

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

+ **RSA 27/2009**

Date of decision : 27th July, 2009

RADHA KRISHANAN S. Appellant

Through : Ms. Babita Puniya, Advocate

Versus

DHRUV KUMAR GUPTA & ORS.

.....Respondents

Through : Ms. Ansuiya Salwan, Advocate
for DDA.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J.(Oral)

CM APPL.2533/2009 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of

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file and no page is missing.

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1. In this appeal, the appellant has assailed the judgment and decree dated 2.12.2008 in RCA No.7/2008 passed by the Appellate Court whereby it was pleased to dismiss the appeal of the appellant against the judgment and decree dated 31.01.2008.
 2. Appellant claimed himself to be a tenant of Dhruv Kumar Gupta, respondent No.1 in respect of property No.1/5, Mukteshwar Dham Complex, Mahipalpur Road, Mehrauli, New Delhi where he alongwith his family members has been residing as a tenant. Since he apprehended threat from respondent No.1 of forcible dispossession from the suit premises, he filed a suit seeking relief of permanent injunction for restraining the defendants/respondents from carrying out demolition, dis-possession or otherwise obstructing the possession and/or peaceful use of the suit premises by the appellant. He has also prayed seeking mandate to respondent No.1 to restore the shape and structure of the suit premises.
 3. Respondent No.2 DDA has contested the suit alleging that on 13.11.1959 a notification was

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issued under Section 4 of the Land Acquisition Act (hereinafter referred to as 'Act') for the acquisition of the suit land followed by another declaration dated 7.12.1966 issued under Section 6 of the Act. On 25.3.1983 award pertaining to the said acquisition being award No.83/82-83 was published. With the acquisition of land having attained finality, the possession of the land vested with the Govt. On 14.3.1997, Land and Building Department of the Govt. handed over the possession of the suit land to respondent/DDA.

4. After DDA took over the possession of the suit property from Land and Building Department, appellant filed a civil suit No.286/2006.
5. After completion of the pleadings of the parties, the learned Civil Judge framed the following issues on 17.1.2005:-

1. Whether the plaintiff has any locus standi to file the suit as the land in question is duly acquired by Government? OPP.

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6. Vide its detailed judgment and decree dated 31.1.2008, the learned Civil Judge dismissed the suit of the plaintiff with the following observations:-

"7..... According to the reports of possession (Kabza Karyawahi) dated 14.3.1997 and 1.7.2004, possession has already been transferred to the Government. Transfer of possession has taken place in accordance with law and in a peaceful manner. Hence, the plea of wrongful dispossession is not available to the plaintiff. There is no right of continuing in possession in favour of the plaintiff.

8. In view of the aforesaid facts and circumstances, the suit is not maintainable and the plaintiff has no locus-standi to file the present suit....."

7. The First Appellate Court vide its judgment dated 2.12.2008 while upholding the judgment and decree of the trial court dismissed the appeal of the appellant with the following observations:-

".....The argument of the appellant that he had been the tenant under the respondent No.1 would not help him in any manner. Once the building constructed on the land had been demolished after which the

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possession of the same was handed over to the DDA, the question of the appellant continuing to be in possession of the said land does not arise. The photographs placed before this court by the appellant also do not assist the appellant in any manner since once the actual possession of the land had been taken over by the DDA, no right whatsoever remains with either the appellant or the respondent no.1.

In view of the aforesaid, I do not find any illegality or infirmity in the judgment/decreed dated 31.1.2008 passed by the Ld. Civil Judge which is hereby upheld....."

8. Now, it is to be seen if any substantial question of law arises in the second appeal filed under Section 100 CPC.
9. I have heard Ms. Babita Puniya learned counsel for the appellant and Ms. Ansuiya Salwan, Advocate appearing for the respondent/DDA and have perused the relevant documents placed on the record.
10. Preliminary issue was framed in vide of the pleadings of the appellant that he was a tenant in a portion of the suit land acquired by the Govt. in

accordance with law and procedure laid down under the Land Acquisition Act to which the possession was taken over by the Land and Building Department after the acquisition Award No.83/82-83 was published on 25.3.1983.

