

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

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Date of decision: 26th August, 2013

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RFA No.753/2010

SANATAN DHARAM MANDIR SOCIETY Appellant

Through: Mr. Anand Yadav & Ms. Anita
Tomar, Advs.

Versus

UNION OF INDIA & ORS. Defendants

Through: Mr. Jaswinder Singh, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 30.07.2010 of the Court of Additional District Judge-17 (Central), Delhi of dismissal of suit No.590/2008 filed by the appellant / plaintiff.

2. Notice of the appeal was issued and the Trial Court record requisitioned. Though the Union of India (UOI) through Ministry of Defence, Director General Defence Estates and Defence Estates Officer were already before this Court as respondents / defendants but an application was filed by the Director General, National Security Guards (NSG), Palam for impleadment in the present appeal claiming that certain portions of the land subject matter of this appeal had been transferred to them. The appellant / plaintiff did not oppose the said impleadment which was allowed vide order dated 09.12.2011 and on which date the appeal also was admitted for hearing. During the hearing on 22.02.2012

the counsel for the appellant / plaintiff confined the relief to a very limited area of land underneath the temple and some area around it and which was stated to be not more than approximately 10% to 15% of the land with respect to which the suit was originally filed; some suggestions for amicable settlement were also mooted on that date. However no settlement could be reached between the parties, as recorded in the order dated 18.03.2013. The newly impleaded respondent i.e. Director General, NSG thereafter filed CM No.8827/2013 under Order 41 Rule 27 CPC to lead additional evidence. Though there was no interim order in the appeal till then but the appellant / plaintiff moved an application in the summer break of the year 2013 and on which application vide order dated 19.06.2013 the parties were directed to maintain *status quo*. Thereafter, on 02.07.2013, the counsel for the respondents / defendants having expressed urgency, the appeal was posted for hearing for today. The counsels have been heard.

3. The appellant / plaintiff instituted the suit from which this appeal arises pleading:

- (i) that it is a Society registered with the Registrar of Societies vide Registration No.14281/84 with the object *inter alia* of management of the property and assets of Sanatan Dharam Mandir situated in village Mehram Nagar;
- (ii) that the land falling in the revenue Estate of village Mehram Nagar was acquired way back in the year 1911-12 but the land falling in village abadi and of temple was not acquired

and has always remained the property and assets of the temple;

- (iii) that the said land and temple was earlier maintained by the villagers of Mehram Nagar and since 1984 by the Managing Committee of the appellant / plaintiff Society;
- (iv) that the appurtenant land is being used for religious purposes especially during the days of festivals and fairs;
- (v) that the total area of the temple along with its appurtenant land and Johar (Water Pond) is approximately 3.33 acres;
- (vi) that the respondents / defendants are duty bound to enter in the General Land Register of Cantonment, the fact of the said 3.33 acres being non-defence land and of the temple which is at least few centuries old being managed by the appellant / plaintiff;
- (vii) that the temple along with its said appurtenant land and Johar is bounded on South side by the Campus of NSG bearing Survey No.281; and
- (viii) that the officials of the respondents / defendants in the second week of May, 2004 attempted to encroach upon the appellant / plaintiff's land inspite of the fact that they have no concern whatsoever with the land of the temple; the temple is situated outside the defence land.

The suit was thus filed for a decree for permanent injunction restraining the respondents / defendants from interfering in the affairs of the appellant / plaintiff and from encroaching upon the land of the appellant / plaintiff and for mandatory injunction directing the respondents / defendants to allot a survey number to the temple and its appurtenant land and to enter the same in the General Land Register of Delhi Cantonment.

