

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

% Judgment reserved on: 15.03.2011
Judgment delivered on: 18.03.2011

+ **RSA No.243/2006 & CM No.10268/2006**

SHRI .D.V. SINGH & ANR. Appellants
Through: Mr. Ravinder Sethi, Sr. Advocate with
Mr. R.K. Saini, Smt. Poonam and Mr.
Puneet Sharma, Advocates for the
appellant.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS Respondents
Through: Ms. Maninder Acharya, Advocate for
respondent No. 1.
Mr. Ravi Kant Chadha, Sr. Advocate
with Ms. Anuradha Anand, Advocate
for respondent No. 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.

1 This appeal has impugned the judgment and decree dated 12.06.2006 which had endorsed the findings of the trial Judge dated 22.02.2003 whereby in the suit filed by the plaintiff Mr.D.V. Singh seeking permanent injunction against the four defendants had been dismissed; in fact the plaint had been rejected under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code').

2 Smt.Prakashwati mother of the plaintiff and of defendants No. 3 & 4 had purchased plot No. 25 measuring 399.93 square

yards, Kalindi Colony, Ring Road vide registered sale deed dated 07.10.1965 from defendant No. 2 i.e. Swatantra Co-operative House Building Society Ltd. After the death of their mother, plaintiffs and defendant No. 3 were recognized as owners of the flat; they have acquired all incidental rights and rights of easements as also the rights to construct a building on the said plot of land. Defendant No. 2 had submitted a layout plan showing 98 residential plots, 7 commercial plots, 2 lawns and a site plan for primary school to the Municipal Corporation of Delhi (MCD)/defendant No. 1 for approval. This layout plan was approved vide Resolution dated 01.10.1958 with a condition that no building will be constructed on plots No. 18 to 25 (E-18 to E-25) as there was no approach to these plots. The area of the land was irregular; negotiations between the Society and the Central Road Research Institute (CRRI) were carried out pursuant to which plot No. E-25 of the original plan was shifted to another place but the word 'new' was added to the old existing number. This remained as one of the plots in the approved plan originally sanctioned. Contention of the plaintiff is that defendant No. 1/MCD is threatening to take possession of the aforestated plot whose title vests with the plaintiff. Present suit for permanent injunction was accordingly filed. During the course of the proceedings, defendant No. 4 was transposed as plaintiff No. 2.

3 Written statement was filed by defendant No. 1. It was stated that the plaintiff has not come to the Court with clean hands. It was pointed out that there is no plot in existence bearing No. E-25 (new); it does not find mention in the layout plan. Present suit has

been filed only to grab the property which is a part of municipal park opposite flat No. E-24, Kalindi Colony, New Delhi.

4 In the course of proceedings before the trial Judge, an application under Order 7 Rule 11 of the Code was filed. This application was disposed of vide judgment and decree dated 22.02.2003. The trial court had held that in view of the judgment of the Apex Court pronounced on the SLP of plaintiff No. 2 qua the same subject matter, there is no cause of action which has arisen in favour of the plaintiff; plaint was accordingly rejected. The relevant extract of the judgment of the trial Judge reads as follows:-

"I have heard counsel for the plaintiff Shri Shyam Kishore along with Shr Hemant Gupta, Ms.Kusum Sharma, Shri R.S. Aggarwal along with JLO Shri Rajeev Garg, counsel for the MCD and perused the record. During the course of argument counsel for the plaintiff failed to bring to the light judgment passed by the Apex Court resolving all the disputes raised in the present suit. Counsel for the MCD emphatically and vehemently argued and heavily relied on the judgment of the Supreme Court passed by the Hon'ble Justice Mr. V.K. Khare J., Mr. Justice S.N. Variava J. I have gone through the judgment. In the judgment, Their Lordships examined the controversy between the parties in respect of ownership rights of the plaintiffs for the alleged plot E-25 now, Kalindi Colony. After detailed discussion and scrutiny of the facts, it is held that E-25 now is not part of the sanctioned layout plan and there can be no building activity in the absence of sanctioned layout plan. These observations are binding on this court. Now, it is crystallized by the Supreme Court in the abovesaid order which is final in respect of determination of rights of the parties before this Court. Hence, in my considered opinion when there is no plot E-25 now in the Kalindi Colony, then there is no question of any injunction suit before this Court. After relying the judgment of the Supreme Court the plaint of the plaintiff is rejected under Order 7 Rule 11 CPC. Decree sheet be prepared accordingly. File be consigned to the record room."

