

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

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Date of Judgment: 29.03.2011

+RSA No.95-105/2005 & CM Nos.5713/2005, 10999/2006 & 6499/2007

SHRI TARAN SINGH & ORS. Appellants
Through: Mr.Rajat Aneja, Advocate.

Versus

SMT.PIAR KAUR & ORS. Respondents
Through: Mr.K.C.Maini, 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. (Oral)

1. This appeal has impugned the judgment and decree dated 15.10.2004 which had endorsed the finding of the trial judge dated 08.7.2002 whereby the suit filed by the plaintiff Taran Singh seeking specific performance of an agreement to sell dated 28.11.1979 (Ex.P-2) had been dismissed.

2. The case of the plaintiffs as set out in the plaint is that plaintiff no.1 is in possession of portions in property No.C-71, Shivaji Park, Village Madipur, New Delhi as a tenant of the defendant. Two shops, one shed courtyard on the ground floor and a hall on the first floor is in his occupation. This is w.e.f.1964-65. Plaintiff no.2 is also in occupation of shop and one shed on the ground floor and one hall on the first floor since 1964-65 and

plaintiff no.3 is in occupation of two shops on ground floor and one hall on the first floor; his tenancy is also from 1964-65. Plaintiffs no.4 and 5 are in occupation of the portion shown in black in the site plan; they are tenants at a rental of Rs.200/- per month. Defendant no.1 is the owner of the suit property. Defendant no.1 through defendant no.2 agreed to sell the aforementioned suit property which was in occupation of the aforementioned plaintiffs for a total consideration of Rs.1,15,000/-. Agreement to sell dated 28.11.1979 (ExP-2) had been executed between the parties. Rs.10,000/- had been paid in advance. In terms of Ex.P-2 which was in the handwriting of defendant no.1 a sum of Rs.10,000/- was paid as an advance; if any party refused to execute the sale deed the purchaser would lose this amount of Rs.10,000/-; if the owner had refused to finalize the deal he would be liable to pay Rs.20,000/- to the plaintiffs; the sale deed would be executed within four months from the said date i.e. up to 28.3.1980.

3. Plaintiff on behalf of the defendants no.1 and 2 had thereafter applied for the requisite permission under Section 26 and 27 of the Urban Land (Ceiling Regulation) Act 1976. This permission was granted on 18.3.1980 vide Ex.P-6. Para 4 of this documents is relevant; it reads as follows:

“4. The point for consideration is as to whether the above property which is proposed to be sold is required for any of the public purpose and whether option should be exercised to purchase the property in question on behalf of the Government. In this connection till today no requisition has been received in the office whatsoever for purchase of any of the properties in this locality for any of the public purposes.”

4. Relevancy of para 4 shall be discussed in the later part of the judgment. Contention of the plaintiffs is that thereafter on

25.9.1980 vide a registered sale deed defendants no.1 and 2 had sold this property to defendants no.3 to 6; it could not have done so as the disputed land had stood acquired by an Award and permission under Section 5 of the Delhi Land (Restriction on Transfer) Act 1972 (hereinafter referred to as 'the Act of 1972) was mandatory, which permission has since not been taken. The plaintiff had in fact addressed a letter dated 21.3.1980 wherein it was brought to the notice of the defendant that the plot in question has been acquired by the DDA but this fact has been concealed by the defendant who has played a fraud upon the plaintiffs; clarification had been sought. In this letter it was stated that the advance of ₹10,000/- would remain with the defendants as an unconditional advance and will bear interest at the market rate. This letter was replied by the defendant on 17.4.1980. This is an admitted document and has been admitted by the DW-1 in his deposition. In this letter of 17.4.1980 it has categorically been averred that the plot in question has not been acquired and no notice from the concerned authority has been received; defendant had given time to the plaintiffs up to the first week of May 1980 to make the balance payment in order that the sale deed could be executed in their favour; this communication further stated that after the expiry of the said date the advance amount would be lost. This is the admitted factual scenario.

5. This is a second appeal. It has been admitted and on 29.3.2011 the following substantial question of law was formulated:

“Whether the finding in the impugned judgment dated 15.10.2004 is perverse for the reason that it has not correctly construed and appreciated the provisions of Section 4 and 5 of the Delhi Land

(Restriction of Transfer) Act, 1972? If so, its effect?”

6. On behalf of the appellant, it has been urged that the provisions of Sections 4 and 5 of the Act of 1972 place an embargo on the transfer of land which has been either acquired by an Award or notified by the government to be acquired at a later date, for a public purpose. It is pointed out that in view of this embargo and the defendant No. 1 not having obtained this mandatory permission under Section 4 and 5 of the Act of 1972, the sale deed executed by him in favour of defendants no.3 to 6 dated 25.9.1980 is a nullity. Suit of the plaintiff could not be dismissed.

7. Before the first appellate court an application under Order 41 Rule 27 of the Code had also been filed by the appellant which had been dismissed. The additional evidence which was sought to be led by way of this application was a document i.e. the Xerox copy of the Award dated 17.09.1983 passed by the government qua this suit property; this document would establish that the defendants through Piar Kaur (successor-in-interest of the defendants) in fact had even set up their claim for compensation and thus it was clearly within their knowledge that the suit land had been acquired; it does not now lie in the mouth of the defendants to state that they were not aware of these acquisition proceedings.

