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HIGH COURT OF DELHI AT NEW DELHI

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RSA 231/2013

Pronounced on: 23rd May, 2016

M/S. DLF UNIVERSAL LTD.

..... Appellant

Through: Mr. Rakesh Tikku, Senior Advocate with
Mr. Mohit Mudgal, Mr. Raghav Kacker
& Mr. Nakul Sachdeva, Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr. Akshay Makhija, CSGS with Ms.
Sanjugeeta Moktan & Ms. Mahima Bahl,
Advocates for R-1.
Mr. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant/plaintiff under Section 100 CPC against the judgment and decree dated 29.5.2013 by virtue of which the Additional District Judge, Central-07, Delhi has set aside the judgment and the decree dated 28.2.2011 passed by the learned Senior Civil Judge-cum-Rent Controller, (Central), Delhi by virtue of which the appellant/plaintiff was held to be the owner of the land in question. Further it was directed that the appellant/plaintiff in lieu of the acquisition of the land in question be allotted an equal measure of land at some other place within the city.

2. The second appeal is permissible only on a substantial question of law. However, before dealing with the submissions of the learned counsel for the appellant, it will be appropriate to give the brief background of the case.
3. The appellant/plaintiff originally filed a suit for injunction simplicitor which was later on converted into a suit for declaration and possession.
4. It was alleged in the plaint that on 30.7.1957, the Chief Commissioner, Delhi issued a notification No.F.15(143)56/15G under Section 3 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 for acquisition of 56 bighas and 18 biswas of land situated in village Sarai Shahji, Delhi out of which 41 bighas and 19 biswas was owned by one Nathwa and his relations. It is alleged that the appellant/plaintiff had purchased the land from Nathwa vide Sale Deed dated 5.5.1959 and in the year 1960, the competent authority issued notification under Section 4 of the Act of 1948 on 22.02.1960.
5. It is further stated that the appellant moved an application under Order VI Rule 17 CPC which was allowed and by virtue of that amendment apart from the injunction, a relief of declaration and possession was also sought.
6. It was stated in the plaint that on 22.2.1960, respondent Nos.1 and 2 issued Notification under Section 4 of the Act of 1948. Vide letter dated 3.3.1960, the appellant/plaintiff informed respondent Nos.1 and 2 about its ownership right in the land and asked for compensation. Vide letter dated 2/5.11.1964, respondent Nos.1 and

2 refused to release the land from acquisition proceedings by cancelling the acquisition proceedings as requested by the appellant/plaintiff in its letters dated 10.3.1964 and 7.5.1964. The award of the land was made on 9.11.1962 Ex. DW-1/2. The respondent No.1 and 2 allotted the land to respondent No.3.

7. The said land after allotment to respondent No.3 was cancelled and order of which was assailed by respondent No.3 by filing a Civil Writ Petition No.654/1979 before Delhi High Court and the same was allowed on 1.9.1980 and the land in question was re-allotted by the DDA to respondent No.3. An SLP No.3162 of 1981 was filed by the DDA, however, the same was dismissed and the order dated 6.5.1982 was modified by the Apex Court and the land was allotted to respondent No.3 under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the possession was also handed over to them.
8. Respondents Nos.1 and 2 filed their written statement and contested the claim. It took number of objections with regard to the maintainability of the suit. Number of preliminary objections were taken. These were pertaining to *locus standi* of the appellant/plaintiff to file the suit. It was stated that the Civil Court's jurisdiction is barred under the Displaced Persons (Compensation and Rehabilitation Act), 1954 and also under the provisions of Resettlement of Displaced Persons (Land Acquisition) Act, 1948. It was further stated that the suit is hopelessly barred by time as the notification under Section 3 was issued in the year 1957, notification under Section 4 was issued in

the year 1960 and even compensation was demanded by the appellant/plaintiff vide letter dated 3.3.1960 which was offered and paid. It may be pertinent here to mention that it has not been pleaded in the plaint by appellant that they or the recorded owner who had sold the land to him was never paid the compensation. In the meanwhile, the suit was filed in the year 1967 by assuming that the cause of action to have accrued to the appellant/plaintiff in the year 1964, when the statutory period of notice given under Section 80 of the CPC came to an end was not correct.

