

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

Date of Decision: May 09, 2014

+ **RFA(OS) 72/2013 & CMs 10341-42/2013**

PANKAJ BAJAJ

.....Appellant

Through: Sh.Manav Gupta, Adv.

Versus

MEENAKSHI SHARMA & ORS.

..... Respondents

Through: Mr. S.K. Pathak with Mr. Amit Sinha and Mr. Rohit Aggarwal, Advocates for R-1.
Mr. Subrat Deb, Advocate for DDA/R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. NAJMI WAZIRI

1. This Appeal challenges the order of the learned Single Judge dated 1st July, 2013 (“**impugned order**”), whereby the learned Single Judge had dismissed the appellant’s suit, i.e. CS (OS)/1114/2009 (“**Suit**”) seeking (a) perpetual injunction against dispossession from suit property, i.e., A-20, New Friends Colony, New Delhi and (b) declaration that restoration allotment of the same by the Lieutenant Governor, on 2nd May, 2009 was illegal. However, the Suit was itself dismissed on the ground that the plaintiff (appellant herein) had no title to the suit property. The impugned order observed *inter alia* that since the appellant had set up his case on the basis of a document, which could

not have vested any title in him, the Suit was without any *locus* or cause of action.

2. The circumstances in which the Suit came to be filed can be traced to 13th November, 1959 when a notification under section 4 of the Land Acquisition Act, 1894 (“**Act**”) was issued in respect of lands (including the suit property), comprised in Khasra 60/3, measuring 1 Bigha 17 Biswas in the Revenue Estate of Village Khizrabad, Delhi. A Notification under section 6 was issued on 9th January, 1969 and notices under sections 9 and 10 were served on the land-owners on 20th June, 1971. This acquisition was to enure to the benefit of the respondent no. 5 (“**Society**”); the lands under acquisition were leased to the Society under agreements dated 13th February, 1963 and 15th December, 1964 (hereafter collectively referred to as the “**Lease agreements**”), for developing the lands as per the sanctioned layout plan and thereafter sub-leasing it to its members. The owners of Khasra No. 60/3 challenged the acquisition before this court in W.P. (C). 764/1971 (“**Writ Petition**”). An interim order on 12th July, 1971 protected the landowners from dispossession. This order was confirmed on 9th August, 1971.
3. Meanwhile, the land under Khasra No. 60/3 was divided into four plots, bearing numbers A-13, A-14, A-19 and A-20; the suit property is the land comprised in plot A-20. It was the appellant’s case that the land comprised in the said four plots remained in the possession of the original landowners / writ petitioners. The Society allotted the said

four plots to different parties who subsequently became parties to the Writ Petition. The allottees of plots A-13, A-14 and A-19 settled the differences with the original landowners and the challenge in respect of the said plots stood withdrawn in 1987 and 1994. It is the case of the appellant that the challenge in respect of the said plots was withdrawn as the allottees, under the settlement, compensated the owners of the plots – not the respondent no. 3 (DDA).

4. However, the challenge to the acquisition remained, to the limited extent of the original landowners' interest in the suit property. This challenge too extinguished in 2005, when a compromise application was filed and the Writ Petition was withdrawn. The order of 19th April, 2005 disposing off the Writ Petition recorded *inter alia* that the possession of the suit property has already been handed over to the Society and there was no dispute as to the validity of the acquisition proceeding. The appellant contends that the settlement came about only as a result of the Society making payment to the original landowner using the monies given by the appellant – not from any amounts given the respondent no. 1; which fact stands admitted by the latter.
5. It is not disputed that in 1982, by a sub-lease, the Society allotted plot A-20 to Mr. R. D. Sharma, through whom the respondent No. 1 seeks to claim, the allotment to Mr. R. D. Sharma was cancelled / withdrawn in 2001 due to non-compliance with the terms of the sub-lease, and subject to payment of certain charges, the allotment was restored in 2009. Neither the allotment nor the restoration in favour of Mr. R. D.

