

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

Judgment Reserved on: 30.09.2010
% *Judgment Delivered on: 04.10.2010*

+ **RSA No.189/2007 & C.M.Appls.9924-9925/2007 & 3299/2009**

MAYA DEVI & ORS. Appellants
Through: Mr.Sandeep Sethi, Sr. Advocate with
Mr.B.P.Gupta, Advocate.

Versus

RAJNI MASAND & ORS. Respondents
Through: Mr.O.P.Khadaria and Mr.Deepak
Khadaria, Advocates.

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.

1. This second appeal has impugned the judgment and decree dated 5.5.2007 which had reversed the judgment and decree of the trial judge dated 5.2.2000. Vide judgment and decree dated 5.2.2000 the suit of the plaintiff Rajni Masand (respondent before this court) had been dismissed. The impugned judgment had decreed her suit. Maya Devi, Defendant before the trial court is now the appellant before this court.

2. The factual matrix of the case is as follows:

(i) Plaintiff had filed a suit for possession and permanent injunction. As per her case, her late husband Rochhal Dass had purchased a plot measuring 200 sq. yds. bearing no. 202, Acharya Niketan situated in the area of Kotla, Shahdra, Delhi from M/s Mittal & Sons and Financers Private Limited vide sale deed dated

23.2.1959 for a consideration of Rs.1100/-. Her husband died on 14.1.1980; relinquishment deed dated 4.6.1987 was executed by other legal heirs in favour of the plaintiff who was the widow of Rochhal Dass.

(ii) In January, 1987 plaintiff along with her son visited the plot where she found one Panditji, an employee of (defendant no.2) S.K.Gupta occupying it.

(iii) In March, 1987 plaintiff again visited the plot and requested defendant no.2 not to interfere in her legal rights.

(iv) On 26.5.1989 plaintiff filed a suit for permanent and mandatory injunction. Complaint of the same date i.e. 26.5.1987 reiterated on 19.8.1987 and 13.12.1988 was also made by her at the concerned police station.

(v) On 24.7.1989, plaintiff found defendant no.1 carrying out construction activity in the said plot. This was in collusion with defendant no.3. Another complaint dated 27.7.1989 was filed. Suit for injunction was also filed on 25.7.1989. On legal advice the said suit was subsequently withdrawn.

(vi) Present suit was filed thereafter.

(vii) Written statement was filed contesting the suit; objection about pecuniary jurisdiction and suit not having been properly valued for the purpose of court fee had been taken. Defendant claimed title by virtue of a general power of attorney and agreement and claimed to be in possession since 20.9.1982.

(viii) On 6.3.1995, fourteen issues were framed by the trial court which inter alia read as follows:

1. Whether the suit is barred by limitation? OPD-1&2.
2. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction in view of preliminary objection No. 2 & 3 of the WS of deft.no.1

- & 2, preliminary objection No.3 of the WS of deft.No.4? OPD-1, 2 & 4.
3. Whether the suit is not maintainable in view of preliminary objection No.5 of the WS? OPD-1 & 2.
 4. Whether the plaintiff has no locus-standi to maintain the present suit? OPD-1, 2, 4&6.
 5. Whether the suit is barred U/o XXIII Rule 1 CPC and U/o-II, Rule-2 CPC? OPD-4.
 6. Whether the suit is bad for non-joinder of necessary parties in view of preliminary objection No.8 of the WS of deft.No.1? OPD-1.
 7. Whether the suit is bad for mis-joinder of parties in view of preliminary objection No.1 of the WS of defendant No.5? OPD-5.
 8. Whether the defendants No.4, 5 & 6 are protected under D.R.C.Act? OPD-4, 5 & 6.
 9. Whether the suit is bad for misjoinder of cause of action? OPD-4, 6.
 10. Whether the suit is barred U/o-XXIII, Rule-1 CPC & U/o-II, Rule-2 CPC? OPD-4 & 6.
 11. Whether there is no privity of contract between the plaintiff and defendant No.3? OPD-3.
 12. Whether the plaintiff is entitled for restoration of the peaceful vacant possession of premises No.A-19, Acharya Niketan, New Delhi, as shown red in the site plan? OPP.
 13. Whether the plaintiff is entitled to the relief of injunction as claimed for? OPP.
 14. Relief.
3. Issue no.3, 4, 5, 12 & 13 were all decided against the plaintiff and in favour of the defendants. Plaintiff was held not entitled to any relief. Her suit was dismissed.
4. Impugned judgment had reversed the finding of the trial judge. Plaintiff was held entitled for possession on the basis of the sale deed Ex.PW-1/2. It was held that the plaintiff could not have been non-suited merely on an incomplete description or for want of complete description of the immovable property.
5. This is a second appeal. After the appeal was admitted on 5.8.2010 the following substantial question of law was formulated which inter alia reads as follows:

