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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 157/2012

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24th April, 2014

GOVERNMENT OF NCT OF DELHI

....Appellant

Through: Mr. V.K. Tandon, Advocate.

VERSUS

LATE KABOOL CHAND MAITHAL (THROUGH LRS) AND ORS.

..... Respondents

Through: Mr. Arun Kumar, Advocate with Mr. Udit Goyal, Advocate for respondent No.1.

Mr. H.L. Narula, Advocate for respondent No.2.

Mr. Pawan Mathur, Advocate for respondent No.3.

Ms. Mini Pushkarna, Advocate for respondent No.4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.16132/2012 (condonation of delay)

1. For the reasons stated in the application, delay of 43 days in re-filing the appeal is condoned.

C.M. stands disposed of.

+ RSA No.157/2012 and C.M. No.16131/2012 (stay)

2(i) This second appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed against the judgment of the first appellate court dated 31.10.2011; by which the first appellate court in the appeal filed by the defendant no.5(hereinafter referred to as ‘colonizer’) against the judgment of the trial court dated 10.2.2011 modified the judgment of the trial court by passing the following operative part:-

“The respondents no.2 to 4 shall acquire the suit land by paying the plaintiff/cross objector due compensation calculated on the basis of the market rate prevalent as on today as per LAC guidelines within the period of four months from the date of this order or in case the suit land is already acquired, then the plaintiff/cross objector shall be given the alternative plot of equal dimension in the same type of vicinity/locality within the period of four months from today. However, in case the respondents no.2 to 4 remain fall to make the compliance of the aforesaid directions then in that eventuality the cross objector would be entitled to get back the possession of the suit property by launching the appropriate execution proceedings before the competent court of law.

It is ordered accordingly.” (emphasis is mine)

(ii) The trial court in the suit for possession which was filed by the respondent no.1/plaintiff (now represented through his legal heirs) decreed the suit for possession by making the following observations:-

“23. Relief:- In view of the above observations on issue no.1, the suit of the plaintiff stands decreed with costs with modified relief to the effect that plaintiff is initially entitled to the alternative plot of

equal dimension in the same type of vicinity/locality and possession thereof if the land has not been acquired and if the land is shown in the record as acquired then the plaintiff will be entitled to the compensation as market rate prevalent as on today as per LAC guidelines. The competent authority will decide the issue as to whether the land has been acquired or not by the reasoned order after going through the record within two months from today and will take the decision thereafter as per judgment. Decree sheet be prepared. File be consigned to record room.” (underlining added)

(iii) Plaintiff had claimed in the suit that he was the owner of the suit plot bearing no.C-20, Inder Puri Colony, New Delhi admeasuring 500 sq yds because he had purchased the same from the colonizer vide registered sale deed dated 24.11.1952. Plaintiff states that he was put in possession by the colonizer pursuant to the sale deed dated 24.11.1952. The other paras in the plaint refer to the illegal dispossession of the plaintiff by the defendants generally. The defendant nos.1 to 4 in the suit were Union of India, Delhi Administration, Director of Education of Delhi Administration and Delhi Development Authority respectively. Defendant no.5, as already stated above, was the colonizer. In the suit plaint in para 10 it was averred that the defendant no.5 had provided alternative plots to plot holders who were illegally dispossessed in the revised lay out plan of the colony, and therefore, plaintiff had become entitled to such alternative plot from the defendant no.5. It needs to be observed, at this stage, that the plaint was not too well drafted because how cause of action arose against each of the defendants

including the defendant no.5 specifically was not mentioned and even the prayer clause was a general prayer clause seeking decree of possession in favour of the plaintiff as against the defendants with respect to the suit plot.

3. Since the trial court by the judgment dated 10.2.2011 decreed the suit against all the defendants, the defendant no.5 filed an appeal questioning his liability as per the judgment of the trial court dated 10.2.2011 and which has been dismissed by the impugned judgment holding that there is no liability of the defendant no.5/colonizer/appellant in the first appellate court and the liability to give plot or compensation would be upon the defendant nos.2 to 4 in the suit. Defendant no.3 in the suit is the Government of NCT of Delhi and which has therefore preferred the present appeal questioning the impugned judgment by which they have been held liable and not the colonizer/defendant no.5. It may be noted that by the impugned judgment of the first appellate court, cross objections of the respondent no.1/plaintiff were allowed and consequently the present appeal is also against allowing of the cross objections by which directions were prayed by the respondent no.1/plaintiff for the Government to acquire the land and to pay compensation.