Sharma is disputed, except that the petitioner questions the powers of the Lt. Governor / DDA to so do. The appellant has had other proceedings with the respondent no. 1 in respect of the suit property, which are not relevant to the present dispute; he claims title to the suit property on the basis of the settlement with the original landowner and a sale deed executed by the Society in 2007. He has been enjoying the property since 2009 on the basis of an interim order passed in the Suit.

6. He contended that when the possession of the suit property was admittedly not taken till 2005 the acquisition could not be deemed as complete nor that the Society has received the possession under the acquisition; that the latter's possession and title to the property is derived not from the acquisition or the Lease Agreements but from the settlement of the disputes in 2005, which, in turn, was on the basis of the monies paid by the appellant; that he derives his title from the 2007 agreement executed by the Society in his favour.
7. The appellant submits that the respondent no. 1, in collusion and connivance with the respondents no. 3 and 4 were seeking to illegally and adversely affect his ownership and possession of the suit property through the restoration of the allotment in 2009; he emphasised that the restoration was much after the sale in 2007. He thus sought (a) perpetual injunction against respondents no. 1 and 3 from dispossessing the appellant; (b) respondent no. 3 being enjoined from entering upon the suit property; (c) respondent no. 4 being enjoined from assisting respondent no. 1 in taking possession of suit property;

(d) declaration that the restoration by respondent no. 2 is illegal and unlawful; (e) declaration that the sub-lease by respondent no. 1 is illegal, unlawful and inoperative; and (f) such further and other orders, with costs.

8. An application was filed by the respondent no. 1 in the Suit under Order VII rule 11 of the First Schedule to the Code of Civil Procedure, 1908 (“**Code**”), pursuant to which the impugned order came to be passed. The application sought to contend that the plaint ought to be rejected as it does not disclose any cause of action.
9. Before the learned Single Judge, the case of the respondent nos. 1 and 3 was that the suit was not maintainable because the appellant had no *locus standi*; that since the Society was not competent to execute the sale deed of 2007, the appellant would have no right, title or interest in the property. To demonstrate this, they relied on the provisions of the Lease Agreements of the Society with the President of India, whereunder the former was given the right to only sub-lease the suit property, and not to alienate it. It was emphasised that the Society was prohibited from selling the suit property. They had further relied upon the order dated 19th April, 2005 disposing off the Writ Petition to demonstrate that it was an admitted position of the original landowners that there was no challenge to the validity of the acquisition proceedings and the possession of the suit property was already handed over to the Society.

10.The appellant asserted the Society's right to execute the sale deed of 2007; that the possession of the suit property was transferred pursuant to the settlement with the original landowners and withdrawal of the writ petition on 19th April, 2005; that pursuant to the settlement, it was the Society and not the DDA that acquired the interest and possession of the land; that DDA never acquired title to or interest in the suit property as possession was never taken over pursuant to the acquisition; that thus Society was entitled to execute the sale deed of 2007 in favour of the Appellant. To reinforce this contention, the appellant relied on a response by DDA to a query under the Right to Information Act, 2005 which stated that till 2005, the possession was not taken either pursuant to the acquisition or otherwise. It was further argued that in any case, a triable issue arose as to whether the Society acquired possession of the suit property pursuant to the acquisition or (as is sought to be pleaded by the appellant) pursuant to the settlement culminating in the order of 19th April, 2005. It was lastly argued that since the appellant was in possession of the suit property, the same ought to not be disturbed.

