

R-293

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

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Date of Judgment: 19.05.2011

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R.S.A.No. 41/2008 & CM NO.1943/2008

SHRI BASHIR AHMED Appellant
Through: Mr.Ankit Jain, Advocate.
Versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents
Through: Mr.Ajay Verma, Advocate for
R-1.
Mr.Noorun Nahar Firdausi,
Advocate for R-2 .

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)

1. This appeal has impugned the judgment and decree dated 13.11.2007 which has endorsed the finding of the trial judge dated 29.5.2004 whereby the suit filed by the plaintiff Bashir Ahmed

seeking permanent injunction against the defendant (to the effect that the defendant be restrained from interfering in the peaceful use and occupation of the suit property i.e. a workshop being run by the plaintiff in land measuring 600 sq. yards in Khasra No.61 belonging to Majid Gulakwali and the grave yard in Village Sheikh Sarai, New Delhi where he claims himself to be a tenant at monthly rental of ₹100/-) had been dismissed.

2. Case of the plaintiff was that he was a tenant in the aforementioned suit property. He was running a workshop there; the said land is a wakf property. Employees of the Delhi Development Authority (DDA) with a view to extract money from the plaintiff threatened that they would throw his goods and he would be arrested him if he did not accept their demand. Further contention was that the plaintiff has no concern with Khasra No.531/156 and Khasra No.525/60, Sheikh Sarai for which threats had been raised upon the plaintiff. Present suit was accordingly filed.

3. Suit was defended. It was stated that the plaintiff has not come to the court with clean hands; he is guilty of the suppression of material facts. As per the defendants plaintiff was running his business under the name and style of M/s Bashir Steel Industry in

an unauthorized area of 200 sq. yards in Khasra No.525/60 which is a government land and being "Nazul Land" it is under the control and management of the defendant. Suit is not maintainable. It was further stated that the land falling in Khasra No.61 measuring 2 bighas 3 biswas and the land falling in Khasra No.525/60 measuring 7 bighas 13 biswas vide separate notifications was taken over by the DDA on 23.12.1962. Plaintiff has no right, title or interest in the above noted land. Plaintiff had in fact made representation to the department; Estate Officer had passed an order under Public Premises Act (hereinafter referred to as 'the PP Act') wherein the plaintiff has been assessed to damages for the unauthorized use and occupation qua Khasra No.525/60. Suit is otherwise also not maintainable.

4. On the pleadings of the parties, the following five issues were framed:

1. Whether plaintiff is a tenant of DWB in the suit land measuring 600 sq. yds in KH.No.61, Village Sheikh Sari, New Delhi? OPP
2. Whether suit land is wakf property? OPP
3. Whether suit land from a part of KH. No.525/60 Village Sheikh Sarai which belongs to Govt. and placed at the disposal of DDA? OPD
4. Whether plaintiff is entitled to the relief claimed for? OPP
5. Relief.

5. Oral and documentary was led. Trial court was of the view that the land belongs to the DDA. Possession of the same had already been taken by the DDA being Nazul Land which has been placed under the disposal of the DDA under Section 22(1) of the Delhi Development Act (hereinafter referred to as 'the DD Act'); documentary evidence to the said effect has been proved; suit of the plaintiff was dismissed.

5. In appeal this finding was endorsed.

6. This is a second appeal. It has been admitted and on 08.2.2008 the following substantial question of law was formulated:

Whether in view of neither party challenging the demarcation report Ex.PW2/1 the view taken by the learned Trial Judge in not accepting PW2/1 is legally sustainable"

7. On behalf of the appellant, it has been urged that the judgment of the trial judge is illegal; no finding has been returned on the demarcation report Ex.PW-2/1; it was the bounden duty of the first appellate court to have return a finding on all the issues which had not been adverted to; it has failed in its duty. To support this submission reliance has been placed upon (2007) 2 SCC 619 Shantilal Kesharmal Gandhi Vs. Prabhakar Balkrishna

Mahanuhav as also on JT 2010(10) SC 551 B.V.Nagesh Vs. H.V.Sreenivasa Murthy. It is pointed out that even otherwise this demarcation had been effected by the Field Kanungo and this report could not have been rejected. Reliance has been placed upon 2000 (52) DRJ Kartar Singh Vs. DDA to support his submission that demarcation of land is the job of the Revenue officials who are the conversant with the rules of demarcation; in this case the demarcation had been carried out by the Kanungo and proved through the Patwari (PW-2); the same could not have been ignored. This demarcation report has supported the case of the appellant/plaintiff; dismissal of the suit is an illegality.

