

S~52.

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

+ RSA 260/2015 & C.M. Nos.12795/2015, 12796/2015 (condonation of delay of 156 days), 12797/2014 (Delay in refiling of 34 days)

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Sanjeev Sabharwal, Standing
Counsel with Mr. HemKumar,
Advocate

versus

MAHABIR SINGH & ANR Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

21.07.2015

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1. Having heard learned counsel, I am of the view that no useful purpose would be served in issuing notice on the aforesaid two applications to seek condonation of delay in filing and refiling of this second appeal. Consequently, I proceed to dispose of the appeal at this stage.

2. The respondents/ plaintiffs had preferred a suit to seek the relief of perpetual injunction against the appellant/defendant. The case of the plaintiffs was that late Sh. Bhim Singh, the father of plaintiff no.1 and the husband of plaintiff no.2 Smt. Gian Devi was the owner of plot falling in Khasra No.533, Village Wazirpur. Upon the demise of Sh. Bhim Singh, his four sons including the plaintiff no.1 and plaintiff no.2 became the co-owners. A family settlement was reached between the plaintiff and his brothers in the year 1970 and each of the brothers raised construction in their

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respective shares of the land.

3. The plaintiff claimed that the co-owners of the plot were in exclusive possession thereof falling in Khasra No.533. In this respect, reliance was placed on a decree passed by the court in declaratory suit no.339/1958 titled *Munshi & Ors. v. Onkar Nath* decided on 14.01.1959 by the Sub Judge, Delhi. Another declaratory suit had been filed being suit no.386/1959 titled *Munshi & Ors. v. Gaon Sabha Wazirpur*, challenging the validity of inclusion of the land of Khasra No.533 in L.R. Form No.2 as property belonging to Gaon Sabha Wazirpur, and the same was decreed vide judgment dated 17.03.1961 passed by the Sub Judge, Delhi.

4. The cause of action of the plaintiff was that the defendant/DDA had issued a demand cum notice dated 10.10.1991 to M/s Haryana Paints & Hardware claiming the suit property as part of Khasra No.533/3, and requiring them to pay damages from 01.04.1971 to 31.08.1980 amounting to Rs.9,058/-. The plaintiff opposed this action of the appellant. Since the communication of the plaintiff to the appellant in this regard did not bear any fruit, the suit was preferred to seek a restraint against the defendant/DDA from executing its writ of demand under section 68 of the Punjab Land Revenue Act, 1887.

5. The appellant/defendant filed its written statement claiming that the suit was barred by limitation; it was bad for want of notice under section 53B of Delhi Development Act, and; that the suit property fell in Khasra No.534 min of village Wazirpur which was acquired by award no.1329 and physical possession taken over on 01.09.1962. The appellant claimed that the land had been transferred to Wazirpur residential scheme on 13.06.1963

and placed at the disposal of DDA under section 22(1) of Delhi Development Act vide notification dated 30.08.1963. It was claimed that the plaintiff was an unauthorised encroacher on government land, and was liable to be evicted. The construction raised by the plaintiff was alleged to be illegal. On the aforesaid premise, the defendant sought to justify the issuance of notice under section 68 of the Punjab Land Revenue Act, 1887.

6. On the basis of the pleading, the learned Civil Judge framed three issues, namely-

- i) Whether the suit is barred by time?
- ii) Whether the suit is bad for want of notice under section 53B of Delhi Development Act?
- iii) Whether the plaintiff is entitled for relief of injunction?

7. Parties led their respective evidence. The Trial Court held that the suit was not barred by time; it was not bad for want of notice under section 53B of Delhi Development Act and, most importantly; the suit property fell in Khasra No.533 and not 534 as claimed by the appellant/defendant. Consequently, the plaintiff was held entitled to the relief sought in the suit. The first appeal preferred by the appellant has also been dismissed, affirming the findings of the Trial Court.

8. The discussion on merits i.e. on the issue whether the suit property fell in Khasra no.533 (as claimed by the plaintiff) or in Khasra no.534 (as claimed by the defendant) was dealt with under issue no.3 by the Trial Court in the following manner:

“The onus of proving this issue was on the plaintiffs. The gist

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of controversy in the present matter is the khasra no of the suit property. While plaintiffs claim that the suit property is situated in khasra no.533 Village Wazirpur, defendant claims it to be in khasra no.534. Plaintiffs have relied on order Ex PW1/13 passed in suit no.339/1958 in which the plaint filed by the father of plaintiff no.1 is Ex PW1/12. Ex PW1/14 shows that the certified copies of these documents could not be obtained since the original suit file was destroyed in fire on 15/16.03.1996. These documents however cannot help the case of plaintiffs for the reason that the order Ex PW1/13 was passed not on merits but ex parte. Moreover DDA was not a party in that suit and therefore would not be bound by findings contained therein

13. Plaintiffs have also relied on judgment Ex PW1/15 to say that their predecessor in interest was the landlord of the property situated to the South of the electric sub meter and 10-15 feet wide passage in khasra no 533.