11.The learned Single Judge agreed with the contentions of the respondents, since it was, in the opinion of the learned Single Judge, *ex facie* evident from the plaint and documents filed therewith that the appellant has no *locus standi* nor is any cause of action found in the plaint. He accordingly dismissed the Suit. He reasoned:

- 11.1. The interest in and possession of all the lands under acquisition were transferred to the Society pursuant to the Lease agreements.
- 11.2. It is inconceivable how the interest and possession only for the suit property would transfer to the Society pursuant to the order of 19th April, 2005.
- 11.3. In any case, even the compromise application filed for withdrawing the Writ Petition had acknowledged that the interest in the suit property passed to the Society under the Lease agreements. The sale deed sought to be relied upon by the appellant finds the Society admitting to the same.
- 11.4. Once it is held that the Society derives its interest to the land only pursuant to the Lease agreements, any further acts of the Society *qua* the land would be governed by and subject to the terms of the Lease agreements.
- 11.5. The Lease agreements expressly prohibit any sale of the land by the Society and only permit a transfer by way of sub-lease, which admittedly was not done in the instant case.
- 11.6. Thus, it is *ex facie* evident from the documents filed with the plaint that the appellant has neither *locus standi* nor any cause of action to file the suit, as the appellant could not have received any title to the suit property from the Society.
- 11.7. When it is already admitted by the appellant's predecessor-in-interest, i.e., the Society – in both the order dated 19th April, 2005 as well as the sale deed the appellant relies on – that the possession was received under the Lease agreements, no triable

issue arises as to when the possession was actually transferred.

The parties need not be relegated to a trial for the same.

11.8. The case of appellant that he is in possession of the property and hence is entitled to an order protecting the same from any disturbance is not founded on the pleadings. A party cannot be allowed to set up a case not specifically pleaded. The appellant has set up a case in the Suit based on the sale deed of 2007 and cannot now seek relief on the basis of possession.

12.Mr. Tiku, learned Senior Advocate for the appellant contended that the impugned order failed to take into account that the possession of the suit property passed on to the Society only pursuant to, or in any case, subsequent to the order of 19th April, 2005. He laid especial reliance on the reply of the DDA to his RTI application. He further contended that the property could not have been allotted to respondent no. 1's predecessor-in-interest when the possession of the property was never taken over and the acquisition process has *per se* not been completed. He further emphasised that the respondent no. 1 could not have acquired or gained any interest in the suit property from the Society, since the latter would have had no interest prior to 19th April, 2005. He submitted that in any case, the DDA could have acquired no right, title or interest in the suit property, since the possession of the property was never taken pursuant to the acquisition.

13.It was further submitted that the Society transferred the suit property to the appellant only in view of the fact that the appellant settled the

disputes with the predecessor-in-interest / original landowners (which settlement culminated in the order dated 19th April, 2005). This, he reasoned, was in keeping with the outcome of resolution of identical disputes *qua* the other plots of land (A-13, A-14 and A-19) by the allottees with the original landowners.

14.He contended that in an application under Order VII rule 11 ought to be decided based on the averments in the plaint alone. He contended that the learned Single Judge has incorrectly proceeded upon an assumption that the possession of the suit premises were taken pursuant to the acquisition without giving an opportunity to the appellant to prove his case. It was contended that the only mandate of order VII rule 11 was to reject a plaint if, on a reading of the plaint, it is apparent that no cause of action is disclosed. He further contended that once it is seen from the plaint that a reasonable case has been made out, the appellant ought to have been given an opportunity to prove his case in trial. He contended that the impugned order has caused great prejudice to the appellant, who is now remediless.

15.*Per contra*, Senior Counsel Mr. Neeraj Kishan Kaul appearing for the respondent no. 1 contended that the impugned order suffers from no infirmity. He contended that it is *ex facie* evident from the documents filed with the plaint that the suit property was given to the Society pursuant to the acquisition and under the Lease Agreements. He contended that once it is seen that the Society acquires interest in the suit property under the Lease Agreements, it is a logical sequitur

therefrom that the Society would be bound by the terms thereof – including the prohibition from selling. In the circumstances, he submitted, no title could have flown from the Society to the appellant. He submitted that where the plaint itself discloses no cause of action, the Suit ought to be dismissed and there was no infirmity in the action of the learned Single Judge in doing so.

