

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

+ RSA 244 /2007

Date of Decision: April 20, 2010

IQBAL BEGUM Appellant
Through: Mr. S.D. Ansari, Advocate.

versus

M.C.D. & ANR. Respondents
Through: Ms. Amita Gupta, Adv. for MCD.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper 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 |

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM APPL Nos.13091/2007 (delay) and 13092/2007 (delay in refiling) in RSA 244 /2007

There is delay of 3 days in filing the appeal and delay of 7 months in refiling the appeal. For the reasons stated in the applications, delay in filing and refiling the appeal is hereby condoned.

Applications stand disposed of.

RSA 244 /2007

1. Appellant filed a suit for declaration and injunction against Respondent/DDA for declaring that she was entitled to allotment of an alternative plot measuring 80 Sq. Yds. under Section 9 of the DDA Rules 1981 and the Resolution dated 23.04.1985. Plaintiff lost her suit in the Trial Court and she remained unsuccessful even in the First Appellate Court. Hence, she has filed this appeal challenging the findings of the Trial Court that suit was barred by period of limitation.

2. Plaintiff had purchased property No.3246/VIII, constructed on freehold plot measuring 80 Sq. Yds. vide registered sale deed dated 01.04.1969 for consideration of Rs.3,000/-. In 1976, DDA demolished the property of the plaintiff without any notice and payment and compensation though, suit property was neither acquired nor was in the possession of DDA. After demolition of the property, DDA allotted her a single room tenement at Kabul Nagar, Shahdara under the Slum Clearance Scheme, whereas, she was entitled for allotment of 80 Sq. Yds. of land. Her claim for 80 sq. yds of land was rejected by the DDA vide letter dated 9.4.1987. She

was informed by the DDA vide letter dated 09.04.1987 that they were not able to help her. Therefore, she filed the suit. One of the objections raised by the Respondent was as to the maintainability of the suit that it was barred by period of limitation.

3. Mr. S.D. Ansari, learned counsel for the appellant has submitted that he has claimed relief of injunction and the cause of action is continuing. Therefore, the Court went wrong in holding that suit was barred by period of limitation. Therefore, a substantial question of law arises in this appeal which needs determination.
4. The Trial Court framed issues on the pleadings of the parties. Issue No.1 is relevant in the present appeal as the challenge has been made only against the finding on this issue. Issue No.1 reads:-

“1. Whether suit of the plaintiff is time barred as alleged by the defendant ? OPD”

5. While deciding this issue, the Trial Court observed:-

“... The limitation period of injunction suit and declaration suit is three years. Plaintiff has herself stated that cause of action arose on 9-4-1987 when defendant did not acced to her request to alternative allotment of 80 sq. yds

plot and compensation. Admittedly the present suit has been filed by the plaintiff on 14-5-1990 i.e. after a period of three years. Thus the suit of the plaintiff is barred by limitation. The issue No:1 is decided against the plaintiff and in favour of the defendant accordingly.”

6. Agreeing with the findings of the Trial Court, the Appellate court in its impugned order dated 27.09.2006 observed:-

“9. It the findings of the Trial court are gone into, it is noticed that cause of action which has arisen in favour of appellant has been shown as 9.4.1987 and the suit has been filed on 14.5.1990. The notice which she has served is of dated 29.9.1989. This service of notice is between 1987, when the cause of action has arisen and the period of limitation expiring after a period of three years from 9.4.1987. If she had served the notice after expiry of period of limitation i.e. three years, she would certainly have got benefit of two months, not in between, when the period of limitation was running. Therefore, the judgment relief upon by Id. Counsel for appellant has no bearing on the case and the suit as held by Trial court having been instituted on 14.5.1990 i.e. after a period three years.”

7. Relevant for consideration is para 14 of the plaint which speaks of cause of action, it reads:-

“14. That the cause of action for the present suit arose in the month of April 1976 when the property of the plaintiff was demolished

without any notice and without acquisition and payment of compensation. It again arose on 9.4.87 when the defendant refused to allot her an alternative allotment and finally on when the plaintiff met Commissioner (S&JJ) without any success.”

8. Thus, it is clear that as per the case of the plaintiff herself cause of action arose in the month of April, 1996 when the property was demolished without any notice and it again arose on 9.4.1987 when the defendant refused to allot her alternative plot and finally when plaintiff met Commissioner (S&JJ) without any success. However, the date of her meeting with the Commissioner is not disclosed either in the paragraph or even in her statement on oath. The fact remains, any meeting conducted by the appellant with the Commissioner after refusal of the defendant to allot her alternative allotment measuring 80 Sq. Yds., does not in any manner extend the period of limitation for filing a suit for declaration and injunction. The period of limitation for filing a suit for declaration is three years from the date of cause of action. In this case, it lastly arose on 9.4.1987. The suit was filed on 14.5.1990. Therefore, period of limitation for filing a suit for declaration expired on 9.4.1990. The present suit having been filed thereafter is obviously barred by period of limitation. This fact has been admitted by counsel for the

appellant during the course of arguments, when confronted with his own pleadings. Learned counsel for the appellant has conceded that he did not look into this aspect of the pleadings while preparing the appeal.

9. As regards plea of continuing cause of action because of relief of permanent injunction, at the outset, it can be said that appellant did not claim any permanent injunction against the Respondent. She only claimed relief of mandatory injunction for issuance of directions to the defendant to allot a residential plot measuring 80 sq. yds. free of cost. Relief of mandatory injunction as claimed is consequential to the relief of declaration. Therefore, as per the pleadings of the appellant herself, suit was barred by period of limitation, when it was filed.
10. Under the circumstances, when the findings as regards the question of limitation are based on admitted facts of the appellant herself, no substantial question of law is involved in this appeal. Hence, I find no merits in the appeal and is accordingly dismissed.

(ARUNA SURESH)
JUDGE

APRIL 20, 2010/vk