

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

+ **RSA No.264/2013**

% **26th July, 2016**

SHRI PHOOL SINGH

.... Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr.Sushil Kumar Singh and Ms.Sahiba
Pantel, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr. D.S. Mehandru, Advocate for
respondent/MCD.
Ms. Aishwarya Rao, Advocate for
intervenors.

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 appellant/plaintiff against the concurrent Judgments of the courts below; of the Trial Court dated 4.2.2012 and the First Appellate Court dated 4.9.2013; by which the suit of the appellant/plaintiff for possession of the allotted plot nos. 243 to 246 (50 sq yds each) at Block-A, Bhalswa Dairy Complex, Delhi, was dismissed on two counts. The first count

was that the suit was held to be barred on account of non-service of statutory notice by the appellant/plaintiff to the respondent/defendant as required under Sections 477 and 478 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as 'the DMC Act'). The second count on which the suit was dismissed was that it was held that in view of the language of the Allotment Letter/Order dated 8.1.1988, Ex.PW1/1 in favour of the appellant/plaintiff, allotment is deemed to be cancelled as the plaintiff had not taken steps within three weeks for taking possession of the subject plots.

2. The facts of the case are that the respondent/defendant came out with a policy of allotment of alternative plots to persons who were carrying on dairy business within urban limits, so that the dairy business within urban limits is stopped. Appellant/plaintiff was, therefore, allotted plot nos. 243 to 246 at Block-A, Bhalswa Dairy Complex, Delhi, vide Allotment Letter dated 8.1.1988 and he was to stop running his business in urban limits. The case of the appellant/plaintiff is that soon after receiving of the Allotment Letter dated 8.1.1988, when he went to the site to take possession of the subject plots, it transpired that there were trespassers on the plots and hence the appellant/plaintiff could not take possession of the suit plots. Ultimately, the appellant/plaintiff sent a Legal Notice dated 29.12.1990 (actually it is 28.12.1990) to the respondent/defendant which failed to

yield desired results and hence appellant/plaintiff filed the present suit for possession against the respondent/defendant for giving possession of the subject plots or allotment of alternative plots of same size.

3(i) In the written statement filed by the respondent/defendant before the trial court the case which was set up is that the appellant/plaintiff never approached the competent authority for taking possession of the plots and it is therefore deemed to be cancelled on account of expiry of the period of three weeks provided in the Allotment Letter dated 8.1.1988. However, in the same breath it is stated in the written statement that one Smt. Gayatri Devi and Sh. Sulekh Singh had illegally trespassed into the suit plots and that therefore physical possession of the plots to be given to the appellant/plaintiff would be contemplated on decision of the competent authority. The relevant paragraphs of the written statement are preliminary objection no. 2 and reply on merits para 3, and the same are reproduced as under:-

“2. That it is admitted that the plots no.A-243 to 246 were allotted to the plaintiff and he was directed to take the possession of the plots within three weeks vide Allotment Order no. 3530/ADC/CLZ/88 dated 8.1.1988, but the plaintiff never approached the competent authority for taking possession of the plots. However, one shrimati Gayatri Devi and Shri Sulekh Singh illegally tress-passed into the plots in question on the basis of some forged documents. As a matter of fact, the answering defendant investigated into the matter. Shrimati Gayatri Devi and Shri Sulekh Singh showed allotment letters in respect of plots no.A.243-44 and A-245-246 respectively in their respective names. However, on verification of the same from official record, it was revealed that Smt. Gayatri Devi was allotted plots no.398-99 and Sulekh singh,

plot no.394-95 but they made tempering on their copies of the allotment letters thereby Shrimati Gayatri Devi changed the plot no. as A-243-244 and Shri Sulekh singh as plots no. 245-246 in their respective allotment letters. Thus, the said Gayatri Devi and sulekh singh have tempered with the allotment letters and on the basis of such forged documents, have illegally tress-passed into the plots which stand allotted in the name of the plaintiff. Further action is under contemplation and the plaintiff would be given physical possession of the plots, subject to the decision of the competent authority in the matter, and as such the present suit is liable to be dismissed.

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3. That para no. 3 is incorrect and denied. It is denied that soon after the allotment letter was issued, the plaintiff went to the site to take the possession of the plots. As a matter of fact, the plaintiff has never approached the competent authority for taking possession of the plots till date. However, it is admitted that one Smt.Gayatri Devi and Sh. Sulekh Singh have illegally tress-passed into the plots allotted to the plaintiff on the basis of some forged documents and the matter is under investigation for the same. A detailed reply in regard has been given in the preceding paras and the same is reiterated.”
(underlining added)

(ii) The respondent also contested the suit as liable to be dismissed on account of non-serving of the pre-requisite notice under Sections 477 and 478 of the DMC Act.

