

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

% *Judgment reserved on : 30.05.2011*

Judgment delivered on : 01.06.2011

+ **R.S.A.No. 69/2010**

DELHI DEVELOPMENT AUTHORITY**Appellant**

Through: Mr.P.K. Mittal, Advocate.

Versus

SUBHAKAR TIWARI (Since deceased) Through LRs.

.....**Respondent**

Through: Mr.G.D. Sharma, Advocate.

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.

1. This appeal has impugned the judgment and decree dated 03.12.2009 which had reversed the finding of the trial judge dated 13.03.2003. Vide judgment and decree dated 13.03.2003, the suit filed by the plaintiff Subhakar Tiwari seeking a declaration (to the effect that the plaintiff was the occupant of premises bearing no. C-76/9, Hudson Lane, Kingsway Camp, Delhi and the defendant is under a legal obligation to allot an alternative

accommodation of land measuring 25 sq. yards in lieu of this suit land) had been dismissed. Impugned judgment has reversed this finding. Suit of the plaintiff stood decreed.

2. Plaintiff was the resident of C-76/9, Hudson Lane, Kingsway Camp, Delhi. She was living there with her family for several years. Defendants i.e. Delhi Development Authority/DDA had started an improvement of the locality; under the scheme those who were tenants and in possession had been granted alternative accommodation of land measuring 25 sq. yards plots. Since January 1987 upto May, 1987, defendant had been allotting alternative spaces. Plaintiff was in legal occupation of the aforementioned suit premises; she was entitled for an alternative allotment of a plot measuring 25 sq. yards. Defendants were illegally harassing the plaintiff and not acceding to her request; they were misusing their powers; notice under Section 53 B of the Delhi Development Authority Act, 1957 (hereinafter referred to as DDA Act) have been served upon the defendants. Thereafter, suit was filed.

3. In the written statement, it was denied that the plaintiff was entitled to an alternative plot. It was stated that the plaintiff had filed the present suit with a malafide intention; a demolition slip

had been already issued to the plaintiff. No question of issuance of a second demolition slip would arise. She had no right or entitlement to her claim.

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

- i. Whether suit is not maintainable in the present form?
OPD.*
- ii. Whether demolition slip bearing No. 4614 was issued against Jhuggi No. 76/9 Block C Hudson Line, Kingsway Camp and plot of 25 sq. yards provided to the plaintiff? OPD*
- iii. Whether plaintiff is entitled for the relief claimed for?
OPP*
- iv. Relief.*

5. Oral and documentary evidence was led. It is not in dispute that an earlier suit had been filed by the plaintiff which had been withdrawn for the reason that notice under Section 53 (B) of the DDA Act had not been served.

6. This is a second appeal. It had been admitted and on 10.05.2010, the following substantial question of law was formulated.

“Whether the findings of the Appellate Court are perverse on facts and law?”

7. On behalf of the appellant it has been urged that the judgment of the trial court is illegal; mandate of Section 53 (B) of the DDA Act has not been proved, in the absence of which, the suit could not have been decreed. To support this submission reliance has been placed upon the judgment reported in MANU/DE/0364/2005 Smt. Prinda Punchi and Anr. Vs. Municipal Corporation of Delhi and Ors. It is pointed out that the impugned judgment comparing the thumb impression on the demolition slip with the entry made in the register was a perverse finding; attention has been drawn to the testimony of DW-3; it is pointed out that he was an independent witness who had come into the witness box to state that he had purchased the suit property from the plaintiff meaning thereby that an alternative plot had been given to the plaintiff and he had thereafter sold it; documentary evidence led before the first appellate court i.e. CW 1/1 to CW 1 /4 also shows that an electricity connection had been granted in RSA No. 69/2010

favour of the plaintiff in the alternative accommodation. Impugned judgment is liable to be interfered with.

8. Arguments have been rebutted. It is pointed out that on no count does the judgment suffer from any perversity.

9. Record has been perused. It is noted that the impugned judgment had set aside the finding of the trial judge on two counts. The first was on the service of notice under Section 53 (B) of the DDA Act. No issue had been framed qua this aspect. In para 12 of the plaint, a specific averment had been made by the plaintiff that notice under Section 53 (B) of the DDA Act had been served upon the plaintiff before the filing of the present suit. In the corresponding para of the written statement, there was no specific denial. This has been noted in the impugned judgment. Moreover, PW-1 had come into the witness box to specifically testify to the effect that Ex. PW 1/A (notice under Section 53 (B) of the DDA Act) have been served upon the defendant. Not a single suggestion have been given to PW-1 on this count that no such notice had, in fact, been given. It does not now lie in the mouth of the appellant/defendant to state that the notice had not been served; he had not assailed this notice at the time when PW-1 had come into the witness box to depose about the same. There is no

dispute to the proposition that Section 53 (B) contemplates a mandatory notice to be served upon the DDA before certain suits could be filed as has been noted in Smt. Prinda Punchi and Anr. (supra). This judgment is, however, inapplicable to the facts of the instant case. This finding is accordingly returned in favour of the plaintiff/respondent.

