

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

+ **RSA No. 147/2017 & CM Nos. 20018-19/2017**

% **24th May, 2017**

**M/S ROHTAK ROAD TRANSPORT CENTRE WORKERS
ASSOCIATION (REGD.)** Appellant

Through: Mr. Suryakant Singhla, Ms.
Mayanka Dhawan and Ms.
Mehaak Jaggi, Advocates.

versus

**DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE
CHAIRMAN** Respondent

**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 impugning the judgment of the First Appellate Court dated 6.3.2017 by which the first appellate court accepted the appeal filed by the defendant in the suit and set aside the judgment of the Trial Court dated 24.11.2015 by which the trial court while dismissing the suit of the appellant/plaintiff for one relief of grant of alternative allotment however decreed the suit for the second relief that the members of the appellant/plaintiff association should not be dispossessed without due

process of law from their portions which they are occupying in DDA Parking, Rohtak Road Transport Centre, Punjabi Bagh, Delhi-35. I may note that the appellant/plaintiff did not file any appeal against the judgment of the trial court dated 24.11.2015 by which the trial court dismissed the suit by refusing to grant the prayer for alternative plots being granted to the members of the appellant/plaintiff.

2. The first appellate court by its impugned judgment has thoroughly examined the issue with respect to the claim of the appellant/plaintiff that the appellant/plaintiff should not be dispossessed without due process of law. While discussing this issue the first appellate court has held that admittedly the appellant/plaintiff does not claim any valid title or legal basis to continue to occupy the land of the respondent/Delhi Development Authority. The first appellate court also holds that 251 members of the appellant/plaintiff have not been proved to be in occupation of which specific portions as there is no delimitation in the site-plan filed. The first appellate court has referred to the three Supreme Court judgments which hold that courts should not grant equitable relief to encroachers of public land. Also, it has been held by the first appellate court by reference to a judgment of the Supreme Court that mere possession is not enough for grant of injunction because the possession must be such to which there

must be acquiescence by the owner of the land and that an encroacher has no acquiescence of the owner of the land to occupy the land much less valuable public land.

3. Since the first appellate court has done a very thorough and exhaustive job in dealing with the issues and has also referred to the relevant judgments of the Supreme Court, I would instead of my own language refer to and adopt the reasoning and discussion of the first appellate court as contained in paras 9 to 14 of the impugned judgment and which paras read as under:-

“9. The plaintiff’s association has not denied the fact that the members of the association have unauthorizedly occupied the government land which was meant for parking. However, they have claimed their right to the suit premises on the basis of the possession. Ld. Trial Court has relied upon the various documents and communications exchanged between the plaintiff’s association and defendant in respect of the allotment of the suit premises. To reach the conclusion that the members of the plaintiff’s association are in occupation of the suit premises and therefore, the defendant cannot evict them therefore without due process of law. However, in order to get the injunction the plaintiff was required, in the first instance, to specify and describe the property on which the right of occupation has been claimed. No site plan has been filed on behalf of the plaintiff’s association to define the area which is being occupied by various members of the plaintiff’s association. On the basis of the evidence produced by the plaintiff’s association, it can be assumed that 251 members of the plaintiff’s association are in occupation of the various sites around the DDA parking, but the separate portion in occupation of these members cannot be ascertained. The site plan Ex.PW1/8 relied upon by Ld. Trial Court does not by any means specify the shares of the members of plaintiff’s association. The plaintiff has not even produced any evidence to establish the separate area in the occupation or separate members, Ex.PW1/2 which is a list of the members also does not specify the site being occupied by each member separately. Under the circumstances, no blanket permanent injunction can be granted in favour of the plaintiff. The onus was upon the plaintiff to bring on record all the relevant and necessary material and despite the onus being onerous, it must have been discharged by the plaintiff.

10. The Ld. Trial Court has granted injunction on the premise that the members of the plaintiff are in settled possession of the suit property.

However, in the absence of proper description of property occupied by them, their possession cannot be termed as settled one. A possession which is continuous and uninterrupted and with the acquiescence of the true owner is said to a settled possession.

11. In Rame Gowda (D) by Lrs vs M. Varadappa Naidu (D) by Lrs. & Anr. (2004) 1 SCC 769, Hon'ble Supreme Court has held that the 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession':

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each cases;
- iii) the process of dispossession of the true owner by the trespasser must be completed and final and must be acquiesced to by the true owner.

12. In the present case, the defendant has never acquiesced in the possession of the members of the plaintiff over the suit property which is evident from the fact that the defendant has treated them as encroachers and has refused to allot alternative sites. Besides, the plaintiff has not produced any evidence to establish the long and uninterrupted possession of the members and mere assertion is not sufficient.

13. Besides, the plaintiff has not denied the fact that defendant is the owner of the suit land and no injunction can be granted against the true owner and in favour of trespasser. Reference may be had to "Premji Ratansey Shah and Others vs. Union of India, reported in JT 1994 (6) Supreme Court 585". Again in "Mahadevo Savalaram Shelke and Ors. vs. Pune Municipal Corporation and Ors., (1995) 2 SCC 33". It was held that no injunction should be granted against the true owner at the instance of person in unlawful possession.

14. Therefore, it cannot be said that the members of the plaintiff are in settled possession of the suit property and they are consequently not entitled to any protection in the form of injunction. Ld. Trial Court has committed error in granting permanent injunction to the plaintiff." (emphasis added)

4. A second appeal under Section 100 CPC lies only if there is a substantial question of law. Once the admitted facts are that the members of the appellant/plaintiff are encroachers of public land, no equitable relief of injunction could have been granted to the

appellant/plaintiff in view of the various judgments of the Supreme Court referred to by the first appellate court.

5. No substantial question of law arises. Dismissed.

MAY 24, 2017/ib

VALMIKI J. MEHTA, J