4. The respondents / defendants contested the suit by filing a written statement pleading:

- (i) that the entire area of village Mehram Nagar including the abadi and all structures was acquired by the then Punjab Government vide Notification dated 22.12.1911 published in the Gazette of India;
- (ii) that there was no temple at the site at the time of acquisition of the land;
- (iii) that the area where the site is presently existing constitutes part of Survey No.176 of Delhi Cantonment;
- (iv) denying that any temple with approximately 3.33 acres of land was under the management and control of the appellant / plaintiff;
- (v) that the temple came into existence during 1970's by way of unauthorized construction on the defence land;

- (vi) proceedings were initiated by the respondents / defendants under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to evict the encroachers;
- (vii) that the Estate Officer vide order dated 15.09.1982 ordered eviction of the encroachers and in execution whereof the encroachers were evicted on 05.03.1983 in the presence of the police authorities and possession of the land taken over;
- (vii) further subsequently the temple again came into use unauthorizedly by the encroachers;
- (viii) there is thus no question of making entry in the General Land Register of Delhi Cantonment with respect to the encroached land;
- (ix) the temple is on a small piece of land of not more than 0.01 acres;
- (x) that the intent of the appellant / plaintiff is to grab the defence land for illegal and commercial exploitation;
- (xi) that the appellant / plaintiff has constructed shops and godowns on the land adjoining the temple building;
- (xii) that the land on which the temple is unauthorizedly constructed is a defence land and the appellant / plaintiff is unauthorized encroacher having designs to exploit the Government land for commercial purposes for personal

gains and the respondents / defendants reserve their right to initiate eviction proceedings against the appellant / plaintiff to thwart their efforts to grab Government land; and

(xiii) that the Cantonment boundary is well defined by the Notification dated 13.05.1915 in the Gazette of India and the land in dispute is well within the boundaries of the Cantonment.

5. The appellant / plaintiff filed a replication denying the contents of the written statement and reiterating its case. It was further pleaded that the land “belonging to temple and its appurtenant land inclusive of Johar are private land”. With respect to the proceeding under the PP Act, it was pleaded that the same were against Sh. Raghbir Singh and it was denied that in pursuance to the eviction order, possession was taken.

6. On the pleading of the parties, the following issues were framed on 16.02.2005:

- “1. *Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*
2. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPD*
3. *Relief.”*

7. I may mention that though the appellant / plaintiff had filed an application before the Trial Court for interim relief but no *ex parte* ad-

interim relief as sought was granted and a perusal of the Trial Court record shows that the application of the appellant / plaintiff for interim relief was dismissed vide reasoned order dated 31.07.2004 *inter alia* on the ground that there was nothing to show that the land was in private ownership or that the appellant / plaintiff was in settled possession inasmuch as proceedings under the PP Act had been taken and order of eviction passed. It was further held that the respondents / defendants were entitled to check illegal encroachments on Government land.

8. The parties thereafter examined their witnesses. The learned Additional District Judge has vide the impugned judgment dismissed the suit, finding, observing and holding:

- (i) that the appellant / plaintiff has failed to prove that the land of the temple was owned by the appellant / plaintiff or by any private person;
- (ii) that on the other hand, the witnesses of the respondents / defendants had deposed that the said land was part of Survey No.176 of Delhi Cantonment which belong to Government of India, Ministry of Defence and was placed under management of local military authority and was on 18.04.1986 transferred to NSG and the appellant / plaintiff had not carried out any cross-examination of the witnesses on the said aspect;

- (iii) that a perusal of the General Land Register proved as Ex.DW1/P1 clearly showed that the name of Government of India was entered in the column of 'Landlord' and the name of Ministry of Defence was mentioned in the column of 'Holder of Occupancies' – this fact was not disputed by the appellant / plaintiff;
- (iv) that the appellant / plaintiff had not placed any material to prove that the land was not owned by the Ministry of Defence but by private persons;
- (v) that the witnesses of the respondents / defendants had deposed that the temple was situated on a piece of land of not more than 0.01 acre and the appellant / plaintiff had not cross examined the said witness on the said aspect also;
- (vi) that the witnesses of the respondents / defendants had also deposed of the encroachment in the form of temple having come into existence during 1970, eviction proceedings having been initiated, eviction order being obtained and possession being taken by the Estate Officer – not a single question had been put by the appellant / plaintiff to the witnesses in this regard;
- (vii) that on the contrary, witnesses of the appellant / plaintiff admitted that they knew of the position post the year 1996 and not prior thereto;

