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

% **Date of order : 1st September, 2022**

\+ W.P.(C) 12608/2022

J P DHAWAN & ORS. ..... Petitioners

Through: Mr. L. B. Rai, Mr. D. S. Lakra and Ms. Amita Rai, Advocates

versus

DEPUTY COMMISSIONER SOUTH WEST DISTRICT & ORS. ..... Respondents

Through: Mr. Shadan Farasat, ASC with Mr. Aman Singh and Mr. Shourya Dasgupta, Advocates for R-1 and R-3
Mr. Arun Birbal, Advocate for DDA/R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners seeking issuance of an appropriate writ, order or direction for quashing Show Cause Notice dated 18th March 2021 (hereinafter "impugned Notice") issued by the respondent no. 1 and for calling upon the respondent authority to remove the encroachments that it has constructed on the portion of the petitioners' land comprised in Khasra No. 34/24 (4-16) situated in Village

Palam, Delhi.

2. The petitioners purchased the aforesaid land admeasuring 4 bighas 16 biswa, from its recorded owners, Dariyao Singh, Roop Chand and Prahlad Singh, by way 3 registered sale deeds dated 31st October 1996 for 1 bigha 12 biswa each and its possession was taken by the petitioners thereafter. The said land fell upon the recorded owners when their father, Girdhari, died intestate. The said land admeasuring 4 bigha 16 biswa came to be comprised in Khasra No. 34/24, Village Palam, Delhi, by way of exchange between Khatauni B and Khatauni A, and was mutated as such in the name of Girdhari on 23rd June 1962 in pursuance of order of the SDM/RA dated 17th May 1961.

3. It is the case of the petitioners that on 21st December 1998, mutation of the land in question was done by way of entering the names of the petitioners as owners of the land and on 24th April 2008, a portion of the petitioners' land for approximately 1066 sq. yards was encroached upon by the respondent authority by constructing a road and drain.

4. The petitioner no. 1 sought information under the Right to Information Act, 2005, to ascertain the status of the land in question. The respondent authority replied to the said application under Right to Information Act, 2005 that as per record of DDA, Khasra No. 34/24 (4-16) of Village Palam, New Delhi, has not been acquired so far for DDA, although a requisition for acquisition of this land is pending with Land Acquisition Collector and Land & Building Department of the DDA.

5. The petitioners approached the concerned authority seeking removal of certain alleged encroachment on the part of respondent

authority, however, since no action was taken by the respondent authority, the petitioners approached this Court by way of filing Writ Petition bearing No. 2230/2015, which was withdrawn by the petitioners with the liberty to file a representation before the respondent authority. Accordingly, the petitioners made a detailed representation to the respondent authority on 25th May 2015 demonstrating their title and ownership over the land and alleged encroachment of a portion thereof by the respondent authority, requesting the respondent authority to remove the encroachment from the land or, in the alternative, to acquire the said encroached portion of the land under the applicable laws for such acquisition and to pay such compensation thereof.

6. Before the respondent authority decided the representation of the petitioners, they approached the Financial Commissioner under Section 72 of the Delhi Land Revenue Act, 1954, however, the same was also withdrawn.

7. The respondent no. 1 had issued the Notice dated 18th March 2021, wherein it informed the petitioners that the revenue record with respect to the land in question reveals that on 17th May 1961, the SDM/RA had passed an order conferring *bhumidari* rights in favour of Girdhari on the custodian land without jurisdiction and in contradiction to the provisions of law and which was hence, *void ab initio.* By the impugned Notice the petitioners were directed to furnish an explanation regarding the same.

8. The petitioners are aggrieved by the impugned Notice issued by the respondent no. 1.

9. Learned counsel appearing on behalf of the petitioners submitted

that the respondent authority has encroached upon the portion of the land in question which has been in the possession of the petitioners for more than 60 years and which is also reflected in several uncontroverted revenue records. As per the information received by the petitioners to the application under Right to Information Act, 2005 revealed that the land neither belonged to the respondent nor had it been acquired by the government or any authority under it.

