

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

% *Judgment Reserved on: 09th December, 2009*
Judgment Delivered on: 14th December, 2009

+ **L.P.A. No.458/2004**

BALWAN SINGH Appellant
Through: Mr.Ravinder Sethi, Senior Advocate
with Mr.S.K.Rout, Mr.Rajiv Kumar
Ghawana, Mr.M.K.Pradhan and
Mr.Pankaj Bhatia, Advocates.

Versus
UOI & ORS. Respondents
Through: Mr.Sanjay Poddar, Advocate for UOI
Mr.Rajiv Bansal and Mr.Rajan
Tyagi, Advocates for DDA.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. The appellant Balwan Singh filed a writ petition registered as WP(C) No.3901/1999. In the said writ petition he pleaded that he was in adverse possession of land comprised in Khasra No.271(37/9) in the revenue estate of Village Ladha Sarai and was thus entitled to challenge the notification dated 23.1.1965 issued under Section 4 of the Land Acquisition Act 1894 and the declaration issued under Section 6 of the said

Act on 6.1.1969. He also stated that he was entitled to challenge the notices issued by the Land Acquisition Collector under Section 9 and 10 of the Land Acquisition Act 1894.

2. Prayer made in the writ petition was to quash the notification and the declaration issued under Section 4 and Section 6 of the Land Acquisition Act 1894 respectively. It was further prayed that a declaration may be granted in his favour that by virtue of Section 5-1(A) of the Punjab Tenancy Act he is the permanent occupant of the land. It was further prayed that the respondents be prohibited from taking possession of the land.

3. It may be noted that there are vague pleadings in the writ petition that the land was evacuee property and hence could not be acquired.

4. The writ petition was dismissed vide order dated 27.2.2002 holding that Roop Chand, father of Balwan Singh had accepted compensation in respect of the land and thus Balwan Singh could not stake any claim in respect of the land. Alternatively, it was held: *Even assuming for the sake of arguments, the petitioner has become owner by adverse possession, his title cannot be determined in the present proceedings.*

5. Balwan Singh filed an appeal against the order dated 27.2.2002 which was registered as LPA No.322/2002.

6. The said appeal was disposed of vide order dated 22.4.2002 noting that the stand of the Balwan Singh was that his father had never accepted any compensation and that his case was that being evacuee land the same could not be acquired. The appeal was dismissed as withdrawn with right reserved in favour of Balwan Singh to seek review of the order dated 27.2.2002.

7. Review application being RA No.5381/2002 was filed praying that the order dated 27.2.2002 be reviewed.

8. The same has been dismissed vide impugned order dated 3.2.2004.

9. The instant appeal lays a challenge to the order dated 3.2.2004.

10. Dismissing the application seeking review, the learned Single Judge has held that even if father of Balwan Singh did not receive any compensation it would make no difference to the result of the writ petition. In so holding, the learned Single Judge has held that during acquisition proceedings neither Roop Chand nor Balwan Singh raised any issue of the land being evacuee property and hence immune from acquisition. Thus, said plea could not be raised for the first time in appeal.

11. Various grounds, all mumbled-jumbled have been urged in the writ petition and also in the instant appeal.

12. On 9.12.2009, after arguments concluded in the appeal, in presence of learned counsel for the parties a short order was penned noting the stand of the appellant in the appeal. In the order dated 9.12.2009 it has been recorded as under:-

“1. Mr. Ravinder Sethi, learned senior counsel for the appellant states that the appellant is not predicting any plea on the premise that the subject land was an evacuee property. Counsel urges that the stand of the appellant is that the subject land being the property of the Union could not be acquired under any award and thus pursuant to the award the Land Acquisition Collector would have no jurisdiction to take over possession of the land treating the same to be an acquired land. Counsel states that fore-fathers of the appellant were in continuous adverse possession of the land and by prescription claimed title to the land.

2. Arguments heard.”

13. To appreciate the contention urged with respect to the award, it may be noted that the lands in respect whereof a declaration under Section 6 of the Land Acquisition Act 1894 was issued on 6.1.1969 were the subject matter of Award No.31/86-87. In the award, pertaining to the land comprised in Khasra No.271, at serial No.4 of the list of persons who have staked a claim to the lands, it was recorded that Roop Chand had claimed compensation in sum of Rs.50,000/- per bigha.

