for about two decades and was piecemeal etc.

12. Armed with the aforesaid information provided under the provisions of R.T.I., the petitioner vehemently argued that the plot in question is a part of samayojan housing scheme, which was never acquired by respondent no.1 and demand of development charges from the Samiti for development of Samiti's samayojit housing colony on khasra no.131 of Village-Ismailganj is of no relevance to acquisition or non-acquisition. According to them the officers of respondent no.1 have acted in a high handed and illegal manner in creating and auctioning Plot No.12/677 and 12/678 in the year 2001, i.e. after 19 years of samayojan.

13. The petitioner has also disputed the lay out of the housing colony of the Samiti filed by the respondents as allegedly they are fabricated/tampered to support the illegal actions of the respondent no.1. The petitioner has filed

certified copy of part map of khasra plots of Village-Ismailganj, Pargana, Tehsil and District-Lucknow showing khasra plot no.131 along with other contiguous plots, extract map of the housing colony of the Samiti. The petitioner categorically contends that plot no.12/674, 12/675 and 12/676 could not be seen in the record of the Sampatti Prabandhak or the concerned executive engineer, which obviously means that no such plots existed in the Parishad's housing scheme of Sector-12, Indira Nagar, Lucknow. There are too many insertions in the extract, unlike part site plan signed by Awas Ayukt. Further, there are many inaccuracies like school, shop figuring in the site plan included in the extract lay out plan, which were never provided in the housing scheme in Sector-12, Indiranagar, Lucknow. Thus, they say that the site plan filed by the respondents is totally unreliable. The petitioners have also filed various documents relating to seeking information and reply thereto under the provisions of R.T.I. from the authority and/or the appellate authority relating to the plot in question.

14. This Court has taken pain to pen down the facts in extenso, in order to satisfy itself about the real controversy between the parties. Essentially the crux of the dispute between the parties lies in the representation dated 31.12.2001 (annexure no.6 to the writ petition) sent by the petitioner to the

respondent no.1, which is being extracted herein below:-

“Dear Sir.

Sub: Representation against acquisition of Plot of residential land belonging to me adjoining Sector 12 of Indra Nagar, Lucknow.

As a member of Navneet Sahkari Grih Nirman Samiti Ltd, L-10/2, Badshahnagar Colony, Lucknow was allotted Plot No. 17 in the Housing Scheme of the above society for my residential purposes. The above plot of land measuring about 2275 sq.ft was sold to me by the Society on 19th May 1980. The Plot was part of a piece of land purchased by the Society in Village Munshipurwa Mazra ismailganj, Post Ghazipur, Tahsil & District Lucknow situated on Kukrail Manoranjan Ban Road Khasra No 131 (Khatauni No 193).

*Since my husband has been moving on transfer from place to place, it could not be possible so far to construct residential premises on the above Plot. One of my relatives has been looking after the property and only last week to our utter surprise he found that **someone has dug up foundation of a building including nearly half of my Plot. On enquiry we learn that the person claims that adjoining land including part of my land has been allotted and sold by your good offices.** There has been no notice of any acquisition proceeding either to me or to the above named Housing Society.*

I register my strong protest and objection against this kind of illegal action and request that the same may be rescinded and the total area of the Plot be restored to me forthwith

Thanking you in anticipation,

Yours faithfully

(SHEELA SRIVASTAVA)

N.O.O.

*CC: The Secretary
Navneet Sahkari Grih Nirman Samd: Lto
L-102 Badshahnagar Colony, Lucknow*

*Secretary,
Navneet Sahakan Grih Nirman Samiti
12 Nandini Vihar,
Nandini Montessan School Fendra
Nagar Lucknow (UP)*

*Ref enquiries made by my brother S Vay
Kumar Sivastava with your Sri Bimal
Chandra Stivastava.” (emphasis
supplied by underlying)*

- 15.** From the representation it is clear that the petitioner is aggrieved because **nearly half of her plot being Plot No.17 has been dug up by respondent no. 2 & 3 for construction** and apparently on enquiry it was learnt by her that the respondent no. 2 and 3 claims that the adjoining land including part of her land has been allotted and sold by respondent no.1.
- 16.** Thus, the issue according to this Court primarily revolves around some over-lapping area between the plot owned by the petitioner on the one hand, which has been allotted as Plot No.17 by “Nanveet Sahkari Grih Nirman Samiti Ltd.” in khasra no. 131, Village-Ismailganj, Pargana, Tehsil and District-Lucknow and the plot owned as Plot

No.12/678 allotted by “U.P. Awas Evam Vikas Parishad” in khasra no.127, Village-Ismailganj, Pargana, Tehsil and District-Lucknow.

17. There is no denial of the fact that both khasra no.127 and khasra no.131 are adjoining khasra of the same village. There is also no denial of the fact that the plot of the petitioner, which was allotted vide sale deed in the year 1980 remained unconstructed through the year 2001. There is also no denial of the fact that respondent no.1 developed khasra no. 127 into Sector-12, Indiranagar, Lucknow in the year 1985, however, the plot no. 12/678 came to be auctioned and subsequently occupied by respondent no. 2 and 3 in the year 2001 only. There is nothing on record to suggest as to how and in what manner the plot no.17 or plot no.12/678 can be identifiable as independent to each other or for that matter co-exist without causing any violation to the territory/ boundary of the other. The lay out plan of the respondents also does not clearly signifies anything and if the Court may say it makes the matter worse and complex. It is not a case wherein the same plot has been allotted to different individuals and each of them are claiming their right over the same plot, rather the issue is that a plot which is supposed to be belonging to the Samiti is allotted to the petitioner and the same plot is again supposed to be that of the

respondent no.1 is now being allotted to respondent no.2 and 3.