9. With regard to the merits of the matter, it was stated that the said land was validly acquired under the statutory provisions and it was allotted correctly to respondent No.3 by following procedure under the Displaced Persons (Compensation and Rehabilitation) Act, 1954.
10. In replication the appellant/plaintiff contested the averments made in the written statement and reiterated the stand taken in the plaint.
11. On the pleadings of the parties, the following issues were framed:-

- “1) Whether Sh. Ram Kishan is authorized to sign and verify this plaint on behalf of the plaintiff?*
- 2) Whether the suit is maintain on behalf of the plaintiff?*
- 3) Whether this court has jurisdiction to try this suit?*
- 4) Whether the suit is within time?*
- 5) Whether the plaintiff is in possession of the suit property?*
- 6) If issue No.5 is not proved, whether the value of the suit for purposes of court fee and jurisdiction is correct?*

- 7) *Whether the notification in question is invalid and mala fide?*
- 8) *Whether the purposes of these notifications under Section 3 and 4 of the D.P.L.A. Act of 1948, stood exhausted?*
- 9) *Whether the defendant served notices under Section 3 and 4 of the D.P.L.A. Act to the previous owners. If not, to what effect?*
- 10) *If the defendant is entitled to acquire the land after 10 years of the date of the notification?*
- 11) *Relief.*
- 12) *Whether the plaintiff is stopped by his conduct from filing the present suit?*
- 13) *Whether the suit against defendant No.2 is legal and maintainable?*
- 14) *What is the effect of allotment of land and the writ petition No.654/79 and other litigation inter-se between the defendants as pleaded in para of the preliminary objections?*
- 15) *Whether the suit suffers from non-joinder of necessary parties?*
- 16) *Whether the plaint does not disclose any cause of action against the defendant society and the same is liable to be rejected under Order VII Rule 11 CPC? OPD*
- 17) *Whether the plaintiff has locus-standi to challenge the notification in question when the persons claimed to be owners of the suit land on the date of issue of notification, had not challenged the same? OPP*
- 18) *Whether the plaintiff is entitled to claim only compensation amount of the suit land as per their own claim before the Revenue Authority and Land Acquisition Collector vide their letter dated 3.3.1960 and are stopped from asking a decree for declaration and possession of the suit land as claimed in the amended plaint at this late state? OPP*

- 19) *Whether the original owners of the suit land had any subsisting right to sell the suit land on 5.5.69 to the plaintiff after the issue of date of notification. If so, to what effect? OPP*
- 20) *Whether the plaintiff purchased the suit land for Rs.37,000/- from the previous owners by a sale deed dated 5.5.59 alleged to be registered in the office of Sub-Registrar, if so, to what effect? OPP*
- 21) *Whether the plaintiff is vested with any civil right which entitles the plaintiff to challenge the notification on the grounds mentioned in the plaint? OPP*
- 22) *Whether the validity of the notification in question with respect to the suit land can be challenged in Civil Court and that too by a person, who had no interest in the suit land at the time of notification in question? OPP*
- 23) *Whether the defendant society is a bonafide purchaser for consideration and in possession of 45 acres of land including the suit land and the perpetual lease deed had been executed and duly registered in the office of Sub-Registrar, Delhi in favour of the defendant society for implementation of the High Court order dated 1.9.80 under the orders of Hon'ble Supreme Court in Contempt Petition and thus the society became the absolute owner of the land measuring 45 acres including the suit land? OPD*
- 24) *Whether the suit land has also been substantially used for the settlement of displaced persons from West Pakistan in accordance with the bye-laws of the society from whom it was acquired? OPD*
- 25) *Whether the plaintiff was aware for more than the two decades that the land in Malviya Nagar including the suit land was acquire by the Government for resettlement of displaced person under the provisions of Resettlement of Displaced Persons (Land Acquisition Act), 1948 and has been substantially used for the rehabilitation of*

displaced persons from West Pakistan in accordance with the bye-laws of the society? OPD

