

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

+ **RFA No. 96/2018 & CM Nos. 3433/2018(stay) 3434/2018
(exemption)**

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**Reserved on: 29th January, 2018
Pronounced on: 5th February, 2018**

BABA BALBIR SINGH

..... Appellant

Through: Mr. Ved Prakash Sharma,
Advocate with Ms. Amrit Kaur
Oberoi, Advocate, Ms. Abha
Sharma, Advocate and Mr.
Siddharth Bhardwaj, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Dhanesh Relan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the trial court dated 11.10.2017 by which the trial court has dismissed the suit for possession and injunction filed by the appellant/plaintiff. The suit property comprises of 1 Bigha and 2 Biswas of land (1,100 sq. yards) out of Khasra Nos. 1089/1032/445

and 444 and 1031/445 min/part situated in Village Khirki Tehsil Mehrauli, New Delhi, also known as Plot no. 163, Khirki Extension Colony, Kariappa Marg, New Delhi. The case of the appellant/plaintiff is that the suit property was originally owned by the original plaintiff Mrs. Gurjit Taneja and that during the pendency of the suit the present appellant was assigned and transferred rights in the suit property by Mrs. Gurjit Taneja by virtue of an agreement to sell and GPA dated 9.8.2005. The present appellant was therefore in terms of an application filed under Order XXII Rule 10 CPC substituted as the plaintiff in place of the original plaintiff Mrs. Gurjit Taneja. Mrs. Gurjit Taneja is said to have purchased the suit property from the owner Sh. J.C. Marwah and from whom the original plaintiff Mrs. Gurjit Taneja had purchased the suit land under an Agreement to Sell dated 6.4.1992. Also it is required to be noted that the suit as originally filed was a suit for injunction inasmuch as the appellant/plaintiff pleaded to be in possession of the suit property, however, during pendency of the suit the appellant/plaintiff alleges that he was dispossessed from the suit property by the respondent/defendant/Delhi Development Authority (DDA) in January

2007 and consequently, the suit was amended from a suit for permanent injunction against dispossession to claiming the relief of possession of the suit property.

2. The appellant/plaintiff claims that he and earlier Mrs. Gurjit Taneja was owner of the suit property and therefore, the appellant/plaintiff is entitled to possession of the suit property which has been illegally taken by the respondent/defendant.

3. Respondent/defendant filed its written statement and pleaded that the land in question was acquired with other land in terms of the Award No.20/1987-88. Possession of the suit land was taken under possession proceedings on 22/23.12.1987. The suit land along with other lands were thereafter transferred to the respondent/defendant under a package deal by the Ministry of Rehabilitation. It was therefore pleaded that the suit be dismissed inasmuch as the suit land is an acquired land and of which possession was also taken by the respondent/defendant in possession proceedings as per Section 16 of the Land Acquisition Act, 1894 and the respondent/defendant is hence the owner in possession of the suit land.

4. After pleadings were complete the following issues were framed on 6.1.2005:-

- “1. Whether the plaintiff is the owner of the suit land as claimed by the plaintiff?
2. Whether the suit land is acquired land and the plaintiff has got no right, title or interest in the same as alleged in para 1 of the preliminary objections of W.S?
3. Whether no notice under Section 53B of the D.D. Act was served upon the defendants.(DDA)?
4. Whether the plaintiff is entitled to the relief of permanent injunction as claimed?
5. Relief.”

