

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

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Date of decision: 9th August, 2016

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CS(COMM) No.1058/2016

SHRI KRISHAN KUMAR WADHVA

..... Plaintiff

Through: Mr. Khushbir Singh and Ms. Shaiza,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR ... Defendants

Through: Mr. Pawan Mathur, Adv. for DDA.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.9579/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CS(COMM) No.1058/2016, IAs No.9578/2016 (u/O 39 R-1&2 CPC) & 9580/2016 (u/S 80 (2) CPC).

3. This suit claiming the reliefs of declaration, permanent injunction and mandatory injunction has come up today for admission. However, having gone through the plaint and having not found the plaintiff to be having any cause of action for the reliefs claimed, the counsel for the plaintiff has been given an opportunity to address thereon.
4. It is the case of the plaintiff:

- (i) that the defendant No.1 Delhi Development Authority (DDA) granted a Perpetual Lease dated 11th July,1974 of industrial plot bearing No.71/5 admeasuring 7246.67 sq. yards, Najafgarh Road Industrial Area, Najafgarh, New Delhi to M/s Delhi Flooring Pvt. Ltd. (DFPL) (not a party to the suit) for a period of 25 years from 11th July, 1974;
- (ii) that the said DFPL inducted the plaintiff as a tenant in a portion admeasuring 2400 sq. feet of the aforesaid property;
- (iii) that the period of 25 years, for which the defendant No.1 DDA had granted the perpetual lease in favour of DFPL, lapsed in the year 1999;
- (iv) that as per clause (III) of the Perpetual Lease Deed, upon non-renewal of the Perpetual Lease Deed, it was to come under the purview of “void”;
- (v) that DFPL also did not pay damage charges as demanded by the defendant No.1 DDA from it;
- (vi) that though DFPL had originally let out an area of 2400 sq. feet only to the plaintiff but subsequently in the year 1981, let out additional area of 2858 sq. feet to the plaintiff and the rent payable by

the plaintiff to DFPL increased from Rs.800 per month to Rs.2,500/- per month;

(vii) that again in the year 1982 DFPL let out another 500 sq. feet of area of the property aforesaid to the plaintiff at a monthly rent of Rs.2,000/-;

(viii) that the plaintiff is presently in occupation of 5258 sq. feet area of the property;

(ix) that the land underneath the property is *nazul* land;

(x) that in the month of January, 1999, the plaintiff received notice from Municipal Corporation of Delhi (MCD) of attachment of rent which the plaintiff was paying to DFPL, as DFPL had failed to pay property tax to MCD;

(xi) that the plaintiff accordingly started depositing the rent of the portion aforesaid of the property in its occupation with MCD;

(xii) that though DFPL was left with no rights in the property owing to perpetual lease in its favour having not been renewed and owing to non-payment of damages demanded by the defendant No.1 DDA but attempted to forcibly dispossess the plaintiff from the property compelling the plaintiff to institute CS(OS) No.86/2002 and vide

decree dated 17th January, 2012 wherein, DFPL was restrained from forcibly dispossessing the plaintiff from the property;

(xiv) that though DFPL was left with no rights in the property aforesaid but vide Sale Agreement dated 29th December, 2009 sold the property to the defendant No.2 Saurabh Buildcon Pvt. Ltd. (SBPL);

(xv) that thus the defendant No.2 SBPL has not acquired any rights in the property;

(xvi) that the liabilities of the property having been discharged by the plaintiff since the year 1999 and the plaintiff being a legal occupant of the property, the plaintiff has a right to get the perpetual lease with respect to the property transferred from the name of DFPL to his own name;

(xvii) that the defendant No.2 SBPL has served a legal notice dated 6th September, 2014 on the plaintiff claiming to be the owner of the property and has filed CS(COMM) No.333/2016 against the plaintiff for recovery of possession of the portion of the property in occupation of the plaintiff;