10. The second reason recorded in the impugned judgment for upsetting the finding of the trial judge was that the comparison of the purported thumb impression of the plaintiff on the demolition slip (ex. DW 1/1) with the entry in the register at serial no. 472 clearly evidenced that the thumb impressions are of two different persons. This fact finding had been arrived at after a detailed examination and scrutiny; record had also been summoned from the Department.

11. Finding returned is as follows:-

"Coming now to the first objection raised by the appellant with regard to the authenticity and correctness of the demolition slip and the extract of allotment register, it is evident that the plaintiff before the Trial Court has been in total denial of the same. He has denied having put his thumb impression on either the demolition slip or the allotment. In fact, what is most surprising is, that despite the evictee Subhakar Tiwari all through denying his thumb impressions on both the demolition slip and the allotment register of the DDA,

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at no point of time did the respondent department make any request to the court for obtaining his thumb impressions which could have clinched the entire dispute at the earliest. Subhakar Tiwari having expired before filing the appeal, it is not possible now to have obtained his thumb impressions at the appellate stage. Efforts were made by this court to get the thumb impression of the deceased Subhakar Tiwari from his bank, which attempts proved futile since the concerned bank had closed his account after his death and were not in possession of any records. However, records have been called from the NDPL with regard to the grant of connection to Subhakar Tiwari which has been duly produced. The application for grant of connection bears the signatures of Subhakar Tiwari which signatures do not tally with the admitted signatures of Subhakar Tiwari which he had put at the time of recording of his testimony. It has been a consistent plea by the appellants that Subhakar Tiwari had always been putting his signatures and was not thumb impressions on any of the documents. This being so, in order to prove that the thumb impression on the demolition slip were of Subhakar Tiwari it was necessary for the respondent DDA to have examined the official of its department in whose presence the said thumb impression of Subhakar Tiwari was taken on the demolition slip and on the allotment register. This becomes all the more necessary since it is evident from the certified copy of the extract of the allotment register showing the alleged thumb impression of Subhakar Tiwari and demolition slip that both the thumb impression do not tally. A bare comparison of both the documents with naked eye shows that not only there is a difference in the size of thumb impression but also there is a difference in the pattern of Whorl and Loop apparently showing that the same are not of the same person. The plaintiff/ appellants have been very consistent in their stand. According to them

Subhakar Tiwari was never given any alternative accommodation and it appears that some other person has fraudulently in connivance with the officials of the respondent DDA obtained the possession of alternative accommodation by impersonating himself as Subhakar Tiwari. The aforesaid apprehension of the plaintiff and his family is not unfounded in view of the fact that even the record of the NDPL reveals that the signatures of the applicant Subhakar Tiwari does not tally with the admitted signatures of Subhakar Tiwari appended before the Ld. Trial Court during his examination and hence the conclusion that the applicant before the NDPL who had applied for electricity connection in the name of Subhakar Tiwari as owner of the alternatively allotted accommodation is not the same person who had signed as Subhakar Tiwari, the plaintiff before the court. Therefore, firstly the alleged thumb impression of Subhakar Tiwari on the demolition slip does not tally with the thumb impression present on the alternative accommodation register at Sr. No.472. Both the thumb impressions are not only of different size showing that they belong to different persons but there is also a difference in the whorl and loops as observed by the court. Secondly, it is not mention whether the thumb impressions present on the demolition slip and on the alternate allotment register are of the right hand or left hand of the person putting his thumb impression. The name or parentage of the person putting his thumb impression has also not been mentioned either on the demolition slip or on the register. Thirdly the signatures of Subhakar Tiwari on the application filed with the NDPL do not tally with the admitted signatures of Subhakar Tiwari present on the Trial Court record which signatures he had put before the Ld. Trial Court while signing his testimony. Lastly as evident from the record of the testimony of CW1 O.P. Arora no physical verification of the spot has been done while

granting the electricity connection in the allegedly alternative accommodation allotted by the DDA and the same has been granted only on the basis of the documents submitted alongwith the application and therefore, the possibility of some person having got the possession of the alternative accommodation and enjoyed the benefits thereof by impersonating himself as Subhakar Tiwari cannot be ruled out. This being so, I hereby hold that the allotment of alternative accommodation to the plaintiff Subhakar Tiwari has not been duly proved by the DDA and the Ld. Trial Court has seriously erred in placing its reliance totally on the demolition slip and the record of the allotment register which has not been duly proved by the department at all and that too when the circumstantial evidence points to the contrary. “

12. Court had also noted that the documents qua the grant of electricity connection were suspect as the witness was unable to tell as to whether any physical verification of the site had been made which was a pre-requisite before the grant of the electricity connection. Court had noted that this could clearly be a case where the actual evictee had been deprived of the alternative accommodation on account of some other person.

13. On the thumb impressions, the impugned judgment had noted that besides the fact that to the naked eye, the thumb impressions on the demolition slip and the register appeared to be different, there was also no details noted; whether it was the right

or left thumb impression; the parentage of the person whose

thumb impression it was had not been noted by the department.

14. These findings returned by the first appellant court do not, in any manner, call for any interference. There is no perversity in the said findings. The substantial question of law is accordingly answered in favour of the respondent and against the appellant. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

JUNE 01, 2011

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