5. An additional issue was also thereafter got framed on 30.5.2012 and which reads as under:-

- “1. Whether the plaintiff is entitled to the protection of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007? If so, whether the plaintiff is entitled to the reliefs prayed for in the suit? OPP”

6. Trial court has held that the suit land is an acquired land in view of the Award No.20/1987-88 being proved as Ex.DW1/4. The possession proceedings dated 22/23.12.1987 under Section 16 of the Land Acquisition Act were proved as Ex.DW1/5. Aks-shajra (specific location plan of the plot) was proved as Ex.DW1/3. Trial court has held that since the subject land was an acquired land and possession of which was taken by the competent authority hence the appellant/plaintiff was not the owner of the suit land inasmuch as

neither the present appellant/plaintiff nor the earlier alleged owner Mrs. Gurjit Taneja was the owner of the suit property inasmuch as Mrs. Gurjit Taneja herself had purchased the property from one Sh. J.C. Marwah under the Agreement to Sell dated 6.4.1992 i.e after possession was taken on 22/23.12.1987 under Section 16 of the Land Acquisition Act, and therefore, on 6.4.1992 Sh. J.C. Marwah was not the owner of the suit property capable of transferring the same to Mrs. Gurjit Taneja. Trial court has held the additional issue of alleged applicability of the National Capital Territory of Delhi (Special Provisions) Act, 2007 (hereinafter referred to as the '2007 Act') against the appellant/plaintiff by holding that the appellant/plaintiff failed to prove the location of the suit land and in any case appellant/plaintiff could not have better title than his predecessors being Mrs. Gurjit Taneja and Sh. J.C. Marwah because the Government had become owner of the suit land in terms of the Award No.20/1987-88 and possession proceedings of taking possession as per Section 16 of the Land Acquisition Act on 22/23.12.1987 and where after there remained no title in the suit land of Sh. J.C. Marwah to transfer validly the suit land to the original plaintiff Mrs. Gurjit Taneja.

7. Learned counsel for the appellant/plaintiff argued before this Court that possession of the suit property was not taken by the respondent/defendant. It was also argued that in response to Para 1 of the reply on merits of the written statement the respondent/defendant had not pleaded ownership of the suit land. It was also argued on behalf of the appellant/plaintiff that in terms of the notings of the DDA filed and proved on record though PW-2 Sh. Virender Pratap being UDC of the Unauthorized Colony Cell of the Government of NCT of Delhi it is shown that possession of the suit land was not taken and as reported by the Tehsildar in terms of the notings of the relevant file which appears at running page 214 of the paper book of this appeal. This document of file notings is Ex.PW2/D1. Finally, it is argued on behalf of the appellant/plaintiff that the suit was liable to be decreed in view of the complete bar in favour of the appellant/plaintiff and against the respondent/defendant on account of Section 3 of the 2007 Act.

8. In my opinion all the arguments urged on behalf of the appellant/plaintiff have no substance and are liable to be rejected. Each of the arguments are taken up hereinafter.

9.(i) The first argument of the appellant/plaintiff was that the respondent/defendant had not taken possession of the suit property pursuant to acquisition proceedings and which is argued on the basis of the notings in the DDA file and proved as Ex. PW2/D-1 and which referred to the fact that Tehsildar of Hauz Khas admitted that various khasra numbers, including those in which the suit property is situated forms a part of an unauthorised colony and therefore effectively it is argued that no possession was taken of the suit property by the respondent/defendant. Related to this argument is also the argument that once the suit property is included in a plan submitted for regularisation of the unauthorised colony, the suit property being referred to Plot no. 163 in the application submitted for regularisation of the unauthorised colony, consequently by virtue of Section 3 of the 2007 Act, the appellant/plaintiff could not have been dispossessed from the suit property.

(ii) In law, after a land is acquired and an Award is passed under the Land Acquisition Act then possession once is taken under Section 16 of the Land Acquisition Act then on that event the ownership of the land vests with the acquiring authority being the Government. In the