10. It is submitted that the suggestions in the letter of the Assistant Settlement Commissioner dated 22nd November 2010 and in the letter of the Deputy Secretary (BP Cell) Land & Building Department dated 31st May 2017 that, Khasra No. 34/24 (4-16) is an evacuee property, are patently incorrect. The said land was an evacuee property only till the day the order dated 17th May 1961 was passed by the SDM/RA in favour of the owner Girdhari. The said order passed by the SDM/RA was not in the nature of appeal under Section 24 of the Administration of Evacuee Property Act, 1950, as has been observed in the impugned Notice, and therefore, not without jurisdiction or against the provisions of the said Act.

11. It is further submitted that the action being contemplated by the respondent no. 1 to rectify the entries in respect of Khasra No. 34/24 (4-16) and record it back in favour of custodian, in exercise of powers vested in him under Section 26 of Delhi Land Revenue Act, 1954, is wholly misconceived and illegal. The powers under Section 26 are meant to be exercised *"to correct any mistake or error in the Annual Register"*, such as arithmetical errors/mistakes or errors apparent on the face of the

record, and not for the purposes of changing the Annual Register to reflect one view where disputed questions of fact and law are involved.

12. It is submitted that in light of the above, the impugned Notice is liable to be quashed.

13. *Per Contra,* learned ASC appearing on advance notice on behalf of the respondents vehemently opposed the instant petition and submitted that the petitioners have challenged the impugned Notice after a lapse of one year without any actual cause of action having been arisen.

14. It is submitted that the revenue records have shown that the *bhumidari* rights has been erroneously made in the name of Dariyao Singh, Roop Chand and Prahlad Singh, that is, the sons of one Girdhari, from whom the petitioners had purchased the land in question. Since the *bhumidari* rights in the favour of the original *bhumidar*, Girdhari, the question of petitioners having a rightful title in pursuance of the registered sale deeds would not exist.

15. It is submitted that in light of the information revealed by the revenue records, the impugned Notice was served upon the petitioners and they have challenged the same without appreciating the fact that there is no actual cause of action that has arisen by the issuance of the impugned Notice. Therefore, the instant petition is liable to be dismissed for being devoid of merit.

16. Heard learned counsel for the parties and perused the record, including the impugned Notice.

17. The petitioners are challenging the impugned Notice dated 18th March 2021 and are seeking directions for the respondents to be directed

to remove encroachments on the petitioners' land.

18. The relevant portion of the said impugned Notice is reproduced hereunder for perusal:-

> *"Whereas, Dy. Director, (NL)-1, DDA vide letter No. F9(8)03/CRC/WZ/DDA/18 dated 16.03.2017 addressed to ADM/LAC(SW) has informed that "as per reply letter from Asst. Settlement Commissioner bearing No. MOEP(Cell) L&B/2003/394 explaining status of the land khasra No. 34//24(416) on 22.11.10. wherein it was mentioned that land measuring 10 Bigha 4 Biswa in khatoni "B" allotted to the custodian having 02/1107 share including land falling in khasra No. 34//24(4-16)."*
>
> *Whereas, Dy. Secretary EP(Cell), Land and Building Department vide letter No. 988/L&B/EP Cell/2017/398 dated 31/05/2017 has replied that the land and bearing kh. No. 34/24(4-16) of village palam is an "Evacuee property".*
>
> *Whereas the revenue record shows the bhumidhari rights erroneously in favour of Sh. Dariyav Singh, Roop Chand and Pahlad Singh all sons of Sh. Girdhari as per khatoni for the year 1977-78 and sold to following three persons:*
> *1. 24min (1-12), Sh. Rajan Verma S/o Ram Prakash Verma*
> *2. 24min (1-12), Sh. J.P. Dhawan S/o Late Prithvi Ram Dhawan*
> *3. 24min (1-12), Sh. Kawaljeet S/o Sh. Jaan Nath.*
>
> *Whereas, Section 7 & 8 of the Administration of the Evacuee Property 1950 and as per Section 4 of the Act overrides others laws hence any deal against the measures under section 7 lie only before the custodian and section 24.*

Whereas vide order dated 17.5.61 SDM/RA Sh. Narender Singh has passed an order conferring bhumidari rights in favour of Girshari on the custodian land without jurisdiction and in violation of the statue i.e. Section 24 of the Administration of the Evacuee Property Act, 1950 hence void ab initio.

