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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: December 03, 2009

Date of Order: December 04, 2009

+CS(OS) 2257 of 2009 & IA Nos. 15487-15488 of 2009

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Satish Khosla

Through: Ms. Maldeep Sadhu and Ms. Aparna Saxena, Advocates

04.12.2009

...Plaintiffs

Versus

Union of India & Ors.

Through: Mr. Ajay Verma, Advocate for DDA

...Defendants

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This suit has been filed by plaintiff who lost his battle right up to the Supreme Court and again re-agitated the issue in respect to the same subject matter. Plaintiff Satish Khosla had resisted taking of possession of land illegally occupied by him on which he did massive construction in the name of Shanti Sports Club and the litigation continued for more than 20 years. Ultimately, the Supreme Court vide its decision in *Shanti Sports Club and another vs. Union of India and others* 2009(11) Scale 731 gives following directions:

“53. Unfortunately, despite repeated judgments by this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development

plans, sanctioned plans etc., have received encouragement and support from the state apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/ unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized construction in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and the political apparatus of the State take serious view of the menace of illegal and unauthorized construction and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

54. In the result, the appeals are dismissed. However, by taking note of the submission made by Shri Mukul Rohtagi that some time may be given to his clients to vacate the land, we deem it proper to grant three months' time to the appellants to handover possession of the land to the concerned authority of DDA. This will be subject to the condition that within two weeks from today an affidavit is filed on behalf of the appellants by an authorized person that possession of the land will be handed over to DDA by 30th November 2009 and during this period no encumbrances whatsoever will be created by the appellants or their agents and that no compensation will be claimed for the construction already made. Needless to say that if the required undertaking is not filed, the concerned authorities of DDA shall be entitled to take possession of the land and, if necessary, take police help for that purpose."

2. The plaintiff in terms of the judgment passed by the Supreme Court had filed an undertaking and affidavit before the Supreme Court that plaintiff shall handover possession of the land to DDA by 30th November 2009. However, despite tendering this undertaking plaintiff did not handover the land to DDA and DDA had to take over possession with the help of police force. The plaintiff had made another attempt to continue its hold over the land by filing writ petition being WP(C) No.10765/ 2009. This writ petition was also dismissed on 13th November, 2009 by this Court holding that it was without merits. The Court observed that the writ petition was an abuse of process of law in view of the fact that petitioner had already given an undertaking to the Supreme Court that they would vacate the land without claiming any compensation qua structure. After dismissal of the writ petition, plaintiff has now preferred the present suit with a novel plea that 7 bighas of land situated in Khasra No. 38 Min was not the subject matter of acquisition and plaintiff was Bhumidar or successor in interest in respect of land falling in Khasra No.38 Min and the officials of defendants were threatening to take forcible possession on the ground that the said land vested in government.

3. Plaintiff has failed to place on record any document showing that the plaintiff was Bhumidar of any portion of land under any of the Khasras. The Khasra Girdavaries placed on record by plaintiff pertain to year 1982-83 to 1986-87. These Khasra Girdavaries show name of one Atma Ram but do not contain the name of plaintiff as tenure holder. Moreover, Khasra Godavari is not a document of Bhumidari. The Bhumidari rights are enforceable under Delhi Land Reforms Act. At no stage, plaintiff had filed any proceeding under Delhi Land Reforms Act to claim that he was a Bhumidar of the land in question. After dismissal of the plaintiff's writ petition by this Court and plaintiff having lost his claim to the land illegally occupied right upto Supreme Court, this

novel idea struck plaintiff of claiming to be a Bhumidhar in respect of one Khasra i.e. 38 Min. Plaintiff nowhere in previous proceedings had raised the issue in respect of Khasra No.38 Min and had not stated that 38 Min was not a part of the acquired land.

4. The plaintiff has come to seek declaration after 29 years of passing of award. The acquisition of land in this case had taken place on 16th January 1969. The award in respect of land was passed on 22nd December 1980. In this award, Khasra No.38 Min has been categorically shown as the land acquired. After 29 years of passing of award plaintiff or any person has no right to come to the Court to seek a declaration that the land in question was not the part of award. The suit is liable to be rejected on this ground alone.

5. I consider that the suit filed by plaintiff was another attempt made by plaintiff to thwart the efforts of defendants to take possession of the acquired land. The present suit is a gross misuse of judicial process and is liable to be dismissed with exemplary costs.

6. In the result, the suit of plaintiff is hereby dismissed with costs of Rs.50,000/-. The cost shall be deposited by plaintiff with the Registry of this Court within 30 days from today and in case the costs is not deposited, the same be recovered through attachment of plaintiff's property and DDA (defendant herein), who has put appearance shall file execution for recovery of costs. Cost as and when recovered be deposited with Delhi High Court Legal Services Committee.

December 04, 2009
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SHIV NARAYAN DHINGRA J.