present case, it is seen that Award acquiring the land has been proved and exhibited as Ex.DW1/4. The possession proceedings under Section 16 of the Land Acquisition Act dated 22/23.12.1987 has been proved as Ex.DW1/5. A reference to the possession proceedings Ex.DW1/5 clearly shows that all the three khasra numbers as mentioned in the suit plaint are those khasra numbers which are duly mentioned in the possession proceedings Ex.DW1/5 and possession of such land including other lands were taken in the possession proceedings under Section 16 of the Land Acquisition Act. The possession proceedings specifically mention Khasra nos. 1089/1032/445 (4 bighas and 3 biswas), and 444 (1 bigha and 13 biswas), 1031/445 (7 bighas and 4 biswas). Therefore, in my opinion, it is not possible for the appellant/plaintiff to contend that the suit land was not acquired and possession of the suit land was not taken, and once that is so, that the Government became the owner of the suit land, then neither the appellant/plaintiff nor were the predecessors in interest owners of the suit property and hence are not entitled to possession of the suit land possession of which was taken way back in the year 1987 in terms of possession proceedings Ex.DW1/5. Some

file notings in the file of DDA cannot have the effect of wiping away the Award and the possession proceedings with respect to the suit land which have been duly proved on record of the trial court.

10. Learned counsel for the appellant/plaintiff contended that the appellant/plaintiff was in possession when the suit was filed and appellant/plaintiff had proved on record the applications filed for regularisation of the colony containing the suit plot attaching the site plan of the colony showing the suit plot, being the documents Ex.PW3/1 (application for regularization of the year 2004), Ex.PW3/2 (acknowledgment from GNCTD), Ex.PW3/3 (being another application for regularization dated 13.12.2007, list of members of the colony in question as Ex.PW3/5 and Ex.PW3/6, lay out plan of the colony including the suit Plot no. 163 as Ex.PW3/7 and Ex.PW3/8, and accordingly it is argued that in view of Section 3 of the 2007 Act, the appellant/plaintiff could not have been dispossessed by the respondent/defendant and possession is liable to be returned back to the appellant/plaintiff by decreeing the suit.

11. In order to appreciate this argument of applicability of the 2007 Act, and alleged right of the appellant/plaintiff as per Section 3

of this Act it will be necessary to refer to Sections 2(c), 2(i), 3 and 4 of the said Act as also certain paras and definitions contained in the Gazette Notification dated 16.6.2008 issued under Section 57 of the Delhi Development Act, 1957 pertaining to regularisation of unauthorised colonies. Sections 2(c), 2(i), 3 and 4 of the 2007 Act, read as under:-

2(c) "encroachment" means unauthorised occupation of Government land or public land by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use;

2(i) "unauthorised development" means use of land or use of building or construction of building or development of colonies, village abadi area and its extension, carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment.

3. Enforcement to be kept in abeyance.—(1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Act, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and Jhuggi-Jhompri clusters, hawkers and urban street vendors, unauthorised colonies, village abadi area and its extension, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:—

(a) policy for relocation and rehabilitation of slum dwellers and Jhuggi-Jhompri clusters in accordance with provisions of the Master Plan of Delhi, 2021 to ensure development of Delhi in a sustainable, planned and humane manner;

(b) strategy for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in the Master Plan of Delhi, 2021;

(c) scheme containing guidelines for regularisation of unauthorised colonies, village abadi area and its extension, as existed on the 31st day

- of March, 2002, and where construction took place even beyond that date and up to the 8th day of February, 2007;
- (d) policy regarding existing farm houses involving construction beyond permissible building limits; and
- (e) policy regarding schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land.
- (2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status quo—
- (i) as on the 1st day of January, 2006 in respect of encroachment or unauthorised development; and
- (ii) in respect of unauthorised colonies, village abadi area and its extension, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 8th day of February, 2007, mentioned in sub-section (1), shall be maintained.
- (3) All notices issued by any local authority for initiating action against encroachment or unauthorised development referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken till the 31st day of December, 2008.
- (4) Notwithstanding any other provision contained in this Act, the Central Government may, at any time before the 31st day of December, 2008, withdraw the exemption by notification in respect of encroachment or unauthorised development mentioned in sub-section (2) or sub-section (3), as the case may be.
- 4. Provisions of this Act not to apply in certain cases.**—During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:—
- (a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;
- (b) removal of slums and Jhuggi-Jhompri dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village abadi area and its extension, in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”

12. As per the policy of 2008 an unauthorised colony has been defined in para 2(k) and the same reads as under:-

2(k) “Unauthorised colony” means a colony/development comprising of contiguous area, where no permission of concerned agency has been obtained for approval of Layout Plan, and/or building plan.”