Whereas, as per section 26 of DLR Act, regarding correction of mistake or error in Annual Register "Deputy Commissioner may, on his own motion and shall in the application any person, correct any mistake or error in the Annual Register."

Whereas, it has been reported by SDM (Dwarka) that in view of the confirmation received from Land and Building Department that khasra No. 34/24(4-16) is an Evacuee Property and Revenue records needs to the corrected.

Now, therefore, you are hereby directed to submit an explanation within 30 days failing which the entries in respect of khasra No. 34/24(4-16) be rectified and recorded back in favour of custodian."

19. Admittedly, pursuant to the Notice of the respondents as neither were any proceedings initiated by the respondents nor did the petitioners hear anything from them. The only challenge before this Court is to the impugned Notice issued. However, the precedents clarify the position of law with regard to the question whether any Show Cause Notice would give rise to a cause of action that can be challenged before a court of law.

20. When an authority issues a Show Cause Notice, it is merely giving the individual an opportunity to make his case and show as to why an

action should not be taken against him. At the stage of issuing a Show Cause Notice, there is no adverse action that has been taken against the recipient of the Notice and hence, no cause of action has actually arisen for it to be challenged. Such a challenge to a Show Cause Notice especially does not lie as a matter of routine under a writ jurisdiction since a Court exercising its powers under Article 226 of the Constitution of India is already limited to the extent of adjudicating upon the illegality or errors apparent on the very face of record and hence, has limited scope of interference in the impugned order or in this case, a Show Cause Notice. Therefore, challenging a Show Cause Notice invoking a court's writ jurisdiction is not only premature but is also discouraged by the mandate of the law, as has been interpreted by the Hon'ble Supreme Court.

21. The Hon'ble Supreme Court in ***Special Director vs. Mohd. Ghulam Ghouse*** **2004 3 SCC 440,** the Hon'ble Supreme Court while adjudicating upon a similar question has observed as under:-

> *"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take*

all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court…"

22. In ***Union of India & Anr. vs. Kunisetty Satyanarayana*** **(2006) 12 SCC 28,** while setting aside a High Court judgment allowing the writ challenging a Show Cause Notice, the Hon'ble Supreme Court has observed as under:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the

proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

23. Reiterating the principles laid down in ***Kunisetty (Supra),*** the High Courts while entertaining Show Cause Notices under the PP Act have observed as under:-

The Calcutta High Court in ***Kishen Lall vs. Deputy Commissioner,*** **2012 SCC OnLine Cal 2803** observed as follows:-

"It is settled by a catena of decision of the Hon'ble Supreme Court that a writ petition against a show cause notice issued by a statutory functionary shall not be entertained unless the High Court is satisfied of the nullity of such notice or want of jurisdiction of the authority concerned to even investigate the facts. The point of jurisdiction of the Estate Officer has been answered above, and therefore, every other point that

the petitioner seeks to agitate in respect of validity of the show cause notice including the point that it does not contain the grounds must be raised by him after his appearance before the Estate Officer. Reference in this connection may be made to the decision of the Supreme Court reported in AIR 1961 SC 1615: Carl Still G.m.b.H v. The State of Bihar, (2004) 3 SCC 440: Special Director v. Mohd. Ghulam Ghouse and AIR 2007 SC 906: Union of India v. Kunisetty Satyanarayana."

The Bombay High Court in ***JM Financial Asset Reconstruction Company Pvt Ltd vs. Board of Trustees of the Port of Mumbai & Ors.*** **2016 SCC OnLine Bom 5355** held as reproduced under:-

"14. On the other hand, the PP Act was brought into force to provide for eviction of unauthorized occupants from public premises and for certain other incidental matters. Originally, the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 was enacted to provide for a speedy machinery for eviction of unauthorized occupants of public premises. Section 5 of the Act provided for taking possession of public premises which were in unauthorized occupation and section 7 provided for recovery of rent or damages in respect of public premises from persons who were in unauthorized occupation thereof. The vires of certain provisions of the 1958 Act were challenged in different Courts all over country as being unconstitutional, and which challenges were upheld. Since, these Court decisions had created serious difficulties for the Government and it had become impossible for the Government to take expeditious action, even in flagrant cases of unauthorized occupation of public premises, it was therefore considered imperative to restore a speedy

machinery for eviction of persons who were in unauthorized occupation of public premises. Accordingly, it was proposed to reenact the Public Premises Eviction (Unauthorized Occupants) Act, 1958, as amended from time to time, after removing the vice which led to it having been declared as void. This is how the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the PP Act) came on the Statute Book. There have been several amendments to the PP Act thereafter which are not really germane to decide the issues raised in this Writ Petition.

