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IN THE HIGH COURT OF DELHI

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FAO No.227/2002

Jaspal Singh & Anr. Appellants
through: Mr.O.P.Gaggar, Advocate.

VERSUS

Municipal Corporation of Delhi
& Ors. Respondent
through: Mr.O.P.Saxena, Advocate.

% DATE OF DECISION:
28.04.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (ORAL)

1. Heard learned counsel for the parties.
2. Order dated 18.1.2002 passed by the learned Additional District Judge dismissing application of the appellants under Order 39 Rule 1 & 2 CPC is under challenge.
3. It is unfortunate that the counsel appearing before the learned Trial Judge as also the learned Trial Judge, all have remained extremely non focused. Though not relevant for the purposes of the present order a discussion thereon it would be

otherwise relevant for the purposes of disposal of the suit and this is my justification for penning a few words on said aspect of the matter.

4. Before dealing with the relevant facts relatable to the issue or grant or denial of interim injunction it may be noted that due to the non-focused approach wholly inappropriate issues have been framed by the learned Trial Judge. The issues framed are as under:-

“1. Whether suit is bad for want of notice under Section 477/478 of DMC Act? OPD-1

2. Whether the suit is bad for want of notice under Section 53B of DD Act? OPD-3

3. Whether Civil Court has jurisdiction to try this suit in view of preliminary objection No.2 and 3? OPD-1

4. Whether plaintiff is entitled for the relief of injunction as prayed for? OPP

5. Plaintiff's suit for a decree of perpetual injunction pleaded that plaintiffs are owner in possession of 200 sq. yds. of land bearing No.G-10 comprised in part of land of khasra No.74/75, Village Sarai Peepal Thala. It was pleaded that an unauthorized colony called Mahindra Park has come up on the agricultural lands of Village Sarai Peepal Thala and that the same has been regularized by the MCD vide order No.3/Bldg./HQ/87 on 9.3.1987. It was pleaded that officers of MCD came to the site to take possession. Pleading that MCD could not take possession of

the site as MCD had neither a title nor a right to possess the suit land, the suit was filed.

6. Apart from MCD, Director (Slum) as also DDA were impleaded as defendants.

7. In the written statement filed by MCD it was stated that vide award No.102A/72/73 dated 23.3.1977 land comprised in khasra No.74 and 75 of Village Sarai Peepal Thala was acquired and that possession thereof was handed over to DDA which in turn handed over possession of the acquired land to the Slum and J.J. Department on 27.12.1984. It was further pleaded that the Slum and J.J. Department was transferred from DDA to MCD on 1.9.1992. Averments were made that the suit was not maintainable on account of non service of the statutory notice upon MCD contemplated by Section 477 and 478 of the DMC Act. It was further pleaded that possession of the land had to be with MCD and that the plaintiffs had encroached upon a part of the land and when construction was noted, the same being without any sanction, show cause notices were issued to the plaintiffs requiring plaintiffs to show cause as to why the unauthorized constructions be not demolished.

8. In the written statement filed by DDA it was disclosed that land comprised in khasra No. 74 and 75 Village Sarai Peepal Thala were acquired vide award No.102A/72/73 and pursuant

thereto vide notification issued under Section 22 of the Delhi Development Act on 12.9.1978 possession of part of the acquired land was taken over by the Land Acquisition Collector and handed over to DDA who in turn gave possession to its Slum and J.J. Wing and that on 27.12.1984 the Slum and J.J. Wing of DDA got transferred to MCD. Being relevant it may be noted that in the written statement DDA specifically averred:-

Rest of the land of khasra No. 74 min 2 bigha has not been taken possession by DDA due to built upon. The suit land is part of the two bigha.”

9. Why did I preface my order by noting that it is a meaningless exercise by all?

10. From the pleadings of the parties it is apparent that 2 bigha of land in respect whereof an award was made was not taken possession of by the Land Acquisition Collector much less handed over to DDA. This is apparent from the admissions made by DDA in the written statement filed by it. Further, 2 bigha of acquired land was not taken possession of due to it being heavily built upon. The further admission of DDA is that the suit land forms part of the 2 bigha of land, possession whereof was not taken over.

