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

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Decided on: 12.12.2019

+ RSA 15/2016

NIRMAL JAIN & ORS

..... Appellants

Through: Mr. J.P Sengh, Senior Advocate with
Ms. Zubeda Begum, Mr. Zubin Singh
and Mr. R.L. Sinha, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Rajiv Bansal, Senior Advocate
with Mr. Dhanesh Relan, Ms. Komal
Sorout, Ms. Parul Panthi and Mr.
Anant Nigam, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. An affidavit has been filed by the DDA as of yesterday. One copy of which has been supplied to the Court, the same is taken on record, a copy has been supplied to the learned Senior Advocate for the appellants.
2. Upon a cursory perusal of the same, Mr. J.P. Sengh, the learned Senior Advocate for the appellants submits that DDA has virtually conceded the appellants' case inasmuch as the only reason why others were granted regularisation of the coal depot, was that each one of them were in possession of the coal depot. That being the position, the appellants' would be squarely covered under the policy adopted by the DDA because the appellant has been found to be in possession of the coal depot since

1964. The appellant being equally placed should be treated equally i.e. the possession should be regularized.

3. Apropos the proof of possession of the land, he refers to the order of the learned Appellate Court dated 14.09.2015 in RCA No: 07/15 which reads as under:

“21. In order to claim injunction, appellants were required to prove that they were in long and settled possession of the suit property. The possession of the Appellants over the suit property in the year 1993 is established from the Court record, as discussed above. Further, there were encroachments upon the suit property, as is clear from the contents of Ex.DW1/2 in the year 1983 as well. The Respondent did not disclose to the Court as to who were those encroachers whose reference is found in Ex.DW1/2 and thus presumption arises in favour of the Appellants, considering the deposition of PW3, that it is the Appellants who were in possession of the suit property. PW3 is the witness from MCD. He deposed that the suit property was surveyed for the first time for the purpose of house tax on 13.08.1962, and house tax was paid in the name of Sh. Chandu Lal. Appellants disclosed that Sh. Chandu Lal was their grandfather which fact was not disputed during the proceedings. The suit property was being assessed to house tax till the year 1993 when the Appellants filed the Suit. It is correct that payment of house tax does not make payer the owner of the property, however, such document can be used for determining as to whether payer was in possession of the property or not. The testimony of PW3 is clear and suggests that even in the year 1962, the suit property was in possession of predecessor in interest of the Appellants.

22. There is thus clear and unflinching evidence in favour of the Appellants with respect to their possession over the suit property in the year 1962, 1983 and 1993. Law

presumes in favour of continuity of a particular state of affairs unless contrary is proved. In the present Suit Respondent did not show that Appellants were removed from the suit property prior to the year 1993. Regarding 1993, evidence only with respect to part demolition of structure is on record. The Appellants were allowed to reconstruct the said partly demolished structure, which fact also IS a part of the Court record and is not disputed by the Respondent.

(emphasis supplied)”

4. The learned Senior Advocate for the appellants further refers to this Court's order dated 22.02.2018 which has recorded *inter alia* as under:

“The learned Senior Counsel for the appellants submits that the records pertain to a time much prior to the birth of the plaintiffs’ witness, PW1; that the application under the aforesaid policy for allotment of alternate land was either made by the grandfather or the appellant's other predecessors. In this regard, they rely upon various documents and acknowledgments by statutory bodies, such as the MCD, apropos the filing of an application in 1976. They also rely upon a survey report of 13.08.1962 made by the MCD, which has recorded the existence of M/s Jain Coal Depot at T-1, Nizamuddin (East), Opposite Railway Reservation Office; upon a number of Tehbazari receipts issued after 1962; the stock and trade of the coal issued by the Food and Supply Department in 1978, and other documents to show that the appellants were in lawful possession of the suit property.”

5. It is, therefore, contented that not only has it been proven from DDA's own records that the appellants were in fact in possession of the coal depot

before the year of 1977 but indeed, there is also a judicial finding in their favour.

6. Mr. Bansal, the learned Senior Advocate for DDA refers to an order of this Court dated 16.09.2016 which recorded *inter alia* as under:

“2. While going through the file in Chamber for passing of judgment it is found that the policy dated 19.9.1969 Ex.PW1/17 in fact requires the affidavit to be filed by an unauthorised occupant of being in occupation prior to 1.7.1960 in the unauthorisedly occupied plot within one month i.e. prima facie there is a time limit for seeking allotment of alternative plot. It is also noticed that the policy Ex.PW1/17 filed is only of one page and the complete policy does not appear to exist on the trial court record.

3. Counsel for the appellant will take steps and file in Court the complete policy dated 19.9.1969 / Ex.PW1/17 and arguments will then be addressed in this Regular Second Appeal afresh on account of the fact that there seems to be a time limit for seeking benefit of allotment of an alternative plot by filing an affidavit in one month as per Ex.PW1/17.”

7. A perusal of DDA's affidavit shows that proof of occupation of the coal depot was required only upto the year 1977 and not till 01.07.1960 as noted in the aforesaid order.

8. In the circumstances, if the appellants are equally placed with the other six allottees, namely, Sh. Jagmohan Kochar, Smt. Champa Devi, Sh. Thakur Abrial Singh, Sh. Bhagwan Dass, Sh. Nandu Mai Jain and 52/1, Old Rajinder Nagar, i.e. it has been proven that the appellants were in possession of the coal depot prior to year 1977, indeed way back from 1962. Therefore, like the aforementioned persons, the appellants being equally placed are

entitled to regularisation of their coal depot. Accordingly, the DDA is directed to regularize the appellants' coal depot and/or grant relief identical to the six named persons identically placed, within two weeks of receipt of copy of this order.

9. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

DECEMBER 12, 2019/AB

