

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

% RSA 162 of 2009

+ Date of Decision: 2nd May, 2012

ABDUL MUTALIB ...Appellant
! Through: Mr. Vipin K. Singh, Advocate.

Versus

\$ UNION OF INDIA & ORS. ...Respondents
^ Through: Mr. Sanjeev Sabharwal & Mr.
Hem Kumar, Advs. for R-2
to R-4.
Ms. Manjira Das Gupta, Adv.
for MCD/R-5.

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The appellant is the unsuccessful plaintiff in a suit for declaration, mandatory and permanent injunction filed against the respondents herein.

2. The case of the plaintiff-appellant(hereinafter to be referred as 'the plaintiff') was that he was running a dhaba since the year 1970 in Okhla Industrial Estate near factory no. 229 on a small piece of land. Other persons were also doing their business in that area like that. In the year 1981, the dhabas/stalls etc., where the plaintiff and others were doing their business, were ordered to be demolished as the same were unauthorisedly constructed and occupied on public land/pavements. In order to accommodate people like the plaintiff who were earning their livelihood from there and who would have been uprooted because of demolition of their dhabas/stalls a Scheme was framed by the Directorate of Industries, respondent no. 3 herein, for allotment of alternative sites to all those persons whose stalls were to be demolished. A survey was conducted and a list of those affected persons was prepared in which the plaintiff's name was also included. On 17.01.1985 the stalls/dhabas etc. were demolished and at the time of demolition a demolition slip was given to the plaintiff showing that stall no. 60 near factory no.74 in Okhla Industrial Estate was allotted to him temporarily with an assurance that he would be allotted one of the stalls being constructed, as per the Scheme, by the respondent no. 3 in Okhla Industrial Estate-III.

3. As per the further case of the plaintiff, when new stalls were constructed stall no. 68 in Okhla Industrial Estate-III came to be allotted to him but before the same could be formally handed over to him he went to Dubai. After coming back to India, he found that all the final allotments of the new stalls had been made to the concerned allottees except him. He then made representations before the defendant no. 3 but he was not allotted his stall no.68 and in fact he was further threatened to be evicted even from stall no. 60 where he had continued to run his dhaba and also that stall no. 68 would be auctioned.

4. The plaintiff then filed a suit on 18.04.1987 for declaration and injunction in which he had pleaded aforesaid facts and had made the following prayers:-

“ (a) a decree for declaration may kindly be passed in favour of the plaintiff and against the defendants, declaring that the plaintiff is entitled for the allotment of the stall no. 68 at Okhla Industrial Estate, New Delhi constructed permanently for allotment in lieu of the stall no. 60 near Factory No. 74, Okhla Industrial Estate, New Delhi;

(b) a decree for mandatory injunction be passed in favour of the plaintiff and against the defendants, their employees and servants to allot the stall no. 68 situated at Okhla Industrial Estate, New Delhi to the plaintiff immediately as per the said scheme in lieu of the above said stall no. 60 Factory No. 74, Okhla Industrial Estate, New Delhi;

(c) a decree for permanent injunction be passed in favour of the plaintiff and against the defendants restraining the defendants, their employees and servants from dispossessing the plaintiff from stall no. 60 Factory No. 74, Okhla Industrial Estate, New Delhi or from demolishing the same which is presently in possession of the plaintiff or to interfere with his possession in any manner whatsoever.”

5. The respondents-defendants contested the suit of the plaintiff. Respondents-defendants 1-4 filed a joint written statement while respondent-defendant no.5, Municipal Corporation of Delhi, had filed its separate written statement. The respondents-defendants 1-4 admitted that the plaintiff was included in the survey conducted in 1981 as one of the persons running a dhaba in Okhla Industrial Estate, as was being claimed by him, and also that the unauthorized dhabas/stalls were demolished and new stalls were constructed for the affected persons but no alternative accommodation was marked for the plaintiff at the time of demolition and further that stall no.60 was not allotted to him. It was stated that for getting allotment of an alternative stall the plaintiff was required to furnish an affidavit that he himself would be using the stall but he did not furnish it and, in fact, he had settled in Dubai and had requested for allotment of the stall to his brother-in-law. That request could not be entertained as the new stalls were meant only for the affected persons.

6. Respondent-defendant no.5, MCD, contested the suit on the ground that it had nothing to do with the allotment of stalls as that was the job of the Director of Industries, respondent no.3 herein, and it had only rendered its assistance in the demolition of unauthorised stalls etc.