4. Trial court vide Order dated 23.10.2008 framed the following issues:-

- “i) Whether the plaintiff is entitled to decree for possession as prayed for? OPP
- ii) Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
- iii) Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP

- iv) Whether the suit is barred by sec.477/478 of DMC Act 1957?
OPD
- v) Whether the suit is bad for non-joinder of necessary party?
OPD
- vi) Relief.”

5. The relevant issues are issue nos.1 to 3 with respect to whether the appellant's/plaintiff's allotment of the plots stood whereby he was entitled to possession of the plots, and these issues were held against the appellant/plaintiff by the trial court as per the following discussion:-

“12. Issue No.1 to 3. i) Whether the plaintiff is entitled to decree for possession as prayed for? OPP ii) Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP iii) Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for? OPP

The case of the plaintiff is that the plaintiff was allotted the suit property vide allotment order No.3530/1-ADC/CLZ/88 dt. 08.01.1988 Ex.PW1/1. But when the plaintiff went to take possession of the suit property he found some other person in unauthorized possession of the suit property. Therefore, he could not obtain the possession of the suit property.

13. The allotment order Ex.PW1/1 contain is the following terms.

“You are directed to take over the possession of the plot(s) and shift your dairies within three weeks of the receipt hereof failing which your allotment will be cancelled without any further reference.”

14. The plaintiff has not led any evidence to prove the fact that he had taken any action within 3 weeks from the receipts of the allotment order Ex.PW1/1. It means that the allotment order Ex.PW1/1 is cancelled as mentioned in the allotment order Ex.PW1/1.

15. The plaintiff has proved that he has issued a legal notice Ex.PW1/6. But the said legal notice has been issued only after expiry of about 4 years which is of no use/benefit to the plaintiff as the plaintiff has to take the steps within 3 weeks from the receiving of the allotment order Ex.PW1/1.

16. It is pertinent to mention that on the allotment letter of plaintiff it was clearly mentioned that plaintiff was to take possession within three weeks

failing which allotment was to be deemed as cancelled without any further correspondence. The plaintiff never approached competent authority to take possession of the plot within stipulated time of three weeks and he never informed the defendant as to why he was not approaching for possession of allotted plots. The plots were allotted on 08.01.1988 whereas the suit was filed in September 1992 after lapse of four years.

17. In view of the above discussion the plaintiff is not entitled to relief of possession as claimed as the allotment order Ex.PW1/1 was to be deemed as cancelled as the plaintiff had not taken steps within prescribed period. Hence these issues are decided in favour of the defendant and against the plaintiff.”

6. As regards the suit being barred under Sections 477 and 478 of the DMC Act, this issue was also decided against the appellant/plaintiff by the trial court, as per the following discussion:-

“9. Issue No.4 Whether the suit is barred by sec. 477/478 of DMC Act 1957? OPD

The plaintiff in his entire evidence has not led any evidence to prove that he has issued any notice as required under section 477 & 478 DMC Act. The present suit has been filed for possession and injunction. The plaintiff has not described any circumstances showing the urgency for granting of injunction in his favour.

10. Although the plaintiff was allotted the suit property vide allotment order No.3530/1-ADC/CLA/88 dt.08.01.1988 Ex.PW1/1. But the present suit has been filed only on 22.09.1992. Therefore, the notice under section 477-478 can not be waived off as the plaintiff has failed to explain the circumstances which would have defeated the object of injunction by giving the notice or postponement of institution of the suit. Hence the suit of the plaintiff is bad under section 477-478 DMC Act. Hence this issue is decided in favour of the defendant against the plaintiff.”

7. For the purpose of disposal of the present second appeal the following substantial questions of law are framed:-

(i) Whether the conclusion of the courts below, that the suit is barred under Sections 477 and 478 of the DMC Act, is not a grossly

illegal finding in view of the Division Bench judgment of this Court in the case of *Yashod Kumari and Anr. Vs. MCD and Ors. AIR 2004 Delhi 225?*

(ii) Whether the courts below have arrived at a completely perverse finding by misreading the Allotment Letter dated 8.1.1988 which by its very language does not contemplate automatic cancellation of the plots allotted to the appellant/plaintiff?

(iii) Whether the courts below have committed complete illegality and gross perversity in holding that the allotment letter should be taken as complete, although, as per the admitted stand of the respondent/defendant in the written statement the respondent/defendant was not in a position to deliver the possession of the plot to the appellant/plaintiff?

8. So far as the first question framed above is concerned, it is seen that this very issue was squarely decided by the Division Bench of this Court in the case of *Yashod Kumari (supra)* holding that the object of sending statutory notices such as under Section 80 CPC or Section 53(B) of the Delhi Development Act, 1957, and which are provisions of giving of prior notices to the governmental authorities before filing of the suit to see if litigation is not necessary, once the suit is contested to the hilt, then the requirement of giving prior notices is to be taken as waived and suits cannot be dismissed merely on account of the fact that prior statutory notices are not sent. The Division Bench of this Court in the case of *Yashod Kumari (supra)* took a practical view because the entire object of

provisions such as 80 CPC is really now reduced to a dead letter because in almost 100% of the suits, there is complete contest showing opposition to the grant of reliefs as claimed in the suit, and which reliefs are to be claimed by means of statutory notices given prior to filing of the suit.

