

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

+ **CS(OS) No.1378/2005**

Date of Decision : 23.11.2010

D.D.SHARMA & ORS.

.....Plaintiffs

Through: Ms.Anita Saroha, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Defendants

Through: Ms.Saroj Bidawat, Advocate
for UOI.

Mr.Sanjay Poddar, Adv. for
defendant nos.1 & 3.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

IA No.13431/2008

1. This order shall dispose of the application bearing IA No.13431/2008 for restoration of the suit.
2. Briefly stated the facts of the case are that the plaintiffs are 45 in number and they have filed a suit for permanent injunction against dispossession by Government of NCT of Delhi, UOI and Land Acquisition Collector. It is alleged in the plaint that the plaintiffs are in peaceful and settled possession of the land which is part of Khasra no.730/416 and 732/416 and 412, Village Civil Station, Tehsil and District Delhi falling in Civil Lines. It is alleged that the total

area of Khasra No.730/416, 732/416 and 412 is measuring around 37 bighas and 10 biswas in the Revenue records and the same was owned by Sh.Fazal-ul-Rehman S/o Sh.Ataul Rahman, while as Khasra no. 412 is the land which has been recorded as a burial ground (Kabristan). It is alleged that the plaintiffs are not in occupation of Bungalow belonging to Sh.Fazal-ul-Rehman and they are having their pucca structures on the rare side of the said bungalow on the land which partly falls in these three khasras. It is alleged that the plaintiffs are in occupation of the aforesaid land since 1960 and have documents like election card, ration card, etc. on the aforesaid addresses, while as the LAC had issued notices under Section 4 and 6 of the Land Acquisition Act and the said proceedings culminated into passing of an award for acquisition of the land. It is stated that under the said proceedings, no compensation was paid to the plaintiffs or to any other person.

3. It is alleged that even it is assumed that if they are encroachers on the land in question, since they are in settled possession since 1960, it confers on them right in the eyes of law and in terms of the judgment of the Apex Court in **Ram Prasad Vs. Chairman, Bombay Port Trust** AIR 1989 SC 1306, they deserve to be protected. It is further alleged that they are entitled to alternative allotment and till that time, their possession cannot be disturbed. The plaintiffs have

alleged that notice under Section 16 of the Land Acquisition Act has been issued by the defendants on 26.5.2005/27.6.2005, which is totally illegal and arbitrary and therefore, they have sought permanent injunction against their dispossession from the suit property. Reference is also made by the plaintiffs to a writ petition bearing WP(C) no.769/2004 which was filed by them in the High Court of Delhi. It is alleged that the said writ petition was disposed of with the categorical statement by the learned counsel for the Govt. of NCT of Delhi that they would not take possession of any land which is not covered by the award and is forming part of Khasra no 730/416 and 732/416 Village Civil Station. It is alleged that despite this order of the High Court, the defendants have again issued notice dated 27.9.2005 addressed to the Executive Engineer PWD Division 25, Delhi intimating that the demarcation of the area be done for the purpose of demolition of unauthorized construction.

4. The defendants have filed their written statement and contested the claim of the plaintiff on both preliminary objections as well as on merits.
5. On the pleadings of the parties, the issues were framed on 4.3.2008. The plaintiff was given time for filing affidavit by way of evidence and the matter was adjourned to 5.5.2008 for fixing up the dates for cross examination of the witnesses.

6. On 5.5.2008, neither list of witnesses nor affidavits by way of evidence were filed by the plaintiff and therefore, time of six weeks was given to file the same. The matter was adjourned to 23.9.2008. Even on 23.9.2008, neither the list of witnesses nor affidavits by way of evidence were placed on record and thereafter on the next date, i.e. 3.10.2008, neither the plaintiff nor his counsel were present and accordingly, the suit was dismissed for non-prosecution.
7. The plaintiff filed an application bearing IA No.13431/2008 seeking restoration of the suit to its original number on which notice was issued but on account of non filing of the process fee, notice could not be issued on two different dates i.e. on 13.2.2009 and 30.4.2009.
8. After great difficulty, notices could be served on the Standing Counsel for the UOI /LAC as well as GNCT of Delhi. On account of an inadvertent mistake, both the defendants filed their written statements afresh, while as the written statement of the defendants were already on record. No reply to the said application has been filed by the defendants.
9. I have heard the learned counsel for the parties on the said application for restoration of the suit which was dismissed on account of non prosecution/dismissal in default on 3.10.2008. It has been stated in the application that on 3.10.2008, the learned counsel for the plaintiff was not well and therefore, he could not appear before the Court when the

