

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

% Date of judgment: 18.5.2011

+ **RSA No.139/2008 & CM No.8618/2008**

SH.HOSHIAR SINGH Appellant

Through: Mr.Ravi Gupta, Sr. Advocate with
Mr.Ankit Jain, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr.M.K.Singh, 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 29.5.2008 which had endorsed the finding of the trial judge dated 29.11.2005 whereby the suit filed by the plaintiff Hoshiar Singh seeking permanent injunction against the defendant/Delhi Development Authority (DDA) restraining them from demolishing

his structure in the land comprising in Khasra No.1237, measuring 2 Bighas 8 Biswas in the revenue estate of Village Mehrauli, New Delhi had been dismissed.

2. The case of the plaintiff is that he along with his brother are the owners/bhumidar of the aforementioned land; he is in possession of the land for the last 40 years. Gaon Sabha has transferred this land to the defendant; action was taken against certain unauthorized occupants on 03.6.2001; under mistaken identity the defendant had demolished a portion of the property of the plaintiff though this land does not belong to the Gaon Sabha; this was without show cause notice. Officials of the DDA again visited his land and tried to put a wire fencing on his land; present suit was accordingly filed.

3. Defendant contested the suit. It was stated that the land belongs to the Gaon Sabha which has since been urbanized and it has been placed under the disposal of the DDA under Section 22 of the Delhi Development Act (hereinafter after referred to as 'the said Act'). It was denied that the plaintiff is in possession of the suit land.

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

1. Whether the suit is bad for want of notice Under Section 53(B)

Delhi Development Act? OPD

2. Whether the plaintiff is owner of the land measuring 2-8, situated in Khasra no.137 in the revenue estate of village Mehrauli, Delhi. If so, its effect ? OPD

3. Whether the land falls in Khasra No.2797/2026/1675/13 in the revenue estate of Mehrauli and placed at the disposal of the DDA? OPD

4. Whether the plaintiff is entitled for the relief of injunction, as prayed for? OPP

5. Relief.

5. Oral and documentary evidence was led. Trial judge was of the opinion that khatoni and khasra girdawari Ex.PW-1/3 to Ex.PW-1/5 cannot be read in evidence as they had not been proved in accordance with law. The order of the Revenue Assistant Ex.PW-1/2 had also not been looked into for the same reason. Trial judge was of the view that the plaintiff has failed to prove his case for the aforementioned reasons.

6. In appeal this finding was endorsed. Impugned judgment had however looked into these documents i.e. Ex.PW-1/1 to Ex. PW-1/5. Ex.PW-1/2 was adverted to; court was of the view that this order of the Revenue Assistant was only to the effect as to whether vesting of the land in Gaon Sabha was wrong and illegal. Court was of the view that the plaintiff has failed to show his possession in the intervening period i.e. between 05.8.1971 to 07.5.1973. Per contra the defence of the defendant that in terms

of the notification dated 03.6.1966 under Section 507 of Delhi Municipal Corporation Act the land stood urbanized and it had stood transferred to the DDA and had been placed at the disposal of the DDA in terms of Section 22 of the said Act was relied upon. Relief of injunction was accordingly refused.

7. The finding returned in the impugned judgment reads as follows:

“10.The counsel for appellant has stressed upon copy of order of Revenue Assistant which is Ex.PW-1/2 according to which Paltu/predecessor in interest of the appellant was held to be bhumidar of 2 bighas, 8 biswas land.

11.Perusal of the above judgment shows that issue no.2 in the said case was whether vesting of the land in Gaon Sabha was wrong and illegal. The said issue was decided against the petitioners. Despite that the petitioner was held entitled to bhumidari rights Under Section 85 DLR Act. The date of institution of the said case was 05.08.71 and date of decision was 07.05.73. there was no evidence to show that appellant continued in possession after 07.05.73. It is possible that due to loss of subsequent possession, his bhumidari came to an end.

12. On the other hand the Counsel for respondent submitted that as per notification dated 03.06.66 U/s 507 Delhi Municipal Corporation Act, the village Kishangarhh in Mehrauli was urbanized as per entry number 37 at page 3. The effect of urbanization is contained in section 150 (3) DLR Act and the same is that land vesting in Gaon Sabha stands transferred to Central Government. The Central Government in turn issued notification dt. 20.08.74 U/s 22 Delhi Development Act. The land of village Mehraullti (Kishangarh) was placed at the disposal of respondent as per entry at Sl. No.17 at page 2.

13. The counsel for appellant submitted that copy of notification U/s 22 Delhi Development Act does not contained the Khasra numbers without which it can not said which khasra was placed at the disposal of respondent. I am unable to appreciate the argument. If no Khasra number has been mentioned, it means that the entire village has been placed at the disposal of respondent.

14. The Counsel for respondent drew my attention towards extract of Field Book according to which Khasra no.1237 measuring 2 bigha 8 biswas was placed at the disposal of respondent.

15. It is true that there is no evidence that the land vested in Gaon Sabha but the Khasra girdwari filed by appellant himself shows the nature of the land in gair mumkin abadi. This in itself is sufficient to vest land in Gaon Sabha. Moreover, once a notification U/s 22 Delhi Development Act is issued, no jurisdiction can be granted as per decision in Rajinder Kakkar Versus DDA 54 (1994) DLT 484.

16. In view of the above discussion I find that though the decision of the ld. Trial Court is not sustainable on the grounds mentioned in the impugned judgment, but the appeal is liable to fail on other counts as mentioned in the present judgment."

8. On behalf of the appellant it has been urged that this finding is wrong; the plaintiff has proved his possession. No person can be dispossessed without due process of law. For this proposition reliance has been placed upon JT 1989(3) SC 489 Krishna Ram Mahale Vs. Mrs. Shobha Venkat Rao.

9. Arguments have been rebutted.

10. This is a second appeal. It has been admitted and on

20.11.2009 the following substantial question of law was formulated:

1. After urbanization of the suit land in the year 1966, could the Revenue Assistant declare Paltoo, the predecessor-in-interest of the appellant as the 'Bhumidar' of the land which vested in Gaon Sabha?
2. What is the effect of the notification dated 20th August, 1974 issued under Section 22 of the DDA Act on the claim of the appellant in respect of the land in suit?

11. Record has been perused.

12. The instant suit had been filed in the year 2001. Documentary evidence i.e. Khasra Girdwari and Khatoni adduced by the plaintiff show that he was in possession of the suit land in the year 1983-84; the defendant had specifically denied his possession qua the suit land. Defence of the defendant was that after the notification under Section 507 of the DMC Act on 03.6.2006 the land had become urbanized and it has since been placed at the disposal of the DDA under Section 22 of the said Act. The factum of possession having been specifically denied by the defendant it was for the plaintiff to have proved that prior to the filing of the suit he was in possession of the suit land. Admittedly the documentary evidence showing his purported possession is only for the year 1983-84; this was correctly considered in the

impugned judgment and the relief of injunction was declined.

13. Suit land having vested with the DDA after the notification of 20.8.1974, and the plaintiff having failed to prove that he was in possession of the suit land; suit was rightly dismissed; which finding was endorsed by both the two fact finding Courts below. Substantial question no.2 is answered accordingly. The first substantial question of law has become infructuous. Appeal has no merit. Appeal as also pending application is dismissed.

INDERMEET KAUR, J.

MAY 18, 2011

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