

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 212/2008 & CM No.12973/2012**

Date of Decision : 18.11.2013

DDA

..... Appellant

Through: Mr.Pawan Mathur, Advocate.

versus

OM SHANTI & ANR.

..... Respondents

Through: Mr.L.K.Singh, Advocate for R-1
(a) to (c).
Mr.Shyel Trehan and Ms.Manjira
Dasgupta, Advocates for R-
2/MCD.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant/DDA against the judgment dated 08.02.2008.
2. I have heard the learned counsel for the appellant as well as the learned counsel for the respondents. The only substantial question of law which arises for consideration of this court is:

“as to whether the judgment of the first appellate court suffers from any perversity? If so, to what effect?”

3. The learned counsel for the appellant has vehemently urged that the judgment of the first appellate court dated 08.02.2008 suffers from perversity inasmuch as without discussing the evidence or the facts of the case, it has arrived at a finding contrary to the one which is arrived at by the trial court vide order dated 02.12.2006. In addition to this, the learned first appellate court has also directed that no action for demolition be taken in derogation of the judgment passed by the High Court in Civil Writ Petition No.2361/1990.

4. The learned counsel for R-1(a) to (c) has contended that the only direction which he is seeking is that the action for demolition cannot be taken without the appellant/DDA deciding the application for de-notification of the land in question or the question of regularization of the unauthorized construction.

5. In order to understand the controversy, it is necessary that the brief facts of the case be given. The original respondent herein (Sh.Om Shanti since deceased) filed a suit for permanent injunction against the present appellant/DDA and the MCD claiming himself to be the owner and in possession of a residential piece of land bearing no.WZ-131 D/1 Village

Naraina, New Delhi forming part of the land bearing khasra no.1854/1784 in the revenue estate of village Naraina, New Delhi. It was alleged that the said residential property was sought to be demolished by the appellant/DDA on 02.01.1987. Accordingly a permanent injunction was prayed for restraining the appellant and the MCD, its officials, servants, assigns and representatives from demolishing the suit property i.e. property no.WZ 131-D/1, forming part of land bearing khasra no.1854/1784 in village Naraina, New Delhi.

6. The appellant/defendant filed the written statement and contested the claim. The stand taken by the appellant was that the parcel of land in respect of which suit had been filed was falling in Khasra no.1853 and not 1854. It was further stated that the said khasra no.1853 was already acquired and the possession of the land in question had already been taken. So far as khasra no.1854/1784 is concerned, it was the case that the said land was also duly acquired although the possession of the entire parcel of land could not taken because of a portion of the land being heavily built up.

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

“1. Whether the suit is bad for want of notice u/S 53B of DD Act? OPD.

2. Whether the plaintiff is owner in possession of a residential piece of land bearing No.WZ-131 D/1 village Naraina forming part of land bearing khasra No.1854/1784 in the revenue estate of village Naraina? OPP.

3. Whether the suit land forms part of khasra no.1783 of village Naraina which stands acquired and has been placed at the disposal of DDA? OPD

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

5. Relief.”

8. The parties were given an opportunity to adduce their respective evidence. Sh.Om Shanti, the original R-1 herein/plaintiff, produced his evidence. So far as the appellant/defendant no.1 is concerned, it did not examine any witness. The learned trial court came to a specific finding that so far as khasra no.1853 is concerned, the said land was acquired and the possession thereof was also taken by the appellant/DDA. This fact was admitted by the the original R-1 herein/plaintiff in his cross examination while testifying before the court. As regards khasra no.1854, it was observed that the case of the original R-1 herein/plaintiff was that

his parcel of land falls in khasra no .1854/1784. However, the court held that even if it is assumed that the land of the original R-1 herein/plaintiff falls in the said khasra no.1854/1784, still the factum of acquisition of the said land and the consequent award having been passed by the revenue authorities was not disputed by them and once the land was acquired, the entire property in the said parcel of land vested with the Government of India and, therefore, the same could not be transacted and if at all it was in possession of the original R-1 herein/plaintiff, it was in his occupation as a trespasser. The court returned a finding that even the the original R-1 herein/plaintiff was not able to prove that the suit land falls in khasra no.1854. Similarly, the court also observed that the appellant was also not able to establish that the suit land falls in khasra no.1853. This resulted in dismissal of the suit on merits.

9. The appellant feeling aggrieved by the said judgment, passed by the learned Civil Judge, preferred an appeal being RCA No.55/2006 before the learned ADJ. The learned ADJ has observed that the appellant/DDA was not able to establish that the suit property falls in khasra no.1853. However, the original R-1 herein/plaintiff was able to establish that the suit property falls in khasra no.1854/1784. If that be so,

it was observed that as the original R-1 herein/plaintiff and some other persons have already filed a writ petition being WP No.2361/1990, therefore, no action for demolition be taken by the appellant except in accordance with due process of law and further it should be in consonance with the decision of the High Court in WP No.2361/1990. It may be incidental to mention that in WP No.2361/1990 the the original R-1 herein/plaintiff had challenged the acquisition proceedings pertaining to khasra no.1854. A perusal of the relief in writ petition shows that the following relief was claimed by the the original R-1 herein/plaintiff, who was one of the parties in the writ petition.

“Certiorari to quash the notification under Section 4 and the declaration u/Section 6 issued on 13.11.1959 and 05.09.1963, respectively, and any other subsequent acquisition proceedings in respect of the land and houses belonging to the petitioners on parts of Khasra No.1854/1874 (3 bighas 3 biswas) of village Naraina New Delhi also known as House No.WZB-52, Naraina village, New Delhi.”

10. Mr.Mathur, the learned counsel for the appellant, has contended that the relief which was claimed in the writ petition was pertaining to khasra no.1854/1784 specifically confined to a particular property being House No.WZ 52, Naraina Village, Ring Road, New Delhi and, therefore,

the first appellate court has been misled and the first appellate court committed perversity by extending the said interim orders to the present proceedings also. It was contended that the two properties – one which is involved in the writ petition and the other which was involved in the suit were different properties although pertaining to the same village and therefore the judgment of the first appellate court restraining the appellant/DDA from demolishing the construction of the original R-1 herein/plaintiff on property No.WZ-131/D/1 forming part of Khasra No.1854/1784, village Naraina, Delhi with a clarification that the order would be subject to the outcome of Civil Writ Petition No.2361/1990, suffers from perversity.

11. I fully agree with the contention advanced by Mr.Mathur that the properties involved in the two proceedings were totally different and therefore the learned ADJ while deciding the appeal has committed a perversity by making his order subject to the decision in the writ petition. To that extent, the order deserves to be set aside. Even with regard to the factum that the appellant should not take any precipitative action against the original R-1 herein/plaintiff is also not justified by giving any reasons. The judgment of the first appellate court does not discuss the evidence at

all which has been adduced by the parties to arrive at a finding by reversing the finding of the trial court.

12. I feel that the first trial court has committed a grave perversity by not giving the reasons as well as by not discussing the evidence and simply on *ipse dixit* having upset the finding returned by the trial court. I accordingly feel that the present appeal deserves to be allowed. The judgment of the first appellate court dated 08.02.2008, which is challenged in the present regular second appeal, is set aside and the judgment of the trial court is restored.

13. With these directions, the appeal is allowed.

V.K. SHALI, J.

NOVEMBER 18, 2013
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