Whether the impugned judgment dated 5.5.2007 decreeing the suit of the plaintiff was and illegality in view of the fact that the disputed land had stood acquired by an award no.19/76-77 dated 05.1.1977, if so, its effect?

6. Arguments have been addressed at length. It is pointed out by the learned counsel for the appellant that it is an admitted case of the parties that the disputed land i.e. the plot of 200 sq. yds of which the ownership is being claimed by the plaintiff was situated in Khasra No.66, Village Kotla, Delhi. It is also not disputed between the parties that this land had stood acquired by Award no.19/76-77 on 5.1.1977. Counsel for the appellant has drawn the attention of this court to the Jamabandi Ex.DW-1/1 for the year 1986-87 proved in the version of DW1 as also the Khasra Girdawari Ex.DW-1/PX1 showing that Khasra no.66 comprising of 5 bighas and 5 biswas in village Kotla vested in the name of the Government i.e. the Land and Building Department. Attention has also been drawn to Ex.PW-1/19 & Ex.PW-1/20, dated 26.5.1987 and 19.8.1987, the first of which is a complaint made by the plaintiff to the SHO concerned and the second of which is a letter drafted on her behalf by her advocate wherein it has specifically been averred that her property is situated in Khasra No.66 in village Kotla. Attention has also been drawn to the application filed by the plaintiff under Order 16 Rule 1 of the CPC filed before the first appellate court (page 236) wherein in para 2 she had stated that this land had been acquired by the DDA for the police station. PW-2 the daughter of the plaintiff has also deposed that this land was acquired by the government in 1976-77 and possession was taken over by the government. It is submitted that a combined reading of the aforesaid documentary evidence coupled with the oral versions of PW-2 and DW-1 (recorded on 15.9.1988) clearly shows that the subject matter of the suit property stood acquired by the Government by an Award, and the possession of the land had been

taken. The plaintiff was thus divested of his title. It is pointed out that no suggestion had also been given to DW-1 who had proved Ex.DW-1/1 and Ex.DW-1/PX1 that this record was incorrect or that the government had not acquired this land. There is also no evidence of any subsequent de-notification. In these circumstances, the suit filed by her was not maintainable.

7. Learned counsel for the appellant has placed reliance upon 1995 Supp (4) SCC 268 General Manager, Telecommunication & Anr. vs. Dr. Madan Mohan Pradhan & Ors. to substantiate his submission that once the land has been acquired and possession had been taken over, by operation of Section 16 of the Land Acquisition Land Act, 1984 (LAC) the right, title and interest in the land vests in the Government absolutely, free from all encumbrances. The Government became the absolute owner thereof. For the same proposition reliance has also been placed upon AIR 1996 SC 866 State of Tamil Nadu & Anr. vs. Mahalkshmi Ammal and Ors. It is submitted that after the land has been acquired and the possession has been taken over the subsequent continuation if any by the erstwhile owner is illegal and unlawful. To substantiate this submission reliance has been placed upon AIR 2004 Delhi 238 Ramjas Foundation vs. Union & Ors., (1996) 8 SCC 259 Tamil Nadu Housing Board vs. A.Viswam (dead) by L.Rs., (1998) 4 SCC 387 Larsen & Toubro Ltd. vs. State of Gujarat & Ors., (2005) 12 SCC 489 P.K.Kalburqi vs. State of Karnataka & Ors. It is pointed out that symbolic possession by itself is also sufficient to qualify as "possession". Reliance has also been placed upon (1996) 4 SCC 212 Balmokand Khatri Educational & Industrial Trust, Amritsar vs. State of Punjab & Ors. Learned counsel for the