7. The plaintiff filed a replication to the written statement of respondents-defendants 1- 4 and denied that he had asked the defendants to allot the stall to his brother-in-law though he admitted that when he had gone to Dubai for sometime he had put his brother-in-law in possession of stall no.60. He also claimed that he had furnished his affidavit also as was demanded from him by defendants 1-4.

8. The trial Court had initially framed the following issues for trial:-

“1. Whether the plaintiff is entitled for a decree of declaration to the effect that he is entitled for the allotment of stall no. 68?

2. Whether plaintiff is entitled for injunction as prayed?

3. Whether the suit is not maintainable on account of Section 80 CPC?

4. Whether the suit is maintainable in its present form or not being the misuse of the process of law?

5. Whether the plaintiff has locus-standi to file the present suit?

6. Whether the suit is not maintainable in lieu of Section 477 & 478 of Delhi Municipal Act?

7. Whether the suit is hit by Section 41(h) of the Specific Relief Act?”

Subsequently, following additional issue was also framed:-

“Whether the suit of the plaintiff is maintainable or not in view of the judgment of Hon’ble Supreme Court in Gainda Mal and Saudan Singh’s case or not?”

9. In support of his case, the plaintiff had examined himself as his sole witness while no evidence was adduced from the side of the defendants-respondents.

10. The learned trial Court decided all the issues, except issue no. 3, in favour of the respondents-defendants and against the plaintiff and dismissed the suit vide judgment dated 17.8.2002. While deciding the additional issue regarding the maintainability of the suit the trial Court relied upon two judgments of the Hon’ble Supreme Court in **“Saudan Singh Vs. N.D.M.C.”**, **AIR 1992 Supreme Court 1153** and **“Gainda Ram and others etc. Vs. M.C.D.”**, **1993(3) SCR 704**.

11. Thereafter, the plaintiff filed an appeal but that appeal was also dismissed by the first appellate Court vide judgment dated 26.8.2009.

12. Then this second appeal came to be filed. The following two substantial questions of law were formulated on 08.08.2011 for the decision of this Court:-

*“1. Whether the suit of the appellant-plaintiff could be dismissed by the trial Court relying upon the decisions of the Supreme Court in **“Saudan Singh Vs. N.D.M.C. and others”, AIR 1992 SCC 1153** and **“Gainda Ram and Others etc. Vs. M.C.D. Town Hall and Others etc.”** considering the fact that the respondents were not claiming that the allotting authority of the shops to unauthorized occupants of Government land was either Municipal Corporation of Delhi or New Delhi Municipal Committee and it was being claimed that only the Director of Industries was the competent authority which infact had found the appellant-plaintiff to be entitled also for an alternative shop.*

2. Whether the Courts below were justified in accepting the case of the respondents that the appellant-plaintiff was not allotted alternative shop in lieu of the demolition of the stall unauthorizedly occupied by the appellant because of his failure to comply with the terms of the offer given to him when no evidence whatsoever was led by the respondents in support of its said stand.”

13. It was argued by the learned counsel for the plaintiff-appellant that defendant no. 5(MCD) had admitted in its written statement that it had no role in the allotment of stalls as it was the job of respondent no.3, Directorate of Industries, and so the judgments of Hon’ble Supreme Court in **“Saudan Singh Vs. N.D.M.C.”** (supra) and **“Gainda Ram Vs. M.C.D.”** (supra) were not applicable in this case and also for the reason that plaintiff’s entire claim for the allotment of a newly constructed stall was

admitted by the respondents-defendants no. 1 to 4 in their written statement.

14. On the other hand, learned counsel for the respondents-defendants supported the judgments of the Courts below and submitted that this second appeal also deserved to be rejected.

