

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

+ **RSA No. 293/2015**

% **21st October, 2016**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Rajiv Bansal, Sr. Standing Counsel
with Mr. Dhruv Tamta and Ms. Arpita,
Advocates.

versus

BIRENDER SINGH & ANR. Respondents

Through: Mr. Amol Sinha, Mr. Anshum Jain and
Mr. Rahul Kochar, Advocates for R-1.
Mr. Roshan Lal Goel, Advocate for
SDMC/R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

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/Delhi Development Authority (DDA)/defendant no. 2 challenging the concurrent Judgments of the courts below; of the Trial Court dated 15.1.2007 and the First Appellate Court dated 25.4.2015; by which the courts below have decreed the suit for injunction filed by respondent no. 1/plaintiff and restrained the appellant/defendant no.2

from dispossessing the respondent no. 1/plaintiff from the suit property without the due process of law. The suit property is House no. E-64, Krishna Park Extension, Vikaspuri, Delhi.

2. The facts as per the plaint are that respondent no. 1/plaintiff pleaded that he is an owner and in possession of the suit property way back from 1969 and he raised a house on the suit plot in the year 1991. It is further pleaded in the plaint that E-Block, Krishna Park, Extension colony is a regularized colony which was approved by the Standing Committee of Municipal Corporation of Delhi (MCD) on 8.8.1979 and publication was also carried out in the daily Urdu newspaper, namely, 'Pratap' on 20.11.1979 and English newspaper, namely, 'Hindustan Times' on 15.11.1979. Respondent no. 1/plaintiff further pleaded that he had filed a suit for mandatory injunction being suit no. 68/95 and in which the concerned court of the Civil Judge vide Order dated 13.8.1996 directed the MCD to survey the site in question and take appropriate steps. Respondent no.1/plaintiff then pleaded that on 27.11.1996 officials of the appellant/defendant no.2 and respondent no. 2/defendant no.1/MCD illegally entered into the suit premises and demolished the front portion of the house and did so similarly on 29.11.1996 also. Hence, the subject suit was filed seeking the relief of injunction.

3. Appellant/defendant no. 2 contested the suit and pleaded that the suit land is an acquired land and which formed part of Khasra no. R-34/19-min, 20-min, 21-min and R-35/16/1-min, 16/2-min, 25-min of Village Budhela. The aforesaid land was acquired through Award no. 2183-II/71-72 and placed at the disposal of the appellant/defendant no.2 vide Notification dated 2.11.1973. The suit land was transferred by the appellant/defendant no.2 to its Western Division-II for Budhela Residential Scheme. It was the case of the appellant/defendant no. 2 that on 27.11.1996 it demolished the shops and rooms unauthorisedly constructed by respondent no. 1/plaintiff with police help. The suit was accordingly prayed to be dismissed. This Court notes the fact that the respondent no.1/plaintiff admits to the factum of the demolition exercise conducted on 27.11.1996 in the plaint itself.

4. After the pleadings were complete, the trial court framed the following issues:-

- “i) Whether the suit land falls in khasra No. 34/19 min, 20 min, 21 min and R-35/16/1 min, 16/2 min, 25 min of village Budhela which has acquired on? OPD
- ii) Whether the land has been placed at the disposal of DDA under Section 22(1), DD Act? OPD
- iii) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP
- iv) Relief.”

5. While discussing these issues the trial court has arrived at the following conclusions:-

(i) Appellant/defendant no. 2/DDA failed to prove by demarcation report that the suit property forms part of the acquired land.

(ii) Appellant/defendant no.2/DDA failed to prove the documents being the award and possession proceedings which were proved and exhibited by the appellant/defendant no.2 as Ex.D2W1/1 (wrongly mentioned as Ex.D2W1/2 by the courts below) and Ex.D2W1/2A because these were only photocopies.

(iii) Even if the award and the possession proceedings being Ex.D2W1/1 and Ex.D2W1/2A are looked into, yet, it is not shown that how the suit property forms part of the acquired land.

(iv) Respondent no.1/plaintiff is in continuous possession of the suit property and the suit property is part of the regularized colony of E-Block, Krishna Park, Extension colony. Blue print of Krishna Park, Extension colony, D and E Block was proved as Ex.PW4/1 and another site plan was proved as Ex.PW6/A. The documents showing possession of respondent no.1/plaintiff were the Receipt of material dated 30.6.1991 as Ex.PW6/G, another Receipt dated 25.6.1991 as Ex.PW6/H, a Challan dated 18.11.1995 as Ex.PW6/I, Letter

from Oriental Bank of Commerce dated 29.12.1999 as Ex.PW6/J, two other Letters dated 20.8.2001 and 29.9.2001 as Ex.PW6/K and Ex.PW6/L and an envelope containing the Letter dated 29.9.2001 as Ex.PW6/M.