appellant has also placed reliance upon a judgment of the Orissa High Court reported in The Cuttack Law Times Vol.XLI 291 titled as Mohammed Imrahim & Anr. vs. State of Orissa. It is pointed out that the facts of the present case are almost similar and in this case the High Court of Orissa had held that after the acquisition procedure is complete it would be illogical to hold that the owner can still continue to have any right to eject any trespasser. It is pointed out that on this analogy the suit of the plaintiff was clearly not maintainable.

8. Arguments have been countered by learned counsel for the respondent. It is submitted that a substantial question of law is a question which arises from the lis between the parties. Reliance has been placed upon AIR 1927 Privy Council 101 Raghunath Prasad Singh & Ors. vs. Deputy Commissioner of Partabgarh & Ors. where while dealing with the scope of substantial question of law, it had been stated as under:

“A substantial question of law does not mean a question of general importance but the words “substantial question of law” mean a substantial question of law as between the parties in the case involved.”

For the same proposition reliance has been placed upon AIR 1962 SC1314 Sir Chunilal V.Mehta & Sons Ltd. vs. The Century Spinning & Manufacturing Co.Ltd. It is submitted that applying the test as laid down in the latter judgment the substantial question of law as formulated by this court on 5.8.2010 does not arise as a substantial question of law; this submission that this land stood acquired was never a contention raised in the written statement and it was for this reason that no specific issue had also been formulated in this regard. Be that as it may, on merits it is submitted that the plaintiff is the owner of the suit property by virtue of the sale deed

dated 23.2.1959. The defendant is a rank trespasser. It is submitted that vide Resolution No.59 dated 1.2.1983 of the Government the subject matter of the suit i.e. the colony of Acharya Niketan had become regularized. It is submitted that this is a public document and can be looked into in evidence even at this stage. It is submitted that this document had not been filed before the trial court for the reason that this issue now raised before this court was never an issue before the courts below.

9. In rebuttal, it has been submitted that there is a clear distinction between a regularization of a colony and a de-notification of acquired land; a de-notification has necessarily to be effected of land which has been acquired by the Government to divest the Government of its title which can only be as per the procedure of Section 48 of the LAC Act which has admittedly not been done. Counsel for the appellant has placed reliance upon a judgment of this court reported in 112 (2004) DLT 957 (DB) Daya Nand & Ors. vs. Union of India & Ors. to substantiate this submission. It is pointed out that a notification under Section 4 or a declaration under Section 6 of the said Act cannot be invalidated merely on the ground that a policy decision has been taken by the Government to regularize the unauthorized colony; in that said case the petitioners had been directed to make an appropriate representation to the Competent Authority under Section 48 of the said Act. For the same proposition reliance has been placed upon 61 (1996) DLT 206 (FB) Roshanara Begum vs. Union of India & Ors.; the dicta of which had been upheld by the Apex Court in (1997) 1 SCC 15 Murari & Ors. vs. Union of India & Ors. Reliance has also been placed upon AIR 2009 SC 2232 Rajinder & Ors. vs.

State of Haryana & Ors. It is pointed out that if the State Government wishes to withdraw from the acquisition proceedings, the notification has to be published in the official gazette and this is well settled.

10. This is the second appellate court. The question of law as formulated by it on 5.8.2010 as reproduced hereinabove has to be answered. Contention of the learned counsel for the respondent that this aforementioned question does not raise a substantial question of law is negatived. It was in the presence of both the parties that this substantial question of law was formulated. What is a substantial question of law has been expounded by the Supreme Court in several authorities. In the case of Sir Chunilal V.Mehta (supra) the Supreme Court had held as follows:

“10. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

11. The plaintiff in her application under Order 16 Rule 3 dated 14.11.2002 had clearly averred that the suit property as shown in blue print Mark A (site plan) had been acquired by the DDA for a police station. In the plaint it had been stated that the husband of the plaintiff Rochhal Dass had purchased this property from his erstwhile owner M/s Mittal & Sons and Financers Private Limited who had received compensation from the Government on its acquisition. Applying the test of the judgment of Sir Chunilal V.