9. In view of the Division Bench judgment in the case of *Yashod Kumari (supra)* substantial question no.(i) is answered in favour of the appellant/plaintiff and it is held that the conclusion of the courts below of the suit being barred under Sections 477 and 478 of the DMC Act by deciding issue no.4 against the appellant/plaintiff is against the settled law so far as this Court is concerned, and is accordingly set aside by holding that the suit cannot be taken as barred on account of not serving statutory notices under Sections 477 and 478 of the DMC Act.

10. Substantial questions of law nos.(ii) and (iii) have to be dealt with together and are accordingly dealt with together. To decide these questions, let us firstly turn to the language of the Allotment Letter dated 8.1.1988, and which is reproduced hereunder:-

**“MUNICIPAL CORPORATION OF DELHI
CIVIL LINES ZONE
NO.3530/ADC/CLZ/88 Dated 8.1.88
ALLOTMENT LETTER**

In compliance of the order of the LT., you have been allotted plot No.243-246, at block A, Bhalswa Dairy Complex through a draw of lots conducted at Zonal office on 7.1.88.

You are directed to take over possession of the plot (s) and shift your diaries within 3 weeks of the receipt hereof failing which your allotment will be cancelled without any further reference.

Sd.
For Addl.Dy. Commissioner,
Civil Lines Zone

To
Shri Phool Singh
Son of Shri Shiv Lal
5900 New Chandrawal,
Delhi.7”

(underlining added)

11. One thing is clear that the language of this letter shows that there is no deemed cancellation of allotment because it is written that allotment “will be cancelled”, i.e, will be cancelled in future, and hence there is no deemed and automatic cancellation of the allotment on expiry of three weeks of the Letter/Order dated 8.1.1988. Courts below have, therefore, committed a complete perversity in completely misreading the language of this Allotment Letter dated 8.1.1988 as if there is a deemed automatic cancellation after three weeks.

12. Accordingly, the findings of the courts below on issue nos.(i) to (iii) being totally perverse are set aside and it is held that even after three weeks of the Letter dated 8.1.1988, there is no deemed cancellation of allotment of the suit plots which were allotted to the appellant/plaintiff.

13. There is another reason for holding that there cannot be deemed cancellation, even assuming for the sake of argument that the Allotment Letter dated 8.1.1988 provides for deemed cancellation, and this is because as per the written statement filed by the respondent/defendant itself the allotment letter could not go through on account of illegal occupants being found in possession of the plots allotted to the appellant/plaintiff namely one Smt. Gayatri Devi and Sh. Sulekh Singh. Surely, if because of the fault of the respondent/defendant, appellant/plaintiff could not take possession of the subject plots, then how at all could there arise an issue of cancellation of allotment on account of fault of the appellant/plaintiff. It is very strange and a very unfortunate defence of the respondent/defendant that although subject plots were in possession of the trespassers, yet, allegedly because appellant/plaintiff did not take possession of the plots, the allotment is to be taken as deemed to be cancelled. Similarly, surprising is the finding of both the courts below accepting the stand of cancellation although admittedly as per the paras of the written statement which have been reproduced above, there were illegal trespassers on the plots and therefore, appellant/plaintiff could not take possession of the subject/suit plots. Therefore, the findings and conclusions of the courts below on issue nos.(i) to (iii) against the appellant/plaintiff are totally perverse and are set aside by deciding the issue nos.(i) to (iii) in favour of the appellant/plaintiff and against the

respondent/defendant and answering the substantial questions of law no.(ii) and (iii) above in favour of the appellant/plaintiff.

14. In view of the aforesaid discussions, this Regular Second Appeal is allowed by answering all the substantial questions of law in favour of the appellant/plaintiff. The suit of the appellant/plaintiff for possession of the subject plot nos. 243 to 246 at Block-A, Bhalswa Dairy Complex, Delhi, is decreed and respondent/defendant will after evicting the trespassers give possession of the suit plots to the appellant/plaintiff. Also, it will be open to the respondent/defendant to instead allot more or less similarly situated plots to the appellant/plaintiff in lieu of the subject plot nos. 243 to 246 at Block-A, Bhalswa Dairy Complex, Delhi.

15. The second appeal is allowed with costs in favour of the appellant/plaintiff and against the respondent/defendant. Appellant/plaintiff will file certificate of costs within a period of two weeks from today and costs will be paid within two weeks thereafter.

JULY 26, 2016

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VALMIKI J. MEHTA, J