16. The judge considering a matter under Order VII rule 11 of the Code ought to bear in mind that the issue to be considered is not of whether the plaintiff has cause of action to file the suit, but as to whether the plaint has disclosed a cause of action.¹ The public policy behind the provision of Order VII rule 11 could be found in the judgement of the Supreme Court in *T. Arivanandam v T. V. Satyapal & Anr.*,² where it held that *if on a meaningful – not formal – reading of the plaint, it is manifestly vexatious and meritless, and does not disclose a cause of action*, the power under Order VII rule 11 ought to be exercised.

17. The Supreme Court, in *Liverpool & London S. P. & I Association Ltd. v M. V. Sea Success I & Anr.*,³ observed:

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety

¹ *State of Orissa v Klockner and Co. & Ors.*, (1996) 8 SCC 377.

² (1977) 4 SCC 467.

³ (2004) 9 SCC 512.

must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See Mohan Rawale [(1994) 2 SCC 392] .)”

18.The Suit also ought to be considered in the light of the above pronouncements. The case of the appellant in the Suit is that the possession of the suit property was never taken over pursuant to the acquisition. In the plaint, it has been *inter alia* averred:

- 18.1. The proceedings in the acquisition remained stayed since 1971 and till 2005.
- 18.2. The disputes *qua* the lands comprised in plots A-13, A-14 and A-19 were settled between the original owners thereof and the allottees of the plots.
- 18.3. The original owners of the lands comprised in plots A-13, A-14 and A-19 withdrew the dispute *qua* the acquisition in view of the settlement with the allottees.
- 18.4. The writ petition before this Court was thus only in respect of the suit property.

18.5. Even the challenge to that limited extent was settled between the original owners and the Society and the writ petition was withdrawn in 2005.

18.6. The possession of the suit property was given to the Society pursuant to the settlement and the withdrawal on the basis of the consent order.

18.7. The Society then sold the property to the appellant and put him in possession thereof, which is now sought to be disturbed by the respondent no. 1 in collusion and connivance with the other respondents.

19. The plaint contends that in the past the respondents have been involved in various proceedings *inter se* in respect of the allotment made to the predecessor-in-interest of the respondent no. 1 (which was admittedly cancelled in 2001 and reinstated in 2009); it sought to make out a case that the respondent no. 1 has neither right, nor title, nor interest in the suit property at the time of the sale by the Society to the appellant; that the respondents have colluded to oust the appellant from the suit property and to gain possession thereof illegally. Alongwith the plaint, various documents were filed purporting to be in support of the appellant's case.

20. It has been the case of the appellant before the learned Single Judge as well as before this Court that the possession was never taken by the respondent no. 3 pursuant to the acquisition proceedings. The appellant has sought to set up a case based on the above averments that the

possession was transferred by the original owners to the Society directly. Even this transfer of possession, it is contended, is pursuant to the settlement between the original owners and Society.

21.It has further been contended that even the settlement *qua* the suit property was effected by the Society using the monies furthered by the appellant and thus the Society transferred the suit property to the appellant. Although the respondent no. 1 is said to have made extensive submissions before the learned Single Judge *qua* her title to / interest in the suit property, the same are not relevant for deciding the application under Order VII rule 11 of the Code. As earlier observed, the only relevant material for considering an application under Order VII rule 11 is the averments in the plaint – read as a whole – and the documents filed therewith.

22.This Court is of the view that the averments in the plaint and the documents filed therewith do disclose a cause of action. The case of the appellant is that the possession of the suit property was never taken pursuant to the agreement and that the Society has acquired title, possession and / or interest therein from the original owners pursuant to the settlement and not the acquisition. It is thus that the appellant seeks to set his title up. This cannot be said to be a case of clever or artful drafting to create an illusory cause of action that ought to be nipped in the bud under Order VII rule 11. The duty of the Court under Order VII rule 11 is to consider whether the averments in the plaint taken as a whole, alongwith the documents filed therewith, if taken to be true,

would warrant a decree in favour of the plaintiff. This Court is of the view that in the instant case, the averments and the documents would so do.

