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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Delivered on : 22nd October, 2019

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RFA 914/2019 & CM APPL Nos.45514-16/2019

RAMESH KUMAR MALI

..... Appellant

Through: Mr.Ashok Kr.Verma and
Mr.Surendra Tyagi, Advs.

versus

ASSISTANT ENGINEER, DDA & ORS

..... Respondents

Through: Mr.Dhanesh Relan, Standing
Counsel for DDA with Ms.Komal
Sorout and Ms.Gauri Chaturvedi,
Advs.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is preferred by the appellant against the judgment and decree dated 25.09.2014 passed by the learned Additional District Judge-04/North-West District, Rohini Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.482/2014 whereby the suit filed by appellant for permanent injunction and declaration was dismissed in respect of premises admeasuring 300 square feet bearing No.B-36, Gali No.2, Kailash Vihar, Pansali, near Sector – 32, Rohini, Delhi (hereinafter referred to as the '*suit property*').

2. Admittedly, there is a delay of 1734 days in filing the appeal and CM APPL No.45516/2019 has been filed by appellant for condoning such delay. The learned counsel for the appellant urge the delay occurred was due to wrong advise to file a Writ Petition instead of this RFA

against the impugned judgment and thus from the year 2014 till 17.07.2019 the appellant has been pursuing W.P.(C) No.7568/2014 before this Court, hence the period in between be condoned.

3. To seek and give benefit of pursuing an alternative remedy, one need to look into the prayers made in the suit as also in Writ Petition.

4. The Civil Suit No.482/2014 as filed by the appellant / plaintiff for permanent injunction and declaration has following prayers:-

“a)Permanent injunction against the defendants thereby restraining them, their agents, associates, officers, employees, agents, representative, assignees from demolition of the said suit property and dispossessing the plaintiff from the same, as shown in the site plan filed herewith.

a-i) declaration in favour of plaintiff thereby declaring that the plaintiff is the absolute owner of the suit property bearing No.B-36, Gali No.2, Kailash Vihar Pansali, Near Sector – 32, Rohini, Delhi - 110085

b) The cost of the suit may also be awarded in favour of the plaintiff and against the defendants.”

5. The prayers made in the Writ Petition (C) No.7568/2014 are as under:-

“(a) pass a writ, order or direction in the nature of a writ of certiorari thereby quashing Section 4 Notification dated 27.10.1999 in respect of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delhi;

(b) further pass a writ, order or direction in the nature of a writ of declaration thereby quashing Section 6 Notification dated 20.03.2013 in respect of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delhi;

(c) further pass a writ, order or direction in the nature of a writ of declaration, declaring the acquisition proceedings initiated in respect of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min, admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, post Prahladpur Bangar, Delhi, as having lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(d) further pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondents not to interfere with the peaceful possession and enjoyment of the land of the Petitioner bearing House No.B-36, Gali No.2, forming part of Khasra No.18/14 Min,

admeasuring 300 sq. yards, situated in the Revenue Estate of Kailash Vihar, Pansali, Post Prahladpur Bangar, Delh."

6. A bare perusal of the prayers made in the suit as also in Writ Petition would reveal the same are *distinct* and hence the Writ cannot be treated as an alternative remedy to Regular First Appeal against the impugned judgment dated 25.09.2014. Admittedly the reliefs sought in the suit as also in writ petition are wholly different, hence, it cannot be said the applicant was prosecuting with *due diligence* another civil proceedings, relating to same matter in issue.

7. *Secondly*, the plaint for injunction and declaration has been filed on the premise the appellant is an owner of the *suit property* and is residing therein peacefully with his family members, having purchased it with the help of defendant No.2 from the defendant No.3. It is alleged after a lapse of 13 years i.e. in 1988, the plaintiff was handed over with the possession of the *suit property* and on 10.07.2001 the registered power of attorney, agreement to sell, possession letter, affidavit, receipts were all executed in favour of the appellant by Suresh son of Uday singh, who had in turn had purchased it from Davender Singh son of Bhuri Singh. In the plaint, the appellant has admitted the Delhi Development Authority (DDA) had demolished the suit property *thrice* – firstly on 15.01.2009; secondly on 30.07.2009 and thirdly on 26.10.2009, hence the suit.