5 This finding was endorsed in the first appeal. The appellate court vide the judgment dated 12.06.2006 had held that material facts had been concealed by the plaintiff; judgment of the Apex

Court had clearly held that there is not suit property bearing No. E-25 (new) in Kalindi Colony; prayer seeking permanent injunction qua the same property was not maintainable. On another count also, the appeal was dismissed. It was held that the rejection of plaint under Order 7 Rule 11 of the Code does not qualify as a decree; such an order is only appealable under Order XVIII of the Code. It is pointed out that this is a perversity and has raised a substantial question of law.

6 Arguments have been countered. It is submitted that the impugned judgment suffers from no infirmity. The findings of the Apex Court were rightly adverted to; there was no scope for passing any other order to the contrary.

7 The Apex Court had been seized of an SLP preferred by plaintiff No. 2 assailing the order of the High Court dated 29.01.1999 whereby building activity has not been permitted. This SLP was disposed of on 27.07.2000. The appellant before the Apex Court was plaintiff No. 2 before the trial Court.

8 Belownoted facts are not in dispute. The mother of plaintiff No. 2 was allotted plot No. E-25 (new) Kalindi Colony to the defendant No. 2 Society vide agreement dated 07.10.1965. It was a conditional allotment which had been accepted by her in terms of her undertaking dated 22.09.1965. The condition attached was that the vendor society had offered for sale to its members plots of land, vendee had agreed that in case the MCD rejects the revised layout plan or passes it with some modifications, vendee will be entitled only to the refund of his money or in the alternate will accept the plot as modified by the MCD. The layout plan of this society

consisted of 98 plots. However by mistake in the Resolution of the MCD 01.10.1958, 108 plots had been mentioned. The layout plan which had been sanctioned had irregular boundaries; there was no proper approach to plots No. 1, 2, 10, 15 of Block B and plots No. 18-25 of Block E; building activity was prohibited herein. Pursuant to the negotiations with the CRRI for the purpose of straightening out the boundaries, plots No. E-25 & C23 had gone to the share of CRRI; these plots had therefore ceased to exist. The revised layout plain had been submitted to the MCD; the same had been perused by the Apex Court; this clearly depicts that plot No. E-25 no longer existed and there is no plot bearing No. E-25 (new); it was clear that plot No. E-25 was mentioned in the Resolution by mistake; it was further noted that reference to E-25 in this Resolution cannot be to any plot by number E-25 (new) because at this stage no new plots had been carved out by the society. Admittedly permission to build was restricted to 98 plots only. Taking advantage of the fact that in the Resolution of 1958, the number of plots had been mentioned as 108, the society issued a circular dated 21.07.1965 stating that the society had exchanged irregular pieces of land on the boundary of the colony with the CRRI as a result of which irregular pieces of land had disappeared and some more regular plots were being carved out. This circular made it clear that the revised layout plan for the new plots would have to be submitted to the MCD for sanction and allotment would be conditional only on the sanction of the layout plan being received from the MCD; this circular also clarified that in case the MCD rejected the revised layout plan or passed it with modifications, the allottees would get right to a refund of the deposit, further only those persons should

apply for the allotment who are willing to accept these conditions. Apex Court had noted that the mother of plaintiff No. 2 Prakashwati had accepted this conditional allotment in terms of her undertaking dated 22.09.1965; plot No. E-25 (new) for conditional allotment was mentioned in this agreement of the society with Prakashwati. This agreement is dated 07.10.1965. It has been noted herein (supra). The society had carved out 11 additional plots to bring the total number of plots to 108; these plots were sold to various persons including the mother of plaintiff No. 2. This sale was by way of a conditional agreement. The Apex Court had examined the plan annexed to the agreement which had been entered into with the mother of plaintiff No. 2. This plan showed that old plots No. E-25 and C-23 were no longer in existence. The society again applied to the MCD for sanctioning the revised layout plan. This was rejected vide Resolution of the MCD dated 14.11.1968; additional plots were not permitted; it was clarified to the society that what has been approved by the Resolution of 1958 were only 98 plots and not 108 plots. On 18.07.1969, the mother of plaintiff No. 2 was informed by the society that the revised layout plan had been rejected by the MCD; she may take the refund of her money, if she so desired. She replied vide letter dated 24.07.1969 wherein she did not opt for refund of money but stated her preference for allotment of the plot. The Apex Court noted that Prakashwati (predecessor of the plaintiffs) did not claim that her plot is not a new plot; it was also not her claim that her plot No. E-25 (new) was substituted for the old plot No. E-25. The revised layout plan was never sanctioned or accepted by the MCD. On 29.01.1976, MCD permitted carving out

