

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

+ **RFA No. 125/2018**

% **Reserved on: 9th February, 2018**
Pronounced on: 15th February, 2018

S.D. RATHI Appellant
Through: Mr. Rajender Singh, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. No. 5035/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 125/2018 and C.M. Appl. No. 5036/2018 (for stay)

2. This Regular First Appeal is filed by the plaintiff under Section 96 of the Code of Civil Procedure, 1908 (CPC) impugning the judgment of the trial court dated 31.10.2017 by which the trial court has dismissed the suit filed by the appellant/plaintiff seeking recovery of compensation of Rs.15,20,380/- as also allotment of an alternative site in lieu of acquired land/property.

3. The facts of the case are that appellant/plaintiff pleaded that he was the owner in possession of property/plot no.3 admeasuring 107.5 sq. yards, falling in Khasra no.5/25/1 Village Nangloi Jatt, Delhi-41 abadi known as Friends Enclave Part-II, New Delhi, Sultan Puri Road. Appellant/plaintiff claimed to have purchased the suit property in terms of registered sale deed dated 1.3.2006. Appellant/plaintiff pleads that he is the doctor who ran his clinic from the suit property. On 2.1.2012 it was pleaded that officials of Municipal Corporation of Delhi (MCD) came and demolished and took possession of 28 sq. meters from the suit property for the purpose of widening of a road and construction of a flyover over the Delhi-Rohtak railway track. It was pleaded in the plaint that possession was illegally taken of the said 28 sq. meters without issuing any notice and it was further pleaded that inspite of forcibly taking away the land of the appellant/plaintiff the respondent/defendant neither paid any compensation nor has allotted any alternative site and therefore through the suit appellant/plaintiff claimed compensation and allotment of an alternative site.

4. Respondent/defendant contested the suit by filing written statement and pleaded that appellant/plaintiff was encroacher of public land which was a public road and such encroachment was on a Right of Way of 100 feet road and therefore the encroachment on the main road was removed for constructing road over bridge and road under bridge between Sultan Puri and Nangloi Jatt. The cost of construction of the bridge was to be shared between Indian Railways and the respondent/defendant. It was pleaded that the property of the appellant/plaintiff, of which 28 sq. meters was taken over by the respondent/defendant, was a part of unauthorized colony being Friends Enclave till the year 1977 and this colony was regularized in terms of the circular dated 16.1.1977 of the Lieutenant Governor subject to the existing structures being regularized in accordance with the layout plan prepared after getting clear spacing for roads and community facilities. Appellant/plaintiff is pleaded to have encroached upon a part of the main road, being 100 feet wide road, which was to be constructed in front of the property of the appellant/plaintiff, and as duly provided in the regularization plans. In terms of the Resolution no.1030 of the respondent/defendant dated

11.1.1984 regularization of Friends Enclave took place where it was clearly shown that there would be construction of 100 feet wide road being the Right of Way of Sultan Puri Road. The suit was prayed to be dismissed as it was stated that there was no right in an encroacher to illegally occupy Government land and therefore there was no need of any notice to the appellant/plaintiff who was illegally encroaching part of the Right of Way/road, over which road over bridge and road under bridge was to be made by the respondent/defendant jointly with the Indian Railways.

5. After pleadings were complete the following issues were framed:-

- “1. Whether defendant has not been served with notice under Section 477 and 478 of the DMC Act? If so, then its effect? OPD
2. Whether the plaintiff is entitled to a decree for a sum of Rs.15,20,380/- against the defendant as prayed in the para (I) of prayer clause of the plaint? OPP
3. Whether the plaintiff is entitled to pendente-lite and future interest? If yes, then at what rate and for what period? OPP
4. Whether the plaintiff is entitled to alternative site in lieu of the acquired land/property as prayed in the para (iii) of prayer clause of the plaint? OPP
5. Relief.”