- 26) *Whether the plaintiff had forfeited its right, if any, for declaration and possession on account of being guilty of delay and laches for sleeping over his right because he land in suit in possession of defendant society had been developed by the society well within the knowledge of the plaintiff during the past several years by spending crores of rupees? OPD*
- 27) *Whether the government did not implement the order passed by the Hon'ble High Court of Delhi dated 1.9.80 passed by Hon'ble Mr. Justice B.N. Kirpal and later on the perpetual lease deed in favour of the defendant society was executed and registered under the order of Hon'ble Supreme Court in a contempt petition in SLP No.3769/81 and no delay has been cause for utilizing the suit land on account of any delayed action of the defendant society? OPD*
- 28) *Whether any time limit was provided in the resettlement of the Displaced Person (Land Acquisition) Act, 1948 for the implementation of the provisions of the said Act? OPP*
- 29) *Whether the plaintiff slept over his right by allowing the defendant that society to develop the suit land in the residential regular colony by developing, leveling, approval of site plans, construction of water tanks, sewerage, electricity facilities, electric sub-station, carvation of plots and allotment of the same to the individual members by spending crores of rupees, without any objection and later on execution on the sub-leases and its registration in favour of the individual members more than 500, under the orders of Hon'ble Supreme Court in contempt petition in SLP 3762/81 and construction of the residential houses by the members? OPP*

- 30) *Whether the plaintiff can be permitted to appropriate and reprobate in the same breath by acquisition to the validity of the notification by claiming only compensation before the Revenue Authorities both the writing and its conduct and acquiescing to its validity to challenge its validity subsequently and whether the plaintiff is stopped from challenging the validity of notification on account of its conduct? OPP*
- 31) *Whether the suit is sufficiently stamped for the purposes of court fee and jurisdiction and the same is not liable to be dismissed as the suit land has been fully developed included in the urban area and crores of rupees have been spent by defendant society for its development and thus the plaintiff must value the suit accordingly and pay ad valorem court fees thereon, otherwise the suit is not maintainable and is liable to be dismissed as insufficiently stamped? OPP*
- 32) *What right, if any was acquired by the plaintiff from the original owners by means of alleged sale deed dated 5.5.1959 with respect to the suit land? OPP*
- 33) *Whether the plaintiff is entitled to declaration as prayed? OPP*
- 34) *Whether the plaintiff is entitled to possession as prayed? OPP*
- 35) *Relief.”*

12. A perusal of the aforesaid issues would show that unnecessarily so many number of issues were framed which, as a matter of fact, was nothing but replication of issues. Be that as it may, the appellant/plaintiff in support of its case examined nine witnesses, namely, PW-1 Attar Singh, PW-2 Din Dayal Sharma, PW-3 B. Bhatnagar, PW-4 C.B. Sharma, PW-5 S.L. Soni, PW-6 H.R. Srivastava, PW-7 Ram Chand, PW-8 A.L. Handa and PW-9 Ram

Kishan Jain. The respondent No.1 examined DW-1 Kanshi Ram, DW-2 A.K. Khatri, DW-3 V.N. Mehta and respondent No.3 examined DW-3/1 R.K. Saini, DW-3/2 C.P. Katyal and DW-3/3 R.C. Bakshi.

13. On the evidence produced by the parties, the learned trial Court decided issues No.33 and 34 which were most important. With regard to issue No. 33 it was observed that the appellant/ plaintiff were owners of the suit land however with regard to the question of declaring that acquisition of the said land by notification under section 3 and 4 it was held that the court does not have the power to declare as void. It was also held that the court cannot grant the possession of the land to them. Simultaneously the court observed that the appellant/ plaintiff be given land at any other place of the same size which has been acquired.
14. The Union of India, feeling aggrieved by the aforesaid judgment and decree passed by the learned Civil Judge, preferred an appeal and the learned Appellate Court reversed the finding of the learned ADJ by holding that the trial Court has passed the judgment and decree in blatant violation of law and suffers from perversity.
15. In appeal the first appellant court overruled the decision of the trial court holding that the land was validly acquired under the act and the appellant had already been paid compensation and there was no question of allotting an alternative land.
16. Feeling aggrieved the appellant/plaintiff has filed the present appeal against the judgment and decree dated 29.05.2013.