6. On the basis of the aforesaid conclusions it was held that respondent no. 1/plaintiff was entitled to the relief of injunction against being dispossessed without the due process of law.

7. For the purpose of disposal of this Regular Second Appeal the following substantial questions of law are framed:-

“(i) Whether the courts below have not committed a complete illegality and perversity in overlooking the specific contents of the award Ex.D2W1/1 as per which the specific land comprised in plot no. E-64, Krishna Park Extension, Vikaspuri being the suit property, was acquired by the appellant/defendant no.2/DDA and possession of which was taken under the possession proceedings Ex. D2W1/2A dated 18.4.1972 and thus it could not be held that respondent no. 1/plaintiff was in continuous possession of the suit property from 1969 till the filing of the suit in December, 1996?

(ii) Whether the courts below have not committed a complete illegality and perversity in failing to note that the suit was a simplicitor suit for injunction and in which respondent no. 1/plaintiff had to show his physical possession of the suit property on the date of the filing of the suit, but, the respondent no.1/plaintiff failed to do so and hence the simplicitor suit for injunction was not maintainable in view of the decision of the Supreme Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and Others, (2008) 4 SCC 594*?

(iii) Whether the courts below have not committed a complete illegality in holding that the appellant/defendant no. 2/DDA failed to discharge the onus of the issues which were put on the appellant/defendant no. 2/DDA, inasmuch as, once the evidence is led on behalf of both the parties, then, issue of onus pales into insignificance, inasmuch as, a civil court decides the suit on the basis of balance of probabilities as per the complete evidence appearing on record?"

8. In my opinion, all the aforesaid substantial questions of law have to be answered in favour of the appellant/defendant no. 2/DDA and against the respondent no. 1/plaintiff and the reasons for the same are given hereinafter.

9. The appellant/defendant no. 2 in paragraph 1 of the reply on merits in the written statement specifically pleaded the case with respect to the fact that the suit land was part of the acquired land forming part of Village Budhela acquired vide Award no. 2183-II/71-72 and possession of the same was taken under the possession proceedings dated 18.4.1972. The award and the possession proceedings are Ex.D2W1/1 and EX.D2W1/2A. The trial court fell into a clear error in firstly observing that these documents are only photocopies and cannot be relied upon, inasmuch as, before commencement of cross-examination of the witness D2W1, namely, Sh. Satya Pal Singh (Patwari), no objection was raised that the award and the possession proceedings have wrongly been exhibited being only photocopies, because, if such objection was raised then appellant/defendant no. 2 would have filed certified copies to prove

the award and the possession proceedings. Once before the commencement of cross-examination no objection is raised to the exhibiting of the documents which were photocopies being the award and the possession proceedings, respondent no.1/plaintiff waived its right to question the exhibition and proof of the documents in terms of the ratio of the judgment of the Supreme Court in the case of *R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another*, (2003) 8 SCC 752.

10. A reference to the award Ex.D2W1/1 clearly shows at its internal pages 5 to 8 that different parts of land which were acquired and compensation paid under this award was with respect to specific khasra numbers and a substantial number of such khasra numbers had in fact been given also plot numbers commencing with the alphabet 'E'. This was because unauthorized plots had been carved out on the land for the purposes of a colony. Besides mentioning the khasra numbers, in fact the plot numbers have simultaneously been mentioned at pages 5 to 8 of the award as plot numbers E-1, E-3 E-4A, E-5, E-5A, E-6A, E-7, etc etc till plot no. E-66. The subject plot being E-64 is mentioned at serial no. 45 and which is comprised in khasra no. 35/16/1 and 16/2 of Village Budhela. Therefore, the award shows that there was already some sort of unauthorized colony existing in Village Budhela having, in certain cases plot numbers in addition to khasra numbers, and which land was acquired

