

HIGH COURT OF DELHI: NEW DELHI

RFA No. 335/2008

Judgment reserved on: 17.11.2009

Judgment pronounced on: 13.01.2010

JAGAT SINGH

..... APPELLANT

Through: Mr. A.K. Singh with Ms. Gitanju Suran
and Mr. S.K. Singh, Advs.

Versus

DDA

..... RESPONDENTS

Through: Mr. Rajiv Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

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

S.L. BHAYANA, J

The present appeal has arisen out of the Judgment & decree passed by the Additional District Judge, Delhi in Suit No. 72/4/02 whereby the suit for perpetual injunction was dismissed with costs.

2. The brief facts of the case are that the appellant is the owner of ancestral land measuring 6 bighas and 3 biswas situated at khasra no. 623 of village Gokal Pur, Delhi. The father of the appellant Sh. Rattan Lal and his grand-father Sh. Kacheru have already died.

3. It is further the case of the appellant that out of the total land i.e. 6 bighas and 3 biswas in khasra no. 623, the Government acquired 5 bigas and 17 biswas of the said land and the Government did not acquire 6 biswas of land, i.e. 300 sq. yds and this land was left by the Government. It is further the case of the appellant that since the Government had not acquired 6 biswas of said land, his late grand-

father had constructed a boundary wall, room and 11 khors in the said piece of land.

4. On 08.1.2002, the officials of DDA came to the said land to demolish the structure raised by his late grand-father on the land which was not acquired by the Government. But they could not succeed and left the place with a warning that they would come again and demolish the structure. Thereafter, the appellant approached the Trial Court for grant of perpetual injunction against the DDA.

5. On the other hand, the case of the DDA is that the entire piece of land admeasuring 6 bighas and 3 biswas bearing khasra no. 623 was acquired by the Government vide award no. 14/72-73 but possession of 5 bighas and 3 biswas was only taken and the said land was placed at the disposal of DDA by the Government, which was subsequently transferred to Horticulture Department of DDA. It is further the case of the DDA that the appellant encroached upon the land acquired by the DDA and carried out unauthorized construction on the said land, which was demolished by the DDA on 09.1.2002 and as the said land was in actual physical possession of DDA, the suit of the appellant/plaintiff had become infructuous.

6. It was also mentioned in the plaint that the plaintiff/appellant had filed a similar suit earlier along with his late grand-father Sh. Khacheru on 24.11.1990. The said suit was also for perpetual injunction which was registered as Suit No. 3566/1990 which was filed in the High Court initially but it was transferred to the District Court. But the said suit was dismissed in default somewhere in the year 2000. Therefore, the defendant/ DDA has taken a plea that in view of the

dismissal of the previous suit, the present suit was barred under Order 9 Rule 9 CPC.

7. The following issues are framed by the learned ADJ;

(i) "Whether the land in dispute falling in Khasra No. 623 min of village Gokal Pur was acquired by Award No. 14/1972-73? OPD

(ii) Whether the plaintiff is entitled to relief of perpetual injunction in respect of land in question? OPP

(iii) Relief."

8. Both the parties adduced their evidence in support of their case. However, in the written statement filed by the DDA, they have taken a stand that the entire piece of land in khasra no. 623 measuring 6 bighas and 3 biswas was acquired by the Government vide award no. 14/72-73 but possession of only 5 bigas and 17 biswas was taken and the possession of 6 biswas of land was not handed over to the DDA since the same was a built up structure. However, the DDA has made it very clear that the entire piece of land measuring 6 bighas and 3 biswas was acquired by the Government vide award No. 14/72-73.

9. Both the parties have also filed their affidavits by way of evidence to prove their case. The appellant has filed his affidavit Ex.PW1, wherein he has stated that the land measuring 5 bighas and 17 biswas out of 6 bighas and 3 biswas in khasra no. 623 village Gokal Pur, Delhi was acquired by the Government and its possession was taken on 15.6.1972, which belonged to his late grand-father Sh. Khacheru. He has further deposed in the affidavit that the possession of remaining 6 biswas of land in khasra no. 623 was not taken by the Government and that his late grand-father had constructed boundary walls, room, and 11 khors for buffaloes in this piece of land. The

appellant produced Sh. Brij Pal Singh/PW2, Executive Engineer. He has produced letters dated 22.5.2001 Ex. PW2/1 and other letter dated 22.6.2001 Ex. PW2/3. The appellant has also produced PW3, Sh. S.C. Jain, UDC LAC N/E, Nandnagri. He has produced the possession proceedings of village Gokulpur consequent to award no. 14/72-73 Ex. PW3/1. In the said affidavit he has deposed that the award was passed in respect to land measuring 6 bighas and 3 biswas in khasra no. 623 of village Kokulpur. He has admitted that possession of land measuring 5 bighas and 17 biswas out of this khasra was taken into possession and the possession of the remaining 6 biswas might not have been taken because there could be built up structure on the same. He further deposed that the possession of land measuring 5 bighas and 17 biswas was handed over to the DDA.