11. It is pertinent to mention here that respondent No.1 as owner of the property had first challenged the acquisition proceedings in a writ petition but was unsuccessful. SLP filed against the order of this court was also dismissed. Respondent No.1 in his own right as owner filed a civil suit seeking permanent injunction against the respondents in the said suit including the DDA. The said suit was dismissed for want of jurisdiction. The appeal filed against the said judgment and decree of the trial court was also dismissed. Respondent No.1 assailed the order of the trial court in second appeal which was also listed before this court and has been reserved for orders. Appellant who claimed himself to be a tenant of Dhruv Kumar Gupta has no better title in the property than that of the actual owner Dhruv Kumar Gupta.

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12. It is no longer *res integra* that the Civil Court has no jurisdiction to try a case which by necessary implication arises out of Land Acquisition Act. Section 9 of CPC vests jurisdiction in a Civil Court to try all the civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure laid down under the Act is a special procedure with a view to envisage to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The dissatisfied claimant after the notification issued under Section 4 and 6 and pronouncement of the Award, has been specifically provided with remedy of reference under Section 18 and a further appeal under Section 54 of the Act. Once possession is taken, it stands vested under Section 16 of the act in the State with absolute title free from all encumbrances.

13. In '**Laxmi Chand & Ors. vs. Gram Panchayat, Kararia & Ors., (1996) 7 SCC 218**' the Supreme Court observed:-

"3. It would thus be clear that the scheme of the Act is

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complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court."

14. It is not disputed that the first Kabza Karwahi under the Land Acquisition Act in respect of the land took place on 3.4.1996; second Kabza karwahi took place on 14.3.1997; Third Kabza Karwahi on 31.3.1997 and Last Kabza Karwahi on 1.7.2004.
15. After taking over the possession, the Government becomes its absolute owner, free from all encumbrances.
16. Therefore, physical possession of the appellant, if any, can be considered as possession of a trustee on behalf of the public at large or as a tress-passer and, therefore, this itself cannot be a ground to

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contend that the Government has not taken the possession of the suit land. Appellant has no right to claim the relief sought alleging that actual possession was not taken and therefore he should be protected.

17. In '**Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors., AIR 1975 SC 1767**', in similar circumstances it was observed:-

"26. In a proceeding under the Act for acquisition of land all interests are wiped out. Actual possession of the land becomes necessary for its use for the public purpose for which it has been acquired. Therefore, the taking of possession under the Act cannot be "symbolical" in the sense as generally understood in Civil Law. Surely it cannot be a possession merely on paper. What is required under the Act is the taking of actual possession on the spot. In the eyes of law the taking of possession will have the effect of transferring possession from the owner or the occupant of the land to the Government."

It was further observed:-

"28.....It is, therefore, clear that taking of possession within the meaning of S.16 or 17(1) means taking of possession on the spot. It is

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neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9 (1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government."

18. In ***Nagin Chand Godha's case (supra)*** while referring to ***Balwant Narayan Bhagde's case (supra)*** this court observed in para 10 as under:-

"10..... If a person is enjoying the possession after the possession has been taken, the person is enjoying the possession as a trustee on

behalf of the public at large and that by itself cannot be a ground to contend that the possession has not been taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified."

19. The First Appellate Court while dealing with the question of appellant being in physical possession of the property as a tenant observed in its judgment dated 2.12.2008 as under:-

".....The argument of the appellant that he had been the tenant under the respondent No.1 would not help him in any manner. Once the building constructed on the land had been demolished after which the possession of the same was handed over to the DDA, the question of the appellant continuing to be in possession of the said land does not arise. The photographs placed before this court by the appellant also do not assist the appellant in any manner since once the actual possession of the land had been taken over by the DDA, no right whatsoever remains with either

the appellant or the respondent
no.1....."

20. In view of the discussion as above, I am of the considered opinion that no substantial question of law can be formulated under the facts and circumstances of this case. The judgment and decree of the trial court as upheld in the first appeal needs no interference on any question of law as none is involved. Hence, the appeal is dismissed in limine.

21. CM APPL. Nos. 2531-32/2009 for stay also stand dismissed.


(ARUNA SURESH)
JUDGE

JULY 27, 2009
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