

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

% **Date of decision: 31st August, 2017**

+ **CM(M) No.1009/2005, CM No.7085/2005 (for stay), CM No.11166/2007 (under Order XXII Rule 4 CPC), CM No.11167/2007 (for condonation of delay), CM No.3007/2015 (for direction) and CM No.41426/2016 (for directions).**

D.D.A.

..... Petitioner

Through: Mr. Pawan Mathur, Standing
Counsel for DDA.

versus

PRATAP SINGH & ANR

..... Respondents

Through: Mr. Rajat Aneja and Ms.
Chandrika Gupta, Advs. for LR's of
R-1.

Mr. K.B. Soni, Adv. for R-2.

Ms. Sapna S. Kapil, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order (dated 2nd February, 2005 in Suit No.451/02/96 of the Court of Civil Judge, Delhi) of dismissal of the application filed by the petitioner Delhi Development Authority (DDA) under Section 5 of the Limitation Act, 1963 for condonation of delay in applying under Order IX Rule 7 of the Code of Civil Procedure, 1908 (CPC) for having the order dated 16th September, 1996 proceeding *ex parte* against the petitioner DDA set aside.

2. The petition was entertained and has now been pending in this Court for the last twelve years. Though there is no stay of proceedings before the Trial Court but the counsel for the respondents / plaintiffs states that the suit has not been disposed of, as the Court of Civil Judge

before which it is pending was awaiting the outcome of this petition and now for some time the suit file has been requisitioned in this Court.

3. The counsels have been heard.

4. Not finding the copy of the plaint in the suit from which this petition arises in the paper book, I have enquired about the same from the counsel for the respondents / plaintiffs and have also seen the plaint in the requisitioned suit record.

5. The respondents / plaintiffs Pratap Singh and Gur Kirpal Singh instituted the suit from which this petition arises against the petitioner / defendant no.1 DDA and one Jatinder Pal Singh and Tejewant Kaur, only for the relief of perpetual injunction, restraining the petitioner / defendant no.1 DDA from dispossessing the respondents / plaintiffs from the piece of land in occupation of the respondents / plaintiffs and / or from demolishing the superstructure raised by the respondents / plaintiffs thereon and / or from obstructing the passage of the respondents / plaintiffs to the said property.

6. The counsel for the respondents / plaintiffs on enquiry states that the said land is situated in Radio Colony behind Kingsway Camp near Delhi University, Delhi.

7. I have enquired from the counsel for the respondents / plaintiffs, the title of the respondents / plaintiffs to the subject land.

8. The counsel for the respondents / plaintiffs states that the said land was acquired and was vested in the petitioner / defendant no.1 DDA; however possession thereof was never taken and compensation also was not paid. On further enquiry, whether the respondents / plaintiffs were the recorded owners of the said land, the answer is in the negative and it is

stated that the respondents / plaintiffs are merely in possession of the said land for long. Subsequently, it is stated that the respondents / plaintiffs have purchased the said land from the recorded owner thereof. On enquiry, whether there are any registered documents, no answer is forthcoming and on further enquiry whether the sale is of after the land being notified for acquisition or of before, also no answer is forthcoming. The only claim is of possessory rights and at least today no argument of adverse possession also has been raised. In the said circumstances, I have enquired from the counsel for the respondents / plaintiffs as to on what basis has injunction been claimed in the suit; if the suit land has been acquired, then the petitioner / defendant no.1 DDA is entitled to take all measures open to it to recover possession thereof and to remove the respondents / plaintiffs therefrom.

9. Attention of the counsel for the respondents / plaintiffs has also been drawn to the dicta of the Supreme Court in **Anathula Sudhakar Vs. P. Buchi Reddy** (2008) 4 SCC 594 holding that in a suit merely for permanent injunction no enquiry into title is required to be made.

10. As far as the plea of the counsel for the respondents / plaintiffs of possession of the land having not been taken and compensation having not been paid notwithstanding the land having been acquired and the acquisition having lapsed, is concerned, it has been enquired from the counsel for the respondents / plaintiffs, whether the respondents / plaintiffs have filed a writ petition in this Court for having it so declared.

11. The answer is in the negative but it is stated that an application has been filed in this proceeding to the said effect.