matter was called out. So far as the plaintiff no.1 is concerned, he could not appear at the time when the matter was called, as he could not get the gate pass. This is stated to be constituting 'sufficient cause' for restoration of the suit.

10. The learned counsel for the defendant has contended that after framing of issues, the entire exercise on the part of the plaintiff has been to delay the disposal of the suit in respect of the present suit which stands concluded on account of writ petition having been filed by them. Mr.Poddar, learned counsel for defendant no.3 has contended that not only the suit deserves not to be restored, the continuance of the same is also gross abuse of the processes of law inasmuch as there is a repetitive filing of the suits challenging in effect the acquisition proceedings by the plaintiffs in an indirect manner by challenging issuance of notice issued by defendant no.3 under Section 16 of the Land Acquisition Act whereby the possession is sought to be taken in respect of the acquired land.
11. It was contended by the learned counsel for the defendant no.3 that admittedly in the instant case so far as the acquisition proceedings in respect of the land in question is concerned, that was challenged in WP no.769/2004 by Punjab National Bank on various grounds which was dismissed on 4.8.2004 by the Division Bench of this Court and a Special Leave Petition was preferred from the said order

that was also rejected by the Supreme Court. The acquisition proceedings attained finality. It is alleged that it was after the said acquisition proceedings in respect of the land in question pertaining to khasras having attained finality that the present plaintiffs choose to file an independent writ petition before this Court bearing WP(C) No.769/2004 whereby the said acquisition proceedings were again sought to be challenged on the ground that their houses are built on a portion of land which does not form part of the acquired land or part of Khasra numbers which are sought to be acquired by the defendants.

12. The learned Judge of this Court dismissed the writ petition of the present petitioners by taking into consideration the stand of the defendant no.3 that they will not take possession of any portion of the suit land & the relevant khasras, unless and until it is acquired by the award in question.
13. It is alleged by Mr.Podar, learned counsel for defendants 1 and 3 that after disposal of the writ petition and having taken a definite stand that the suit land where the structures of the plaintiff are situated are not on the acquired land, the plaintiffs have chosen to assail two notices issued by the LAC to the PWD on 26.5.2004 and 27.6.2004 on the ground that the said notices are arbitrary because the land where the structures of the plaintiffs are built is evacuee property and therefore, vested in the Government and it could not be

acquired. It is also alleged that the land does not form part of the said khasras which are sought to be acquired.

14. It was contended on the basis of the aforesaid facts that the plaintiffs are changing their original stand and indulging in gross abuse of the processes of law knowing that the Civil Court does not have the jurisdiction to entertain the suit challenging the acquisition proceedings and consequently, they are changing their stand so as to meet their convenience to ensure that their possession in the suit land is perpetuated.
15. The learned counsel has drawn the attention of the Court to the judgment of the Apex Court in **T.Arivandandam Vs. T.V. Satyapal & Anr.** 1977 (4) SCC 467 wherein the Apex Court deprecated the practice of a party indulging in serious legal proceedings against the eviction order and observed that if on a mere reading of the plaint, it is vexatious, meritless or is not disclosing the cause of action the suit ought to be dismissed. Similarly, reference has been made to the case titled **DDA Vs. R.S.Kathuria & Ors.** 2009 (107) DRJ 365(DB) wherein **State of Bihar Vs. Dhirendra Kumar & Ors.** AIR 1995 SC 1995 has been taken note of and it has been observed that the jurisdiction of the Civil Court under Section 9 is barred to entertain a challenge to the acquisition proceedings. It was therefore, contended that even if the suit is restored, the very stand of the plaintiff is gross abuse of the process of law on

account of the aforesaid facts and accordingly does not deserve to be restored as no 'sufficient cause' is shown for non appearance or even if it is restored for the sake of argument even then the suit deserves to be rejected.

