

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

+ **RFA No. 781/2016**

% **19th September, 2018**

DELHI DEVELOPMENT AUTHORITY

..... Appellant

Through: Mr. Rajiv Bansal, Sr. Advocate
with Ms. Rukhmini Bobde and
Ms. Aprajita Gupta, Advocates
(Mobile No. 9871738029).

versus

RAM RATI (NOW DECEASED) THROUGH LR'S & ORS

..... Respondents

Through: Mr. Shlok Chandra, Advocate
for R-2 (Mobile No.
9999670588).

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 First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the Delhi Development Authority (DDA), defendant no. 1 in the suit, impugning the Judgment

of the Trial Court dated 15.01.2016 whereby the trial court has restrained the appellant/DDA from demolishing the suit property bearing no. D-15/A, Chandra Vihar, behind Sr. Sec. School, Khasra no. 248/2, Mandawli, Fazalpur, Shahdara, Delhi-110092.

2. At the outset, it may be noted that the trial court in para 17 of the impugned judgment notes that the respondent no. 1/plaintiff, now deceased and represented by legal heirs, had stopped appearing in Court, yet the trial court has decreed the suit by applying the provisions of National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, and relief was given to the respondent no. 1/plaintiff, even though trial court found that there is no evidence led by the respondent no. 1/plaintiff that the said suit property is situated in Khasra no. 248/2, Mandawli Fazalpur, Shahdara, Delhi-110092. The trial court observed that the respondent no.1/plaintiff failed to prove that the suit property is situated in Khasra no. 248/2 inasmuch as neither demarcation report was filed by the respondent no.1/plaintiff nor any site plan/*Aks shizra* filed that the suit property falls in Khasra no. 248/2.

3. The facts of the case are that respondent no. 1/plaintiff filed the suit pleading ownership of the suit property measuring 1 Bigha 19 Biswas (1950 sq. yds.). It was also additionally pleaded that the suit property, which is situated in Khasra no. 248/2, is as part of the colony of which regularization is proposed and is included in the list of 1071 colonies which are pending regularization with the Government. It was further pleaded that the Chander Vihar Mandawali Fazalpur colony, in which the suit property is situated, is built up to 90% to 100%. The suit was therefore prayed to be decreed.

4. Appellant/Defendant no. 1/DDA contested the suit and denied that the suit property fell in Khasra no. 248/2. It was further pleaded by appellant/defendant no. 1/DDA that in fact the land which the respondent no. 1/plaintiff had claimed to be in Khasra no. 565 min and 570 min. Regardless of the said land either comprised in Khasra no. 248/2 or in Khasra no's 565 min or 570 min, had been acquired under the Land Acquisition Act, 1894. The possession, thereof, was taken under Section 16 of the Land Acquisition Act, 1894 by the appellant/defendant no. 1-DDA on 03.03.1983 and hence the ownership vested with the Government/appellant/defendant no.

1/DDA. Appellant/defendant no. 1/DDA pleaded that the land for which the respondent no. 1/plaintiff claimed rights was an open land around which appellant/defendant no. 1/DDA has constructed its boundary wall.

5. After pleadings were complete, the trial court framed issues and parties led evidence. These aspects are recorded in paras 5 and 6 of the impugned judgment and these paras 5 and 6 read as under:

“(5) In order to prove her case the plaintiff has examined her Special Power of Attorney namely **Ashok Kumar** as her sole witness as **PW1** whereas the defendant DDA has examined its **Patwari Mukesh Kumar** as their sole witness as **DW1**.

(6) For the sake of convenience, the details of the witnesses examined by both the parties and their depositions are put in a tabulated form as under:-

Sr. No.	Name of Witness	Deposition
Witness of plaintiff:		
1.	Ashok Kumar (PW1)	PW1 Ashok Kumar in his examination in chief by way of affidavit Ex.P-1 has corroborated what the plaintiff has stated in the main plaint. He has placed his reliance on the following documents: 1. Special Power of Attorney dated 03.06.2002 which is Ex.PW1/1. 2. Khasra Girdawris showing the name of the plaintiff as Bhumidar in respect of Khasra No. 248/2 which are Ex.PW1/2. 3. Rough Site Plan of the suit property which is Ex.PW1/3. 4. The Possession Report dated 03.03.1983 which is Ex.PW1/4.