6. Parties thereafter led evidence and these aspects are recorded in paras 27 to 39 of the impugned judgment and which paras read as under:-

“27. The Plaintiff, in support of his case, has examined himself as PW1; Sh. Pravesh as PW2; Sh. Rakesh as PW3; Sh. Purushottam Pandey as PW4; Sh. Harinder Mohan as PW5 and Sh. Subhash Chand Sharma as PW6. On the other hand, the defendant has examined Sh. A.S. Yadav, Executive Engineer (Project)-I, Rohini Zone, North DMC as DW1 to prove its case.

28. PW1 Dr. S.D. Rathi has deposed on the lines of plaint through his affidavit Ex.PW1/A. Contents of the affidavit are in consonance with the contents of the plaint. He has relied upon the documents vis-a-vis Sale Deed dated 01.03.2006 as Ex.PW1/1; certificate of registration for professional activity, receipts issued by MCD regarding CC charges, electricity bills dated 5th March 1993 and January 1995 paid by plaintiff, telephone bills dated 01.01.1992 as Ex.PW1/2 (Collectively); site plan of property as Ex.PW1/4; legal notice as Ex.PW1/5; registered acknowledgment due receipt as Ex. PW1/6 and speed post receipt as Ex.PW1/7.

29. When cross-examined by Sh. Sanjay Sethi, Id. Counsel for defendant, plaintiff has testified that he has never given any representation to MCD regarding ownership and demolition of the property except the legal notice; has not filed any document on record to prove the title/ownership of Smt Maya Rathi and other previous owners i.e. title deeds to prove the area in the sale deed. He denied that he is the encroacher of the public land. He deposed that he has not arrayed revenue/concerned department and was not aware as to whether his property falls under the concerned road development plan or not. He also deposed that he was not aware as to how many square yards of land falls in one Khasra. He also deposed that he was not aware as to in what khasra his property falls. He also deposed that there must be other property owners falling in that khasra. He denied that he has not willfully given any representation to MCD as he is the encroacher on the land falling under development area/road. He deposed that one gatta measures equal to 7.5 meters. He deposed that his property falls on the eastern side and road falls on the western side. He denied that his property falls on the eastern side and road falls on the western side. He deposed that road falls on one side of his property. He deposed that he has filed the documents pertaining to his property. He deposed that there is a road on the back side of his property measuring 15 feet.

30. In further cross-examination, PW1 deposed that his claim against MCD is for approximately Rs. 15 lacs. He also deposed that he has not filed any document pertaining to the valuation of the damaged property to approved valuer/architect. He deposed that he had never applied for regularization of building (building plan) from the MCD. He admitted that measurement of property in his sale deed does not mention the measurement of land in Guttas and it is mentioned in square yards. He

also admitted that in Khasra No. 5/25/1, there are other properties also. He also admitted that certificate of registration has been issued by CDMO – North West for the purpose of ultrasound. He also admitted that it does not pertain to regularization of building activity. He admitted that he never made any representation in writing to MCD regarding demolition of his property. He denied that he is an encroacher of the public property. He admitted that the portion of his disputed land i.e. 28. sq. meters is presently used for construction of flyover i.e. ROB/RUB/Sultan Puri Railway Crossing Project. He denied that he is deposing falsely regarding claim against MCD.

31. PW2 Sh. Pravesh, Daftari, Department of Publication, Gazette Section, Old Secretariat Delhi has proved the Gazette Notification No. E29/1/2010/GAD/CN/1494-1539 dated 15.11.2011 concerning circle rates as Ex.PW2/1. His testimony has remained unchallenged.

32. PW3 Sh. Rakesh, Halka Patwari, Village Nangloi Jatt, Office of SDM Punjabi Bagh, Delhi has proved Aksh Sazra and Field Book for 1953-54 of Village Nangloi Jatt Delhi as Ex.PW3/1. He deposed that 'Rasta' (way) has been shown at point A, B, C and D in Ex.PW3/1 and the same bears Khasra No. 111/1 of Village Nangloi Jatt, Delhi. He proved the attested copy of Field Book as Ex.PW3/2. He also deposed that width of the way (rasta) i.e. Khasra No. 111/1 is three gatta as per record of the field book and this way (rasta) is leading from Delhi Rohtak Railway Line to boundary of Village Nangloi Jatt. He further deposed that the width of the said way (rasta) between Khasra No. 5/25/1 and 24/2 is also three gatta. He also deposed that as per record, there is no change in the width of said way (rasta) till date. He further deposed that one gatta is equal to 8 feet 3 inches. Testimony of this witness has also gone unchallenged.