(xviii) that it is necessary for the plaintiff to bring the transaction between DFPL (described in the plaint as “ex-lessee”) and the defendant No.2 SBPL under the concept of ‘void *ab initio*’

5. The plaintiff, in the suit has claimed the reliefs of:

(A) declaration that the ownership claimed by the defendant No.2 SBPL in property No.71/5, Najafgarh Road Industrial Area, Najafgarh, New Delhi is void;

(B) declaration that the plaintiff is the custodian of the portion of property No.71/5, Najafgarh Road Industrial Area, Najafgarh, New Delhi in his occupation and the defendant No.2 SBPL cannot claim possession thereof from the plaintiff;

(C) permanent injunction restraining the defendant No.1 DDA from dispossessing the plaintiff from the portion of the aforesaid property in his occupation;

(D) mandatory injunction directing the defendant No.1 DDA to issue a fresh perpetual lease deed in favour of the plaintiff of the portion of the aforesaid property in occupation of the plaintiff in favour of the plaintiff.

6. The plaintiff, along with the plaint has filed a copy of the indenture dated 11th July, 1974 between the defendant No.1 DDA and DFPL with respect to the property aforesaid. The same records (i) that Delhi Improvement Trust being the predecessor-in-interest of the defendant No.1 DDA had vide Agreement of Lease dated 26th September, 1957 agreed to demise the *nazul* land under the said property to DFPL and the subject indenture was being executed in pursuance thereto; (ii) that the demise under the said indenture is “in perpetuity” from 22nd day of February, 1955; (iii) that DFPL as lessee shall register all changes in case of any devolution of the rights granted by that indenture, whether by transfer, succession or otherwise with the defendant No.1 DDA within one month thereof; (iv) that if the rent payable under the said indenture by DFPL was to be in arrears, the lease granted by the said indenture shall become void entitling the defendant No.1 to cancel the lease and to re-enter into possession of the property; (v) that on expiry of the first rental period of 25 years ending on 21st February, 1999, the defendant No.1 DDA shall at the request of DFPL execute a new lease of the property by way of renewal.

7. It would thus be seen that while the lease deed granted by the defendant No.1 DDA in favour of DFPL in the initial clause states that the

grant of the lease was in perpetuity but in a latter clause provides for renewal of the rental periods. It is also worth noting that under the said grant, DFPL is not required to obtain any prior approval from the defendant No.1 DDA for transfer of the leasehold rights and is only required to give intimation thereof.

8. The plaintiff has also filed copy of a letter of the defendant No.1 to DFPL claiming violation of the terms of the lease and calling upon DFPL to deposit a sum of Rs.6,71,23,980/- on account of sub-letting as well as misuse charges;

9. The plaintiff has also filed a copy of the registered sale agreement between DFPL and the defendant No.2 SBPL, whereunder DFPL has sold, conveyed, transferred and assigned all its rights in the aforesaid property to the defendant No.2 SBPL and has delivered possession of the property to the defendant No.2 SBPL.

10. It is not the plea of the plaintiff that the defendant No.1 DDA has cancelled the lease in favour of DFPL or re-entered into possession of the said property. The plaintiff claims to be a mere tenant in the property under DFPL. The plaintiff as a tenant is not entitled to challenge the title of the landlord, who had inducted the plaintiff into the premises.

11. The sole ground on which the plaintiff challenges the title of DFPL is that the lease granted by the defendant No.1 DDA in favour of DFPL was for 25 years and the same has not been renewed and that DFPL is otherwise also in violation of the terms of the lease.

12. I have already noted hereinabove that the lease granted by the defendant No.1 DDA in favour of DFPL in the earlier clause describes the same as in perpetuity and in the latter clause describes the rental period as of 25 years and of renewal thereof. The settled principle of construction of deeds is that in the event of any inconsistency between two clauses thereof, the earlier one prevails over a latter one. However in this proceeding no final opinion is required to be rendered on the said aspect and this observation is made only to demonstrate the misconception under which the suit has been filed. Even if it were to be held that the lease was for a period of 25 years only and has not been renewed and that DFPL is also in violation of other terms of the lease, as is pleaded by the plaintiff, that would still not entitle the plaintiff herein to challenge the title of DFPL as its landlord.

