

R-101

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

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Date of Judgment: 25.11.2010

+ **RSA No.45/2002 & C.M.Nos.132/2002 & 215/2002**

TEK CHAND (since deceased)
THROUGH HIS L.R.

.....Appellant
Through: Mr.R.K.Bindal, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr.Rajesh Manchanda,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 4.3.2002 which had endorsed the finding of the trial court dated 23.1.1990 thereby dismissing the suit of the plaintiff Tek Chand. Appellant before this court is the plaintiff Tek Chand. He is stated to be the owner of land comprised of 9 bighas and 7 biswas in Khasra No.174, Village Naharpur, Delhi. It is stated that out of this aforesaid land 9 bighas and 4 biswas had been acquired but the balance 3 biswas had been left out as the same was built up. Government had not taken possession of the aforesaid 3 biswas of land. The plaintiff is living in this suit property and he has been assessed to property tax. He also has a water connection. On 15.4.1987, the officials of the Delhi Development Authority (DDA) had threatened to demolish his house. The action of the defendant

was illegal. No notice of demolition had ever been served upon the plaintiff. He was constrained to file the present suit for injunction seeking a restraint against defendant from interfering with the peaceful possession of his property.

2. The defendant in its written statement stated that whole of the land stood acquired vide Award no.35/78-79. Out of this land, 9 bighas and 4 biswas had been taken possession of and placed at the disposal of the DDA. Remaining 3 biswas could not be taken over as a grave (samadhi) existed there. Plaintiff has no right, title or interest in the suit property. The show cause notice and demolition order under Section 30 of the Delhi Development Act, 1957 (hereinafter referred to as 'the said Act') had been duly served upon the plaintiff; a person aggrieved by such an action can file an appeal before the Appellate Tribunal; suit was not maintainable.

3. Trial judge framed the following five issues:

1. Whether the threatened action of the deft. is ultra-vires and without jurisdiction? OPD
2. Whether the jurisdiction of this court is barred u/s 30 of the D.D.Act? OPD
3. Whether the pltf. has got any locus standi to file the present suit? OPP
4. Whether the pltf. is entitled to the relief claimed for?
5. Relief.

On the basis of the oral and documentary evidence adduced by the respective parties, it was held that the show cause notice and the demolition order were duly served upon the plaintiff. The show cause notice was proved as Ex.DW2/2. Report of the process server Ex.DW2/3 reported that the plaintiff had refused service. Demolition order is Ex.DW2/4; the demolition notice was proved as Ex.DW2/5 served upon the plaintiff and received by one Ramu on behalf of the owner. Both the courts below had noted that no

suggestion had been given to DW2 in his cross examination that this notice was not served upon the owner in the aforementioned manner. Further the trial court was of the view that the demolition order could only be challenged under Section 31-E of the said Act before the Appellate Tribunal; jurisdiction of the civil court was barred.

4. This finding of the trial judge was endorsed by the Appellate Court.

5. This is a second appeal. It was admitted on 12.7.2002 and following substantial questions of law have been formulated which inter alia read as under:

“The points which are to be considered relate to is the question of jurisdiction, of the Civil Court to dismiss the suit on the ground that there is an Appellate Tribunal for the purpose of consideration and the other question relate to authority of the DDA to interfere with the construction, by issuing notice to demolish etc.”

6. Counsel for the appellant has vehemently urged that the Award Ex.DW1/1 shows that 3 biswas of land had been left out from acquisition and in fact this has also been admitted by the defendant in his written statement. The contention of the plaintiff all-along has been that he had not received either the show cause notice or the demolition order.

7. Arguments have been countered. Learned counsel for the respondent has placed reliance upon the judgment of this court reported in 2001 III AD (Delhi) 911 Prabhu Dayal vs. M.C.D. & Anr. to support his submission that the remedy available to a party against the demolition order is to go to the appropriate forum which is the Appellate Tribunal and not to file a suit.

8. The demolition order in the instant case was passed under Section 30 of the said Act. Both the fact finding courts have held

that the show cause notice and the demolition order had been duly served upon the appellant/plaintiff. These were concurrent and clear findings. This court is not a third fact finding court. It cannot interfere with the findings of fact unless they are perverse. No such perversity has been pointed out.

9. The demolition order having been served upon the appellant, the only remedy available to the said party was to challenge this demolition order before the Appellate Authority; jurisdiction of the civil court was barred. This is clear from the provisions of Section 31-C, 31-D and 31-E of the said Act. The judgment relied upon by the learned counsel for the respondent also squarely covers this case. Suit of the plaintiff was rightly dismissed. The person aggrieved by such a demolition order can take recourse to the Appellate Tribunal; the arguments urged before this court could very well have been advanced before the Appellate forum.

10. There is no merit in the appeal. Appeal as also the pending applications are dismissed.

INDERMEET KAUR, J.

NOVEMBER 25, 2010

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