

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

% *Date of Judgment: 16.11.2010*

+ **RSA No.207/2010 & CM No.20272/2010 (for stay)**

SHRI RISHI KUMAR Appellant
Through: Mr.J.C.Mahendro, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR.
.....Respondents
Through: Nemo.

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.20273/2010 (for exemption)

Allowed subject to just exceptions.

RSA No.207/2010 & CM No.20272/2010 (for stay)

1. The present appeal has impugned the judgment and decree dated 10.8.2010 which had endorsed the finding of the Trial Judge dated 01.12.2005 whereby the suit of the plaintiff Rishi Kumar seeking permanent injunction against the Delhi Development Authority (hereinafter referred to as the "DDA") had been dismissed.

2. The plaintiff was stated to be running "Rishi Auto Electric Work" adjacent to Drivil Service Station, Shahdara, Delhi for the last 15 years. He apprehended demolition at the hands of the respondent/DDA. Suit was filed seeking an injunction against the respondent from interfering over his peaceful possession.

3. Defendant contested the suit. It was stated that the suit land since stood acquired; an encroacher who had not come to the Court with clean hands is not entitled to any relief.

4. Trial Judge framed four issues. Court held that the plaintiff had failed to establish as to how he has come into possession of the suit property. The oral and documentary evidence was appreciated. It was held that no document either of title or of possession of the suit property had been placed on record by the plaintiff. He was not entitled to relief. On the other hand, the defendant had placed on record Ex.DW-1/1 which is Award No.61/72-73 as also documents Ex.DW-1/2, Ex.DW-1/3 which were the possession letter and notification dated 29.1.1973 evidencing the fact that the suit land has since been acquired and the possession of the same had been taken by the DDA. Suit was dismissed.

5. This finding was affirmed in the impugned judgment on 10.8.2010. Relevant extract reads as follows:

11. In reference to issue No.2, during his examination in chief, the appellant/plaintiff as PW1 merely relied upon his possessory title, simultaneously claiming that the respondent/defendant/DDA had nothing to do with the suit land. He miserably failed in proving any document on record showing his title in respect of suit property either as a bonafide purchaser or as an allottee of the same. During his cross examination, he has testified that he did not know even the khasra number in which the said land fell and that he also did not know whether the suit land fell in khasra no.409 of Village Jhilmil, Tahirpur and also that he could not say whether the said land was acquired vide award No.61/72-73 and that he did not know from whom he had taken up this land. He just testified that he occupied this land as it was lying vacant and that he did not know to whom the same actually belong. He could not testify whether the suit land had been placed at the disposal of DDA U/s 22 (1) of Delhi Development Act on 29.01.1973. He could not testify even on which date, month or year, the officials of DDA came at the site causing the apprehension in the mind of the

appellant/plaintiff in respect of interference of the respondent/defendant/DDA. Even in the absence of any document showing title of the appellant/plaintiff in respect of suit property, the plaintiff has merely sought a decree of permanent injunction without seeking any relief in respect of declaration of the same. In these circumstances, I absolutely concur that Ld. trial court on recording its findings on issue No.2 in favour of the respondent/defendant/DDA and against the appellant/plaintiff in holding that the suit is not maintainable in the present form.

12. So far as Issue No.3 whether the plaintiff is entitled to the relief of permanent injunction is concerned, it is a discretionary relief to be granted on the basis of established principles of law. For grant of this relief, the plaintiff had to prove that he has a prima facie case in his favour, that balance of convenience is in his favour and against the defendant and also that in the absence of grant of relief of injunction he will suffer an irreparable loss and injury. In order to seek this equitable relief, the plaintiff had to show equity but in the instant case the appellant/plaintiff even failed to prove how the plaintiff came in possession of the suit property. His case is not that of his ownership in respect of suit property even by way of adverse possession. He has failed to testify when officials of respondent/defendant/DDA came to the site for extending threats. He has not been able to testify even in respect of month, date and year of the alleged threat.

13. On the other hand, respondent/defendant/DDA brought on record that the suit property fell in khasra No.409/217 to 219 which had been acquired by award No.61/72-73. Thus the stand and version of respondent/defendant/DDA appears to be correct. Since the appellant/plaintiff had not instituted the suit for declaration, there was no necessity in respect of demarcation of the same especially when the appellant/plaintiff could not testify in respect of any khasra number in which the suit property according to him fell. I also concur in respect of findings on issue No.3 as recorded by Ld. trial court and the trial court has supported the same with a good reasoning."

6. On behalf of the appellant, it had been urged that these findings are perverse; interference is called for at the second appellate stage. Learned counsel for the appellant has shown photographs of the site depicting the workshop in question. It is pointed out that this site is away from the boundary which is the area which has been acquired by the government. The plaintiff is

running his workshop since long; even an encroacher is entitled to protection of law; he cannot be dispossessed without due process of law. Learned counsel for the appellant has placed reliance upon a judgment of the Supreme Court report in JT 200(7) SC 379 Shreepat Vs. Rajendra Prasad Ors. to support his submission that when there is a serious disputes with regard to the identity of the land a survey commission should be appointed. In this case, there is no dispute about the identity of the land. Plaintiff has claimed that the suit property as per the site plan is adjacent to the Drivil Service Station, Shahadra, Delhi; it is a part of Khasra No.409/217 to 219. This position on the identity is not disputed. Defence of the defendant is that the suit land stood acquired and has been taken possession of by the DDA. This judgment has no application. Learned counsel for appellant has also placed reliance upon (2004) 1 SCC 769 Rame Gowda (Dead) By LRs. Vs. M.Varadappa Naidu (Dead) By LRs. & Another to support his submission that a person who is in "settled possession" cannot be dispossessed without due process. What is the "settled possession" has been clearly described in this judgment; it must be effective, undisputed and to the knowledge of the owner or without any attempt at concealment by the trespasser. This definition as detailed would definitely not cover the case of the plaintiff. The oral and documentary evidence led before the Court had been examined in an indepth detail and pursuant thereto it has been held that as per Ex.DW-1/2 possession of this land was taken in the year 1973; suit was filed in 1993; claim of the plaintiff that he is in possession since last 15 years clearly shows that the plaintiff had come over the suit property after possession of the same had been taken by the

defendant. Relief of injunction being an equitable relief is disentitled to a person who does not come to the Court with clean hands; weighing the evidence in the scale of balance it was held that the version of the defendant is the true version.

7. This Court is sitting as a second appeal Court. It can interfere with findings of fact if they are perverse; no such perversity has been pointed out in the impugned judgment. Findings are based on clear and cogent evidence, both oral and documentary which has been appreciated. Hands of this Court are tied, it cannot interfere with findings of fact unless they are perverse. No substantial question of having arisen in this case, the appeal as also the application is dismissed in limine.

(INDERMEET KAUR)
JUDGE

NOVEMBER 16, 2010
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