as per the Award no. 2183. Once a specific plot number being E-64 is mentioned at serial no. 45 of the Award no. 2183, in my opinion, there was no need at all of a demarcation report because it is the case of the respondent no.1/plaintiff that his plot number is E-64. It is relevant that this plot no.E-64 as per the award is in Village Budhela, and that appellant/defendant no. 2 had so stated in paragraph 1 of the reply on merits of the written statement that the suit land is in fact part of Village Budhela, but, the respondent no. 1/plaintiff in the replication only vaguely denied that the suit land did not fall in Village Budhela and it is not stated in the replication that if the suit land did not fall in Village Budhela then it fell in which village. Therefore, it is clear that the suit property being plot no. E-64 was very much the plot no. E-64 mentioned at serial no. 45 in the Award no. 2183 and which was specifically acquired with respect to not only the revenue khasra numbers of the plot but also as the plot being numbered as plot no. E-64. Hence, the courts below have fallen into complete illegality and perversity in holding that the absence of demarcation report would make liable the appellant/defendant no. 2 to fail in its defence that the land was in fact acquired land of plot no.E-64 and which was the case of appellant/defendant no. 2 as per its written statement. It is, therefore, held that the suit land comprised in plot no.E-64 was acquired by Award no. 2183 and possession thereof was taken in terms of the possession proceedings under Section 16 of the Land

Acquisition Act, 1984 on 18.4.1972. This completely demolishes the case of respondent no.1/plaintiff that the respondent no.1/plaintiff was in continuous possession of the suit plot since 1969.

11. The issue then arises is with respect to the claim of respondent no.1/plaintiff that he had built a house on the suit property in the year 1991. In this regard, it is noted that except oral testimony of respondent no.1/plaintiff, no credible documentary evidence whatsoever was filed of the period from 18.4.1972 (when possession was taken under Section 16 of the Land Acquisition Act) till December, 1996 when the suit was filed that a constructed house existed on the suit plot in this period. This is because if a constructed property existed on the suit plot then surely there would have been a documentary proof in the form of electricity bills or water bills and even for that matter possibly house tax bills/receipts. As regards certain documentary evidence Ex.PW6/G to Ex.PW6/I, surely such sketchy evidence cannot be taken as proof of a constructed building and the same is rejected. Therefore, a self-serving case of respondent no. 1/plaintiff that there existed a constructed house on the suit plot cannot be held to be such evidence by which the courts below could have held that there existed a constructed house on the suit plot. This finding of the courts below is, therefore, clearly illegal and perverse and is accordingly set aside holding that there was no house constructed on the suit

property in the year 1991 as was the case of respondent no. 1/plaintiff, and which house existed till December, 1996 when the subject suit was filed.

12. The next aspect which has to be seen is that the subject suit which was admittedly and only a suit for injunction simplicitor was at all maintainable. The suit proceeded on the basis that respondent no.1/plaintiff was in possession of the suit plot. The case of the appellant/defendant no. 2, however, was that illegally constructed shops and rooms on the suit plot were demolished by the appellant/defendant no. 2 on 27.11.1996, effectively dispossessing the respondent no.1/plaintiff from the illegally encroached land owned by the appellant/defendant no.2 in terms of the award and possession proceedings Ex.D2W1/1 and Ex.D2W1/2A. It is trite that in a simplicitor suit for injunction it has to be categorically proved on preponderance of probabilities that plaintiff was in possession of the suit property vide *Anathula Sudhakar's* case (*supra*). The evidence led with respect to possession which was filed by respondent no. 1/plaintiff is only an affidavit by way of evidence of respondent no.1/plaintiff as PW6 whereby the documents in this regard proved are Ex.PW6/G to Ex.PW6/M as already stated above. So far as documents Ex.PW6/J to Ex.PW6/M are concerned, the same are dated after the filing of the suit in December, 1996 and hence the same cannot be looked into to help respondent no.1/plaintiff to establish possession of the suit property as on the filing of the suit in December,

1996. It is noted that the suit was filed on 2.12.1996. The other documents exhibited as Ex.PW6/G to Ex.PW6/I are either of 1991 or 1995 and therefore once again this cannot show possession of respondent no. 1/plaintiff of the suit property in December, 1996 especially when the case of the appellant/defendant no. 2 was that illegally encroached portion and illegal construction made of shops and rooms of respondent no.1/plaintiff were demolished and possession taken by the appellant/defendant no.2 on 27.11.1996 and which even the respondent no.1/plaintiff admits in the plaint, though calling the event a ‘partial’ demolition.

13. I would like to note that a claim of physical possession of valuable immovable property in Delhi has to be proved to the satisfaction of the judicial conscience of the court and sketchy evidence with mere oral testimonies of witnesses cannot be taken by the courts as proof of possession of valuable land in Delhi, more so when the land is public land having been acquired by the Government and placed at the disposal of appellant/defendant no.2/DDA. I, therefore, hold that the respondent no.1/plaintiff was not in possession of the suit property as on 2.12.1996 when the suit was filed and hence the simplicitor suit for injunction filed was not maintainable as respondent no.1/plaintiff was not in possession of the suit property on the date of filing of the suit on 2.12.1996.