Mehra (supra) to the facts of the instant case it is clear that this is a substantial question of law. This question as formulated by this court on 5.8.2010 was a dispute inter se emanating from the pleadings of the parties and affecting their rights. It has to be answered. Thus, this preliminary contention of learned counsel for the respondent is rejected.

12. The suit property is a 200 sq. yds. plot located in Khasra No.66, Village Kotla, Delhi. The plaintiff has claimed ownership on the basis of a sale deed Ex.PW-1/2. This sale deed had been executed by M/s Mittal & Sons and Financers Private Limited on 23.2.1959 in favour of Rochhal Dass, the husband of the plaintiff Rajni Masand. This was for a consideration of Rs.1100/-. There is no dispute that after the death of Rochhal Dass, the plaintiff was the legal representative of the properties of her deceased husband including the present property. This sale deed Ex.PW-1/2 has been proved. It is also not in dispute. Contention of the appellant is that this property had been acquired by an Award No.19/76-77 on 5.1.1977. The Jamabandi Ex.DW-1/1 for the year 1986 has been proved before the trial court. Column 4 and Column 5 clearly depict that the title of this land vests in the Government i.e. the Land and Building Department. The Khasra Girdawari for the said year Ex.DW-1/PX1 also evidences that the Khasra No.66 comprising of 5 Bighas and 5 Biswas and is in the name of the Government i.e. the Land and Building Department. These two documents had been proved in the version of DW-1 Bala Dutt, Patwari of the Tehsil. He had brought the record of Khasra No.65-66 of Village Kotla. As per his deposition, *"the Central Government was recorded as the owner in possession of the land pertaining to*

field No.65-66; the entire land was recorded as owned by the Central Government and possession is with the Central Government as per the record". He has deposed that this land was acquired vide Award No.19/76-77; in his cross-examination he had admitted that he had not brought the Notification under Section 4 or 6 of the Land Acquisition Act; as per the record of Khasra No.65-66 there is no mention of Acharya Niketan colony.

13. Learned counsel for the appellant has relied heavily upon this version of DW-1 coupled with Jamabandi Ex.DW-1/1 and Khasra Girdawari Ex.DW-1/PX1 to substantiate his submission that the disputed land stood acquired and possession thereof had been taken by the Central Government by an Award no.19/76-77. This Award has proved before the court as Mark E/C. The names of the claimant who had sought compensation has also been filed. The name of the predecessor-in-interest of the plaintiff i.e. M/s Mittal & Sons and Financers Private Limited find mention at Sl.No.159 as a claimant for compensation. This is dated 5.1.1977. This documentary evidence which is the official revenue record i.e. Ex.DW-1/1 and Ex.DW-1/PX1 substantiates that the Khasra No.65-66 of Village Kotla vested with the Central Government and the ownership recorded in the aforementioned document was of the Land and Building Department. This has also been averred by the plaintiff in her application under Order 16 Rule 1 of the CPC (page 236 of the trial court record) wherein she had herself admitted that the disputed land had been acquired by the DDA for a police station. The Award Mark E/C has conclusively proved this fact. In view of this evidence it can safely be concluded that the disputed

land had been acquired by the Government by the Award no.19/76-77.

14. However, the next question which arises is whether the passing of the Award by the Collector under Section 11 of the LAC Act is by itself sufficient to conclude the acquisition proceedings and/or something else has to follow.