23.The learned Single Judge, in the opinion of this Court, erred in placing undue reliance upon the recitals in the 2007 agreement and on the content of the compromise application filed in the writ petition. It is incontrovertible that if the Society had acquired title / interest in the suit property pursuant to the acquisition and under the Lease Agreements, it would not be competent to execute the sale deed. However, that is not the case set up by the appellant in the Suit. The case of the appellant has been that the possession was handed over to the Society pursuant to a settlement with the original owners. Therefore, the appellant ought to be provided an opportunity to prove his case in trial.

24.However, the learned Single Judge held that the appellant is estopped from contending so and cannot seek a trial in respect of the said issues. This, he held, by relying on (a) the acknowledgement (to the effect that the Society derives title to the suit property under the acquisition and the Lease Agreements) in the compromise application, (b) the recitals of the 2007 agreement (which state that the Society derives title to the suit property under the Lease Agreements), (c) the law laid down by this Court in *Nagin Chand Godha v Union of India*,⁴ and *Rajbir*

⁴ 2003 (70) DRJ 721 (DB).

*Solanki, Dr. v Union of India*⁵ to the effect that the Collector need not prove actual physical possession being taken over, so long as the record indicates that possession is taken over.

25.In the opinion of this Court, the aforementioned course of action as adopted by the learned Single Judge would not be warranted on an application under Order VII rule 11. As the Supreme Court observed in *Liverpool & London S. P. & I Association Ltd. v M. V. Sea Success I & Anr.*,⁶ *[i]n ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown.* Although the said documents may contain certain material that may not be in keeping with the case of the appellant, it would not warrant dismissal of the plaint under Order VII rule 11. *De hors* a patent contradiction, i.e., one ascertainable *ex facie* from the record, without involving any lengthy or complicated argument or a long drawn out process of reasoning, between the averments and the documents, the Court considering an application under Order VII rule 11 ought to not lightly ignore an averment in the plaint.

⁵ 2008 (101) DRJ 577.

⁶ (2004) 9 SCC 512.

26.The judgements of this Court referred to hereinabove were made in a different context. In *Nagin Chand Godha v Union of India*,⁷ the Court was faced with a situation where symbolic possession was taken by execution of a *panchnama* and thereafter the erstwhile owner claimed that since he was still in possession thereof, the land ought to be denotified. In the said circumstances, the Court observed that land vests in the Union once symbolic possession is taken and shown from record. Similar was the conclusion of the Court in *Rajbir Solanki, Dr. v Union of India*,⁸ where symbolic possession was taken – admittedly so – over seven years ago, but denotification was sought on the basis that the petitioner therein remained in actual possession.

27.In the present case, the only records that the learned Single Judge appears to have relied upon to arrive at the conclusion that possession was taken were (a) the aforestated acknowledgement in the compromise application filed in the writ petition and (b) the recitals in the 2007 agreement. There is admittedly no *panchnama* filed with the plaint to indicate that symbolic possession was taken over. Nor is there any material to indicate that an *overt act* has been done by the Collector to indicate that possession had been taken over, as was the case in the aforestated two decisions of this Court.

28.In the circumstances, this Court is of the view that the conclusion of the learned Single Judge that the Society acquired title / interest in the

⁷ 2003 (70) DRJ 721 (DB).

⁸ 2008 (101) DRJ 577.

suit property under the Lease Agreements is unwarranted at the stage of considering an application under Order VII rule 11. The plaint does disclose a cause of action which ought to be considered in trial. Thus, the impugned order is set aside; the parties are directed to present themselves before the concerned Single Judge as per roster allocation, on _____ for directions towards further proceedings in the Suit.

29.The appeal is allowed in the above terms, without any order as to costs.

**NAJMI WAZIRI
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

MAY 09, 2014