17. The following substantial question of law were stated to be arising from the judgment:-

- “1) Whether and executive action under Section 3 and 4 of Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (hereinafter called the 1948 Act) for speedy acquisition of land for the resettlement of the displaced persons, can be said to have become and/or declared to have become ultra vires of the 1948 Act, if it is proved that the acquired land was neither utilized speedily nor utilized for the displaced persons as defined under Section 2 (b) of the 1948 Act and as contemplated under Rule 9 (1) of the Rules as framed under Section 10 of the 1948 Act?*
- 2) Whether such a declaration to that an effect as mentioned in question No.1 can be given by a Civil Court?*
- 3) Whether the non-compliance of the mandate of the object of the 1948 Act and/or the provisions of the 1948 Act and/or the rules framed therein under coupled with the fact of non-grant of the compensation amount as per the award, would obligate the authority acquiring the land under the 1948 Act, to restore the rights in the acquired land back to the owners of the land so acquired?*
- 4) Whether the Government’s rejection of the recorded owner request for releasing the acquired land on account of non-utilization of the said land as per mandate of the provisions of the 1948 Act and the rules framed therein under, coupled with the non-payment of the compensation amount so determined under the 1948 Act, for over two decades, would given a legal and a fresh/independent cause of action to the recorded owners to file a suit for declaration along with consequential relief?*
- 5) Whether the land acquired under Sections 3 and 4 of the 1948 Act, could be utilized and/or dealt*

with the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter called as 1954 Act) and if not then what would be the resultant and consequential effect of such a utilization on the legality of acquisition notice and proceedings initiated under Section 3 and 4 of the 1948 Act.

6) *Whether in a suit for seeking decree of possession of land, if the defendant, during the pendency of the suit allows the subject land to be transferred to the third party (who is also one of the defendants), thereby making the relief of possession becoming an illusory relief, then would the civil court legally entitled to mould the relief of possession in a pragmatic and realistic manner?”*

18. I have heard Mr. Tikku, the learned senior counsel for the appellant/plaintiff as well as the learned counsel for the respondent.
19. I do not agree with the contention of the learned senior counsel for the appellant that the present appeal raises any substantial question of law as enumerated herein above. The reason for this is that the suit of the appellant was originally for injunction. Thereafter, the suit was amended and it was filed for declaration and possession. The question which is raised is with regard to vires of 1948 Act. The vires of an Act can be decided only by the constitutional court and not by the civil court. The trial court has also observed it cannot decide the question of vires of the 1948 Act. Further, although the land was acquired for re-settlement of displaced persons by 1948 Act but it was allotted to respondent No.3, a group housing society of displaced persons from West Pakistan under the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

It has been contended that if the land is acquired under 1948 Act then it could not be allotted to the displaced persons who were covered by 1954 Act and secondly the purpose of acquisition under 1948 Act was quick action while as it was taken belatedly. I do not think any such issue arises in the present appeal. The appellant wants to keep the hope of getting back alive although the suit itself was barred by limitation in the first instance. Curiously, the trial court has noted this fact but had not ruled on the same and went on to decide the suit on merits. The first appellate court corrected this perversity and rightly so.

20. Further, once the land is notified under Section 3 of the 1948 Act and a notice is served on the occupier and the owner under Section 4 of the 1948 Act. The Section 5 envisages that the land vests in the government. Therefore, the land in the instant cases vested with the Government of India for settlement of displaced persons. Moreover, so far as the payment of compensation is concerned it has to be paid to the recorded owner. The appellant / plaintiff claims himself to be the purchaser but the seller may continue to be the recorded owner. It is well possible that the compensation may have been passed to the recorded owner. The appellant/ plaintiff has nowhere averred that he was the recorded owner and the compensation has not been paid to him nor any evidence has been led by him in this regard. In any case payment or the nonpayment of compensation is a question of fact and not a question of law much less substantial question of law. Further, it has no where been

pleaded in the plaint that he did not receive any compensation then how can he raise any question with regard to the same now.

21. So far as the question of allotment of land to the respondent No.3 is concerned once the lands vests in the Government it becomes nazul land (govt. land) and it can deal with the same in the manner in which it likes. It is not open to the recorded owner or the so-called purchaser to raise the question of allotment of the land to a third party.
22. The respondent No.3 is nothing but a society of displaced persons. The learned counsel for the appellant has contended that no notice was served on the appellant or the previous owner under Section 3 and 4 of the Act. This is a question of fact as to whether a notice was served on the appellant or not and cannot be gone into this second appeal as these are question of fact.
23. Further, the questions with regard to the lapse of time in taking the possession etc. are also questions of fact and not of law. Moreover, there is machinery provided under the Act for filing objections before the competent authority under Section 6 of the Act, 1948 against the acquisition. Objections for the release of the land were filed but they were rejected but no order of rejection has been placed on record.
24. All these questions are subsidiary to the main question regarding vires of notification under Section 3 & 4 itself which cannot be decided by a civil court nor does it arise from the suit, the present appeal does not, in my considered opinion, raise any substantial question of law so as to warrant entertaining of the same.