18. The present case essentially is for title as possession and the consequential relief would follow the title of the property. It is no gain saying that the adjudication of disputed question of fact is a matter of discretion and not a bar to the exercise of jurisdiction under Article 226 of the Constitution of India, but it is well known that one of the grounds against the exercise of discretionary power vested in the High Court under Article 226 of the Constitution of India is where disputed facts have to be investigated. The reason is that when such dispute exists between the parties, the right claimed by the petitioner is not capable of being adjudicated in the summary proceedings under Article 226 of the Constitution, because, it requires a detailed examination of evidence as may be had in a suit.
19. The primary object of Article 226 is enforcement of an established right and not the establishment of a right or title itself. The petition under Article 226 of the Constitution of India cannot be converted into a suit to resolve factual controversies as the proceedings are summary in nature. Intricate and complex questions of title to a property, its boundaries or possession, they cannot be ordinarily gone into by a writ court. After perusing pleadings of the parties, it is not possible for this Court to

conclusively record findings on factual pleadings urged by the parties. It requires investigation of disputed facts by permitting the parties to lead evidences and it also involves appreciation of evidences that may be so led by the parties. This Court cannot be converted into a trial court in exercising its power under Article 226 of the Constitution of India, particularly, when the party which has approached this Court under Article 226 can work out his/its remedy by approaching the competent jurisdictional civil court. Indisputably, there is no dispute that khasra no.131 and khasra no.127 (later developed as Sector-12, Indiranagar) are situated in the same Village-Ismailganj, Pargana, Tehsil and District-Lucknow and both are adjoining to each other. It is quite possible that there must be some land over-lapping each other as admittedly there had been no demarcation and the dispute also exists relating to demarcation. As a matter of fact none of the parties have sought for demarcation of the disputed plots either before filing the present case or even after filing the same and each of them have been holding their ground in claiming that they are actual owners of the disputed plots. In any case, this Court cannot lose sight of the fact that it is only after proper demarcation that the rights of both the petitioners and respondents no.2 and 3 would flow from their respective sellers which can only be

determined by leading evidences in a competent court of revenue/civil jurisdiction as advisable to the parties.

20. In any case, disputed question that arise for decision in the instant case cannot be resolved on the basis of pleadings and documents produced by the parties, and in fact it requires further investigation into the disputed facts. It is well settled by a catena of judgments that the disputed question of facts or a title to a property or a right to possession are not, normally, examined in proceedings under Article 226 of the Constitution of India. Suffice, if some of these judgments are taken note of:-

(i) In '**Sohan Lal Vs. Union of India**'; (1957) SCR 738, the Supreme Court held, thus:-

*".....We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. **Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour.** In the circumstances to be mentioned hereafter, it is a matter for serious*

consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.” (emphasis supplied)

- (ii) In **‘New Satgram Engineering Works Vs. Union of India’; (1980) 4 SCC 570**, the Supreme Court held thus:-

“.....Where there is a dispute as to whether a particular property vests or not, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit.” (emphasis supplied)

- (iii) In **‘Parvatibai Subhanaro Nalwade (Smt.) Vs. Anawarli Hasanali Makani’; (1992) 1 SCC 414**, the Supreme Court held thus:-

“.....Before closing this judgment we would like to emphasise that in cases relating to immovable properties which are governed by the ordinary civil law the High Court should not exercise its special jurisdiction under the Constitution unless the circumstances are exceptional.....” (emphasis supplied)

- (iv) In **‘Mohan Pandey and Another Vs. Usharani Rajgaria (Smt.) and Others’; (1992) 4 SCC 61**, the Supreme Court held thus:-

“.....It has repeatedly been held by this court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the constitution shall not be available except where violation of some statutory

duty on the part of a statutory authority is alleged. And in such a case, the court will issue appropriate direction to the authority concerned. If the real grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the criminal procedure code, the High Court allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly.....” (emphasis supplied)

- (v) In ‘**State of Rajasthan Vs. Bhawani Singh**’; 1193 (Suppl.) 1 SCC 306, the Supreme Court held thus:-

*“.....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 in very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.....”** (emphasis added)*

21. Having narrated the aforesaid facts in extenso, this Court is of the view that the dispute between the parties is a property dispute which could be well resolved by filing a suit before the appropriate Court. Although, the petitioner has sought for possession of the plot in question but this Court is

of the view that in the facts of this case such a relief cannot be given, especially when the possession has to be established first. The Hon'ble Supreme Court in case of **“P.R. Murlidharan and Others Vs. Swami Dharamananda Theertha Padar and others”**, reported in **(2006) 4 SC 501** held:-

“It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.”

22. It needs no restatements at our hands that where there is a dispute as to whether a particular property vests or not, in the State or in any private individual the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit and not in a proceedings under Article 226 of the Constitution of India. It is well recognized principle of law that a regular suit is the proper remedy for settlement of disputes relating to property rights between parties.
23. The upshot of the above discussion is that writ petition deserves to be dismissed, leaving it open to the petitioner to agitate her grievance in a suit before the civil court of competent jurisdiction.

Since the writ petition is dismissed not on merits but on the ground that this Court, in proceedings under Article 226 of the Constitution of India, would not, normally, adjudicate disputed questions of title, it is wholly unnecessary for this Court to examine the respondents contention and same are therefore, left open for adjudication, if need be, in appropriate proceedings.

24. The writ petition fails and is accordingly **dismissed**. However, in the circumstances without cost.
25. Interim order, if any, stands vacated.

Order Date :- 21.09.2022

Arti/-

(Rajan Roy,J.)

(Om Prakash Shukla,J.)