19. Having held so, we also find considerable force in the argument of Mr Bharucha that the present Petition is premature and not maintainable. In the present case, what has been challenged are the 2 SCNs issued by the 4th Respondent. These SCNs do not per se decide any rights of the Petitioner, but merely call upon noticees to show cause before the Estate Officer (4th Respondent) as to why they ought not to be evicted. The practice of challenging SCNs by way of a Writ Petition has been deprecated time and again as clearly spelt out by the Supreme Court in the case of Kunisetty Satyanarayana, (2006) 12 SCC 28 : AIR 2007 SC 906 (1).

20. As can be seen from the aforesaid decision, the Supreme Court has in clear terms stated that ordinarily no writ lies against an issuance of a SCN. The reason why ordinarily a writ petition should not be entertained against the issuance of a mere SCN is that at that stage, the writ petition may be premature. A mere SCN does not give rise to any cause of action, because it does not amount to an adverse order which affects the right of any party, unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the

SCN or after holding an inquiry, the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere SCN does not infringe the right of any one. It is only when a final order imposing some punishment or penalty adversely affecting a party is passed, that the said party is said to be having some grievance. This being the clear enunciation of the law, we have no hesitation in holding that the present Petition is clearly premature as it merely challenges the SCNs issued by the 4th Respondent (the Estate Officer).”

A coordinate bench of this Court in ***Maruti Suzuki India Ltd. vs. India Tourism Development Corporation Ltd.*, 2013 SCC OnLine Del 1647,** while making reference to the aforesaid landmark judgment noted as under:-

“19. We find the Supreme Court also in Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28 : AIR 2007 SC 906 to have reiterated that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature — a mere show cause notice does not give rise to any cause of action because it does not amount to an adverse order which affects the rights of a party unless the same has been issued by a person having no jurisdiction to do so and because it is quite possible that after considering the reply to the show cause notice or after holding an inquiry the authority concerned may drop the proceedings. It was held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely

affecting a party is passed that the said party can be said to have any grievance. The Supreme Court held that the writ jurisdiction being discretionary should not ordinarily be exercised by quashing a show cause notice.

20. This Court in Seasons Catering Services Pvt. Ltd. v. Delhi Development Authority applied the aforesaid principles to a notice under Section 4 of the PP Act and held that even if there is any deficiency in the notice it will be irrelevant, if the noticee is aware of the ground for eviction and has given a detailed reply on merits."

24. Further, in ***Ministry of Defence vs. Prabhash Chandra Mirdha,* (2012) 11 SCC 565,** the Hon'ble Supreme Court, reiterating the principles, held as under:-

> *"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. …"*

25. Therefore, it is clear that a challenge does not lie against a Show Cause Notice unless there is an action taken in pursuance of such Show Cause Notice, in which case also the challenge would lie against the action and not the Notice itself. Moreover, a Show Cause Notice can only be interfered with under the writ jurisdiction in the rare event of there

being an absolutely illegal, improper, erroneous finding or action on the part of authority issuing such Show Cause Notice.

26. In the instant matter, the petitioners have challenged the impugned Notice after lapse of one year, which itself is a testament to the fact that no action has been taken by the respondents in pursuance of the Notice. There has been no order passed against the petitioners subsequent to the impugned Notice being issued till date. In the absence of any adverse action, the challenge before the writ jurisdiction is premature and hence, shall not be entertained at this stage.

27. In light of the above facts and circumstances, the submissions made on behalf of the parties, the contentions raised in the pleadings as well as the observations made in the foregoing paragraphs, this Court does not find merit in the instant petition.

28. Accordingly, the instant writ petition is dismissed.

29. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 1, 2022
gs/ms