8. The evidence was led by the parties in the Civil Suit on the following issues framed:-

- “(i) Whether the suit Is barred under section 53-B of the DD Act? OPD-1.*
- (ii) Whether the suit is barred for nonjoinder of DDA? OPD-1.*

- (iii) Whether the plaintiff can be the owner of the suit property as alleged in para no. 2 of merits of WS of defendant no. 1? OPD-1.
(iv) Whether the plaintiff is entitled to decree of permanent injunction as prayed? OPP.
(v) Whether plaintiff is entitled to decree of declaration as prayed? OPP.
(vi) Relief.”

9. The suit was dismissed *primarily* it being barred for non-joinder of necessary party viz, the DDA. The learned trial court in its impugned judgment held despite the premises being demolished by the DDA thrice and despite the fact respondent No.1 having taken an objection that DDA is an owner of the plot in question and is a necessary party, no steps were taken by the appellant to amend the suit to implead DDA through its Chairman or Deputy Director to be a party to the suit. The plaintiff / appellant was held to be a trespasser and encroacher upon the land, already acquired by the DDA, hence, the absence of the DDA was considered fatal to the suit.

10. Qua issue of his ownership, the learned Trial Court had noted as follows:-

“Issue No. 3: Whether the plaintiff can be the owner of the suit property as alleged in para no.2 of merits of WS of defendant no. 1? OPD-1.

Issue No. 5: Whether plaintiff is entitled to decree of declaration as prayed? OPP.

Both these issues are interlinked, hence, taken up together.

Onus of issue no.3 is upon defendant no. 1 and onus of issue no. 5 is upon the plaintiff. Defendant no. 1 has raised an objection regarding the ownership right regarding the claim of the plaintiff. It is stated by defendant no. 1 in his WS as well as in his evidence that the land in question has already been acquired by the DDA vide award dated 03.04.2002. The document Ex.DW1/1 is the award in question.- Defendant no. 1 has explained that the suit property in question falling in khasra no. 18/14 is reflected in the said award vide which the land falling in the said khasra no.18/14 (rectangle no.18 and khasra no.14). This document Ex.DW1/1 is perused thoroughly, it is further reflected from the pleadings of the parties and the averments made by the defendant no. 1 particularly in the WS as well as in their examination in chief that the said land in question has been falling and is not the subject matter of title award in question acquired by the DDA vide

award no. 4/2002-03/DC/NW. The possession proceedings are also filed on record which are Ex: DW1/2. It is reflected from the plaint that plaintiff has alleged himself that he has constructed the suit property in question on 3-4 occasions, however, it has been demolished by the DDA time and again. If the action of the officials of DDA including defendant no. 1, who has been arrayed as a party in his personal capacity, is illegal and not according to the rules and procedures then the plaintiff has failed to explain as to why no action has been taken by him till date against the defendant no.1 or the officials of DDA. Plaintiff has not challenged the award in question till date. It is pertinent to mention here that as per Land Acquisition Act (Old and New), the Government has power to acquire any land, however, such acquisition has to be as per rules and procedures and therefore, the right to property which is a fundamental right as per Indian Constitution, is subject to the Law laid down under this act. In other words, the right to property is not an absolute right and it is subject to the right of the Government. State Or Central by way Of regulation, acquisition etc. It is further reflected from the record itself that the award in question passed by the concerned department has not been questioned and disputed by the plaintiff. One of the Objections, however, taken by the plaintiff is that the suit property in Question was not falling and is not the subject matter of the award in question. Therefore, it has not been acquired by the Government, hence, it is the plaintiff and not the Government who is the owner of the suit property in question. The defendant no. 1 has explained and shown from the record that khasra no.18/14 is duly mentioned in the said award. There is no confusion in this regard that this khasra no. is not mentioned in the said award. It is also not disputed that this award has not been challenged by the plaintiff or the earlier recorded owner as per the Law. Plaintiff has also not initiated any proceedings or taken any steps for getting the said property mutated in his name. If the facts alleged by the plaintiff are presumed to be correct then he has to take steps accordingly for correcting the revenue records and getting the same transferred in his name. He should have at least started the proceedings thereof, more particularly, when the officials of DDA have been questioning his right over the property and have been demolishing the construction raised by him time and again. Not taking any step by the plaintiff in this regard and not showing the same by way of documents in his evidence has to be considered accordingly and in the absence of any evidence in this regard and more particularly in the light Of award in question pertaining to the suit property in question, more particularly, pertaining to the land falling in khasra no. 18/14, the plaintiff cannot be said to be the absolute owner of the suit property in question.”

