

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

% *Date of Judgment : 26th August, 2010*

+ **RSA No.72/2008**

SMT.BIMLA RANI Appellant
Through: Mr.P.Chakroborty, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr.Rakesh Mittal, 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)

CM No.12198/2008(for permission to file documents)

Not pressed. Dismissed.

CM No.4301/2008 (for condonation of delay)

There is no substantial opposition to this application. The delay in filing the appeal is condoned. Application is disposed of.

RSA No.72/2008 & CM No.4302/2008 (for stay)

1. This second appeal has impugned the judgment and decree dated 19.9.2007 which had endorsed the finding of the Trial Judge dated 13.8.2002 whereby the suit of the plaintiff/appellant had been dismissed.

2. Briefly stated the facts of the case are as follows:

(i) The plaintiff Bimla Rani represented through her LRs was a widow and had a large family. Her late

husband Roshan Lal was in occupation of 386 sq.

yards of land opposite Idgah in Jhandewalan Estate, Delhi which was under the control and management of the Delhi Development Authority (hereinafter referred to as the 'DDA'). The plaintiff had occupied this land w.e.f. 1.1.1962; he paid damages till 1968 i.e. till he was removed. No alternate allotment was given to the plaintiff as it was stated that he was not assessed to damages prior to 1.1.1961; as such he was not eligible under the policy for alternate allotment. Plaintiff has no source of livelihood; she is dependent upon her son; she is a widow.

(ii) Vide resolution dated 11.10.1977 DDA had allotted land to other evictees who were not assessed to damages but were doing bonafide business at Motia Khan.

(iii) In the year 1985 DDA constituted a committee for allotment of alternate land to the left over and rejected cases of Motia Khan area this came to the knowledge of the plaintiff only in July 1986.

(iv) Vide resolution dated 21.8.1986 the DDA resolved not to accept any fresh application.

(v) On 9.1.1989 a representation was made by the plaintiff to the DDA but of no avail.

(vi) Present suit was filed seeking an injunction against the defendant to allot an alternative plot of 350 sq. yards at Mayapuri Industrial Area.

(vii) Written statement had contested the suit. It is stated that mandatory notice under Section 53B of the

Delhi Development Act (hereinafter referred to as the DDA Act) had not been given. Case of the present plaintiff was not pending with the department. Plaintiff was not in occupation of the land at the time of the clearance operation. Plaintiff has no locus standi to file the present suit. M/s Roshan Lal and sons were in unauthorized occupation of 133 sq. yards of land and were assessed to damages w.e.f. 1.4.1969 to 31.3.1974. Eligible evictees of Motia Khan had already been given alternate sites.

(viii). In view of the resolution no.70, the DDA had decided not to reopen past cases of the evictees of Motia Khan of 1975-76.

(ix) Trial Judge had framed four issues; which inter alia read as follows:

“1. Whether action of defendant is illegal, untravires and without jurisdiction?

2. Whether the suit is bad for want of notice u/s 53-B of DD Act? OPD

3. Whether the suit is barred by limitation? OPD

4. Whether the plaintiff is entitled for the relief claimed for?”

(x) The suit was held bad for want of mandatory notice under Section 53 B of the DDA Act. Suit was however held to be within limitation. On issues no.1 and 4 the Trial Court examined the versions of PW-1 and PW-2 as also the two witnesses examined on behalf of defendant i.e. DW-1 and DW-2. DW-1 had deposed that there was no assessment made in the name of the plaintiff and she was not in possession of the disputed land; the assessments of damages were made in the

name of Roshan Lal and Chunni Lal up to 25.12.1967 and none after that. The case of the plaintiff was not covered by resolution no.70. Further this resolution no.70 dated 21.8.1986 holding that all old cases stand closed and will not be reopened has been upheld by High Court in CWP No.452/1987 titled as M/s Om Prakash Parmod Kumar Vs. UOI & Ors. The same has since attained a finality. Action of the defendant rejecting the case of the plaintiff is legal. Suit of the plaintiff was dismissed.

(xi) The first Appellate Court vide judgment dated 19.9.2007 endorsed the finding of the Trial Judge. It was held that the plaintiff had no cause of action against the defendant. The policy of allotment of alternate plots to evictees of Motia Khan stood closed by resolution no.70 dated 21.8.1986 which was upheld by the High Court in CWP 452/1987 on 19.2.1987. Neither the plaintiff Bimla Rani nor her husband made any representation for an alternate plot in terms of the resolution dated 11.10.1977. Notice under Section 53 B of the DD Act had not been served. Suit was even otherwise held to be barred by limitation; suit having been instituted on 27.3.1989 challenging the resolution dated 11.10.1977.

3. This is a second appeal. Appeal has yet not been admitted. Substantial question of law has been formulated on page 34 of the paper book which inter alia reads as follows:

“ The important question of law in the present RSA is
as under:

Whether the scheme for shifting of non-conforming trade and industry framed under Master Plan for Delhi is a continuous process and the scheme having been prepared in the year 1964-65, all the affected persons are entitled to benefit under scheme irrespective form the date when the scheme came into force and even if the policy is struck down under Article 14. The scheme is revived as soon as it is modified in the light of the order of the court.”

4. The contention of the learned counsel for the appellant is that he was an evictee from the Motia Khan premises of the year 1968 yet the subsequent policy of the DDA allowing alternate allotment to evictees of Motia Khan would have a retrospective effect entitling the plaintiff also to an alternate plot.

5. This argument is noted only to be rejected. Wherefrom and under which statutory provision, guideline or rule of law, this argument has been raised is not answered. Admittedly, even as per the case of the appellant the plaintiff had been shifted out of the Motia Khan area in the year 1968. The policy as per the DDA for alternate allotment of evictees of Motia Khan had been formulated on 11.10.1977 where in terms of this aforenoted resolution evictees who were doing bonafide business at Motia Khan were allotted alternate land. Admittedly, the plaintiff was not in occupation of the suit land at that time; she having been evicted as way back as in 1968. On 21.8.1986 the DDA had passed a resolution that all past cases including cases of Motia Khan will not be reopened. This has been upheld by Division Bench of this Court in the aforenoted writ petition. The case of the plaintiff was not covered under any of the guidelines laid

down by the department under which she could make any legal or valid claim for an alternate allotment. In fact the first representation made by the plaintiff was on 9.1.1989. By no stretch of imagination can it be said that a guideline/policy which had seen the light of the day only on 11.10.1977 would apply retrospectively to an evictee for the year 1968. Learned counsel for the appellant has also not been able to point out any such rule or law in his favour.

6. The judgment relied upon by the learned counsel for the appellant passed in CWP No.360/1981 Om Prakash Gupta & Ors. Vs. Delhi Development Authority & Ors. also shows that the actual removal of persons in the Motia Khan area started in the year 1975. This judgment is of no help to the appellant.

7. No question of law much less any substantial question of law has arisen. Appeal as also the stay application is dismissed in limine.

INDERMEET KAUR, J.

AUGUST 26, 2010
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