4. I need not go issue-wise while discussing merits of the matter because really there are two basic issues which arose and which is firstly as
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to whether the appellant/Government of NCT of Delhi through the Director of Education which is running a school in a large plot of land which includes/covers the land in question is liable to acquire the land and pay compensation or that the appellant/defendant no.3 is liable to pay compensation/market value of the suit plot to the respondent no.1/plaintiff or that whether the compensation has to be paid for the suit plot to the respondent no.1/plaintiff not by the appellant or the Union of India/defendant no.1 but only by the colonizer/defendant no.5.

5. For the disposal of the second appeal therefore, the following substantial questions of law are framed:-

(i) Whether the courts below have committed a gross illegality and perversity in holding the suit for possession or grant of alternative plot or grant of compensation of the suit land as within limitation?

(ii) Whether the courts below have committed grave perversity in fastening the liability of grant of an alternative plot or compensation for the suit land upon the defendant nos.2 to 4 and not exclusively upon the defendant no.5 who is found to have dis-possessed the respondent no.1/plaintiff by submitting the fresh lay out plan for sanction to the Municipal Corporation of Delhi (MCD) in the year 1962 and sanctioned by the MCD in the year 1965?

6. Certain admitted facts are first required to be noted. The defendant no.5/colonizer did in fact sell a plot which was in 1952 bearing no.C-20 (admeasuring 500 sq yds) to the respondent no.1/plaintiff in terms of the sale deed dated 24.11.1952, Ex.PW1/4. As per this sale deed and the contents thereof, possession of the plot C-20 was handed over to the respondent no.1/plaintiff. The colonizer had first originally submitted a lay out plan to the predecessor-in-interest of the MCD i.e M/s. Delhi Improvement Trust in early 1950s, but on MCD being constituted under the Delhi Municipal Corporation Act, 1957, a fresh lay out plan with specific plots and their location in the site plan/lay out plan, was submitted with the MCD. MCD approved this lay out plan in terms of its resolution no.303 dated 14.6.1965, Ex.PW1/13 and in which plan the plot no.C-20 had lost its identity as the plot C-20 was not found in the lay-out plan submitted by the colonizer to the MCD for sanction under Section 313. Plaintiff claims that he allegedly came to know only for the first time in the year 1985 (ie 20 years after sanction of the lay out plan in 1965) of his dispossession from the suit plot and consequently the subject suit for possession was filed on 18.12.1985.

7. Trial court by its judgment dated 10.2.2011 decided the issue of limitation by making the following observations:-

“19. Issue No.3. Whether the suit is barred by limitation? OPD:-

The onus of proving this issue was on the defendants. Certain correspondence have taken place between the parties. The plaintiff was in possession and there is nothing on record which could suggest that how he was informed regarding termination of his rights. Simplicitor suit for actual physical possession was filed though number of documents suggest that his rights existed in the suit property. In the sale deed Ex.PW-1/4, it has been mentioned that possession has been given to the purchaser. Ex.PW-1/12 clearly shows that sale deed was executed out of revised layout plan and scheme was held to be frustrated and he was directed to take refund of the amount. Thus, only paper transaction were challenged and it cannot be held that suit was beyond limitation. He was in possession of the property in question. Thus, this issue is decided in favour of the plaintiff and against the defendants and suit is held within limitation.”

8(i) In my opinion, the trial court has totally failed to give any worthwhile discussion on the issue of limitation which can even be said to be remotely reasonable. The aforesaid discussion really does not at all discuss the relevant documents with respect to dispossession of the respondent no.1/plaintiff and which allegedly was claimed by him to have come to his knowledge in the year 1985. In the aforesaid para 19 dealing with the issue of limitation neither the revised lay out plan approved on 14.6.1965 has been mentioned and nor it is mentioned in this paragraph that the MCD Resolution no.303 dated 14.6.1965 sanctioning the lay out plan itself states that colonizer had submitted a fresh demarcation plan/site plan/lay out plan and wherein admittedly the suit plot no.C-20 lost its

identification and got merged into a larger plot which was earmarked for a school. The aforesaid para 19 of the trial court judgment also does not discuss as to from which date specifically the alleged illegal dispossession of the appellant/defendant no.3 took place. The date/month/period of the dispossession was relevant to be noted because it is from such date/month/period the date will exist for the principle of adverse possession to be applied, whether with respect to grant or denial of relief of possession or grant/denial of the relief of compensation/market value of the suit plot.