8. Order 41 Rule 27 of the Code reads as follows:

“27.Production of Additional Evidence in Appellate Court-(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of

due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

9. The appellate court has powers to admit additional evidence; applicant must however establish that notwithstanding the exercise of the due diligence this evidence was not within his knowledge and even after the exercise of due diligence he could not have produced the said evidence before the courts below. This was, however, the averment of the appellant in his application (under Order 41 Rule 27 of CPC dated 20.2.2004) preferred by him before the first appellate court. In para no.3 of the application, it has been stated that the appellants have come to know about an Award passed on 17.11.1983; a Xerox copy of the same has been obtained; by placing this document on record the complexion of the case would be changed. There is no whisper in the entire application about the requirements as aforementioned. For a prayer to be allowed under this statutory provision the necessary ingredients have to be fulfilled. This application was thus rightly dismissed by the first appellate court; this order calls for no interference.

10. Even presuming that this application is allowed and the document i.e. the Award dated 17.11.1983 is taken on record, it does not in any manner advance the case of the appellant. This document does not show the date on which the claim for

compensation had been made by the defendant; whether it was made before the sale deed had been executed by defendants no.1 and 2 in favour of defendants no.3 to 6 or thereafter is not clear. The edifice of the argument of the appellant is that the defendants no.1 and 2 were aware of these proceedings prior to the execution of the sale deed effected by them on 25.9.1980; this document i.e. the award dated 17.11.1983 even if taken on record would not substantiate this argument of the appellant.

11. Both the two concurrent fact finding courts have returned findings of fact against the appellant. The suit of the plaintiff stood dismissed.

12. Embargo of Section 4 and 5 of the Delhi Land (Restriction on Transfer) Act, 1972 is not attracted. This object of this legislation as is evident from its preamble is:

“An act to impose certain restrictions on transfer of lands which have been acquired by the Central Government or in respect of which acquisition proceedings have been initiated by that Government, with a view to preventing large-scale transactions of purported transfers, or, as the case may be, transfers of such lands to unaware public.”

This was the object for which this statute was promulgated. It was with a view to prevent large scale transactions of purported transfer to the unaware public.

Sections 4 & 5 of the Act of 1972 read as follows:

“4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated- No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central Government under section 6 of the Land Acquisition Act, 1894(1 of 1994), the Central Government has not withdrawn from the acquisition under section 48 of that Act..

5. Application for grant of permission for transfer under Section 4 –

(1) Any person desiring to transfer any land referred to in section 4 sale, mortgage, gift, lease or otherwise may make an application in writing to the competent authority containing such particulars as may be prescribed.

(2) On receipt of an application under sub-section (1), the competent authority shall, after making such inquiries as it deems fit, may, by order in writing, grant or refuse to grant the permission applied for.

(3) The competent authority shall not refuse to grant the permission applied for under this section except on one or more of the following grounds, namely:-

(i) that the land is needed or is likely to be needed for the effective implementation of the Scheme;

(ii) that the land is needed or is likely to be needed for securing the objects of the Delhi Development Authority referred to in section 6 of the Development Act;

(iii) that the land is needed or is likely to be needed for any development within the meaning of clause (d) of section 2 of the Development Act or for such things as public building and other public works and utilities, roads, housing, recreation, industry, business, markets, schools and other educational institutions, hospitals and public open spaces and other categories of public uses.

(4) Where the competent authority refuses to grant the permission applied for, it shall record in writing the reasons for doing so and a copy of the same shall be communicated to the applicant.

(5) Where within a period of thirty days of the date of receipt of an application under this section the competent authority does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the competent authority shall be deemed to have granted the permission applied for.”

13. The plaintiff vide his letter dated 21.3.1980 had informed the defendant that the suit land has been acquired or is proposed to be acquired. The reply of the defendant is dated 17.4.1980; there was a clear averment that there is no such notice of acquisition. Ex.P-6 is also relevant; this was the permission granted by the Competent Authority under the Land Ceiling Regulation Act 1976 on 18.3.1980. Para 4 had been quoted supra. This document clearly states that no request has been received till date in the office of the Land Acquisition Collector that this property i.e. the C-71, Shivaji

Park, Village Madipur, New Delhi measuring 499.10 sq. yards has been requisitioned for any public purpose; permission had accordingly been granted to the applicant for the sale of the aforementioned property. It is thus clear that neither party was aware that the subject matter of this suit land was the basis of an alleged Award dated 17.11.1983. That apart it is only an averment that this Award was qua the suit property. This document had admittedly not seen the light of the day before the two courts below. Even in the application under Order 41 Rule 27 of the Code preferred before the first appellate court, only a xerox copy of the same had been filed. The said application as aforementioned had been rightly dismissed as this statutory provision cannot be availed of to fill in lacuna or to delay the proceedings. "Due diligence" had never been averred.

14. It was thus never established that this land was acquired or it was notified for acquisition. Bar of Section 4 and 5 of the Delhi Lands (Restrictions on Transfer) Act, 1972 is not attracted. Substantial question of law is answered accordingly. There is no merit in the appeal. Appeal is dismissed.

Pending applications are dismissed being infructuous.

INDERMEET KAUR, J.

MARCH 29, 2011
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