		5. The list of 1071 unauthorized colonies to be regularized which is Ex.PW1/5. 6. The relevant extract of the press releases in Newspapers which are Ex.PW1/6. 7. Relevant extract of the guidelines formulated by the defendant no.3 which is Ex.PW1/7. In his cross examination, the witness PW1 has deposed on the following aspects: ➤ That he knew the plaintiff for the last 20 years as she is their family friend. ➤ That he does not know the sons and daughters of the plaintiff. ➤ That the plaintiff cannot read and write. ➤ That plaintiff had brought the SPA after getting it read but he is not aware who read over the same to her. ➤ That he has seen the papers of ownership of the suit property in favour of the plaintiff which ownership is entered into Khatoni. ➤ That he cannot tell since when the suit property was in possession of the plaintiff but it was old possession. ➤ That there was a construction over the suit property and three rooms and two sheds were present there in the suit property. ➤ That he has purchased the suit property from the plaintiff.
2.	Mukesh Kumar (DW1)	DW1 Mukesh Kumar is the Patwari of the DDA who in his examination in chief by way of affidavit Ex.DW1/A has corroborated what has been earlier stated in the written statement. He has placed his reliance on the following documents: 1. Award bearing No. 49-C/70-71 pertaining to Village Mandawli, Fazalpur,

		Delhi which is Ex.DW1/A. 2. Possession proceedings of award No. 49-C/70-71 which is Ex.DW1/B. 3. Notification under Section 22(1) of DDA Act dated 30.03.1983 which is Ex.DW1/C. 4. Aks Shajra part village Mandawali, Fazalpur, Delhi of Khasra No. 565 and 570 which is Ex.DW1/D. In his cross-examination, the witness DW1 has deposed on the following aspects: ➤ That he was not posted in the branch of DDA in the year 2003 and 2004. ➤ That no demarcation of suit property was carried out in this case by him nor he has any personal knowledge whether any demarcation was carried out in respect of the suit property before filing the written statement. ➤ That there is a colony in the name of Chander Vihar in the locality of village Mandawali, Fazalpur, Delhi and is having facilities like water, electricity and sanitation. ➤ That he has stated in his affidavit that there is no property bearing No. D-15A in colony known as Chander Vihar on the basis of written statement although he has no personal knowledge about it nor he made any personal verification on the spot. ➤ That the possession of land falling in Khasra No. 248/1 and 248/2 each measuring 1 bigha 19 biswas as land comprised in these khasras were having built up properties over there. ➤ That the locality falling in Khasra No. 248 as well as 565 and 570 of village Mandawali, Fazalpur is known as C Block, Unchepar,
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		Delhi-110092. ➤ That he cannot tell whether this locality is included in the list of unauthorized colonies recommended by MCD for regularization. ➤ That he is not aware whether the Government of NCT of Delhi has issued a provisional certificate of regularization in respect of this locality on 17.09.2008.
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6. Issue nos. 1 & 3 have been decided by the trial court in terms of paras 15 to 18 of its impugned judgment and these paras read as under:

“(15) Both the issues are clubbed together for the sale of convenience involving common discussion and being interlinked. Onus of proving both the issues was upon the plaintiff. I may observe that the plaintiff has not appeared herself in the witness box and has examined one Ashok Kumar i.e. her duly constituted attorney as her sole witness as PW1. In order to show that the plaintiff is the owner of the property in question, Ashok Kumar (PW1) has placed his reliance on the khasra Girdawris which are Ex.PW1/2 showing that the plaintiff is the recorded Bhumidar in respect of Khasra No. 248/2. The plaintiff has not examined any witness from the Revenue Authorities to prove the said girdwaries nor there is any report of Revenue Department to confirm that the land in question on which the suit property is situated forms a part of Khasra No. 248/2. Assuming that the recorded Bhumidar is the owner of the Khasra No. 248/2 it was necessary for the plaintiff to prove that the land on which the suit property is situated falls in the said Khasra No. 248/2 which has not been done. Neither the Aks Sara nor the Demarcation Report has been produced in the Court or proved in accordance with law to successfully prove that the suit property falls in Khasra No. 248/2.