12. The said relief is incapable of being granted by a Single Bench of

this Court and the filing of the application if any in this regard is misconceived. Moreover, when the respondents / plaintiffs are not even the recorded owners and have not disclosed title to the land, it is not understandable as to what is the locus of the respondents / plaintiffs to have such declaration.

13. At one stage of the argument, when the aforesaid questions were put to the counsels, the counsel for the respondent / plaintiff Gur Kirpal Singh states that the respondent / plaintiff Gur Kirpal Singh will amend the plaint.

14. It was then enquired that if the respondents / plaintiffs have to amend the plaint and which would amount to *de novo* trial of the suit, why should this Court, in exercise of supervisory jurisdiction, not set aside the orders impugned in this petition and allow the petitioner / defendant no.1 DDA to participate in the suit, which the petitioner / defendant no.1 DDA in accordance with law is in any case entitled to do from at any stage of the proceedings, without having the earlier proceeding set aside.

15. At this stage, the counsel for the legal heirs of the respondents / plaintiffs Pratap Singh and Gur Kirpal Singh has contended that this petition is not maintainable, is against a dead person and the application for setting aside of the order proceeding *ex parte* against the petitioner / defendant no.1 DDA was filed after eight years from the date when the petitioner / defendants were proceeded against *ex parte*.

16. However the same would be of no relevance in the aforesaid scenario.

17. Option has been given to the counsel for the legal heirs of the

respondents / plaintiffs Pratap Singh and Gur Kirpal Singh to justify before this Court, the right and entitlement of the respondents / plaintiffs to the relief claimed of perpetual injunction.

18. No answer has been forthcoming and the only argument is, that after dismissing this petition, the suit should be left to be decided by the Suit Court.

19. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is meant to ensure that the proceedings before the Trial Courts are conducted in accordance with law and that the Court process is not being abused. What is found in the present case is that the respondents / plaintiffs are enjoying an interim order in the suit restraining the petitioner / defendant no.1 DDA from dispossessing them from the property. Though the counsel for the respondents / plaintiffs states that the said order was subject to respondents / plaintiffs depositing Rs.25,000/- in the Suit Court and which has been deposited but the said sum of Rs.25,000/- has today lost any meaning in terms of compensation for the possession enjoyed by the respondents / plaintiffs of the property now at least for 21 years owing to the pendency of this proceeding. Considering the location of the property which is prime and size of the property which is disclosed to be 500 sq. yds., the compensation at market rates for occupation, if unauthorised, as it appears today from the arguments, would run into crores of rupees. This Court cannot, inspite of the suit file having come before this Court and finding the aforesaid state of affairs, turn a blind eye on such technicalities and at the cost of public property. It cannot be lost sight of that the officials of Government and Government agencies like DDA are often found lacking in performance

of their duties and owing to the neglect or fault of a few officers, the public property cannot be permitted to be appropriated by a few citizens for their own exclusive benefit and gain.

20. I am therefore not inclined to agree with the counsel for the respondents / plaintiffs to dismiss this petition on the aforesaid technicality and allow the suit which the counsels have been unable to justify as maintainable till now, to remain pending and the respondents / plaintiffs to derive benefit therefrom by perpetuating their possession, presumably unauthorised, of the property.

21. The petition is thus allowed.

22. The learned Civil Judge is requested to, while proceeding with the suit, consider the aforesaid observations and to after hearing the counsels, pass appropriate orders in the suit.

23. The counsel for the petitioner / defendant no.1 DDA on enquiry states that the written statement has not been prepared as yet.

24. The Vice Chairman, DDA is requested to ensure that the written statement to the suit is filed on or before 31st October, 2017 and to ensure that the counsel for the petitioner / defendant no.1 DDA diligently attends to the proceedings in the suit.

25. The order dated 2nd February, 2005 is set aside. The delay in applying for condonation of the *ex parte* is condoned and the order proceeding *ex parte* is set aside.

26. The petition is disposed of.

27. The suit file requisitioned in this Court be returned forthwith to the Trial Court.

28. If there is no date fixed in the suit before the Trial Court, the

parties to appear before the Suit Court on 12th October, 2017.

29. The counsel for the legal heirs of the respondents / plaintiffs Pratap Singh and Gur Kirpal Singh seeks a clarification that the observations aforesaid would not influence the orders in the suit.

30. It is so clarified.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 31, 2017

‘pp’

(Corrected and released on 29th September, 2017).