14. Even for the sake of arguments if I take that respondent no.1/plaintiff was in possession of the suit property, yet, the discretionary relief of injunction cannot be granted to a trespasser on public land, inasmuch as, the grant of relief of injunction is a discretionary relief. That the relief of injunction is a discretionary relief is specifically so provided in Sections 36 and 38 of the Specific Relief Act, 1963 and the Supreme Court has time and again emphasized that the discretionary relief of injunction should not be granted to a trespasser, more so, a person who is a trespasser on public land. One of the judgments of the Supreme Court in this regard is in the case of ***Premji Ratansey Shah and Others Vs. Union of India and Others (1994) 5 SCC 547*** and this judgment being a short judgment is reproduced below:-

“1. The unsuccessful plaintiffs in both the Courts below are the petitioners. Their suit for declaration that the appellants are successors in title to certain land of the defendant Nos. 3 and 4, namely, Sule and Thakkar, who were said to be its owners, which formed a portion of land admeasuring 33 acres 2 guntas in Survey No. 103A/pt. at Kirol and for injunction not to interfere with their possession etc., was dismissed by a Single Judge sitting on the original side of the Bombay High Court. A Division Bench of the same Court dismissed the appeal No. 557/92 of the petitioner by the impugned judgment and decree dated January 31, 1994. The facts not in dispute are that a Notification under Section 4(1) of the land Acquisition Act, 1894, was initially published on May, 4, 1959 proposing acquisition of 48.26 acres of land in Survey No. 103A invoking the urgency clause under Section 17. The enquiry under Section 5A was dispensed with. A declaration under Section 6 was followed. Thereafter, another notification was issued on May 28, 1959 under Section 4(1) of the Act acquiring 13 acres and 33 guntas in Survey No. 228 situated at Kurla. When possession was handed over to the railways on May 24, 1960, it was found that they got possession of an excess of 12 acres 12 guntas in Survey No. 103A. therefore, third notification under Section 4(1) was published on July 13, 1965 and the enquiry under Section 5A was conducted and Section 6 declaration was made. For the lands covered in the first two notifications, award was made only July 30, 1966 and for the land covered by the third notification, an award was made on May 26, 1968.

Thus, the award had become final. As stated earlier, possession was already taken and was handed over to the railways on February 24, 1960. Consequently, the original owner Mrs. Maibai @ Jamnabai had been divested of her title and had no interest to alienate part of land which 3rd and 4th defendants claimed to have purchased from he under a sale deed dated August 21, 1966, in that it had, by then, stood vested in the railways free of all encumbrances. Thereby, the purchasers got under the sale deed no right, title or interest in the land which had gone to the Central Government by them.

2. It is the case of the petitioners that defendant Nos. 3 and 4, namely. Sule and Thakkar, entered into an agreement of sale with the petitioners on January 21, 1973 coupled with a power of attorney etc. and delivered possession of the land to the extent of 12 acres and 12 guntas. As stated earlier, possession was already taken over by the railways. After the award was made, the defendants Nos. 3 and 4 made an application before the land Acquisition Officer claiming proportionate compensation for the land said to have been purchased by them. The Land Acquisition Officer had not accepted it but made a reference to the civil Court under Section 30. In the reference made to the High Court under Section 30, the defendants Nos. 3 and 4 remained ex parte and an award was made by the High Court declaring that Maibai @ Jamnabai was entitled to the entire compensation. The award also had become final, though the petitioners subsequently gave up the relief of declaration that the plaintiffs are the successors in title to the lands purchased by Sule and Thakkar in respect of 33 acres and 2 guntas, claimed a declaration that the acquisition of land of 60 acres 38 guntas pursuant to the award dated July 13, 1966 and May 26, 1968 as illegal, null and void of no effect and injunction.

3. It is true that the trial Judge recorded a finding that the appellants were in possession of the land and directed them to give possession but ultimately the Single Judge dismissed the suit. On appeal, the division bench found that possession was handed over to the railways and the railways had been in possession of the land. Shri Ashok Desai, learned senior counsel for the petitioners, contended that there was a dispute as to the identification of the land. The petitioners' land was not the subject-matter of the acquisition and that, therefore, when the learned trial Judge had found that possession of the land was with petitioners, the division bench had committed error in holding that the petitioners were not entitled to declaration or injunction. In view of the finding by the trial Court that the petitioners were in possession, unless they are lawfully dispossessed, no interference with their possession was called for and, therefore, they are entitled to the injunction sought for. We find no substance in the contention.