33. PW4 Sh. Purushottam Pandey, LDC, SR-II A, Office of the Sub Registrar, Punjabi Bagh/Nangloi, Delhi has proved sale deed dated 01.03.2006 Ex.PW1/1. Testimony of this witness has also gone unchallenged.

34. PW5 Sh. Harinder Mohan, Kanoongo, from Office of the Sadar Kanoongo, Tis Hazari, has proved the Masavi of Nangloi Jatt Village, for the year 1953-54 as Ex.PW5/1. His testimony has also remained uncontroverted.

35. PW6 Sh. Subhash Chand Sharma, AZI/UDC, House Tax Department, Rohini Zone, Sector-17, Rohini, Delhi has proved certified copy of list of colonies/localities/areas indicating categories of colonies consisting of 26 pages as Ex.PW6/1. He deposed that as per record, Friends Enclave, Sultanpuri Road, Nangloi is at Serial No. 416 under the heading colony Ward no. and the category there is "G". His testimony has also remained unassailed.

36. Defendant has examined DW1 Sh. A.S. Yadav, Executive Engineer (Project-I), Rohini Zone, North DMC, Delhi. He has proved his affidavit in evidence as Ex.DW1/A which is in consonance with

contents of written statement. He has proved copy of resolution of Works Committee as Ex.DW1/1; copy of approved layout plan of DDA dated 06.05.1984 as Ex.DW1/2; copy of the circular issued by Ministry of Works & Housing, Government of India no. 130037/113/74/UDI/IIB dated 16.02.77 as Ex.DW1/3; copy of Regularization Plan of Friends Enclave, Near Nangloi as Ex.DW1/4 and copy of Resolution No. 1030 dated 11.01.1984 as Ex.DW1/5.

37. When cross-examined by Sh. Rajinder Singh, Id. Counsel for the plaintiff, this witness has deposed that he is an official of MCD and authorised to depose. He deposed that flyover is being constructed from Rohtak Road (Nangloi side) to Friends Enclave (Sultanpuri Road) and existing road is the road on which construction work is underway. He further deposed that the dotted portion from A to B in Ex.DW1/4 does not denote anything. He deposed that property is coming in the 100 feet ROW (right of way) road are encroachments which were removed by the MCD. When questioned as to whether the Friends Enclave belonged to Nangloi Village or Sultanpur Majra, he replied that issue pertains to LAC Department of GNCT of Delhi. He further deposed that the properties which were coming in the proposed ROW of Punjabi Basti Road did not constitute encroachments and hence acquisition proceedings were undertaken by LAC Department of Delhi Government concerning the same. He deposed that the encroachments coming in the ROW of the 100 feet Sultanpuri Road were demolished. When questioned as to whether the Sultanpuri Road was 3 gathas wide (25 feet) in 2006, he answered that as per the layout plan of DDA of 1984 (Ex.DW1/2), the width of Sultanpuri Road has been shown as 30 meter (100 feet). He admitted that properties coming in the ROW of the Punjabi Basti Road are effected in widening of the road. He volunteered that the suit property is not amongst the plot affected in 100 feet ROW Sultanpuri Road as shown in Ex.DW1/4.