- (viii) that Sh. Raghbir Singh against whom the eviction order was passed by the Estate Officer in the year 1982 had claimed himself to be Secretary of Sanatan Dharam and of the said temple;
- (ix) that though a person in peaceful possession for long was entitled to protection but in the instant case, the respondents / defendants in their written statement had stated that they were not causing any interference in the functioning of the temple and would take appropriate steps to evict the encroachers in accordance with law – the appellant / plaintiff had thus failed to prove that the respondents / defendants had tried to forcibly dispossess the appellant / plaintiff for any cause of action to accrue to the appellant / plaintiff; and,
- (x) that the remedy of injunction is equitable one and the plaintiff / appellant could not be permitted to seek the aid of the Court to protect its unlawful possession by seeking injunction against the true owner.

Accordingly, the suit was dismissed.

9. The counsel for the appellant has at the outset stated that the appellant / plaintiff is not claiming title to any land not even to the land admeasuring 0.01 acres under the temple and is confining the relief to the said 0.01 acres of land underneath the temple only and not to the entire 3.3 acres of land qua which the suit was originally filed. After stating so,

he has contended that the learned Additional District Judge has presumed acquisition of land from the proof only of the Notification under Section 6 of the Land Acquisition Act, 1894 and without any award pursuant to land acquisition having been proved. Reliance in this regard is placed on the judgment dated 09.05.1991 of the Division Bench of this Court in Civil Writ Petition No.2616/1986 titled ***Union of India Vs. M/s I.S. Goel and Company***. However on enquiry whether the land admeasuring 0.01 acres underneath the temple is admitted to be covered in the Section 6 Notification, the counsel fairly admits that it is so covered.

10. I may in this regard notice that the respondents / defendants have without any application and under a list of documents dated 22.08.2013 have filed photocopies of certified copies of Awards No.182 and 183 pertaining to acquisition of agricultural land and abadi respectively of village Mehram Nagar.

11. The counsel for the appellant / plaintiff at the commencement of hearing stated that he had also received copies of the said Awards on 22.08.2013 and will be verifying the same; however the need therefor was not felt in view of the admission of the appellant / plaintiff in the plaint itself of the land of the village having been so acquired.

12. The counsel for the appellant / plaintiff also contends that acquisition can be said to have been completed only when possession of the land is taken over and has in this regard relied on ***Govt. of NCT of Delhi, Land and Building Department Vs. Smt. Poonam Gupta*** 125 (2005) DLT 423 (DB) and ***The Special Land Acquisition Officer,***

Bombay Vs. M/s Godrej & Boyce AIR 1987 SC 2421. It is stated that there can be no presumption of acquisition having been completed from the Notification under Section 6 of the Land Acquisition Act.

13. The counsel for the appellant / plaintiff has next invited attention to copy of the letter dated 31.05.1913 of the Government of India, Army Department, Shimla to the Quartermaster General in India, copy of which has been filed by the respondents / defendants along with their application under Order 41 Rule 27 of the CPC and therefrom has contended that the claim of acquisition pursuant to the notification of the year 1911 is wrong. It is also contended that there is no order of the Delhi Government for acquisition.

14. It was put to the counsel for the appellant / plaintiff that since the appellant / plaintiff itself is relying upon the documents filed by the respondents / defendants along with their application under Order 41 Rule 27 of the CPC, don't they automatically stand admitted into evidence.