of the plots No. C-35 and C-36 in place of old plots No. E-25 and C-23; this was also not the subject matter of challenge by any person including the mother of plaintiff No. 2 namely Prakashwati. Smt. Prakashwati died in 1977. Plaintiff No. 2 did not do anything from 1977 till 1991 when a building plan was submitted by her for approval for plot No. E-25 (new). She had been directed to submit relevant documents; she claimed deemed sanction by virtue of Section 337 of the Municipal Corporation Act; this was rejected by the appellate tribunal. The Lt. Governor vide his order dated 06.01.1994 allowed the appeal; deemed sanction was granted in favour of plaintiff No. 2. Writ petition was filed by the MCD before the High Court. High Court vide order dated 29.01.1999 endorsed the view of the Lt. Governor. It was however held that plot No. E-25 (new) did not form part of the revised layout plan which had been sanctioned by the MCD and as such no relief could have been granted by the administrator; to permit construction activity would be contrary to Section 337 (2) of the MCD Act. This judgment was the subject matter of the SLP.

9 The Apex Court had returned its findings as under:-

“We are unable to accept the submissions of Mr. Shanti Bhushan. To be seen that Resolution No. 588 dated 25.08.1965 did not sanction a revised layout plan. The revised layout plan was sanctioned by Resolution No. 158 dt. 18.05.1961. This showed all plots with numbers as they then existed. Undoubtedly a layout plan will have accompanied Resolution No. 588 dated 25.08.1965 and that plan is missing. However, in our view, no adverse inference can be drawn against the society or the Corporation because there is sufficient material on record to show that plot No. E-25 (New) is not a part of the revised layout plan which was sanctioned in 1964.

It must be seen that by the Resolution No. 158 of 1958 layout plan had been sanctioned for 98 plots. By mistake in the Resolution 108 plots were mentioned. It is an admitted position that there were only 98 plots in the

sanctioned layout plan. It is an admitted position that out of these 98 plots, plot Nos. E-25 and C-23 went to the share of the Central Road Research Institute at the time when the boundaries were exchanged between the Society and the Institute. After the exchange of boundaries a revised layout plan was sanctioned by the Corporation by its Resolution No. 158 of 8th May, 1964. The layout plan annexed to this Resolution is available in the record. This layout plan clearly shows that there were the 96 plots remaining with the Society. This layout plan clearly shows that at this stage there is no plot E-25 old or new. Yet this Resolution makes mention of Plot No. E-25 and states that there cannot be any construction on this, amongst other, plots. Thus, it is clear that the Resolution by mistake is merely repeating the number of plots from the earlier resolution without it being having realised that now there was no plot No. E-25. Resolution No. 588 dt. 25th August 1965 is merely repeating the numbers as were mentioned in Resolution No. 158 dt. 18th May 1964. Thus it is clear that the mistake in Resolution No. 158 is carried forward to Resolution No. 588.

That plot No. E-25 has been mentioned by mistake in Resolution No. 588 is further clear from the fact that in 1971, when the Society applied for changing the location of one plot, i.e. Plot No. 16-B, it sent a copy of the revised layout plan, as sanctioned, to the Municipal Corporation of Delhi. The Corporation permitted the change of location of Plot No. 16-B. The sanctioned revised layout plan which has been submitted to the Municipal Corporation of Delhi at this time is on record. To be remembered that by now Society had already carved out the additional plots and had sold them to various parties. By now the Municipal Corporation had refused permission to carve out more plots. Thus what had been sent by the Society was the Revised layout plan which had been sanctioned in 1964 and on basis of which permission to construct had been granted in 1965. If the appellants plot E-25 (new) existed it would have been shown in this layout plan. This plan shows that in the revised layout plan there was no plot E-25 (new).

It must also be remembered that on 18th July, 1969 the Society had written to the mother of the Appellant pointing out that the revised layout plan showing the additional plots had been rejected by the Municipal Corporation of Delhi. If plot E-25 (new) was part of the revised layout plan such a letter would not have been written by the Society to the mother of the Appellant. The reply sent by the mother of the Appellant also shows that the mother of the Appellant did not consider the plot allotted to her, i.e. Plot No. E-25 (new), to be in exchange for Plot No. E-25 (old).

