

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

+ **RFA No.114/2011**

% **7th March, 2011**

SMT. PREMWATI Appellant

Through: Mr. B.K.Srivastava, Adv.

VERSUS

D.D.A & ANR. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this regular first appeal under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 2.11.2010 whereby the suit of the appellant/plaintiff for declaration and recovery against the Delhi Development Authority (DDA)/respondent no.1 was dismissed. The issue in the suit was with regard to the rights in land measuring 201.70 sq. yds comprising K.No.379 of village Gazipur, Delhi.
2. The case of the appellant/plaintiff was that the father of the appellant/plaintiff was the absolute owner of the subject land which had never vested with the Gaon Sabha. It was claimed that the subject land was

never acquired by government under the Land Acquisition Act and the Gaon Sabha never came in possession of the subject property. It was pleaded that the DDA was liable to be restrained from taking any action against the plaintiff with respect to demolition of the property. The respondent/DDA appeared and contested the suit. The main defence of the DDA was that the suit land was a Gaon Sabha land which was placed at the disposal of the DDA through SO No.2190 dated 20.8.1974 under Section 22(1) of the Delhi Development Act, 1957. It was stated that the land was required for construction of a road falling in the right of way of village Main Road. It was further pleaded that when a demolition notice was served, the appellant/plaintiff failed to appear but her son Sh.Vinod Kumar appeared and whereafter demolition orders were passed on 30.4.2002. The appellant/plaintiff failed to accept the demolition orders and which were thereafter pasted at the premises on 2.5.2002.

3. The basic issue which was argued before the trial court and also argued before this court was whether the plaintiff was the owner of the subject land or that the same vested in the Gaon Sabha and was placed at the disposal of the DDA under Section 22(1) of the Delhi Development Act, 1957. The trial court has given its findings and conclusions in this regard while dealing with the issue no.3 and which reads as under:-

"Issue No.3: Whether the land in suit has vested in Gaon Sabha and placed at the disposal of the DDA under Section 22(1) of the DDA Act? (OPD)."

The case of the plaintiff is that her father was in the possession of the house in question which was given to her in the

year 1953 and she is in settled possession of the same ever since. According to the plaintiff the Gaon Sabha had at no point of time has come into the possession of the suit property and also has no right to eject her under **Section 84 of the Delhi Land Reforms Act**. According to her there is no order of any competent authority on the compensation divesting the proprietorship interest of the proprietor nor any compensation has been paid to her in according with law and therefore under these circumstances, she continues to be the proprietor of her share in the revenue record. In this regard the plaintiff has examined her son Vinod Kumar Nagar as PW1 who has corroborated the case of the plaintiff as made out in the plaint. The defendant/DDA has also examined Sh. S.N.Tripathi, Patwari Land Management, as DW1 who has admitted that Khasra No.379 has not been acquired by the government nor he has able to tell if any compensation qua the disputed land has been paid to the plaintiff or not, but admits that there are other houses adjoining to the disputed premises.

I have gone through the detailed examination of PW1 Vinod Kumar Nagar and DW1 S.N.Tripathi and the various documents placed on record by them. Both the parties before this court have admitted the proceedings in Suit No.**174/01** which is **Ex.DW/1/1**, orders dated 16.8.2001 passed by Ms. Asha Menon, ADJ, in **MCA No.124/2001** which is **Ex.DW1/2**. The parties have also not disputed the show cause notices dated 15.3.2002 and 17.4.2002 which are **Ex.DW1/3** and **Ex.DW1/4**, and the order dated 23.9.2002 passed by Ms. Asha Menon, ADJ, Delhi in **M-32/02** on the application under Order 39 Rule 1 and 2 CPC which is **Ex. DW1/6** dismissing the application of the plaintiff. I have further gone through the copy of the order bearing **SO No.2190** dated **20.8.1974** under **Section 22(1)** of the **DD Act** which is **Ex. DW1/9**, and the copy of the order of Hon'ble Chief Justice of Delhi High Court and Hon'ble Mr. Justice Sanjeev Khanna in **WP(C) No.15699/2006** which is **Ex.DW1/10**. It is not disputed that the Malba lying at the spot has been removed under the directions of the Hon'ble Delhi High Court in another case. The jamabandi of the year 1950-51 and its translation show that the said Jamabandi pertain to Khasra Nos.618/91, 792/9 and 711/28 whereas the present land in question fall in Khasra No.379 (12-12) of village Ghazipur which is shown in Gaon Sabha land. These entries in the Jamabandi do not help the plaintiff in any manner. Therefore, under these circumstances, the stand of the plaintiff that the land underneath her property bearing Khasra No.379 is an Abadi Deh land is incorrect. The documents on record show the land bearing Khasra No.379 belongs to Gaon Sabha and has been placed at

the disposal of the DDA vide Notification No.2190 dated 20.8.1974 which notification has not been challenged by the plaintiff, rather no challenge can be made to the said Notification now after 36 years.

This being so, I hereby decide this issue in favour of the defendant and against the plaintiff and hold that the land of the plaintiff which in fact falls in Khasra No.379 (12-12) of Village Ghazipur is a Gaon Sabha Land and has been placed under the disposal of the DDA vide Notification No.2190 dated 20.8.1974."