15. No plausible answer is forthcoming.

16. When it was enquired from the counsel for the appellant / plaintiff as to what is the jurisdiction of the Civil Court to grant the relief of mandatory injunction of making entries in the General Land Register of Delhi Cantonment, the counsel for the appellant / plaintiff stated that as far as the land in Cantonment Areas is concerned, the requirement for maintenance of Register is of the Cantonment Authority only and to which direction can be issued only by the Civil Court. Upon it being

further put to the counsel for the appellant / plaintiff as to whether the appellant / plaintiff has proved the land to be situated in a Cantonment Area and that the appellant / plaintiff has not even impleaded the Cantonment Board as a party to the suit, the counsel for the appellant / plaintiff again referred to a number of documents filed by the respondents / defendants along with their application under Order 41 Rule 27 of the CPC to argue that the same demonstrated the land to be in a Cantonment Area. However the counsel could not show from the Cantonments Act, 2006 as to who is to maintain the General Land Register or constitution of any Authority as the Cantonment Authority, as was sought to be argued.

17. The counsel for the appellant / plaintiff lastly drew attention to the copies of the Land Acquisition Awards No.182 and 183 filed by the appellant / plaintiff to contend that the same do not show acquisition of the entire land of village Mehram Nagar. It is argued that as per Section 6 Notification proved before the Trial Court, the total land of the Revenue Estate of Mehram Nagar was of 946 acres; that the Award No.182 is pertaining to 822.54 acres and the same refers to an earlier award pertaining to 97.89 acres, and the Award No.183 is pertaining to 6.88 acres only; that the total thereof i.e. 927.31 acres is short of 946 acres and which establishes that the balance land was not acquired and the temple is constructed on the said balance land.

18. Not only is the last of the aforesaid argument of the counsel for the appellant / plaintiff off the cuff and erroneous inasmuch as the Award

No.182 also refers to 18.56 acres being already Government land and addition whereof to 927.31 acres aforesaid makes the total land 945.87 acres i.e. approximately 946 acres with respect to which Section 6 Notification was issued, but the reliance by the counsel for the appellant / plaintiff on the said awards also cuts into the argument otherwise of the counsel for the appellant / plaintiff of the said awards being not part of the Trial Court record and thus being incapable of consideration at the appellate stage. The counsel for the appellant / plaintiff having relied upon the said documents to buttress his case, cannot object to the same being relied upon to dismiss the case of the appellant / plaintiff.

19. Per contra, the counsel for the respondents / defendants has contended that it was not the case of the appellant / plaintiff in the plaint that the acquisition proceedings in the village had not been completed; rather the appellant / plaintiff had in the plaint set up a case of the subject land being outside the acquisition otherwise effected in the village. He has further argued that the facts speak for themselves; earlier Sh. Raghubir Singh on behalf of the temple had contested the eviction proceedings before the Estate Officer and in which an order of eviction was passed in 1982 and eviction effected in the year 1983; soon thereafter in 1984, the appellant / plaintiff Society was got incorporated. He has further argued that a reading of the Awards show that the entire land of the village had been acquired. It is further argued that the said awards are public documents and the Court can always take notice of the same. It is further argued that the persons at the helm of the appellant / plaintiff are commercially exploiting the land by constructing halls, Dharamshala and

hiring out the same for the purposes of weddings, other functions, fair etc. It is contended that the land is urgently required by the NSG for the purpose for which the same has been allotted to it.

20. I may clarify that the counsel for the appellant / plaintiff had relied on the Awards to contend that the same are not of acquisition of the entire land, in his rejoinder argument.