15. Before proceeding further, some facts of the cases of the Hon'ble Supreme Court relied upon by the trial Court for dismissing the suit may be noticed. In or around the year 1989 many squatters/hawkers who were doing trading on streets and pavements had filed writ petitions in the Supreme Court claiming that they had a fundamental right to trade on streets/pavements. The question whether such a right was available to the street squatters/hawkers or not under the Constitution of India, was referred to the Constitution Bench of the Supreme Court and that Bench in its judgment reported as **“Sodan Singh etc. vs. NDMC and anr.”; AIR 1989 Supreme Court 1988**, had held that the right to carry on trade or business on streets/ pavements, if properly regulated, cannot be denied to the hawkers/squatters on the ground that the streets/pavements are meant exclusively for pedestrians. Thereafter, the writ petitions filed by the squatters/hawkers who were claiming a right to trade on the pavements/streets situate within the areas

under the control of Municipal Corporation of Delhi(MCD) and NDMC in different parts of the city of Delhi, which were earlier referred to the Constitution Bench, were taken up by a Division Bench and the same were decided by a common judgment reported in **AIR 1992 Supreme Court 1153, “Saudan Singh Vs N.D.M.C. & Others”**, (referred to by the trial Court in the impugned judgment). In that judgment, the Supreme Court had examined the Scheme which had been prepared by the MCD in pursuance of the orders of the Court given from time to time in those petitions. MCD had also appointed a Committee to consider the grievances of the hawkers/squatters. It was ordered by the Supreme Court that objections to the Scheme would be invited from the hawkers/squatters and the same would be disposed of by the Committee appointed by MCD and its report was to be placed before the Court for approval. Thereafter, the matter was again taken up for consideration by the Supreme Court and certain directions were given in its judgment dated 12th May, 1993 reported as **(1993) 3 SCR 704 “Gainda Ram & Others Vs. MCD & Others”** (which has also been relied upon to by the trial Court) and all the claims of the street hawkers/squatters were to be dealt with by the Court appointed Committee only. Since many other hawkers/squatters, like the plaintiff here, had already filed civil suits etc. also before the

Delhi High Court as well as subordinate Courts the Supreme Court also passed an order in Gaimda Ram's case that the proceedings in all those suits would stand terminated and further that no Court was to entertain fresh claims of the hawkers/squatters in respect of the areas under the jurisdiction of MCD. Consequently, the trial Court in the case of the plaintiff-appellant did not give any relief to him.

16. In my view, there is no merit in the submission of the learned counsel for the plaintiff-appellant that the two judgments of the Hon'ble Supreme Court in "**Saudan Singh Vs. N.D.M.C.**" and "**Gaimda Ram Vs. M.C.D.**" could not be made the basis by the Courts below for rejecting the plaintiff's suit in view of the stand taken by the MCD that it had no role to play in the allotment of alternative stalls to the affected persons like the plaintiff-appellant. MCD had not disputed that the area of Okhla Industrial Estate fell within its jurisdiction and the Hon'ble Supreme Court had while dealing with the petitions of squatters/hawkers squatting and hawking in the areas under the jurisdiction and control of MCD very clearly held that the claims of those squatters/hawkers shall be dealt with only by the Committee appointed by MCD pursuant to the directions/guidelines laid therein. So, just because MCD had

claimed in its written statement that it had nothing to do with the allotment of the stalls etc. to those squatters/hawkers whose dhabas/stalls had been demolished it cannot be said that the directions of the Hon'ble Supreme Court in respect of the claims of the squatters/hawkers operating in the areas falling within the jurisdiction of MCD were not to be followed in the case of the plaintiff-appellant. Therefore, in my view the Courts below were perfectly justified in not granting any relief to the plaintiff-appellant and, in fact, no relief could be granted since after the judgment of the Hon'ble Supreme Court in Gainda Ram's case(supra) the proceedings in the suit had automatically come to an end.

17. In view of the aforesaid conclusion, the fact that the Directorate of Industries had admitted in its written statement that the plaintiff-appellant was found to be entitled to have an alternative site in lieu of what he was occupying unauthorisedly earlier will also not come to his aid and the trial Court could not give any relief to him. Therefore, the further fact that none of the respondents had adduced any evidence during the trial to establish that it was the plaintiff-appellant himself who had not complied with the requirement of furnishing of an affidavit to the effect that he himself would be using the newly constructed

stall to be allotted to him and for that reason he was not allotted the Courts below could not have passed any adverse order against the respondents-defendants 1-4 and granted the reliefs to the plaintiff-appellant as had been claimed by him because by the time the suit came to be disposed of by the trial Court the judgment of the Hon'ble Supreme Court in Gainda Ram's case had already come and noticing that binding decision of the Apex Court the trial Court had framed the additional issue regarding the effect of that judgment on the maintainability of the plaintiff's suit and thereafter had rightly rejected the suit.

18. Thus, both the questions of law formulated in this appeal stand answered against the plaintiff-appellant. Consequently, this appeal is also dismissed.

May 02, 2012

P.K. Bhasin, J