10. The defendant/DDA has also filed the affidavit by way of evidence of Sh. Shiv Kumar Sharma, Patwari, Land Management East Zone, DDA Ex. DW-1. He has deposed in the affidavit that the khasra no. 623 measuring 6 bighas and 3 biaswas was acquired vide award no. 14/72-73. The physical possession of khasra no. 623 min 5 bighas and 17 biswas was taken over on 29.7.1972 by LAC and L & B Department. The land has been placed at the disposal of the DDA vide notification under Section 22(1) F9/18/92/L&B/Learned counsel for the appellant dated 25.1.1995 and this land has been transferred to Horticulture Department, DDA. The possession of 6 biswas of land was not handed over to the DDA because the same was a built up structure by the plaintiff/appellant. He has further deposed that there was encroachment over the suit land by the plaintiff/appellant, which was got vacated by Deputy Director, East Zone on 09.1.2002 but the plaintiff/appellant again encroached on suit land and hence the

plaintiff/appellant has no claim of any kind on the suit land and he is unauthorized encroacher and trespasser and that the suit land acquired by him should be got vacated.

11. In the cross-examination of DW-1, Sh. Shiv Kumar Sharma, he has admitted that the possession of 6 biswas of land out of khasra no. 623 was not taken as it had built up structure on the same. He has further voluntarily admitted that the suit property does not pertain to this portion of land as he has personally demarcated the said 6 biswas of land. On the 6 biswas of land, the ancestral house of the plaintiff was existing. He further deposed in the affidavit that the structure on the suit land was demolished on 09.1.2002. The suit land was in their possession since 1972 as per possession report and the DDA has not removed the debris from the suit land. He has voluntarily admitted that the plaintiff/appellant has again encroached upon the suit land after 09.1.2002 and hence the matter was reported to the police but there was no police report on the case file. He further denied that the suit land was the same 6 biswas of land of which the possession was not taken in possession proceedings.

12. Learned counsel for the appellant has submitted that the Trial Court has wrongly dismissed the suit of the plaintiff/appellant as from the evidence of the witnesses, it is clear that the land measuring 6 bighas and 3 biaswas in kharsa no. 623 was never acquired by the Government and only the piece of land measuring 5 bighas and 17 biswas in khasra no. 623 was acquired by the Government leaving behind 6 biswas of land of which the possession was never taken by the Government and thus, the appellant/plaintiff is lawful owner of this piece of land and DDA is wrongfully claiming the same.

13. Learned counsel for the appellant further refers to the evidence led by PW3, Sh. S.C. Jain, UDC with LAC who produced the possession proceedings of village Gokulpur consequent to award no. 14/72-73 Ex. PW3/1 and deposed that the possession of land measuring only 5 bighas and 17 biswas of land was taken into possession and the possession of the remaining 6 biswas might not have been taken because there could be built up structure on the same. He further deposed that the possession of land measuring 5 bighas and 17 biswas was handed over to the DDA. Learned counsel for the appellant further states that it is clear from the evidence of PW3 that the possession of 6 biswas of land was never taken by the Government as there was built up structure on the same and thus the respondent/DDA is wrongfully claiming the ownership of the same. He also refers to the evidence of DW-1, Sh. Shiv Kumar Sharma wherein he has proved that the land comprising 6 biswas in khasra no. 623 belongs to the appellant.

14. On the other hand, learned counsel for the respondent has drawn my attention to the evidence of PW3, Sh. S.C. Jain wherein he has categorically stated that the entire land comprising 6 bighas and 3 biswas in khasra no. 623 of village Gokalpur was acquired by the Government and the award was passed in respect of said land. However, this witness has also stated that possession of only 5 bighas and 17 biswas out of this khasra was taken into possession by the Government and the possession of remaining 6 biswas might not have been taken because there could be built up structure on the same.