What is also important is that admittedly neither the mother nor the Appellant were owners of old Plot No. E-25. That plot had ceased to exist much prior to the Appellant's mother having allotted Plot No. E-25 (new). The Society, prior to allotting this plot to the Appellant's mother, had by the Circular dated 21st July, 1965 made it very clear that after the change of

boundaries some more plots may be available and that allotment of these plots would only be conditional. The Appellant's mother had given an undertaking dated 22nd September, 1965 accepting conditional allotment of Plot No. E- 25 (new). She then entered into an Agreement which is an conditional agreement as set out hereinabove. The allotment to her was conditional on a revised layout plan containing additional plots being sanctioned. The Municipal Corporation of Delhi refused sanction. This was intimated to Appellants mother in 1969. In 1969 the Appellants mother considered the allotment of plot E-25 (new) to be conditional and subject to the revised layout plan being sanctioned by the Municipal Corporation of Delhi. Thus, at all stages the Appellant's mother knew and accepted the fact that her plot was one of the new plots for which sanction would have to be obtained from the Municipal Corporation of Delhi and that if such sanction was not obtained she would have no right except to receive back the moneys paid to the Society.

When it was pointed to Mr. Shanti Bhushan that the Appellant's mother had entered into a conditional agreement and that the Appellant, who merely steps into the shoes of her mother, could claim no higher or better rights. He submitted that all Sale Deeds executed by the Society were conditional sale deeds. Mr. Shanti Bhushan showed to Court a number of Sale Deeds and showed that all Sale Deeds executed by the Society were conditional. However, it must be remembered that the Society had carved out 11 new plots and had entered into conditional agreements with all persons who wanted allotment of those new plots. Those were the agreements which Mr. Shanti Bhushan was showing to Court. Mr. Rohtagi pointed out to Court that in respect of plots which were not new plots the Society had entered into Agreements which were not conditional agreements. He pointed out that the father and sister of the Appellant (i.e. the husband and daughter of Appellant's mother) had also been allotted plots which were part of the revised layout plan as sanctioned in 1964. Mr. Rohtagi pointed out that those agreements were not conditional agreements. Mr. Rohtagi submitted that the statement made by Mr. Shanti Bhushan across the bar, that all agreements were conditional agreements was not a correct statement. Mr. Rohtagi is correct. Court has seen that members of the Appellant's family had themselves entered into agreements which were not conditional agreements. On a query from Court Appellant, who was present in Court, confirmed that her father and sister had entered into agreements which were not conditional. This made it very clear that the Appellant's mother and even the Appellant were well aware that Plot No. E-25 (new) was not in substitution of the old Plot No. E-25 and that Plot No. E-25 (new) was a new plot which could only be allotted provided sanction was accorded by the Municipal Corporation of Delhi.

In our view, Mr. Rohtagi was also right when he submitted that the layout plan of the Society could only have 98 plots. He correctly pointed out that in exchange for old plots Nos. E-25 and C-23 (which had gone away to

the Central Road Research Institute) the Municipal Corporation of Delhi had by its Resolution dated 29th January, 1976 permitted the Society to carve out Plot Nos. C-35 and C-36. He submitted, and in our view correctly, that if anybody had any grievance to the effect that Plot No. E-25 (new) should have been the plot in exchange of the old E-25, then a complaint should have been made at that stage and the request of the Society and the decision of the Municipal Corporation to permit plot Nos. C-35 and C-36 should have been challenged at that stage. He points out that the Resolution dated 29th January, 1976 and the carving out of plots Nos. C-35 and C-36 in place of Plots Nos. E-25 and C-23 has never been challenged by anybody. He submits that admittedly there can be only 98 and the Appellant cannot ask for building activity to be permitted on an additional plot, which would make it 99 plots. He also points out, and in our view correctly, that the allottees or owners of Plots Nos. C-35 and C-36 have not been made parties to any appeal or litigation undertaken by the Appellant and that the sanction of those plots by the Municipal Corporation has not been in challenge at any stage.

In our view, from the above it is clear that in 1958 a layout containing 98 plots was sanctioned. There is no sanction for more than 98 plots. Including plots C-35 and C-36 there are already existing 98 plots in the Society. The Municipal Corporation of Delhi cannot be directed to create one more plot. What the Appellant, in effect, is claiming is directions to the Municipal Corporation of Delhi to sanction an additional plot as Plot No. E-25 (new). The right of the mother of the Appellant and/or the Appellant, if one existed, was to challenge, sanction of plots C-35 and/or C-36. This has never been done. Clarified that this Court is not saying that the Appellant or her mother have a right to challenge sanction of plots C-35 and/or C-36.