4. Some other relevant findings and conclusions of the trial Court dealing with the issues of the claim of declaration and damages read as under:-

"Ld. Counsel appearing on behalf of the DDA on the other hand has placed his reliance on the earlier cross-examination of PW1 wherein he has stated that the area of Khasra No.379 is 12 bighas and 12 biswas and has admitted that after passing of the orders passed by Ms. Asha Menon, the then AJD in MCA, the defendant no.2 issued show cause notices dated 15.3.2002 and 17.4.2002 had been duly served upon the plaintiff but she did not appear in person before the defendant no.2 (though he himself had appeared). It is pointed out that PW1 in his testimony has admitted that he did not challenge the revenue entries before the competent court regarding the property being shown in Gaon Sabha land and according to him, it was because they came to know about the same in the year 2002 when the DDA started threatening them. He had admitted that after the demolition the Malba remained at the site and the same was removed pursuant to the directions of Delhi High Court in a writ petition filed by Sh. Bhushan Kumar. He has further admitted that Khasra No.379 has not been mentioned in the documents Ex.PW1/5 to Ex.PW1/13 though according to him, the house no. is mentioned in the said documents.

I have considered the aforesaid evidence on record and the submissions made by the counsel. Firstly the previous litigation filed by the plaintiff before the Ld. Civil Court bearing Suit No.174/01 has been admitted which is Ex. DW1/1 and the order dated 16.8.2001 passed by Ms. Asha Menon, Ld. ADJ, Delhi in MCA no.124/01 which is Ex.DW1/2 has not been disputed.

Secondly the show cause notices dated 15.3.2002 and 17.4.2002 which are Ex.DW1/3 & Ex.DW1/4 have also not been disputed.

Thirdly the plaintiff has also admitted the order dated 23.9.2002 passed by Ms. Asha Menon, the then ADJ, Delhi in M-32/02 on the application under Order 39 Rule 1 and 2 CPC which is Ex.DW1/6 dismissing her application and also the copy of the order in CWP No.6254/02 dated 30.9.2002 passed by Hon'ble Mr. Justice S.K. Kaul which is Ex.DW1/7 and copy of the order dated 9.10.2002 passed by the Hon'ble Division bench of Mr. Justice Anil Dev Singh and Mr. Justice R.S. Sodhi in LPA No.774/02 which is Ex.DW1/8.

Fourthly, the defendant DDA has duly proved the copy of the SO No.2190 dated 20.8.1974 under Section 22(1) of the DD Act which is Ex.DW1/9 and copy of the order dated 5.12.2007 passed by Hon'ble Chief Justice, Delhi High Court and Hon'ble Mr. Justice Sanjeev Khanna in WP (C) No.15699/2006 which is Ex.DW1/10, which has not been duly controverted and rebutted.

Fifthly the plaintiff has also not disputed the orders of Ms. Asha Menon, the then ADJ, Delhi dismissing the contempt application has been duly upheld by the High Court of Delhi and another suit had been filed by the plaintiff bearing Suit No.106/05 which was a simple suit for injunction seeking restrain on the defendants, its officers etc. from interfere in the peaceful possession of the plaintiff in the suit premises and from demolitions the same, which suit has been dismissed by Sh. Pooran Chand, Civil Judge, Karkardooma Courts, Delhi vide judgment dated 10.3.2005 appeal of which is pending vide RCA no.46/2005.

Sixthly it is not disputed that the Malba lying at the spot has now been removed by the directions issued by the Delhi High Court in another case.

Lastly it is evident from the testimony of PW3 and PW4 who have proved the Jamabandi of the year 1950-51 and its translation, that the said Jamabandi pertains to Khasra no.618/91, 792/9 and 711/28 whereas the present land in question fall in Khasra No.379 (12-12) of village Ghazipur is shown in Gaon Sabha.

Keeping in view the repeated observations of the Hon'ble Apex Court in the case of **Dayabhai Chaganbhai Thakkar Vs. State of Gujarat** reported I AIR 1964 SC 1563; **Mahadev Savlalan Sheikh Vs. The Pune Municipal Corporation** reported in (1995) 3 SCC 33; **Bakshi Ram Vs. DDA** reported in 1995 (32) DRJ 597; **Premji Rattansey Shah & Ors. Vs. JT** 1994 (6) SC 585; **Rajinder Kakkar Vs. DDA** reported in 1994 (I) AD (Delhi) 432; **Mohan Lal Vs. Mohan Singh** reported in 1995 PLJ Page 48 and **Satish Khosla Vs. Eli Lilly** reported in 1998 RLR 180, I hereby hold that the process of this court cannot be permitted to be abused by unscrupulous persons as a convenient lever to retain illegal gains indefinitely and to hamper the course

of justice and the encroacher upon the government land are not entitled to any relief.”

5. The aforesaid findings and conclusions makes it clear that the jamabandi of the year 1950-51 shows that the subject land was shown as Gaon Sabha land and therefore the jamabandi, which the appellant/plaintiff claimed to further her case did not support the case of the appellant/plaintiff. The trial court has further noted that the documents placed on record clearly show that the land bearing K.No.379 belonged to the Gaon Sabha, and its title did not vest with any individual person and which land was placed at the disposal of the DDA vide notification no. 2190 dated 20.8.1974. The trial court has also rightly noted that the notification of the year 1974 was never challenged and could not be challenged after 36 years. Trial Court has also rightly arrived at the findings of abuse of process of law by the appellant/plaintiff.

6. This case was argued in detail on 22.2.2011 when adjournment was sought on behalf of the counsel for the appellant to file documents to challenge the finding of the trial court that the jamabandi in fact showed the father of the appellant and thereafter the appellant as owner in possession of the subject land. Today, the case has been argued again, but no such document has been filed and relied upon. In view of the above, the trial court has rightly dismissed the suit of the appellant/plaintiff with respect to the subject land which is a public land, and which is required for public purpose for constructing a road falling in the right way of the village main

road.

7. The aforesaid facts show that there are no disputed questions of fact which require summoning of the trial court record. The appeal, therefore, being without merit, is dismissed leaving the parties to bear their own costs.

March 07, 2011
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VALMIKI J. MEHTA, J.