16. The learned counsel for the plaintiff has refuted the same and observed that since issues have been framed, she may be permitted to adduce evidence to show the case of the plaintiff on merits.
17. Regarding the factum of filing the writ petition earlier, challenging the acquisition proceedings, it is stated that this fact has not been concealed and has been stated clearly in the plaint.
18. I have considered the respective submissions of all the parties and perused the record.
19. I am not satisfied that the suit deserves to be restored on the ground that the plaintiffs were prevented by 'sufficient cause' from appearing in the suit on the date fixed. This is on account of the fact that the ground of non appearance on 3.10.2008 is not inspiring confidence. It has been stated in the application that the learned counsel could not appear as he was not well, while as there is no affidavit of the learned counsel in this regard.
20. So far as the non appearance of the plaintiff is concerned, it is stated that the plaintiff no.1 was unable to appear because he did not get the gate pass. It may be noted that there are 45

plaintiffs and plaintiff no.1 who is claiming himself to be present who was obtaining the gate pass does not seem to be inspiring the confidence. Even if it is assumed that the plaintiff had got the gate pass belatedly, he ought to have appeared subsequently and got her attendance marked. On the contrary, he did not appear on the date fixed but he has also chosen not to place the gate pass on record.

21. At this stage, the learned counsel for the defendant states that the plaintiff no.1 never obtained the gate pass. If that be so, the very presence of the plaintiff no.1 on the date of incident itself is doubtful. Absence of the plaintiff is to be seen in the background of the fact that after framing of issues, sufficient time was given for filing list of witnesses as well as affidavits by way of evidence. The said order was not complied with and therefore, the only intention of the plaintiffs was to delay the disposal of the suit.
22. I accordingly, feel that the aforesaid facts that have been enumerated in the application in my view do not constitute 'sufficient cause' for restoration of the suit to its original number.
23. Even otherwise, even if for the sake of arguments, it is assumed that the suit is restored to its original number even then I feel that the very continuance of the present suit is a gross abuse of the processes of law in the light of the pronouncement of the Apex Court in T.Arivandandam's case.

24. Even if it is assumed that the application of the plaintiffs under Order IX Rule 9 CPC is allowed and the suit is restored even then I am of the opinion that the suit ought to be rejected under Order VII Rule 11 CPC as being not only without any cause of action but also being barred by law. As a matter of fact, the very filing of the suit is a gross abuse of processes of law. This would be evident from the fact that the plaintiffs in the prayer clause has sought a decree for permanent injunction for prohibiting the defendants who are all Government officials, against demolishing buildings on acquired land and disturbing the peaceful possession from their so called properties purported to be a part of Khasra no.730/416 and 732/416 and 412, Village Civil Station, Tehsil and District Delhi falling in Civil Lines. The aforesaid land has been acquired by the Union of India/Land Acquisition Collector long back. Notification under Section 4 of the Land Acquisition Act in respect of this land was issued on 08.11.1963. Declaration was made under Section 6 of the Land Acquisition Act on 19.11.1966 measuring 9 bighas and 11 biswas was acquired vide notification no. F.15/[60]/63-LSG dated 08.11.1963. A supplementary award was issued in 1983. It was challenged by the Punjab National Bank who felt aggrieved by the acquisition without any success. A Special leave is also purported to have been preferred which was also dismissed with the following observations:

“We do not think it is appropriate to interfere with the order made by the High Court. However, it is made clear that it is open to petitioner to pursue with the representing, already made, to drop the proceedings or acquisition of the land in question. We hope the government will take appropriate decision, within reasonable time in the matter. The special leave petition is dismissed subject to the observations made above.”