11. Since parties were not at variance of MCD acquiring title under DDA, since DDA admitted not to have taken possession of the land, much less handed over the same to its

Slum and J.J. Wing, question of MCD exercising control over the land as owner thereof does not arise.

12. But, apparent from the written statement filed by the MCD is the fact that officers of MCD, noting unauthorized construction being carried on, proceeded to take action in accordance with law.

13. Under the DMC Act 1957, for areas falling under the territorial jurisdiction of MCD no person can carry out construction without a municipal sanction obtained from the Commissioner.

14. Thus, the only issue on which parties had to fight it out was whether MCD was entitled to proceed in accordance with law pertaining to the unauthorized constructions which were noticed by MCD.

15. Rightly, MCD pleaded in the written statement that it proceeded under law i.e. under Section 343 of the DMC Act which mandates the corporation to proceed against unauthorized constructions.

16. For unexplainable reasons the parties went on to litigate at the stage of interim injunction on the issue of title.

17. That apart, the manner in which the issues have been framed is most unsatisfactory.

18. I do not understand as to how a suit can be good or bad. Suits are either maintainable or not maintainable. Issue

No.1 and 2 are framed in a most inappropriate language. Under Order 6 Rule 6 of the Code of Civil Procedure any condition precedent, the performance or occurrence of which is intended to be contested has to be distinctly and specifically stated in the pleadings.

19. According to the MCD before a suit can be filed against MCD a statutory notice under Section 478 of the DMC Act has to be served.

20. Thus, the issue which required to be framed, if at all was:-

“Whether the suit is not maintainable on account of non service of a notice under Section 477/478 of the DMC Act.”

21. With respect to issue No.3, the issue as framed does not clearly bring out as to on what count the Civil Suit is not maintainable. But, from the facts noted hereinabove it becomes apparent that the maintainability of the suit is being questioned on account of MCD taking action against unauthorized constructions under Section 343 of the DMC Act and a statutory right of appeal available before a Tribunal constituted under the Act.

22. If the Trial Court was a little careful it would have dawned on the Trial Court that probably the suit was not maintainable on account of the plaintiff having a statutory

remedy to challenge the demolition order by filing an appeal against the same. The Trial Court had a limited jurisdiction to entertain the suit only where the plea in the plaint was that MCD had proceeded to pass the demolition order without serving upon the plaintiff a show cause notice.

23. Courts are faced with docket explosions.

24. Not only is the larger number of suits being filed create a problem, but as in the instant case, inappropriately drafted plaints and responses thereto, coupled with a non focused approach by the Trial Judges, are compounding the problem. Instant suit filed in the year 1995 is continuing to languish in the records of the learned Trial Judge due to nobody realizing as to what are the real issues which need to be adjudicated upon.

25. I hope and trust that the learned Trial Judge would take corrective action in light of the present order and in future would be careful while framing issues.

26. Reverting back to the issue of interim injunction, the learned Trial Judge has declined injunction in view of the written statement filed by MCD that the land was acquired under an award. But, the learned Trial Judge failed to appreciate the written statement filed by DDA wherein DDA categorically admitted that 2 bigha of land which was acquired was not taken

possession of due to being heavily built upon. The learned Trial Judge failed to note that MCD was pleading title under DDA and hence once DDA took a categorical stand that it never took possession of 2 bigha of land and that the suit land was part of said 2 bigha of land, that was the end of the matter as regards title dispute.

27. Thus, the impugned order is not sustainable.

28. However, if plaintiffs were raising unauthorized constructions without a municipal sanction, MCD would certainly be entitled to proceed in accordance with law.

29. The appeal accordingly stands disposed of deciding appellant's application under Order 39 Rule 1 & 2 CPC by restraining MCD from taking possession of the suit property treating title thereof being prima facie not vested in MCD. However, MCD would be free to take action for demolition if it has issued a show cause notice pertaining to unauthorized constructions and has passed a demolition order, subject to the order attaining finality.

30. No costs.

31. TCR be returned forthwith.

April 28, 2008
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PRADEEP NANDRAJOG, J.