38. In further cross-examination, he deposed that the properties covered in the order dated 03.10.2012 which is Ex.DW1/P-1 in Writ Petition No. 1852/10 are those which are coming in the alignment under Punjabi Basti road and same did not constitute encroachment whereas the encroachment in the suit property was demolished. He also deposed that the demolition action on 100 feet wide road was taken as per Ex.DW1/4. He further deposed that survey was done as per Ex.DW1/4 for identification of encroachment on 100 feet wide Sultanpuri Road. He further deposed that no notice is required to be given for removal of encroachment. He also deposed that there is no provision in DMC Act which provides for serving of notice for removal of encroachment. He further deposed that they had demolished the encroachments coming in the 100 feet ROW of Sultanpuri Road. He denied that the project of road over bridge/road under bridge at Sultanpuri is covered in Commonwealth Games Scheme. He also deposed that the

said project is connected with Ex.DW1/4 and Ex.DW1/5. He deposed that the project of road over bridge/road under bridge has been undertaken by the MCD in alliance with Railway. He also deposed that the funds are to be shared by both the agencies. He deposed that DW1/2 dates back to 1984 which shows the ROW of Sultanpuri Road as 30 meters (100 feet). He also deposed that the survey report is not available in their record as on date. He also deposed that the encroachments were removed by erstwhile staff of MCD and the then Executive Engineer of Project Division (West Zone) requisitioned police force for removal of encroachments. He deposed that he can not tell the quantum of encroachment removed in the suit property as the encroachment removal action was taken by erstwhile staff.

39. In further cross-examination, DW1 denied that the encroachments were removed as per the programme under Commonwealth Games. He volunteered that the project had never been the part of Commonwealth Games. He deposed that he is dealing with this project since 25.07.2013 and he is not aware if any other project/works in Friends Enclave had ever been carried out. He deposed that Ex.DW1/4 and Ex.DW1/5 are the documents which pertain to the regularization of Friends Enclave. He denied that plaintiff is entitled to any damages as he was rightful owner of the property in question. He also deposed that the building department of the Zone maintains the record relating to regularization of the properties and he is not aware as he was working in Project Division of the Zone. He further deposed that all the properties coming into the alignment of Sultanpuri Road constituting encroachments were demolished. He admitted that there is similar one property which has also been encroached in the alignment of the road. He deposed that no demolition action has been taken against it as yet because Hon'ble High Court has granted stay. He also deposed that he has filed document Ex.DW1/4 specifically regularization plan and moreover Ex.DW1/1 to Ex.DW1/3 and Ex.DW1/5 are the connected documents which prove that action has been taken legally. He further deposed that Ex.DW1/2 shows right of way of Sultanpuri Road as 100 feet. He also deposed that Friends Enclave since 1984 is abutting Sultanpuri Road. He denied that Friends Enclave is a part of Nangloi Village and not with Sultanpur Village. He volunteered that the matter pertains to LAC department of GNCT of Delhi. He further deposed that he cannot say anything about compensation as question of payment of compensation pertains to LAC department.” (emphasis added)

7. A reference to the evidence led on behalf of the respondent/defendant shows that the respondent/defendant had duly proved the layout plan of DDA as Ex.DW1/2 and more particularly the regularization plan of the Friends Enclave was proved as Ex.DW1/4 and which plan showed 100 feet wide road. The resolution with respect to Resolution No.1030 dated 11.1.1984 was proved as Ex.DW1/5. Regularization of the Friends Enclave in terms of the circular dated 16.2.1977 was proved as Ex. DW1/3.

8. The aforesaid paras also show that the appellant/plaintiff only proved an Aksh-Sazra way back of the year 1953 and rasta/way only in Khasra no.111/1 of village Nangloi Jatt, Delhi whereas the suit land was situated in Khasra no.5/25/1 and in any case the revenue record was superseded by the regularization plan. Therefore it was clear that the appellant/plaintiff could not show that the suit land did not form part of the Right of Way of 100 feet road or that the suit land ever formed part of any building in regularization plan of Friends Enclave. The regularization plan of Friends Enclave as duly proved included a 100 feet wide road, and in part of which road, 28 sq. meters of the land of the appellant/plaintiff was situated and hence the said