15. Section 16 speaks of the power of the Collector to take possession. Under this provision of law when the Collector has made an Award under Section 11 he may take possession of the land which shall thereupon vest in the Government free from all encumbrances. This is a mandate under Section 16. There is however no evidence forthcoming before this Court that the possession of this land had been taken over by the Government. The version of DW-1 on this score that *"possession is also with the central government as per our record"* is not sufficient to establish that the possession of this land had been taken over by the government. Admittedly, there is no such document to this effect. In the judgment of General Manager, Telecommunication (supra), the Supreme Court in this context had held as under:

"3. It is common knowledge that possession would always be taken under a memo and handing over also would be under a memo. It is a recognized usual practice in all the acquisition proceedings. "

16. This position has been reiterated in the case of State of Tamil Nadu (supra). In the subsequent judgment of Tamil Nadu Housing Board (supra) the Supreme Court had been held as follows:

"9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take

physical possession of the acquired land. It is common Knowledge that in some cases the owner/interested person may not co-operate in taking possession of the land."

17. In the case of P.K.Kalburqi (supra) the Supreme Court had observed that the manner in which this possession is to be taken would depend upon the nature of the land; such a possession would have to be taken as the nature of the land admits of; where the land was unoccupied in the sense that there was no crop or structure standing thereon, only a symbolic possession could be taken.

18. In view of the ratio of the aforementioned judgments, it is clear that the possession whether it is symbolic or actual physical possession has to be evidenced by a memorandum/panchnama which is executed in the presence of one or more witnesses. Admittedly, there is no such document on record. Neither is there a whisper of the same in the oral version of any witness apart from the testimony of DW-1 as discussed herinabove. It is also not the contention of the appellant/defendant in his written statement that the land had been acquired or the consequential possession of the same had been taken.

19. It was only before the second appellate court that this contention has been raised. It does not find mention in the proceedings before the courts below. There is absolutely no evidence before this court either oral or documentary to substantiate the submission that the possession of this land had in fact been taken over by the Government. The Award made by a Collector under Section 11 of the Land Acquisition Act has to be followed by a possession under Section 16. This possession may be symbolic i.e. in a case where the land is unoccupied. In this case, it

is an admitted case of the parties that the disputed land falls in the Acharya Niketan Colony; it has built up houses; actual physical possession of the land could have been taken. It is also relevant to state that in the proceedings before the trial court on an application of the respondent/plaintiff a Local Commissioner had been appointed on 14.9.1989 to visit the disputed site to determine its status i.e. as to whether it was vacant or occupied. His report is dated 5.9.1989. He had reported that there are four shops located in the disputed site let out to different persons. In this case there is neither any evidence of an actual physical possession nor of a symbolic or constructive possession.

20. The contention of the defendant all along was that he had purchased this property and he was the owner thereof in terms of an agreement to sell and a general power of attorney which had been executed in his favour in the year 1982; his further contention being that these documents had been lost and as such this was the reason why the same could not be adduced in evidence. Admittedly, he had not produced any document evidencing his claim of ownership. He had however proved house tax receipts Ex.PW3/1 and Ex.PW2/3 dated 17.3.1989 and 6.10.1989 evidencing payment of house tax on the said property. It is relevant to state that the stand of the defendnat is that he is the owner of the property; in the next breath before this court he has now set up a diametrically contrary plea stating that the land is owned by the Government w.e.f. 1977 i.e. the date of the Award and physical possession has been taken. This is prior in time to his claim of ownership which is of the year 1982. His this contention that he is the owner of this land by virtue of documents executed in 1982 is

clearly a contrary and conflicting stand; it is not his case that he has purchased this property from the government; stand of the defendant is not clear; he is taking shifting stands; he is blowing hot and cold in the same breath; it takes him nowhere.

21. The contention of the respondent/plaintiff is that this land which had been notified pursuant to which an Award had been passed was never taken possession of by the Government. This submission is correct as has been discussed supra. No evidence is forthcoming that this notified land was taken possession of by the Government.