13. Supreme Court in *Shanti Sharma Vs. Ved Prabha* (1987) 4 SCC 193 held that a person taking land on long term lease from Delhi Development

Authority and constructing building thereon is owner and will not cease to be owner merely on issuance of a notice by the Authority terminating the lease and till further action for dispossession is taken. Reference in this regard made also be made to ***Ramesh Chand Vs. Uganti Devi*** (2009) 157 DLT 450 and ***Tahira Begum Vs. Sumitar Kaur*** ILR (2010) III Delhi 72.

14. Though the aforesaid judgments are in the context of proceedings for eviction under the Delhi Rent Control Act, 1958 but would apply even to a civil suit by a landlord for ejectment of tenant. I may notice that the principle contained in the aforesaid judgments was extended to proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in the judgment of Division Bench of this Court in ***Gondals Press Vs. Punjab National Bank*** 2012 SCC On Line Del 5634.

15. I have enquired from the counsel for the plaintiff as to what is the locus of the plaintiff to challenge the sale agreement executed by DFPL in favour of the defendant No.2 SBPL. The plaintiff as a tenant of the property has no locus to interfere with the transfer of ownership rights by his landlord in favour of anyone else.

16. No answer has been forthcoming from the advocate for the plaintiff.

17. I have further enquired from the counsel for the plaintiff as to on what basis the plaintiff claims that he has become entitled to grant of lease by the defendant No.1 DDA of the subject property in his favour.

18. The question of the defendant No.1 DDA granting any lease in favour of any person, till the lease in favour of DFPL subsists and till the defendant No.1 DDA has re-entered the property and taken over possession thereof, does not arise. Even after the defendant No.1 DDA has done so, the plaintiff cannot claim any preferential right to lease of the property and defendant No.1 DDA would be entitled to, in accordance with its policy, deal with the property and / or to auction the same.

19. The counsel for the plaintiff states that since the plaintiff has been paying the house tax of the property since the year 1999, the plaintiff has become the owner of the property.

20. The aforesaid argument has to be noted to be rejected. The plaintiff admittedly is not paying the house tax of the property claiming himself to be the owner of the property. The plaintiff is merely depositing the amount of rent payable by him with the Municipal Corporation of Delhi towards house tax dues of the property, owing to attachment of said rent by MCD because of default by owner/landlord in paying the said house tax dues. A mere

payment of house tax, even otherwise, cannot make the plaintiff the owner of the property. Moreover the attachment of rent constitutes the plaintiff as tenant only and cannot make the plaintiff owner.

21. The counsel for the plaintiff relies on ***Delhi Development Authority Vs. M/s. Anant Raj Agencies Pvt. Ltd.*** AIR 2016 SC 1806 and has read head note A to C thereof.

22. Supreme Court in the aforesaid judgment was concerned with the validity of the termination effected by DDA of lease granted of a plot of land at Jhandewalan, Delhi. It was held that though the lease contained a clause for renewal thereof but renewal was subject to the conditions mentioned therein and which conditions were held to have not been met.

23. I am unable to understand as to why the counsel for the plaintiff relies on this judgment. The same has no applicability to the facts of the present case.

24. Thus, whichever way one looks at, the plaintiff is not found to have any cause of action or right to challenge the title of DFPL whom the plaintiff has not even chosen to implead as a party or of defendant No.2 SBPL as successor of DFPL and / or to claim any title to the property in himself.

25. The suit is misconceived and is dismissed.

26. I refrain from imposing any costs on the plaintiff for filing a frivolous suit.

RAJIV SAHAI ENDLAW, J

AUGUST 9, 2016

‘pp’/bs

(Corrected and released on 27th August, 2016).