(16) The case of the defendant is that the suit property does not fall within the Khasra No. 248/2 but in fact it is a part of Khasra No. 565 Min and 570 Min in village Mandawli Fazalpur, Delhi. I may observe that despite the colony known as Chander Vihar being a totally built up area forming a part of list of colonies prepared by Government of NCT of Delhi which have been recommended for regularization, the defendant DDA is

in a denial mood and has gone to the extent of denying that the suit property exists in Chander Vihar colony. The vague defence put forth by the DDA that the land comprised in Khasra No. 565 Min and 570 Min which land was acquired by the Central Government and placed at the disposal of the DDA. In so far as the defendant DDA is concerned they have placed on record the Aks Sazra of Khasra No. 565 Min and 570 Min and not of Khasra No. 248/1 and 248/2.

(17) I may observe that the relief sought by the plaintiff in the suit is only to the limited extent of Permanent Injunction seeking restrain the defendants from demolishing the suit property without adopting due process of law and not for Declaration of title and it is not open for this Court, at this stage, to declare her title in respect of the same. However, the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 having come into force, the case of the plaintiff squarely falls within the same. From the material placed on record, it is evident that the property has been in existence for the last may years and has been assessed to the municipal taxes and is even otherwise protected by the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. Here I may observe that when the case was at the stage of final arguments, the plaintiff has stopped appearing in the Court, which it appears due to the fact that the Government has stepped into protect these construction and subject to whatever decision the GNCT of Delhi may take in this regard, no construction shall be demolished. The provisions of Section 3 of the National Capital Territory of Delhi Laws (Special Provision) Second Act, 2011 are very clear which provides that:

“..... (3) All notices issued by any local authority for initiating action encroachment or unauthorized development in respect of areas referred to in sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken till the 31st day of December, 2017, if

(a) it is constructed prior to the dates specified for different areas as enumerated in sub-section (2);

(b) it conforms to the safety standards as in force or such other safety requirements as may be notified by the Central Government; and

(c) it complies with the directions with respect to safety, if any, issued by the Central Government: Provided that in case punitive action is required to be taken by any local authority, prior approval of the Administrator of the National Capital Territory of Delhi or the officer authorized by him in this behalf, shall be obtained by the authority or officer concerned...”

(18) This being the background, the plaintiff having failed to seek the relief of declaration of her title it is not open for this Court to even look into this aspect. However, in far as the relief of injunction is concerned, in view of the governmental intervention in protecting all such similarly placed properties in the area by virtue of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011, I hold that the plaintiff alone cannot be singularly picked up. I therefore restrain the defendant DDA, their officials and representatives etc. from demolishing the suit property bearing No. D-15/A, Chander Vihar (behind Sr. Secondary School), Khasra No. 248/2, Chander Vihar (behind Sr. Secondary School), Khasra No. 248/2, Mandawli Fazalpur, Shahdara, Delhi-110092 and dispossessing the plaintiff in terms of the provisions of Section 3 of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011."

(underlining added)

7. A reading of the aforesaid paras shows that in para 15 trial court has arrived at a finding that no evidence has been led by the respondent no. 1/plaintiff that the suit property is situated in Khasra no. 248/2. Trial court has rightly held that even if the respondent no. 1/plaintiff was the owner of the land comprising Khasra no. 248/2 it was necessary for the respondent no. 1/plaintiff to prove that actually the suit property falls in Khasra no. 248/2, and which has not been done and proved by the respondent no. 1/plaintiff especially because neither any *Aks Shizra* (Map) or demarcation report has been filed of the revenue authority to show the situation of the subject property in Khasra no. 248/2.