25. After dismissal of the special leave petition the Punjab National Bank made further representation to the Ministry of Urban Development, Government of NCT of Delhi to denotify the land which was rejected by the Lt. Governor and thereafter, the writ petition bearing WP(C) no.769/2004 was filed titled **Punjab National Bank Vs. Union of India** which was rejected for release of the suit under Section 48 of the Land Acquisition Act on 04.08.2004.
26. After the dismissal of the said writ petition the present plaintiffs also filed a separate writ petitions bearing nos.11443/2005 to 11447/2005 wherein they took a specific plea that the land where their structures are standing is not part of Khasra no.730/416 and 732/416 and 412, Village Civil Station, Tehsil and District Delhi falling in Civil Lines, and therefore, they be not dispossessed. This writ petition was also dismissed by the Division Bench of this Court vide order dated 27.7.2005 observing that in case the defendants would take the possession of the aforesaid khasra nos. the same shall be done after demarcation. It is after the dismissal of the writ petition that the defendant wrote letters

on 27.05.2005 to the Ex. Engineer (PWD) for effecting demolition and dispossession from the aforesaid khasara numbers and for taking over possession of the land which is in occupation of the plaintiffs. It is this notice which was originally challenged by the plaintiffs and subsequently thereto an amendment was sought and the very acquisition is indirectly challenged by seeking a restraint order.

27. The case of the plaintiffs in the suit is that they have been in possession of the land in question which is purported to have been acquired for the last more than 60 years and have necessary documents like ration card, election card etc. on the said addresses, therefore, they cannot be dispossessed from the said suit properties.
28. The plaintiffs have changed their stand as originally their stand was that they are having their structures on a land other than acquired land and now in the suit they are setting up a case after the dismissal of the writ petitions that even if it is assumed that the land has been acquired but they are having an uninterrupted peaceful possession for the last so many years and they cannot be evicted.
29. I do not accept this contention of the learned counsel for the plaintiffs that they cannot be dispossessed from the suit land which is admittedly acquired land.
30. The plaintiffs having failed in challenging the acquisition proceedings in a writ petition cannot be now permitted to lay

the same challenge in the present suit in an indirect manner, firstly, by changing their stand and then also contending that because of long uninterrupted occupation they have become owners by adverse possession and they cannot be dispossessed.

31. The plaintiffs cannot be permitted to challenge the acquisition proceedings again once they have failed in the writ petitions, and that is why it is gross abuse of process of law. Even otherwise Section 9 of the CPC completely bars the jurisdiction of the Civil Court to lay a challenge to the acquisition proceedings under the Land Acquisition Act. Reliance in this regard can be placed on **State of Bihar Vs. Dhirendra Kumar & Ors.** AIR 1995 SC 1955 and FAO (OS) 27/2008 passed by the Division Bench of this Court. In addition to this, it will be pertinent here to refer to the observations passed by the Apex Court in a civil suit the judgment of K. Ramaswamy J. as his Lordship then has observed that clearly supports the contention made in the said judgment at page 24.
32. For the reasons mentioned above, I am of the considered opinion that a reading of the entire plaint and the way the challenge to acquisition proceedings has been raised, I feel that the suit is not only without any cause of action but also against the provisions of law as well as the pronouncement of the Apex Court. It will be pertinent here to refer to the

observations passed by the Supreme Court in **T. Arivandandam** case where the plaintiffs admittedly had indulged in series of legal proceedings to evade the eviction order passed against him. The relevant observations are as under:

“The Trial Court must remember that if on a meaningful-not formal- reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist judge is the answer to irresponsible law suits. The Trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch. XI) and must be triggered against them.”

33. In the light of the aforesaid facts and circumstances, I am fully satisfied that the suit does not deserve to be restored as no ‘sufficient cause’ has been shown and even if the suit is restored for the sake of argument since it is a gross abuse of processes of law because the petitioners had earlier filed a writ petition taking one stand and failed, they cannot change the said stand and challenge the acquisition proceedings in a Civil suit. Accordingly, on this ground also, the suit must be rejected by invoking Order 7 Rule 11 CPC.

V.K. SHALI, J.

NOVEMBER 23, 2010
RN/KP