25. On the contrary, I feel that the learned ADJ was absolutely right on two aspects. One was that the suit of the appellant at the threshold which admittedly was instituted in March, 1967 was barred by time. In the cause of action clause, the appellant/plaintiff has stated that the cause of action accrued to him on 2/5.11.1964 when respondents No.1 and 2 refused to release the land from acquisition proceedings by cancelling the acquisition proceedings as requested by the plaintiff in its letters and thereafter when he gave notice under Section 80 of the CPC. As a matter of fact, it is admitted by the appellant in the averments of the plaint itself that the notification under Section 4 of the 1948 Act was issued on 22.2.1960 while as the appellant is claiming to have purchased the land from one Nathwa in May, 1959. Since the language of Section 4 of 1948 Act clearly lays down that once the said notification is issued and the land vests with the Union of India, the period of limitation starts running under Section 9 and therefore, the suit for declaration, if any, had to be filed within a period of three years from the date of notification issued under Section 4 while as it has been filed in the year 1967, that is, after more than three years. It may also be pertinent here to mention that a notice under Section 80 CPC given by the appellant would not result in enlargement of time to file a suit for declaration with regard to challenge to the notification.
26. The second aspect on the basis of which the learned trial court has fallen into a serious error is by directing the Union of India to allot an alternative equal land in the territory of Delhi. This has been set

aside and rightly so by the first appellate court. I may refer here to some of the judgments of the Apex Court wherein it is laid down by the court authoritatively that in a civil suit if a particular relief is not claimed, the court is not justified in granting such relief. It may be worthwhile to refer to relevant paras of the judgment in *Manohar Lal (D) by LRs. Vs. Ugrasen (D) by LRs and Ors.*; (2010) 11 SCC 557, wherein it was held as under:-

“29. In Trojan & Co. vs. RM. N.N. Nagappa Chettiar, AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. This Court held as under:-

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in its an alternative case.

30. A similar view has been re-iterated by this Court in Krishna Priya Ganguly etc. etc. vs. University of Lucknow and Ors. etc.: AIR 1984 SC 186; and Om Prakash and Ors. vs. Ram Kumar and Ors.: AIR 1991 SC 409, observing that a party cannot be granted a relief which is not claimed.

31. Dealing with the same issue, this Court in Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi and Ors.: AIR 2010 SC 475 held:

Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and

principles governing grant of relief, grant a relief not even prayed for by the petitioner.

32. *In Fertilizer Corporation of India Ltd. and Anr. Vs. Sarat Chandra Rath and Ors.: AIR 1996 SC 2744, this Court held that “the High Court ought not to have granted reliefs to the respondents which they had not even prayed for.”*

33. *In view of the above, law on the issue can be summarized that the Court cannot grant a relief which has not been specifically prayed by the parties.”*

27. Reference may also be made to a decision of the Apex Court in *Bachhaj Nahar vs. Nilima Mandal and Anr.; (2008) 17 SCC 491* wherein it has been held as under :

“It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of cause of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of Rs.one lakh, the court cannot grant a decree for Rs.ten lakhs. In a suit for recovery of Rs. One lakh, the court cannot grant a decree for Rs.ten lakhs. In a suit for recovery possession of property ‘A’, court cannot grant possession of property ‘B’. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.”

28. Reliance is also placed on the judgment passed in *Meera Sahni vs. Lt. Governor of Delhi and Ors.*; (2008) 9 SCC 177, wherein it was held that after the notification under Section 4 (1) of Land Acquisition Act, 1894 is published in the Gazette any encumbrance created by the owner does not bind the government and the purchasers does not acquire any title to the property and he would be only entitled to get compensation. But this principle would be equally applicable to the notification issued under Section 3 of the 1948 Act.
29. No other point has been urged.
30. Having regard to the aforesaid facts, I feel that the present appeal filed by the appellant is totally misconceived as it does not raise any substantial question of law. Accordingly, the appeal is dismissed.

V.K. SHALI, J.

MAY 23, 2016
vk/'AA'