portion was rightly demolished and taken possession of by the respondent/defendant. Also the relevant issues which were to be decided were issue nos.2 to 4 and these issues have been held by the trial court in favour of the respondent/defendant and against the appellant/plaintiff by holding that in terms of the document Ex.DW1/5 being Resolution no.1030 dated 11.1.1984 only such structures of Friends Enclave were regularized which were duly constructed and existing prior to 16.2.1977 and that appellant/plaintiff led no evidence that the structure which was demolished and possession of land which was taken of to the extent of 28 sq. meters was constructed as on 16.2.1977. Trial court has also held that the appellant/plaintiff failed to prove the chain of title documents from the earlier owners and simply filing ownership in terms of a sale deed would not show that the suit land did not form part of Right of Way of 100 feet road or that the suit land in fact was the land which formed part of regularized colony and which was constructed upon as on 16.2.1977. Admittedly, the sale deed in favour of the appellant/plaintiff is of the year 2006 and which is after regularization in the year 1977 and there is no evidence on record of the construction which has been demolished by

the respondent/defendant and possession taken over of 28 sq. meters was existing in the year 1977.

9. These relevant observations have been made by the trial court in paras 43 to 45 of the impugned judgment and which paras read as under:-

“43. The onus was on the plaintiff to prove that he is the legal/rightful owner of the built up property/plot no.3 falling in Khasra no. 5/25/1 situated in area of Nangloi Jat, also known as Friends Enclave Part-II on the Main Sultanpuri Road and to prove that the defendant has illegally demolished part of the property (measuring 28 sq. meters). The plaintiff has proved on record through his testimony the registered sale-deed dated 01.03.2006 (as Ex.PW1/1) in respect of the property. He has, also, proved on record the certificate of registration for professional activities, various receipts issued by MCD regarding various charges – electricity bills, telephone bills etc. The document Ex.PW1/1 reveals that Smt Maya Rathi wife of Dr. S.D. Rathi (plaintiff) executed the sale-deed in his favour on the basis of a General Power of Attorney dated 05.01.1979 executed in her favour by Sh. Nand Lal. The said GPA, however, has not been placed on record by the plaintiff. Further, the chain of documents showing the title of Sh. Nand Lal, the person who allegedly executed GPA has not been placed/proved on record by the plaintiff. The suit/subject built up property constructed over plot no.3 out of Khasra No. 5/25/1 admittedly formed part of unauthorized colony. The plaintiff in his cross-examination admitted having not filed any documents on record to prove the title/ownership of Smt Maya Rathi and other previous owners. He testified in his cross-examination that he was not aware as to whether subject property falls under road development plan or not. He testified in his further cross-examination that he was not aware as to in what Khasra the subject property falls. He admitted that there would be other property owners falling in that khasra. He, also, testified that he has not filed any document pertaining to the valuation of the damaged subject property. He admitted in his cross-examination that he had/has never supplied any regularization of building/building plans from the MCD. He also admitted that he had/has never made any written representation to MCD regarding demolition of the subject property. He admitted in his further cross-examination that the portion of subject property/land

measuring 28 sq. meters is being presently used for construction of flyover. He has not disputed that Friends Enclave was an unauthorised colony till the year 1977 when policy for regularization of unauthorized colonies was brought and as per the said policy, the existing structures were to be regularised only after bring the same in consonance with the layout plan and after keeping adequate space for roads and other community facilities.

44. The defendant proved on record the document Ex.DW1/5 which provides that benefit of regularization is available to only those structures which were in existence prior to 16.02.1977. This is not disputed by the plaintiff himself. In fact, the plaintiff has not disputed that Friends Enclave was an unauthorised colony. The plaintiff purchased the subject plot/property on 01.03.2006. He, however, has not placed on record any documentary evidence to show as to when the alleged construction was carried on the subject plot of land. In fact, the plaintiff has not placed on record any evidence as to how Smt Maya Rathi or Sh. Nand Lal happened to own the subject plot. As per the policy contained in circular No.130037/113/74/UDI/IIB dated 16.02.1977 (Ex.DW1/3), the benefit of the policy could be given to the structures which were in existence as on that date. The plaintiff has failed to prove that the structure on the property existed as on 16.02.1977, also. The defendant, on the other hand, has made out that in terms of the policy Ex.DW1/3, the families which were displaced in the process of providing space for roads and other community facilities would be rehabilitated either by providing alternative land/flat and tenant, if any, would be allotted alternative accommodation. The only condition was that owners of such house did not own any plot/house in Delhi. The policy clearly provides that for the purpose of regularizing colonies, basic civic amenities were to be provided and for the said purpose, road/streets had to be provided. In case any person / owner or person in possession was affected, he/she was to be provided alternative plot/flat.