Under these circumstances, we are of the view that the High court was absolutely right in coming to the conclusion that Plot No. E-25 (new) is not part of the sanctioned layout plan and that there can be no building activity in the absence of a sanctioned layout plan. To permit such building activity would clearly be in violation of Section 337(1) of the Municipal Corporation Act. Under these circumstances, we see no reason to interfere. The Appeal stands dismissed. There will be no order as to costs."

10 This judgment of the Apex Court has set the controversy at rest; there being no plot No. E-25 (New) in Kalindi Colony; the question of granting permanent injunction qua this suit land did not arise.

11 This was a suit for permanent injunction. The prayers made in the plaint are relevant. They read as under:-

"(a) a decree for permanent injunction restraining the defendants No. 1 & 2, their officers/employees/labour/workmen representatives, etc. from taking possession of the said plot bearing No. E-25 (New), Kalindi Colony, New Delhi, and as shown red in the plan filed be passed against defendants No. 1 & 2 and in favour of the plaintiffs.

(b) costs of the suit be awarded in favour of the plaintiffs; and

(c) any other relief which this Hon'ble Court may deem just and proper be also granted in favour of the plaintiffs."

12 The plaintiff has prayed for a decree of permanent injunction restraining the defendant from taking possession of plot No. E25 (new) in Kalindi Colony. Positive finding had been returned that there is no plot bearing E-25 (new) in Kalindi Colony; question of granting permanent injunction qua this land does not and would not arise; plaint was rightly rejected under Order 7 Rule 11 of the Code. This view was correctly appreciated and endorsed by the first appellate Court. There is no perversity. The impugned judgment calls for no interference on this count.

13 The judgment relied upon by the counsel for the appellant reported in 127 (2006) DLT 91 Ramesh Chand Aggarwal & Ors. Vs. MCD & Ors is distinct on its facts. In this case, the applicant had been allotted plot No.41 in Kalindi Colony by Swatantra Co-operative House Building Society Ltd. vide a sale letter dated 07.10.1965; it was never the contention of anyone that this plot was not in existence; para 18 of this judgment had clearly noted that this plot very much existed at site. This is not so in the present case. In the present case, a positive fact finding has been returned that plot No.E-25 (new) is not in existence.

14 The second finding in the impugned judgment that an application rejecting the plaint under Order 7 Rule 11 of the Code

does not qualify as a 'decree' under Section 2 (2) of the Code is however an illegality; an order rejecting a plaint is a 'decree' within the meaning of Section 2 (2). Section 2 (2) of the Code reads as under:-

"2. Definitions.- In this Act, unless there is anything repugnant in the subject or context.-

(1) xxxxxxxx

(2) 'decree' means the formal expression of an adjudication with, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or*
- (b) any order of dismissal for default.*

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

15 This finding being illegal is liable to be set aside.

16 The impugned judgment had gone into the merits of the controversy in detail and the evidence; it does not in any manner warrant any interference. The plaint was rightly rejected as no cause of action had accrued in favour of the plaintiff.

17 This appeal is at the stage of maintainability. The vehement argument of the learned counsel for the appellant is that without trial, the plaint could not have been rejected, this argument is completely meritless. No trial was required for granting relief of permanent injunction which was sought for by the plaintiff; permanent injunction could not have been granted qua a suit property which was not in existence.

18 Substantial questions of law have been embodied at page 1 of the body of the appeal. They read as under:-

“(1) Whether an appeal is not maintainable against an order rejecting the plaint passed under Order 7 Rule 11 CPC?”

“(2) What is scope of Order 7 Rule 11 CPC and whether the pleas raised by the opposite party (defendants) can be looked into in order to reject the suit under Order 7 Rule 11 CPC?”

“(3) Whether the two courts below have misinterpreted the orders of the Hon’ble Supreme Court dated 22.07.2000 passed in Civil Appeal No. 1216/2000 arising out of SLP (Civil) No. 11906/1999 in the case of Poonam Vs. MCD & Others?”

“(4) Whether the appellate court could deal with the merits of the case and grounds raised in the appeal once it had formed the opinion that the appeal itself was not maintainable?”

“(5) Whether a suit for permanent injunction seeking to restrain the defendants from dispossessing the plaintiff is to be decided on the basis of settled possession or on the basis of title?”

19 No such substantial question of law has arisen. Appeal as also pending application are dismissed in limine.

(INDERMEET KAUR)
JUDGE

MARCH 18, 2011
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