8. Arguments have been rebutted. It is pointed out that the impugned judgment calls for no interference. It is pointed out that the plaintiff has to stand on his own legs and he has failed to show that the suit property was located in Khasra No.61.

9. Record had been perused. The impugned judgment had returned a finding on issue no.1 in favour of the plaintiff; it was held that Ex.PW-1/3 shows that the plaintiff is a tenant of the Delhi Wakf Board. Issue nos. 2 and 3 had been decided against the plaintiff; plaintiff had failed to show that he is in possession of Khasra No.61; his suit was dismissed.

10. In appeal this finding was endorsed but for different reasons. Court had noted that the notice under the P.P.Act had admittedly been received by the plaintiff/appellant; notice under Section 7 of the P.P.Act had been proved as Ex.DW-2/1 which had been replied by the defendant vide his reply Ex.DW-2/2. Ex.DW-2/1 is dated 08.5.1973; it specifically states that the appellant Bashir Steel occupying house and shop no.525/60 is an unauthorized occupant and he is liable for eviction under Section 7 of the P.P.Act. The reply of the appellant is dated 03.6.1973; it is relevant to state that there is no contention raised herein that the plaintiff is in occupation of the Khasra No.61 and not Khasra No.525/60. This is very relevant as the entire case of the plaintiff is now hinged upon the fact that he is in occupation of Khasra No.61. Why he did not advert to this position on his reply on 03.6.1973 is not answered by him. The defence of the DDA was that this land stood acquired vide an Award No.1405 dated 26.10.1962. Ex.PW-1/1 is the award showing that Khasra No.525/60 had been acquired and the possession of the same was taken over on 23.12.1962 (Ex.DW-1/2); vide Ex.DW-1/3 dated 03.1.1967 the notification under Section 22 of the DD Act had been issued placing this land at the disposal of the DDA. Akszira for the aforementioned land i.e. in Khasra No.525/60 had been proved

RSA No.41/2008

as Ex.DW-1/4. Defence of the DDA as per the written statement was that Khasra No.61 measuring 2 Bighas 3 Biswas had also stood acquired on the same day vide Award No.1405 and possession was taken over on 23.12.1962; it was thereafter placed at the disposal of the DDA under Section 22 of the DD Act.

11. All these aforementioned facts had been adverted to in the impugned judgment. This documentary evidence had been correctly appreciated. The case of the plaintiff all along was that he was in possession of 600 sq. yards in Khasra No.60. His only document to the said effect was Ex.PW-2/1 which was the demarcation report. This demarcation report had been proved through the testimony of Patwari. In his cross-examination PW-2 had admitted that this demarcation was held at the instance of the Tehsildar but there is nothing placed on record on the basis of which this can be substantiated; there is no order of the SDM for demarcating this land by the Tehsildar; he does not know if pucca points were considered for demarcating the suit property; it was by looking at the wall which appeared to be old; conclusion was drawn that the suit property was in Khasra no.61. In these circumstances, this report was rightly not adverted to by the two

courts below to substantiate the case of the plaintiff. Ex. PW-2/1 was rightly not relied upon.

12. Submission of the learned counsel for the appellant is that Ex.PW-2/1 has not been adverted to in the impugned judgment and no finding has been given by the first appellate court on this score is a wrong submission. The impugned judgment had detailed the demarcation report on internal page 9 and the discussion had followed thereafter in the subsequent pages with a specific reference again to the said report on internal page 11.

13. After going through the documentary evidence and the oral versions of the witnesses the court had held that the plaintiff is not entitled to the relief prayed for; by filing the present suit he was trying to subvert the proceedings initiated under the P.P.Act against him. There is no perversity in this finding. Plaintiff has to stand upon his own legs and to establish his being in possession of the suit land before he could have been granted the relief of injunction. He has failed to show that he was in possession of Khasra No.61. His submission that Khasra No.61 has since been de-notified by a subsequent notification of 02.8.1963 also does not stretch his case any further as it is an admitted position that Ex.DW-1/3 was the notification dated 13.1.1968 under Section 22

of the D.D.Act. placing this land at the disposal of the DDA. Contention of the DDA all along was that the suit land is a part of Khasra No.525/60 and not Khsara No.61; plaintiff had failed to prove this factum; his suit was rightly dismissed.

14. The substantial question of law is answered in favour of the respondent and against the appellant. There is no merit in the appeal. The appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

MAY 19, 2011
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