45. In the instant case, the plaintiff has claimed to be the owner of subject plot/structure raised threat and he has claimed to be the owner since 01.03.2006. He, however, has not placed on record any documentary or other evidence to show that such construction was in existence prior to 16.02.1977. He has also failed to bring on record any other documentary or other evidence to show that he did/does not own any other house/property in Delhi. The defendants have clearly brought over the record that the suit plot/land encroached upon the road/street which was proposed to be widened and therefore, only that portion of the subject property/plot which encroached upon the public land was demolished. It is well settled proposition of law that no notice is required to be given to an encroacher over public land. The plaintiff was, therefore, not issued/served any notice prior to the demolition action taken, on the subject plot of land. The defendants have, also, brought over

the record that the properties abutting 25B, Punjabi Basti Road at Nangloi side of Sultanpuri Nangloi Railway crossing, as were affected in widening of Punjabi Basti Road upto 100 feet and did not constitute encroachment were acquired but the property in alignment extending over 100 feet wide Sultanpuri Road (already in existence) were demolished as the same constituted encroachment by the residents of Friends Enclave. The defendant has thus clearly brought over the record that no discrimination has been done between the properties which were authorised. Properties which were authorised were duly acquired in accordance with law and compensation was also paid whereas the properties which encroached upon the public land were demolished and no compensation could be given to the owners of such properties.”
(underlining added)

10. As a result of the aforesaid discussion, the following conclusions can be drawn:-

(i) Though appellant/plaintiff claimed to be the owner of the land of 28 sq. meters falling part of Khasra no.5/25/1 of village Nangloi Jatt, however, there was no evidence led by the appellant/plaintiff that this area was constructed upon in the year 1977 when the colony of Friends Enclave was regularized and existence of which construction was a *sine qua non* for construction to be an authorized construction.

(ii) Respondent/defendant duly filed and proved various documents being the approved layout plan of DDA regularizing of Friends Enclave colony, regularization plan of Friends Enclave and the circular of the Ministry of Housing as Ex.DW1/2 to Ex.DW1/5 and all of which documents showed that part of the Friends Enclave was not

regularized which fell within the Right of Way of a road of 100 feet and consequently the area of 28 sq. meters falling within the road of 100 feet was not in the ownership of the appellant/plaintiff because there was no regularization of the same while regularizing the colony of Friends Enclave.

(iii) The appellant/plaintiff failed to file complete chain of title documents and therefore the appellant/plaintiff did not establish that what was the land which is predecessor-in-interest owned and which was regularized and therefore did not fall in the Right of Way of 100 feet road.

(iv) The documents filed by the appellant/plaintiff being the revenue record were of the year 1953-54 i.e much prior to the year 1977 with the fact that rasta/way which was shown in Ex.PW3/1 proved by the appellant/plaintiff was in Khasra no.111/1 of village Nangloi Jatt and not in Khasra no.5/25/1 and in any way after regularization the ownership of disputed part of 100 feet wide road never vested with any of the residents of the Friends Enclave colony and therefore only what was regularized which did not form part of 100 feet road/right of

way was in the ownership of private persons and not the land which fell in 100 feet wide road of way.

11. In view of the above discussion, I do not find any merit in the appeal. Dismissed.

FEBRUARY 15, 2018
ak/Ne

VALMIKI J. MEHTA, J