14. Assessing compensation it has been held that no compensation needs to be assessed qua the said land inasmuch as the same belongs to the Central Government.

15. It may be noted that the land was shown in the revenue record as belonging to the Central Government inasmuch as the recorded owner thereof had migrated to Pakistan at the time of partition and being declared as an evacuee property the same was vested in the Custodian of Evacuee Properties i.e. the Central Government.

16. Thus, Shri Ravinder Sethi, learned senior counsel for the appellant urged that there being no award pertaining to the land in question, the Land Acquisition Collector had no jurisdiction to take possession of the land. In that view of the matter, learned counsel urged that it hardly mattered whether the notification under Section 4 of the Land Acquisition Act 1894 was issued or that the declaration under Section 6 of the said Act was issued.

17. In respect of enforcing the possessory right of the appellant, it was urged that being in adverse possession of the said land for a continuous period of more than 30 years, the appellant acquired the title to the land by adverse possession or alternatively became an occupancy tenant under Section 5-1(A) of the Punjab Tenancy Act. Counsel urged that a perusal of the award shows that no compensation was assessed by the

Land Acquisition Collector in respect of the subject land for the reason he held that the land was of the Central Government.

18. Needless to state, as held in the decision reported as (2003) 3 SCC 128 Sharda Devi vs. State of Bihar & Anr., the Government cannot acquire its own land and if an award is made in respect of the government land the same is a nullity.

19. But, the question arises whether at all the appellant can retain possession in respect of the land claiming adverse possession or alternatively a declaration that he is entitled to be declared as a permanent occupant of the land under Section 5-1(A) of the Punjab Tenancy Act in a writ proceedings.

20. According to the respondents, the question of the appellant or his father being in adverse possession does not arise for the reason the land is recorded in the revenue records as uncultivable rocky area (*banjar pahad*). It was urged that stray (manipulated) entries in the khasra girdawaris under the remarks column showing Roop Chand being in possession were neither here nor there for the reason the said khasra girdawaris do not show any cultivation activity on the land. The same show that the land was vacant. Counsel urged that in respect of the vacant land the principle relatable to possession is that possession follows title.

21. We need not dwell much on the contentions urged for the reason whether or not Roop Chand and thereafter

Balwan Singh were in possession of the land in question requires evidence to be led with respect to the entries in the remarks column of the khasra girdawaris showing possession of Roop Chand. Evidence would be required as to how possession came to be recorded without any entry of what was being cultivated on the land in question. Further evidence would be required as to how come, after recording the land as *banjar pahad* i.e. uncultivated rocky hill, possession of Roop Chand came to be recorded. Further evidence would be required as to whether at all Roop Chand was in possession of the land or whether the entries are manipulated. It may be highlighted that we find it extremely strange that for uncultivated rocky hill land, without recording any cultivation, possession of some person other than the recorded owner finds entered recorded in the khasra girdawaris.

22. It is settled law that in respect of declarations required under the Revenue Law, proceedings have to be taken before the Revenue Authorities constituted under the Act. Even a Civil Court has no jurisdiction on issues which fall within the domain of revenue authorities.

23. It is settled law that writ proceedings are resorted to enforce legal rights and not to create legal rights and then enforce the same.

24. Issues of adverse possession and acquisition of title by prescription required evidence to be led on the point, whether at all the claimant was in possession of the land and whether or not the possession was open and hostile to the knowledge of the recorded owner. Surreptitious acts of possession not to the knowledge of the owner of the property are not enough to sustain a plea of adverse possession.

25. The learned Single Judge was perfectly correct in passing the order dated 27.2.2002 when he noted that such a claim could never be adjudicated in a writ proceedings.

26. Noting that the issue of land being evacuee property was not urged before us during arguments in the appeal, we see no merit in the appeal which is dismissed with costs against the appellant in sum of Rs.11,000/-, to be shared by the respondents.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

December 14, 2009
Dharmender