8. It may also be noted that the trial court has rightly discarded the so called Revenue Record filed by the respondent no. 1/plaintiff as Ex. PW1/2 (colly.) inasmuch as the revenue record was not proved by calling upon any revenue official for examination. I also note that the revenue records filed by respondent no. 1/ plaintiff are very peculiar, and it appears that they have not been issued as certified copies of the public record should be issued. Obviously, it is for this reason that the respondent no.1/plaintiff purposely did not call upon the officials from the revenue department for examination to prove the relevant revenue record.

9. To the aforesaid reasoning of the trial court, I would like to further add that in exercise of the powers of this Court under Order XLI Rule 24 CPC, once possession of the said suit land, whether it was situated in Khasra No. 242/2 or Khasra No. 565 min and 570 min, was shown to have been taken over by the appellant/defendant no. 1-DDA vide the Possession Proceedings proved as Ex.DW1/B, ownership of the suit land shall cease to be with the original owner of this land and will be vested with the government/appellant/defendant no. 1/DDA. Respondent no.1/Plaintiff was therefore an encroacher on

the government land. I would further like to add that though respondent no.1/plaintiff pleaded that property is situated in the colony Mandawali, which falls in the land of 1071 colonies which are pending approval of the Government, however, no site plan/lay out plan has been filed by the respondent no.1/plaintiff explaining how the suit property falls in the site plan/lay out plan submitted for regularization to the government.

10. This Court observes that the interpretation given by the trial court to the provision of Section 3 of the National Capital Territory of Delhi Laws (Special Provisions) Second Act 2011 is not the correct interpretation and this aspect has been dealt with by this Court extensively in its judgment dated 05.02.2018 titled as ***Baba Balbir Singh v. Delhi Development Authority, 2018 SCC OnLine Del 6968***. In this judgment, this Court has examined in depth the provision of National Capital Territory of Delhi (Special Provisions) Act, 2007 alongwith the relevant notification of 2008 issued by the DDA under S. 57 of the Delhi Development Act, 1957 and it is held in the above case of **Baba Balbir's Singh (Supra)** that the provisions of the 2007 Act read with Gazette Notification dated 16.06.2008 issued

by the appellant/defendant no. 1-DDA under Section 57 of the **DDA Act** does not regularize land which is owned by the governmental authority after possession thereof being taken under Section 16 of the Land Acquisition Act, 1894 and such land cannot be encroached upon by illegal trespassers. It is further observed that for such illegal encroachers to claim that such encroached land forms part of a colony which is proposed to be regularized and therefore no action be taken against such encroachers under the 2007 Act or its succeeding statutes is illegal and hence such claim holds no ground. The relevant paragraphs of the judgment in the case of *Baba Balbir Singh (supra)* are paragraphs 11 to 14 and these paragraphs read as under:-

“11. In order to appreciate this argument of applicability of the 2007 Act, and alleged right of the appellant/plaintiff as per Section 3 of this Act it will be necessary to refer to Sections 2(c), 2(i), 3 and 4 of the said Act as also certain paras and definitions contained in the Gazette Notification dated 16.6.2008 issued under Section 57 of the Delhi Development Act, 1957 pertaining to regularisation of unauthorised colonies. Sections 2(c), 2(i), 3 and 4 of the 2007 Act, read as under:-

2(c) "encroachment" means unauthorised occupation of Government land or public land by way of putting temporary, semi-permanent or permanent structure for residential use or commercial use or any other use;

2(i) "unauthorised development" means use of land or use of building or construction of building or development of colonies, village abadi area and its extension, carried out in contravention of the sanctioned plans or without obtaining the sanction of plans, or in contravention of the land use as permitted under the Master Plan or Zonal Plan or layout plan, as the case may be, and includes any encroachment.