13. The issue is that whether the conjoint reading of the provisions of the 2007 Act along with the definition of unauthorised colony in the 2008 policy entitles protection to a person under Section 3 of the 2007 Act although such person is not a person from whom possession was not taken in the possession proceedings under Section 16 of the Land Acquisition Act i.e possession was taken of the acquired land but again there is fresh encroachment of land of which the Government had already became the owner by taking possession under Section 16 of the Land Acquisition Act.

14. Definition of unauthorised colony as per para 2(k) of the 2008 policy only refers to a colony in which buildings are constructed without obtaining approval of lay-out plan or sanctioned plan. In other words a colony containing buildings already exist and the buildings are constructed without plans being sanctioned by the local authority and the colony is unauthorised as there is no lay-out plan sanctioned of the colony as required under Section 313 of the Delhi Municipal Corporation Act, 1957. Unauthorised colony’s definition therefore

does not include unauthorised occupation of the Government land, on which no building was constructed, and of the vacant land the Government had become the owner after taking possession of the vacant land under Section 16 of the Land Acquisition Act. This aspect becomes further clear from Section 4 of the 2007 Act as Sub-Section (a) of Section 4 of the 2007 Act excludes any encroachment of public land except those cases which are covered under clause (c) of Sub-Section (1) of Section 3 of the 2007 Act and which deals with guidelines for regularization of unauthorised colony. In my opinion, the definition of encroachment given in Section 2(c) of the 2007 Act cannot mean encroachment of public land is caused after Government has already taken possession and the Government has become the owner pursuant to possession proceedings under Section 16 of the Land Acquisition Act. The meaning of encroachment has necessarily to be confined to Government land which is acquired by an Award passed under the Land Acquisition Act but with respect to such land possession was not taken under Section 16 of the Land Acquisition Act. The encroachment which is the subject matter of Section 2(c) of the 2007 Act, when the same is read with Section 2(i) of the 2007 Act

which defines unauthorised development and Section 4(a) of the 2007 Act which clearly specifies encroachment of public land is not within the scope of regularisation of an unauthorised colony except cases covered under Section 3(1)(c) of the 2007 Act, therefore I refuse to agree with the arguments urged on behalf of the appellant/plaintiff that merely because appellant/plaintiff's land is shown as Plot no. 163 in an application filed by Resident Welfare Association (RWA) of Khirki Extension for regularisation of the colony therefore, the appellant/plaintiff would have protection of Section 3 of the 2007 Act. In my opinion if this Court permits the argument as urged on behalf of the appellant/plaintiff to succeed that since appellant/plaintiff is an encroacher of a Government land though ownership of which had already vested with the Government, and only on the ground that the land claimed by the appellant/plaintiff is included by a private RWA in its application for regularisation of the colony and hence the appellant/plaintiff should be held to be entitled to protection under Section 3 of the 2007 Act as regards the suit land, would amount to giving license by courts to persons to go and occupy Government lands which are owned by Government and thereafter make a colony

and seeks its regularisation in terms of the 2008 policy. This however is not the scope and intent of the 2008 policy or the relevant provisions of the 2007 Act, and object of which are only to protect development without a lay-out plan or individual building sanction plan in those areas where acquisition proceedings began and reached the stage of passing of the Award, but no possession was or could be taken by the Government under Section 16 of the Land Acquisition Act because on such lands there had already come up buildings and a colony of buildings prior to taking possession. The aforesaid position has to be clearly contra-distinguished from the fact where there was no developed colony of buildings and there was only open land when possession could be and was taken by the Government in acquisition proceedings under Section 16 of the Land Acquisition Act, and that in the latter class of cases therefore once the Government takes possession under Section 16 of the Land Acquisition Act and becomes the owner, it cannot be argued by the citizens that they will do mass scale encroachment on Government lands and thereafter seek regularization of encroachment and constructed buildings allegedly on the ground of there existing the 2007 Act and the 2008 policy. I,

