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

DECIDED ON: 27.10.2010

+ CS (OS) 1195/2009

SHRI RAM SINGH Plaintiff
Through: Mr. Sugriva Dubey, Advocate.

versus

D.D.A & OTHERS Defendants
Through: Ms. Shobhna Takiar, Advocate for DDA/D-1.
Ms. Kajal Chandra with Ms. Jyoti and
Ms. Prachi Gupta, Advocates for ESIC/D-3.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The plaintiff seeks a decree for possession under Section-5 of the Specific Relief Act claiming that he is the owner and has title of the suit land being Khasra No.278/279/281 Khewat No.49, Village Lahri Singh Colony, East Arjun Nagar, Delhi and also Khasra No.1522/280 and 1554/280 situated in the abadi of Lahri Singh Colony, Village Karkardooma, Delhi.

2. It is contended that the plaintiff's father Late Shri Lahri Singh was owner and in occupation of the suit lands which were ancestral. The plaintiff states that as the son and

legal heir of said Lahri Singh, he came into the possession of the land. The suit averments further are that pursuant to large scale acquisition of land, the subject lands were acquired by the second defendant - Land Acquisition Collector (of the Govt. of NCT of Delhi). It is, however, stated that the land was never handed over to the first defendant - DDA and, therefore, the latter does not have any authority to hand over the possession of the land. The plaintiff on this aspect avers as follows: -

“3. That though it is not disputed that large scale land of late Lahri Singh was acquired by defendant No.2 and handed over to defendant No.1 but the land in question has neither been acquired nor handed over to the defendant No.1 by defendant No.2 and hence the defendant No.2 do not have the authority to hand over the possession of the land in dispute as it is only the defendant No.2 who is the land owning agency.

4. That in fact the land in dispute was de-notified by the Union of India as per policy as the Lahri Singh Colony is 100% built up colony and even there are religious places in the adjacent land and they are all exempted and de-notified from the acquisition.

5. That the whole Lahri Singh Colony stands de-notified and regularized on the basis of the layout plan approved by the MCD vide its resolutions passed by the Standing Committee and copy of the layout plan of the colony is being filed herewith as ANNEXURE P-2.”

3. The suit avers that the third defendant - Employee State Insurance Corporation (hereafter referred to as ESIC) started extending its boundary and attempted to take forcible possession of the suit land which led to criminal complaints by the plaintiff. The plaintiff refers to a previous injunction suit, before the Civil Judge against the DDA and ESIC, instituted in 2001, claiming permanent injunction. It is submitted that after considerable litigation, the plaintiff sought liberty to withdraw the suit and approach the Court with a claim for possession.

4. The plaintiff submits that the possession of the acquired lands has to be handed

over to him and relies upon the National Rehabilitation and Resettlement Policy of 31.10.2007. Reliance is also placed in this regard on the 'Fard'- a translation of which has been filed along with the copy to submit that the Lahri Singh was in continuous possession of the suit property. It is further stated that the suit lands are comprised of an area known as Lahri Singh Colony and named after the plaintiff's father. Learned counsel places reliance on a list which is said to be part of the Notification that regularized the said colony and denotified the acquisition. It is urged that on these grounds the present suit for a decree of possession is maintainable.

5. The defendants argue that the suit averments clearly show that the lands are acquired lands and that the plaintiff has not placed any document or material on the record to substantiate or support the assertion that the lands were de-notified. It is argued that in the previous suit the plaintiff had taken the plea that he continued to be in possession - a stand which he abandoned when he approached this Court after seeking leave and in a complete turnaround, has now sought for a decree of possession.

6. The defendants also argued that ever since 1980 when the lands were placed at the disposal of the DDA, the ESIC is in possession of the suit lands. The defendants also object to the maintainability of the suit contending that the documents on the record do not even *prima facie* establish title to the property which is a *sine qua non* for maintenance of the suit for an action of this type. It is argued lastly that there is no material to support the contention that the suit lands were de-notified and that the only document produced is also an incomplete one, upon which the Court cannot act.

7. Section-5 of the Specific Relief Act enacts as follows: -

“5. *Recovery of specific immovable property - A person entitled to the*

possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908)."

8. It has been held that one of the essential and important ingredients to successfully claim a decree under Section-10 is the existence of title (refer to *Somnath Berman v. S.P. Raju* - AIR 1970 SC 846 and *Geetarani Paul v. Dibyendra Kundu* - AIR 1991 SC 395). The Supreme Court has held that as long as the plaintiff is able to substantiate and establish that he is lawful and registered owner of the suit lands and the title vests in him, specific details of his dispossession need not be proved and that a decree on the basis of the title can follow, if the suit is filed within the period of limitation.

9. One of the cardinal principle of the civil law is that the party seeking relief should approach the Court with all the materials. The plaintiff has doubtlessly filed the documents in this case. The claim of ownership of the suit lands is based on a copy of the Fard. A careful reading of the said document would indicate that the plaintiff is not shown as the owner but one Phool Singh is disclosed as the owner (no doubt with the words "and Ors." following his name). The same document reveals that the Lahri Singh was the occupier or cultivator. The plaintiff relies upon certain other revenue documents to say that Lahri Singh was in possession or in cultivation of the suit lands. This Court, however, is of the opinion that these materials cannot measure up to the standard of the documents of title. Had the plaintiff or Lahri Singh - his alleged predecessor - been the real owner of the property, there would have been some other documents disclosing it; even the Fard would have been mentioned Lahri Singh to be the owner of the suit lands. There is a more fundamental flaw in the present suit; the plaintiff admits in paragraph-3 that the suit land was in fact acquired by the second defendant. He, however, hastens to

add that the lands were de-notified. The reliance placed on the list of colonies, however, is completely uninformative, as it is only a portion of a document; no Notification has been placed on the record. Furthermore, in order to say that the lands were de-notified, there must be a clear intention evidenced that in terms of Section-48 of the Land Acquisition Act. The Notification withdrawing acquisition is not part of the record. In the circumstances, the presumption of the lands having vested with the Union of India and later the concerned authorities has not been disturbed. The presumption of the land having been declared for a public purpose under Section 6 (3) of the Land Acquisition Act operates in this case.

10. Having regard to these overall conspectus of the facts and the previous suit, where the plaintiff had taken plainly inconsistent position, this Court is of the opinion that the plaint does not disclose triable cause of action and, therefore, has to be rejected.

11. In view of the above discussion, the suit and the pending applications are, therefore, rejected. There shall be no order as to costs.

S. RAVINDRA BHAT, J

OCTOBER 27, 2010

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