3. Enforcement to be kept in abeyance.—(1) Notwithstanding anything contained in any relevant law or any rules, regulations or bye-laws made thereunder, the Central Government shall before the expiry of this Act, take all possible measures to finalise norms, policy guidelines and feasible strategies to deal with the problem of encroachment or unauthorised development in the form of encroachment by slum dwellers and Jhuggi-Jhompri clusters, hawkers and urban street vendors, unauthorised colonies, village abadi area and its extension, existing farm houses involving construction beyond permissible building limits and schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land, as mentioned below:—

- (a) policy for relocation and rehabilitation of slum dwellers and Jhuggi-Jhompri clusters in accordance with provisions of the Master Plan of Delhi, 2021 to ensure development of Delhi in a sustainable, planned and humane manner;
 - (b) strategy for regulation of urban street vendors in consonance with the national policy for urban street vendors and hawkers as provided in the Master Plan of Delhi, 2021;
 - (c) scheme containing guidelines for regularisation of unauthorised colonies, village abadi area and its extension, as existed on the 31st day of March, 2002, and where construction took place even beyond that date and up to the 8th day of February, 2007;
 - (d) policy regarding existing farm houses involving construction beyond permissible building limits; and
 - (e) policy regarding schools, dispensaries, religious institutions, cultural institutions, storages, warehouses and godowns used for agricultural inputs or produce (including dairy and poultry) in rural areas built on agricultural land.
- (2) Subject to the provisions contained in sub-section (1) and notwithstanding any judgment, decree or order of any court, status quo—
- (i) as on the 1st day of January, 2006 in respect of encroachment or unauthorised development; and
 - (ii) in respect of unauthorised colonies, village abadi area and its extension, which existed on the 31st day of March, 2002 and where construction took place even beyond that date and up to the 8th day of February, 2007, mentioned in sub-section (1), shall be maintained.
- (3) All notices issued by any local authority for initiating action against encroachment or unauthorised development referred to in

sub-section (1), shall be deemed to have been suspended and no punitive action shall be taken till the 31st day of December, 2008.

(4) Notwithstanding any other provision contained in this Act, the Central Government may, at any time before the 31st day of December, 2008, withdraw the exemption by notification in respect of encroachment or unauthorised development mentioned in sub-section (2) or sub-section (3), as the case may be.

4. Provisions of this Act not to apply in certain cases.—During the period of operation of this Act, no relief shall be available under the provisions of section 3 in respect of the following encroachment or unauthorised development, namely:—

(a) encroachment on public land except in those cases which are covered under clauses (a), (b) and (c) of sub-section (1) of section 3;

(b) removal of slums and Jhuggi-Jhompri dwellers, hawkers and urban street vendors, unauthorised colonies or part thereof, village abadi area and its extension, in accordance with the relevant policies approved by the Central Government for clearance of land required for specific public projects.”

12. As per the policy of 2008 an unauthorised colony has been defined in para 2(k) and the same reads as under:-

2(k) “Unauthorised colony” means a colony/development comprising of contiguous area, where no permission of concerned agency has been obtained for approval of Layout Plan, and/or building plan.”

13. The issue is that whether the conjoint reading of the provisions of the 2007 Act along with the definition of unauthorised colony in the 2008 policy entitles protection to a person under Section 3 of the 2007 Act although such person is not a person from whom possession was not taken in the possession proceedings under Section 16 of the Land Acquisition Act i.e possession was taken of the acquired land but again there is fresh encroachment of land of which the Government had already became the owner by taking possession under Section 16 of the Land Acquisition Act.

14. Definition of unauthorised colony as per para 2(k) of the 2008 policy only refers to a colony in which buildings are constructed without obtaining approval of lay-out plan or sanctioned plan. In other words a colony containing buildings already exist and the buildings are constructed without plans being sanctioned by the local authority and the colony is unauthorised as there is no lay-out plan sanctioned of the colony as required under Section 313 of the Delhi Municipal Corporation Act,