15. It is further submitted by learned counsel for the respondent that late Sh. Khacheru, grand-father of appellant had also claimed compensation @ 20,000/- per bigha in respect of this land and the

appellant has deliberately not answered the query before the Trial Court regarding having received the compensation @ 20,000/- per bigha in respect of land comprising 6 bighas and 3 biswas from the Government. He further submits that once the land was acquired by the Government and award has been passed and compensation has been given to the appellant, the appellant has nothing to do with the land acquired by the Government. He further draws my attention to the evidence of DW-1, Sh. Shiv Kumar Sharma wherein he has categorically stated that the land in khasra no. 623 measuring 6 bighas and 3 biswas was acquired vide award no. 14/72-73. The physical possession of khasra no. 623 min 5 bighas and 17 biswas was taken over on 29.7.1972 and the possession of 6 biswas of land was not handed over to the DDA because the plaintiff/appellant had constructed some structure on the same. He has further deposed in the affidavit that there was encroachment over the said land acquired by the Government by the plaintiff/appellant, which was got vacated by Deputy Director, East Zone on 09.1.2002 but the plaintiff/appellant again encroached upon the land and therefore he is an unauthorized encroacher and trespasser of the said land and this encroachment has to be vacated. He further denied that the suit land comprising 6 biswas is the same land of which the possession was not taken over by the Government in possession proceedings.

16. I have heard arguments from both sides. Admittedly, the Government has acquired the land in khasra no. 623 village Gokal Pur comprising 6 bighas and 3 biswas vide award no. 14/72-73. This fact has been proved beyond reasonable doubts by witnesses produced by both the parties. It has also been admitted by both the parties that the

possession of 6 biswas of land out of this khasra was not taken by the Government as there was built up structure on the said piece of land.

17. Sh. Shiv Kumar Sharma, in his cross examination had stated that there was ancestral house existing on 6 biswas of land comprising khasra No. 623 which belonged to the grandfather of the appellant and because of the ancestral house existing on the said piece of land . 6 biswas of land could not be taken into possession by the Government and therefore that piece of 6 biswas was not handed over to the DDA by the Government. Sh. Shiv Kumar Sharma, Patwari, has further deposed that physical possession of 5 bighas and 17 biswas was taken over on 29.7.1972 by LAC and L&B Department. He further deposed that after the possession of the land measuring 5 bighas and 17 biswas was taken by the Government, the appellant has encroached upon the piece of suit land which was got vacated by Deputy Director, East Zone on 09.01.2002 and the structure raised by the appellant was demolished on 09.01.2002 by the DDA authority. It is further deposed by him that the suit land was in their possession since 1972 as per possession report and the DDA has not removed the bebris from the suit land. He has further deposed that the appellant again encroached upon the suit land and the matter was reported to the police. The appellant has stated before the court that the land measuring 5 bighas and 17 biswas out of 6 bighas and 3 biswas in khasra No. 623 village Gokal Pur, Delhi, was acquired by the Government and its possession was taken on 15.6.1972. He has further deposed that the possession of remaining 6 biswas of land in khasra No. 623 was not taken by the Government. This statement of the appellant is against the records produced by Sh. S.C. Jain, UDC LAC N/E Nandnagri who has deposed before the court that land measuring 6 bighas 3 biswas was acquired

by the Government vide award No. 14/72-73 Ex. PW3/1 so evidence produced by the PW-1 appellant contradicted the evidence of Sh. S.C. Jain,UDC, LAC N/E Nandnagri. DW-1, Sh. Shiv Kumar Sharma deposed on oath that land measuring 6 bighas and 3 biswas was acquired vide award No. 14/72-73 and not 5 bighas and 17 biswas as alleged by the appellant. PW-3 has produced award No. 14/72-73 which states that the award was passed in respect of land measuring 6 bighas and 3 biswas in khasra No. 623 of village Gokal Pur so the stand that taken by the appellant that land comprising 5 bighas and 17 biswas was only acquired goes contrary to the record produced by the witness of the appellant as well as the respondent. From the evidence it has now become clear that out of total entire piece of land measuring 6 bighas and 3 biswas the Government has taken possession of 5 bighas and 17 biswas and the appellant has encroached upon the land measuring 6 biswas and raised some structure on the land. The structure raised by the appellant was demolished by the DDA as it was DDA's land which was handed over to the DDA by the Government.

18. Sufficient material has come on record to show that 6 biswas of land belongs to the Government and not to the appellant as alleged by him. The appellant could not reply to the query put by this Court as to whether he has received the compensation of Rs. 20,000 per bigha in respect of land comprising 6 bighas and 3 biswas from the Government. The appellant could not reply to this question whereas the learned counsel for the respondent has submitted that the grandfather of the appellant has taken compensation of the entire land comprising 6 bighas and 3 biswas against the Award No. 14/72-73 bearing khasra No. 623 of village Gokal Pur, Delhi, from the government.

19. In my opinion learned trial Court has rightly dismissed the suit of the appellant. There is no merit in the appeal, the appeal is therefore dismissed.

20. No orders as to costs.

January 13, 2010

S.L. BHAYANA, J.