22. Learned counsel for the respondent has drawn the attention of this court to Resolution No.59 dated 1.2.1983 a document of the Town Planning Department, Municipal Corporation of Delhi. This document states that in pursuance of the Government of India's letter no. J-13037/113/74/UDI/IIB dated 16.2.1977 and its subsequent amendments and after consideration of the draft lay out plan of Patparganj which had been approved on 26.10.1979, the colonies which have been regularized in the modified lay out plan include Acharya Niketan. This colony has been mentioned at Sl.No.2 in this document. Another public document dated 2.2.2010 has recited that the Delhi Development Authority has informed that the lay out plan of Acharya Niketan colony had been approved by Resolution No.59 dated 1.2.1983. The Unstarred Question No.2787 answered in Rajya Sabha on 16.12.1983 has stated that Acharya Niketan Colony has been regularized by the DDA since February, 1983. The respondent/plaintiff has also placed on record a certified copy of the notification dated 30.7.1987 showing the de-notification of this land under Section 12 of the Delhi Development Act, 1957

(DDA); Acharya Niketan colony finds mention at Sl.145. The relevant extract of which reads as follows:

“No.F.12(108)/86/L & B/Part 26291: In exercise of the powers confirmed by Sub-Section I of section 12 of the Delhi Development Act, 1957 (61 of 1957) read with notification of the Government of India in the Ministry of Health, Family Planning & Urban Development No.18011(28)/67-UD dated 14.2.69. The Administrator of Union Territory of Delhi hereby de-notified 155 colonies as mentioned in the enclosed list (declared as development areas) vide notifications issued from time to time.”

Out of 155 colonies, Acharya Niketan being a part of Patparganj Complex had been mentioned at Sl.No.143. This is contained in Appendix C to the said notification. These documents are certified copies of the originals, they are public documents. The presumption of their genuineness has to be read under Section 74 read with Section 76 and 77 of the Indian Evidence Act. They have been taken on court record in terms of the order of this court dated 29.9.2010. There is also no quarrel to these documents.

23. It is thus clear that the disputed land although acquired by the Award no.19/76-77 on 5.1.1977; possession of the same either symbolic or physical was never taken; the possession continued to vest with the owner i.e. first with the successor-in-interest of Rochhal Dass i.e. M/s Mittal & Sons and Financers Private Limited and thereafter vide sale deed dated 23.2.1959 the title passed on to Rocchal Dass and after his death to the plaintiff/respondent Rajni Masand. Defence of the defendant all along was also that he had purchased this land in 1982. He could not prove this. It was not his case before the courts below that this land stood acquired and possession of the same had been taken over by the Government;

his stand was contrary; his defence was that he was in possession of this land by virtue of a legal title.

24. That apart, the notification of Delhi Administration dated 30.7.1987 under Section 12 of the DDA recited that the disputed land i.e. Acharya Niketan colony is de-notified. This is a substantive and conclusive proof of the submission of learned counsel for the respondent that after this de-notification this land was taken out of the development area of the Government.

25. The public documents as discussed afore are not in dispute. They clearly establish that this land although originally acquired by an Award No.19/76-77 possession of the same had not been taken over; it had been de-notified under Section 12 of the DDA Act. The DDA had formulated a layout plan of this colony. It was approved by Resolution No.59 dated 1.2.1983. This colony was subsequently regularized. It is also the case of the defendant that in 1989 he had paid house tax vide Ex.DW-3/A dated 17.3.1989 and Ex.DW-3/B dated 6.10.1989 of this property. Obviously, he was in actual physical possession of this property for which purpose he has paid this house tax. The question of the Government having taken possession of this land does not arise. The judgments relied upon by the learned counsel for the appellant have no application. They are distinct on their facts and do not apply to the instant situation. In all the aforementioned cases, the proceedings were with the Union of India and the petitioners before the said courts were those persons whose lands had been acquired pursuant to notifications under Sections 4 & 6 of the LAC Act which notifications were under challenge by the said persons. They would not apply to the facts of the instant case.

26. The net result is that the disputed land earlier notified by an Award, possession of the same not having been taken over, was subsequently de-notified under Section 12 of the DDA by the Government. Title of the property continued to vest with the plaintiff who was legally entitled to a decree of possession which had been passed in her favour. Defendant is directed to vacate the suit property forthwith. Substantial question of law is answered accordingly.

27. There is no merit in the appeal; appeal as also the pending applications are dismissed.

INDERMEET KAUR, J.

OCTOBER 04, 2010

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