1957. Unauthorised colony's definition therefore does not include unauthorised occupation of the Government land, on which no building was constructed, and of the vacant land the Government had become the owner after taking possession of the vacant land under Section 16 of the Land Acquisition Act. This aspect becomes further clear from Section 4 of the 2007 Act as Sub-Section (a) of Section 4 of the 2007 Act excludes any encroachment of public land except those cases which are covered under clause (c) of Sub-Section (1) of Section 3 of the 2007 Act and which deals with guidelines for regularization of unauthorised colony. In my opinion, the definition of encroachment given in Section 2(c) of the 2007 Act cannot mean encroachment of public land is caused after Government has already taken possession and the Government has become the owner pursuant to possession proceedings under Section 16 of the Land Acquisition Act. The meaning of encroachment has necessarily to be confined to Government land which is acquired by an Award passed under the Land Acquisition Act but with respect to such land possession was not taken under Section 16 of the Land Acquisition Act. The encroachment which is the subject matter of Section 2(c) of the 2007 Act, when the same is read with Section 2(i) of the 2007 Act which defines unauthorised development and Section 4(a) of the 2007 Act which clearly specifies encroachment of public land is not within the scope of regularisation of an unauthorised colony except cases covered under Section 3(1)(c) of the 2007 Act, therefore I refuse to agree with the arguments urged on behalf of the appellant/plaintiff that merely because appellant/plaintiff's land is shown as Plot no. 163 in an application filed by Resident Welfare Association (RWA) of Khirki Extension for regularisation of the colony therefore, the appellant/plaintiff would have protection of Section 3 of the 2007 Act. In my opinion if this Court permits the argument as urged on behalf of the appellant/plaintiff to succeed that since appellant/plaintiff is an encroacher of a Government land though ownership of which had already vested with the Government, and only on the ground that the land claimed by the appellant/plaintiff is included by a private RWA in its application for regularisation of the colony and hence the appellant/plaintiff should be held to be entitled to protection under Section 3 of the 2007 Act as regards the suit land, would amount to giving license by courts to persons to go and occupy Government lands which are owned by Government and thereafter make a colony and seeks its regularisation in terms of the 2008 policy. This however is not the scope and intent of the 2008 policy or the relevant provisions of the 2007 Act, and object of which are only to protect development without a lay-out plan or individual building sanction plan in those areas where acquisition proceedings began and reached the stage of passing of the Award, but no possession was or could be taken by the Government under Section 16 of the Land Acquisition Act because on such lands there had already come up buildings and a colony of buildings prior to taking possession. The

aforesaid position has to be clearly contra-distinguished from the fact where there was no developed colony of buildings and there was only open land when possession could be and was taken by the Government in acquisition proceedings under Section 16 of the Land Acquisition Act, and that in the latter class of cases therefore once the Government takes possession under Section 16 of the Land Acquisition Act and becomes the owner, it cannot be argued by the citizens that they will do mass scale encroachment on Government lands and thereafter seek regularization of encroachment and constructed buildings allegedly on the ground of there existing the 2007 Act and the 2008 policy. I, therefore, reject the argument urged on behalf of the appellant/plaintiff that merely because the appellant/plaintiff's land is shown as Plot no. 163 in the applications for regularization filed by RWA under the 2008 policy, then only because of such reason itself, the appellant/plaintiff has/had protection of Section 3 of the 2007 Act.”

(underlining added)

11. In view of the aforesaid discussion, it is seen that the trial court has committed a manifest error in decreeing the suit for injunction which was filed by the respondent no.1/plaintiff inasmuch as neither the respondent no.1/plaintiff was the owner of the land comprised in Khasra no. 248/2 as ownership vested with government and then with the appellant/defendant no. 1/DDA, and further taking note of the fact that respondent no.1/plaintiff did not even prove that the suit property is situated in Khasra No. 248/2. It is further observed that the respondent no.1/plaintiff failed to prove that the suit property is existing in the layout plan of the colony which is proposed to be regularized by the government.

12. In view of the aforesaid discussion, this appeal is allowed. Impugned Judgment of the Trial Court dated 15.1.2016 is set aside. Suit of the respondent no.1/plaintiff will stand dismissed. Parties are left to bear their own costs. Decree sheet be prepared.

SEPTEMBER 19, 2018

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VALMIKI J. MEHTA, J