therefore, reject the argument urged on behalf of the appellant/plaintiff that merely because the appellant/plaintiff's land is shown as Plot no. 163 in the applications for regularization filed by RWA under the 2008 policy, then only because of such reason itself, the appellant/plaintiff has/had protection of Section 3 of the 2007 Act.

15. The argument urged on behalf of the appellant/plaintiff allegedly of the suit land not being alleged to have been taken possession in view of para 1 of the reply on merits of the written statement is misconceived because para 1 of the reply on merits of the written statement has to be read as a whole and when read as a whole it is seen that the respondent/defendant has specifically taken up a case of appellant/plaintiff not being owner and in possession of the suit land. Semantics cannot help the appellant/plaintiff especially once appellant/plaintiff claims ownership and possession of land falling in Khasra nos. 1089/1032/445, 444 and 1031/445, and that such lands are found to indubitably being very much part of possession proceedings dated 22/23.12.1987 proved as Ex.DW1/5. This argument of the appellant/plaintiff is rejected and for the sake of ready reference para 1 of the reply on merits of the respondent/defendant of its written

statement along with relevant paras 3 to 6 of the affidavit by way of evidence filed on behalf of the respondent/defendant through DW-1 Sh. Shashi Karan Nassa are reproduced as under:-

“Reply on Merits:

1. That in reply to the contents of Para No. 1 of the Amended plaint, it is submitted that the plaintiff is neither the owner nor in possession of the land measuring 1 Bigha and 2 Biswas out of khasra no. 1089/1032/444/445 situated in village Khirki in Tehsil Mehrauli, New Delhi. It is further stated that the land measuring 1 Bigha & 18 Biswas of Khasra No. 1088/1032/445 has been transferred to answering defendant/DDA under a package deal with the Ministry of Rehabilitation. The physical possession of the said land was also taken by the answering defendant/DDA on 22/23.12.87. It is further stated that even the land falling in Khasra No. 1089/1032/445 is also an acquired land and the award was also passed vide award No. 20/87/88. The plaintiff has no right over the land in question. It is pertinent to note that the land falling in khasra No. 1031/445 over which the plaintiff is claiming his right is also an acquired land vide award No. 20/87/88. The land in question is lying vacant and in possession of answering defendant/DDA. Therefore if there is any sale-purchase document of the Government Land, the same is illegal.”

“Evidence by way of affidavit:

3. That the land measuring 1 bigha 18 biswas in Khasra No. 1088/1032/445 along with other land has been physically handed over to the defendant-Delhi Development Authority under the Package Deal from the Ministry of Rehabilitation vide letter No. (41) Survey/CSC/87/Malviya Nagar dated 22/23.12.87. Copy of letter dated 22/23.12.87 along with possession proceedings is Ex.DW-1/2 (Colly). The Aks Sajara showing location of khasra No. 1088/1032/445 is Ex.DW-1/3.

4 That the land falls in Khasra No. 1088/1032/445 is in possession of defendant-Delhi Development Authority. The plaintiff has no right over the same.

5. That even otherwise, the claim of the plaintiff is false and frivolous. The land falling in Khasra No. 1089/1032/445 and 444 is also an acquired land and award was also passed vide Award No. 20/87/88. The said award is Ex.DW-1/4.

6. That the possession proceedings pursuant to Award No. 20/87/88 is Ex.DW-1/5.”

16. In view of the above discussion I do not find any merit in the appeal and the same is hereby dismissed.

FEBRUARY 05, 2018

VALMIKI J. MEHTA, J