14. Plaintiffs have further relied on judgment Ex PW1/16 passed in civil writ petition bearing no 376/1973 in which the petition filed by the father of plaintiff no.1 is Ex PW1/17. DDA was one of the parties in this writ petition. Hon'ble Delhi High Court was pleased to hold that the notifications under Land Acquisition Act in respect of the land belonging to the petitioner situated in khasra no 533 would stand quashed. DDA has not put a single suggestion to PW1 nor has it taken any stand in its written statement that these judgments do not pertain to the suit property but to some other property. On the contrary a positive suggestion was put to PW1 that the suit property is his ancestral property.

15. In support of its own case, DDA has not shown that the suit property is situated in khasra no 534. The red dot in Ex DW3/4 has been shown to be the suit property by DDA. However there is nothing to show who identified such location of the suit property and on what basis. For this reason award Ex DW 3/1, possession proceedings Ex DW 3/2, notification Ex DW 3/3 and jamabandi Ex DW 3/6 are of no help to the DDA since the same

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pertain to khasra no 534. The arrest warrant Ex DW 2/1, application Ex DW2/1C, demand notice Ex DW 2/1A as also order Ex DW 2/1B do not mention the khasra no. of the suit property. Moreover, even though DW2 stated that the Lands Management Department surveys the property and prepares a report before declaring any person as unauthorized occupant, still no such report was produced in the Court to ascertain how DDA concluded that plaintiffs/their tenant was unauthorized occupant.

Ld SLO has argued that vide khatoni Ex DW3/5 it is shown that khasra no 533 is gaon sabha land and the same has been urbanized vide notification Ex DW3/6 and placed at the disposal of DDA vide notification Ex DW3/8. However, Ex DW3/5 does not talk about the entire khasra no. 533 but only khasra no 533 min. Moreover, if the entire land in khasra no 533 was gaon sabha land then there was no necessity of issuing notifications under Land Acquisition Act as is revealed in judgment Ex PW1/16 wherein the same were quashed."

9. The only submission of Mr. Sabharwal, learned counsel for the appellant is that the suit property, in fact, falls in Khasra no.534. He submits that the Total Station Method for demarcation of the property should have been adopted to ascertain the location of the suit property of the plaintiff.

10. I do not find any merit in this submission. A perusal of the judgments of the Trial Court and First Appellate Court shows that there is no evidence led by the appellant to back up its claim that the suit property falls in Khasra no.534. On the other hand, the plaintiff had led in evidence, inter alia, the judgment Ex PW-1/16 passed in CWP No.376/1973 filed by the father of plaintiff no.1. The writ petition itself was also led in evidence as Ex PW-1/17. The DDA was a party to these proceedings. In those proceedings, the court quashed the notification acquiring the land of the respondent's father,

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while holding that the same was situated in Khasra no.533. Pertinently, the DDA did not contest the claim of the respondent's father by claiming that the suit property fell in Khasra no.534, and not in 533. The Trial Court has observed that the DDA had not put a single suggestion to PW-1, nor has taken any stand in its written statement that the said judgment Ex PW-1/16 does not pertain to the suit property, but to some other property.

11. Thus, it would be seen that the findings returned by the Trial Court to the effect that the suit property fell in Khasra no.533 (as claimed by the respondent) and not in Khasra no.534 (as claimed by the appellant) is founded on cogent evidence.

12. The submission that the Total Station Method should have been adopted for demarcation of the land of the respondent/plaintiff has no merit, for the reason, that it was for the appellant/DDA to take the requisite steps at the trial stage to establish that the suit property fell in Khasra no.534 and not 533. Nothing prevented the DDA from getting the land demarcated by using the most appropriate method for demarcation.

13. I find no perversity in the concurrent findings returned by the Trial Court, as affirmed by the First Appellate Court. It cannot be said that the approach of the courts below in the matter of appreciation of evidence was flawed or mis-directed in law. No substantial question of law arises for consideration in the present appeal. Dismissed.

JULY 21, 2015 sr



VIPIN SANGHI, J