11. The learned Trial Court thus dismissed the suit holding the plaintiff has not been able to establish any legal right with regard to *suit property* and hence was not entitled to any of the prayers made therein.

12. Even the Writ Petition (Civil) No.7568/2014 filed by the appellant was also dismissed by this Court on 17.07.2019 while noting:-

"6. In the counter affidavit filed on behalf of the LAC it is averred that possession of the subject land was taken on 12th May, 2000. It is averred that compensation was paid to the recorded owners namely, Surender Singh, Kawal Jit Singh and Harbans Singh. It is also averred that the Petitioner has filed unregistered documents and that such documents do not prove ownership in the eyes of law.

7. In the counter affidavit of the DDA, it is averred that possession was taken and handed over to the DDA on 12th May, 2000. A copy of the possession proceedings has been annexed with the counter affidavit. It is further stated that compensation was remitted to the L&B Department by way of cheques Nos. 033657 and 282364 dated 3rd December, 1999 and cheque No. 086821 dated 24th March, 2003. It is also stated that the Petitioner has admitted the dismissal of his civil suit by the Addl. District Judge, Rohini and that the land acquisition proceedings have now been completed.

8. A rejoinder has been filed on behalf of the Petitioner to the counter affidavit of the LAC where the in the said counter affidavit have been vehemently denied and the contents of the petition have been reiterated.

9. From the averments in the writ petition itself, it emerges that the subject land forms a part of Kaliash Vihar, in Village Pehladpur Bangar, which is an unauthorized colony and has been granted provisional regularization by a letter of the L&B Department dated 11th September, 2007. It figures at Sl. No. 706 (Regn No.761) in the list of unauthorised colonies awaiting regularisation put up on the website of the Department of Urban Development, GNCTD. This Court has in a series of orders, consistently held that where the property in question is part of an unauthorized colony, no relief under Section 24(2) of the 2013 Act can be granted. xxxxx

10. The above decision has been followed and the legal position has been reiterated by this Court in an order dated 25th January, 2019 in W.P.(C) No.3438/2015 (Krishna Devi v. Union of India). However, as clarified therein, the dismissal of the present petition will not come in the way of the Petitioners pursuing the claim for regularisation of the unauthorised colony in question.

11. There is yet another aspect to the matter. From a perusal of the impugned Award pertaining to the subject land and the counter affidavits of the LAC/L&B Department and the DDA, it also emerges that the subject land was acquired for the purpose of the Rohini Residential Scheme. If in terms of the impugned Award, the land was acquired for public purposes of the Rohini Residential Scheme, then by virtue of the order dated 18th October 2016 of the Supreme Court of India in SLP (C) Nos. 16385-16388 of 2012 (Rahul Gupta v. DDA) even if on the date of the said order of the Supreme Court, actual physical possession was not with the DDA, if such physical possession was not handed over to the DDA within ten days thereafter, the DDA would be deemed to be in possession of the lands in question. Therefore, even on the Petitioner's own showing, the possession cannot be said to be with them. In the circumstances, it is not possible to grant the Petitioners relief under Section 24(2) of the 2013 Act."

13. In the decision dated 17.07.2019 (*supra*) the acquisition proceedings were confirmed and an application under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was also dismissed.

14. The only ground raised in this appeal is since no steps are taken by the DDA for taking possession of other properties situated in his neighborhood so *pick and choose policy* be condemned. Admittedly the land upon which the *suit property* is constructed has since been acquired by the DDA and *per* directions of the Supreme Court in (*Rahul Gupta vs DDA*) SLP (C) Nos. 16385-16388 of 2012, the possession of the subject land is now with DDA. The appellant thus has no right to claim possession and/or injunction qua the *suit property*. There is no ground to entertain the present appeal which, even otherwise, is barred by the limitation.

15. In view of above, the appeal is dismissed. The pending applications are also dismissed. No order as to costs.

OCTOBER 22, 2019

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YOGESH KHANNA, J.