4. It is seen that a suit as originally framed, they sought for a declaration that the award made in respect of the land was void, inoperative and does not bind the petitioners. But that relief had been given up. Thereby, the title of the land of the railways have not been questioned. With the award made under Section 30, the vendors of the petitioners got themselves bound by the above award under

Section 12 of the Act. It is also seen that the two awards had become final and possession was delivered to the railways by the Land Acquisition officer on February 24 1960. Thus Defendant Nos. 3 and 4 had no ghost of right, title or interest in the lands acquired from the original owner Maibai. The said sale is a void sale and the petitioners, therefore, cannot derive any interest under the agreement of sale to resist the possession of the lawful owner nor could the declaration sought for be given. The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest or right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner, pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.

6. Under these circumstances, we do not find any ground warranting interference with the judgments and decrees of the courts below. The special leave petition is dismissed with exemplary costs of Rs. 30,000 which shall be payable to Supreme Court Legal Aid Committee. In case the petitioners do not pay the costs within two months, the Supreme Court Legal Aid Committee could proceed to recover the same by resorting to execution.” (emphasis is mine)

15. Therefore, even assuming that the respondent no.1/plaintiff is in possession of the suit property (though respondent no.1/plaintiff was not in possession of the suit property as on the date of the filing of the suit), even then, the discretionary relief of injunction could not be granted to respondent no.1/plaintiff who was a trespasser on government land and which was an acquired land acquired by means of a specific reference to the plot no. E-64, and

of which ownership and continuous possession has been wrongly claimed by the respondent no.1/plaintiff in the subject suit.

16. Learned counsel for the respondent no.1/plaintiff sought to place reliance upon the Order dated 13.8.1996 passed by a Civil Court in a suit filed by the respondent no.1/plaintiff against the MCD to argue that in this order the Civil Court directed MCD to carry out a survey and take action in accordance with law, and which order was passed in a suit for mandatory injunction filed by respondent no.1/plaintiff, however, this Order dated 13.8.1996 cannot help respondent no.1/plaintiff because an order of a court cannot be used by a person to claim possession as on the date of the filing of the subject suit, firstly because it would only be a final judgment of a court of law deciding issues of merits after leading evidence, and not a miscellaneous order, which can be used by a person to prove the aspect of possession being finally held to be of such a person being respondent no.1/plaintiff in the present case. Secondly, it is seen that the Order dated 13.8.1996 is passed in a suit where the appellant/defendant no.2/DDA was not a party and it was only the MCD which was a party and thus this Order dated 13.8.1996 cannot bind the appellant/defendant no.2. As already stated above, the possession of the suit land was taken by the government after acquisition of the same in the year 1972. After taking possession vide possession proceedings dated 18.4.1972, the land was placed at

the disposal of the appellant/defendant no.2/DDA by a notification and which documents have been proved by the appellant/defendant no. 2 as Ex.D2W1/3 and Ex.D2W1/3A. Therefore, once possession of the suit land was with the appellant/defendant no.2 from 1972 and it was placed at the disposal of the appellant/defendant no.2, unless appellant/defendant no.2 was a party to the suit for mandatory injunction in which the Order dated 13.8.1996 was passed, the said order cannot be used as against the appellant/defendant no.2/DDA. There is yet third reason that the Order dated 13.8.1996 will not help the respondent no.1/plaintiff because this order in no way gives any observation or final finding of the possession of the suit property being of the respondent no.1/plaintiff. All that this order does is direct the MCD to carry out a survey and thereafter take action and surely such an order of around ten lines cannot in any manner be taken as final with respect to the possession of the suit property by the respondent no.1/plaintiff on 13.8.1996, and much less on 2.12.1996 when the subject suit for injunction was filed.

17. In view of the aforesaid discussions the substantial questions of law are answered in favour of the appellant/defendant no. 2/DDA. The impugned Judgments of the courts below; of the Trial Court dated 15.1.2007 and the First Appellate Court dated 25.4.2015; are accordingly set aside. This

Regular Second Appeal is allowed and the suit of the respondent no.1/plaintiff will accordingly stand dismissed, leaving the parties to bear their own costs.

OCTOBER 21, 2016

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VALMIKI J. MEHTA, J