(ii) In view of the totally convoluted reasoning amounting to no reasoning at all there is a gross perversity committed by the trial court and which has been upheld by the first appellate court and this Court acting under Section 100 CPC is bound to set aside the finding on the issue of limitation given by the courts below in favour of the respondent no.1/plaintiff and it is held that the suit would be barred by limitation whether for the relief of possession or for grant of alternative plot or for grant of compensation, and which is because at the very minimum/least on the date the fresh lay out plan was sanctioned by the MCD vide its resolution no.303 dated 14.6.1965, the respondent no.1/plaintiff was dispossessed because the suit plot ceased to have any identity as it became part of another larger plot which was earmarked for the school. There cannot exist a more

categorical fact to establish the dispossession of the respondent no.1/plaintiff than the resolution of MCD no.303 dated 14.6.1965. In fact, the respondent no.1/plaintiff would be dispossessed even earlier because the resolution dated 14.6.1965 in its first page itself, para 2 thereof states that the colonizer had submitted a new demarcation plan on account of objections being raised to the earlier submitted demarcation plan/lay out plan. Also, pursuant to the newly sanctioned lay out plan in terms of the resolution no.303 dated 14.6.1965, all the governmental authorities including the appellant and the MCD have acted. In my opinion, it does not lie in the mouth of the respondent no.1/plaintiff to plead and contend on the basis of a self serving convenient statement of being dispossessed in the year 1985 in view of the fact that actual dispossession did take place by the colonizer even prior to sanctioning of the lay out plan by the MCD on 14.6.1965 ie sometimes in 1961. Closing ones eyes to dispossession cannot and does not mean that cause of action qua dispossession allegedly arose in favour of respondent no.1/plaintiff as per a convenient date and year which allegedly arises at a subsequent point of time in 1985 as per the plaint. Limitation therefore arose from 14.6.1965 at least, and the period of 12 years as per Article 65 to reclaim possession of the plot would expire in the year 1977. The suit however was filed much later on 18.12.1985 and consequently the suit is

grossly barred by limitation so far as relief of possession is concerned. If the suit is barred so far as relief of possession is concerned, suit obviously would be barred for the alternative relief of damages/compensation/market value of the suit plot as on 18.12.1985 or an alternative plot being granted to respondent no.1/plaintiff.

9. No doubt, it would appear that the aforesaid aspects lead to a peculiar position that the Government has illegally dispossessed the respondent no.1/plaintiff, however, in reality this is not so because the respondent no.1/plaintiff has been dispossessed, not by the defendant nos.2 to 4, but by the colonizer/defendant no.5, and who submitted the revised sanctioned plan to the MCD which was approved on 14.6.1965 and it is as per this sanctioned plan the plot came into possession of the appellant/Government of NCT of Delhi as part of a larger plot which was earmarked for a school. Really therefore dispossession from the suit plot, which forms part of larger plot in which a school exists today of the appellant/defendant no.3/Government of NCT of Delhi, would have taken place of the respondent no.1/plaintiff by his being illegally dispossessed by the colonizer when the revised lay out plan was submitted for sanction to the MCD by the colonizer. I am informed that this revised lay out plan for sanction was submitted by the colonizer to the MCD sometime in the year

1961. In fact, therefore, really the respondent no.1/plaintiff was dispossessed in the year 1961 itself. I accordingly set aside the findings of the courts below on the issue no.3 of limitation and hold that the suit of the respondent no.1/plaintiff was time barred whether for possession or for grant of alternative plot or for grant of compensation by the defendant nos.2 to 4 including defendant no.3/appellant.

10. The issue is that whether there would be any equity in favour of the respondent no.1/plaintiff for claiming compensation/price of the plot for being granted by the defendant nos.2 to 4 including the appellant/Government of NCT of Delhi. This aspect has to be answered in negative against the respondent no.1/plaintiff because it is not that any of the defendant nos.2 to 4 had illegally dispossessed the respondent no.1/plaintiff, but in fact the respondent no.1/plaintiff was dispossessed by the colonizer/defendant no.5 when a fresh lay out plan was submitted by the colonizer in the year 1961 and which was sanctioned by the MCD in the year 1965. Grievance of the respondent no.1/plaintiff can therefore only be against the colonizer/defendant no.5 and not against the defendant nos.2 to 4.

11. In my opinion, the respondent no.1/plaintiff is solely to be blame for the present state of affairs because one fails to understand that why the respondent no.1/plaintiff went to sleep from 1961 to 1985 i.e a
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period of almost 25 years. Delay and laches therefore defeats any equity or a claim in equity which the appellant had by virtue of having purchased the plot in the year 1952 and the same is as regard whether the claim be against the defendant nos.2 to 4 in the suit or even against the colonizer/defendant no.5 and against whom also the suit for any relief would be barred by limitation.

12. In view of the above, the substantial questions of law are answered in favour of the appellant and defendant no.5, and the impugned judgments of the courts below are set aside, and the suit of the respondent no.1/plaintiff will stand dismissed, leaving the parties to bear their own costs.

APRIL 24, 2014
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VALMIKI J. MEHTA, J