21. The appellant / plaintiff had filed the suit from which this appeal arises for permanent injunction restraining dispossession and for mandatory injunction directing the recording in its name of the land in the General Land Register. Such reliefs were claimed by the appellant / plaintiff by claiming rights to the said land. However today in the arguments, the counsel for the appellant / plaintiff has admitted that the appellant / plaintiff is not claiming any title to the land, not even to the land ad-measuring 0.01 acres underneath the temple and is claiming only a right to management of the temple. However upon being asked as to on what basis appellant / plaintiff has right to management of the temple, which is alleged to be immemorial, and when the appellant / plaintiff itself came into existence only in the year 1984, no answer is forthcoming. Similarly there is no answer to the basis on which the mandatory injunction for entering the name of the appellant / plaintiff in the General Land Register is claimed. In fact the counsel for the appellant / plaintiff though generally referred to the rules under the Cantonments Act but could not state as to on what basis the General Land

Register is maintained and on what basis entries therein are required to be made.

22. The aforesaid alone is sufficient for dismissal of the appeal.

23. The counsel for the appellant / plaintiff at this stage interrupts and states that the learned Additional District Judge having in the impugned order observed that a person in long peaceful possession can be removed only by legal process and that the respondents / defendants had denied having meted out any threats to the appellant / plaintiff, erred in instead of decreeing the suit for permanent injunction on the said basis, dismissing the suit.

24. It is not the case, that the concession of the respondent / defendants in this regard is anywhere else then in the written statement. All that the respondents / defendants have stated in the written statement is that they will take appropriate action / proceedings. The question which arises is, whether the respondents / defendants, having already on an earlier occasion taken action under the PP Act for eviction in accordance with law of encroachment in the form of temple, upon re-encroachment, are again required to take action under the PP Act.

25. In my opinion, the respondents / defendants cannot be compelled to do so. The order of eviction under the PP Act against Sh. Raghbir singh has become final. The documents proved on record show that Sh. Raghbir Singh was proceeded against as Secretary of the Sanatan Dharam Mandir and not in his personal capacity. Upon enquiry whether the

appellant / plaintiff has proved as to who are the founding members of the appellant / plaintiff or what was / is the constitution or the rules and regulations of the appellant / plaintiff society, the counsel for appellant / plaintiff replies in negative. It is well nigh possible that Sh. Raghbir Singh, after the order of eviction against him, with certain others formed the appellant / plaintiff Society. Sh. Raghbir Singh or for that matter others in management of the temple cannot merely by incorporation of the appellant / plaintiff society have a second round. The public authorities who are owners of the land cannot be compelled to so repeatedly take proceedings for ejectment merely because the encroachers over the public land re-encroach. The Supreme Court in *S.P. Chengalvaraya Naidu Vs. Jagannath* (1994) 1 SCC 1 has held that the Courts are today inundated with encroachers of public land and have to deal with them appropriately.

26. Though the counsel for the appellant / plaintiff had stated that the constitution of the appellant / plaintiff has not been filed or proved before the Court but a perusal of the Trial Court record shows the same to have been proved as Ex.PW3/1 and which shows the said Raghbir Singh to be a founding member and Secretary of the appellant / plaintiff Society. It was perhaps for this reason only that the counsel for the appellant / plaintiff did not want to draw attention thereto.

27. With the appellant / plaintiff himself relying upon the awards, the argument earlier raised of acquisition having not been proved dissipates.

28. I may even otherwise note that the appellant / plaintiff itself admitted the land to have been shown in the General Land Register as defence land and having not challenged the said entry is found to have admitted acquisition of the land therefrom also. It also shows that the appellant / plaintiff had knowledge that the possession of the land in pursuance to the acquisition Notification had been taken.

29. No error is thus found in the impugned judgment and decree holding the appellant / plaintiff to have failed to establish any rights whatsoever to the land or to the temple so as to maintain the reliefs claimed in the suit.

30. The suit therefore fails and is dismissed with costs of Rs.20,000/-.

31. The counsel for the appellant / plaintiff states that the possession of the appellant / plaintiff be protected for a period of two weeks.

32. The appellant / plaintiff having been found to be a rank trespasser and re-encroacher over the land, has no equities in its favour and is not found entitled to any sympathy, more so when there was no interim protection during the pendency of the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

AUGUST 26, 2013

‘gsr’..