

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

% Judgment reserved: 18.5.2011
Judgment delivered: 23.5.2011

+ **RSA No.186/2008**

SMT.RATI DEVI Appellant
Through: Mr.L.K.Singh, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr.Rajesh Manchanda and Mr.Rajat
Manchanda, Advocates.

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 29.7.2008 which had endorsed the finding of the trial judge dated 04.3.2003 whereby the suit filed by the plaintiffs Rati Devi & Ors. seeking relief of declaration and permanent injunction to the effect that the plaintiffs are the owners in possession of suit

property and the defendant be restrained from dispossessing the plaintiffs from the aforementioned suit property, had been dismissed.

2. The case of the plaintiffs is that they are owners and in possession of the suit land contained in Khasra No.1300 situated in abadi of Village Madipur, Delhi (which is more correctly described in the site plan annexed with the plaint). Plaintiffs had been using this property for their residential purpose for the last 35 years. Sh.Ram Lal, father of the plaintiffs had constructed a Dharamshala therein. Ejectment proceedings under Section 86-A of the Delhi Land Reforms Act (hereinafter referred to as 'the DRLA') against father of the plaintiffs had been filed by Gaon Sabha Madipur and Union of India; ejectment order was passed on 16.10.2008; appeal against this order had set aside the order of the Revenue Assistant and the matter was remanded back for re-hearing. This was on 27.8.1969. Thereafter no action has been taken by the Gaon Sabha. Ram Lal was in possession of the suit land and after his death the plaintiffs are in possession of the suit land. Defendant had threatened to demolish the aforementioned suit property. Part construction was demolished on 12.11.1980; Civil Suit No.559/1975 had been filed against the defendant; wherein statement was made by the defendant that the defendant will not be dispossessed by the plaintiffs except as per due process of law.

Plaintiffs are now being threatened with dispossession. Present suit has accordingly been filed.

3. In defence it was stated that the land in dispute has since been urbanized and has been vested in the Central Government and this land been placed at the disposal of the Delhi Development Authority (DDA) and plaintiffs have no right, title interest in the land. Plaintiff is not in occupation of the suit land. The land has since been developed into a park.

4. From the pleadings of the parties, the following three issues were framed:

- i. Whether the impugned action of the deft. is illegal ultravires and without jurisdiction? OPP
- ii. Whether the suit is bad for want of notice under Section 53-B of DD Act? OPD
- iii. Relief.

5. Oral and documentary evidence was led. On this evidence the suit of the plaintiffs was dismissed. The court was of view that the plaintiffs have failed to show any right, title or interest in the suit land; suit land had been placed under the disposal of the DDA; the said notification of the DDA under Section 22 of the Delhi Development Act has not been challenged. Suit was dismissed.

6. In appeal this finding was endorsed.

7. This is a second appeal. It has been admitted and on 05.10.2009 the following two substantial questions of law were formulated:

1. Whether the appellant is entitled to protection under Section 13(ii) of the Delhi Land Reforms Act, on the plea that he is deemed Bhumidar of the Gaon Sabha land being in possession of the same for more than 30 years, by virtue of Section 85(iii) of the said Act.

2. Whether notification dated 23.5.1963 under Section 507 of the DMC Act urbanising the village land can be deemed to be a notification for acquisition of the suit property so as to vest ownership rights with the Central Government in view of the provisions contained under Section 67 of the Act?

8. On behalf of the appellant, it has been urged that the judgment of the trial court is a perversity; it is liable to be set aside. Merely because the land has been notified as urban land under Section 507 of Delhi Municipal Corporation Act (hereinafter referred to as 'the DMC Act'), it does not mean that the plaintiffs had been dispossessed of the suit land; attention has been drawn to that part of the testimony of DW-1 wherein he has admitted that the plaintiffs are in possession of the suit land. It is pointed out that a person who is in settled possession cannot be disturbed; relief of injunction could not have been denied to him. To support his submission reliance has been placed upon a judgment report

in 167 (2010) DLT 216 Society of the Holistic Child Development India Vs. Church of North India Synod as also another judgment reported in (2004) 1 SCC 769 Rame Gowda Vs. M.Varadappa Naidu. On behalf of the respondent it has been urged that the declaration sought for by the appellant is barred in view of the provisions of Section 185 of the DLRA. For this proposition reliance has been placed upon AIR 1971 SC 2320 Hatti Vs. Sunder Singh. Further in para 10 of the impugned judgment it had rightly been noted that the plaintiffs once having been evicted from the suit land they had thereafter re-encroached upon the same; plaintiff is not entitled to any relief. It is pointed out that in view of the notification dated 23.6.1974 which is admittedly not the subject matter of challenge, the suit property devolved upon Union of India and has since been placed at the disposal of the DDA for the purpose of a green park; present suit was not maintainable. This finding can in no manner said to be perverse. There is no perversity in the impugned judgment.

9. Record has been perused. The impugned judgment had noted the testimony of DW-1 wherein he had deposed that the suit land had been placed at the disposal of the DDA vide notification Ex.DW-1/1; admittedly this notification is not subject matter of challenge before this Court; prayer is for a declaration to the

effect that the plaintiffs be declared as the owners of the suit land. Court had noted that the plaintiffs had since been removed from the suit land during emergency period in 1975 and then again on 12.11.1980; demolition slip for allotment of building had been given on 12.11.1980 and on 13.11.1980; alternative allotment had been granted to the plaintiffs whereupon they have again encroached upon the government land. Court had also returned a fact finding that the suit property was consistently recorded in the record as the Gaon Sabhaland; no bhumidari rights had accrued in favour of the plaintiffs. The plaintiffs had in their plaint also averred that proceedings for ejectment under Section 86 A of the DLRA had in fact been filed against their father which matter has been remanded back and was pending hearing. This was the case of the plaintiff himself. Question of title could not be gone into by a Civil Court; such a question could only be decided by the Revenue Court as has been held by Apex Court in the case of Hatti Vs. Sunder Singh (supra).

10. That apart finding returned in the impugned judgment was that in view of Ex.DW-1/1 the land had been urbanized and placed at the disposal of the DDA; declaration about the ownership of the plaintiffs, in these circumstances did not arise; his prayer for injunction was a corollary to the first prayer of declaration; since

the prayer of declaration could not be granted, injunction also could not follow. The land had stood urbanized under Section 507 of the DMC Act and was placed at the disposal of the DDA; the second notification was not challenged; the question of the plaintiffs claiming ownership of the suit land did not arise.

11. This is the answer to substantial question no.2. Substantial question no.1 has become in fructuous in view of the answer given to substantial question no.2. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

MAY 23, 2011
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