

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

+ **RSA No.20/2013**

% **26th October, 2016**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Dhanesh Relan, Advocate.

versus

SH. ASHOK KUMAR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/Delhi Development Authority (DDA) in the suit impugning the concurrent Judgments of the courts below; of the Trial Court dated 28.7.2010 and the First Appellate Court dated 27.7.2012; by which the suit for mandatory and permanent injunction filed by the respondent/plaintiff was decreed and the appellant/defendant was directed to allot an alternative plot to the respondent/plaintiff. The appellant/defendant was restrained from dispossessing the respondent/plaintiff from the suit property except with the due process of law.

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2. The limited issue for consideration in the present Regular Second Appeal is that whether the respondent/plaintiff was in possession/occupation of jhuggi no.C-S-02/H-122, Dr. Ambedkar Camp, New Delhi prior to 31.12.1998 inasmuch as only those persons who were in possession of the jhuggi situated on the government land prior to 31.12.1998 were to be granted alternative allotment on being dispossessed from the jhuggi.

3. The respondent/plaintiff pleaded a case of his possession and occupation of the jhuggi in question prior to 31.12.1998 and accordingly led evidence. In the evidence, three documents are proved by the respondent/plaintiff to support his case and which are ration card Ex.PW1/1 dated 24.5.1999, election identity card Ex.PW1/2 dated 7.1.2003 and an identity card issued by the Delhi Administration Ex.PW1/3 dated 15.2.1990.

4. So far as the ration card and election identity card are concerned, the same would not help the respondent/plaintiff because they are dated post 31.12.1998 and occupation/possession has to be shown prior to 31.12.1998. However, the document Ex.PW1/3 being the identity card issued by the Delhi Administration helps the respondent/plaintiff to show that the respondent/plaintiff was in occupation of the subject jhuggi as on 15.2.1990. In fact, even the survey report Ex.DW1/2 conducted by the appellant/defendant showed that the respondent/plaintiff was in possession

of the subject jhuggi but the admitted case of both the parties is that the jhuggi was found locked on that date. The courts below have therefore concluded that even if the jhuggi was found locked it does not mean that the respondent/plaintiff was in possession and occupation of the jhuggi because the name of the respondent/plaintiff is found as against the subject jhuggi no.H-122.

5. When this RSA was admitted on 13.3.2015, the following substantial question of law was framed:-

“Whether finding of fact returned by the trial court and confirmed by the first appellate court suffers from any perversity in the light of the evidence produced by the parties?”

6. Appreciation of evidence when two views are possible would not mean arising of a substantial question of law. A civil suit is decided on the balance of probabilities and as per the balance of probabilities in view of the evidence led, especially the documents being the identity card issued by the Delhi Administration Ex.PW1/3 and the survey report of the appellant/defendant itself Ex.DW1/2, respondent/plaintiff is shown to be in possession of the jhuggi prior to 31.12.1998, and accordingly was entitled to allotment of an alternative plot as per the policy of the appellant/defendant.

7. Learned counsel for the appellant argued that the suit was bad for want of notice to the appellant/defendant under Section 53B of the Delhi

Development Act, 1957, however, this issue is squarely covered against the appellant/defendant by a Division Bench judgment of this Court in the case *Yashod Kumari and Anr. Vs. MCD & Ors., AIR 2004 Delhi 225* and in which judgment it is held that the object of giving notices prior to the filing of the suit is to ensure a settlement before filing of suit, but, once the suit is contested to the hilt, the requirement of the prior notice pales into insignificance.

8. In view of the above discussion, the substantial question of law is answered in favour of the respondent/plaintiff and against the appellant/defendant. Judgments of the courts below are upheld and appellant/defendant is directed now to give an alternative plot to the respondent/plaintiff in accordance with the policy taking the occupation of the subject jhuggi by respondent/plaintiff from 1990. Appeal is accordingly dismissed, leaving the parties to bear their own costs.

OCTOBER 26, 2016
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VALMIKI J. MEHTA, J