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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 1st December, 2020
+ **RSA 56/2020, CM APPLs. 12295/2020, 12297/2020 & 30781/2020**
DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Sanjeev Sagar, Standing Counsel
with Ms. Nazia Parveen, Advocate
(M-9278693021).

versus
KAMAL SINGH & ANR Respondent
Through: Mr. Manohar Lal & Mr. Chaitanya
Rohilla, Advocates for R-1. (M-
9810510145)

5 **WITH**
+ **RSA 57/2020 & CM APPLs. 12573-74/2020**
DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Sanjeev Sagar, Standing Counsel
with Ms. Nazia Parveen, Advocate.

versus
JAI BHAGWAN & ANR Respondent
Through: Mr. S.S. Gulia, Advocate (M-
9958446751).

6 **AND**
+ **RSA 58/2020**
DELHI DEVELOPMENT AUTHORITY Appellant
Through: Mr. Sanjeev Sagar, Standing Counsel
with Ms. Nazia Parveen, Advocate.

versus
HARI CHAND Respondent
Through: Mr. Manohar Lal & Mr. Chaitanya
Rohilla, Advocates for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present second appeals have been filed by the Delhi Development Authority (“DDA”), challenging the impugned orders dated 25th July, 2019

passed by the Id. District Judge/Appellate Court, in appeals filed by the Appellants/Defendants against the impugned judgments/decrees dated 26th December, 2012 passed in the civil suits filed by the Respondents/Plaintiffs.

3. The question raised by Mr. Sagar, Id. Standing Counsel for DDA in these second appeals is that in view of the provisions of Delhi Land Reforms Act, 1954 (*hereinafter 'DLR Act'*) as well as Order II Rule 2 CPC, the civil suits which were filed by the Respondents were not maintainable before a Civil Court and accordingly a permanent injunction ought not to have been granted. He further submits that the Appellate Court and the Original Court have accordingly erred in law in entertaining the suits and passing the impugned orders.

4. On the other hand, the submission of Mr. Manohar Lal, Id. counsel for the Respondents in RSA 58/2020, is that on the date when the threat of dispossession existed, the proceedings under Section 74(4) of the DLR Act, were not pending before the Revenue Court, and hence the civil suit was maintainable. In any event, he submits on the basis of the decision in ***Ashok Kumar & Ors. v. Munni Devi (Smt.) & Ors. [RFA No. 621/2003 & RFA No. 14/2004, decided on 5th March, 2012]***, that a suit for declaration and injunction is maintainable in the Civil Court. In RSA 56/2020, the proceedings under Section 74(4) were pending when the suit was filed.

5. In a similar manner, Mr. S.S Gulia, Id. counsel for the Respondents in RSA 57/2020, submits that the dispossession cannot be effected while the proceedings are pending before the Revenue Court.

6. Mr. Sagar, Id. counsel however points out that civil suits are barred under the provisions of the DLR Act. He further submits that the suits were also barred under Order II Rule 2 CPC and since the title to the property is

with the DDA, no relief ought to have been granted. Moreover, the granting of a permanent injunction would be in the teeth of the proceedings pending before the Revenue Courts. The suits were totally untenable and not maintainable.

7. The brief background of these petitions is that the Respondents as well as other similarly placed parties claim to be *Assamis* of the suit land by virtue of an allotment resolution of 1974 and had filed an application under Section 74(4) of the DLR Act before the Revenue Court for being declared as *Bhumidars* over the suit property. During the pendency of this application, the suit land was placed at the disposal of DDA vide notification no. *FI (172)/LM/L&B/2001* dated 19th August, 2002. The land was handed over symbolically to DDA by the Building Development Officer (BDO) vide order dated 13th October, 2003 and then transferred to the Engineering Wing of DDA on 17th May, 2004.

8. Thereafter, various persons who were similarly placed to the Respondents, challenged the order of 13th October, 2003 by way of *W.P(C) 13061-66/2004 titled Ram Singh & Ors. v. Gaon Sabha Nasirpur, Najafgarh, New Delhi* and the same was disposed of vide order dated 11th August, 2004. The operative portion of the said order reads as under:

“Writ petition is accordingly disposed of holding that petitioners possession in respect of the aforesaid land cannot be disturbed till their application under Section 74(4) is disposed of. If decision is in favour of the petitioner, possession would not be disturbed. Only if the decision is against the petitioner and subject to their right to challenge the order and on the proceedings attaining finality against the petitioner alone can petitioner possession be disturbed by the respondents.”

9. In effect, the above order protected the possession of persons like the Respondents, who were in possession of the suit land during the pendency of the proceedings under Section 74(4) of the DLR Act. It is only after the said proceedings attain finality and upon the DDA succeeding, that their possession could be disturbed.

10. Thereafter, several of the affected parties contested their applications before the Revenue Court under Section 74(4) of the DLR Act, which were rejected by the Revenue Assistant by order dated 15th February, 2005. An appeal was also filed against the order of the Revenue Assistant before the Deputy Commissioner and a revision was filed before the Financial Commissioner. In some cases, like the present three, civil suits were also filed by the parties for permanent injunction, restraining DDA from interfering with the possession of the land.

11. In the civil suit being Suit Nos. 425389/2016, Id. SCJ granted a decree of permanent injunction in favour of the Respondents herein vide impugned order dated 26th December, 2016 in the following terms:

“A decree of permanent injunction is granted in favour of plaintiffs and against the defendant thereby restraining the defendant from interfering with the possession of the plaintiffs over the suit land measuring 4 bigha 16 biswa in khasra no. 393, Village Nasirpur, New Delhi without due process of law.

There shall be no order as to costs.

Given under my hand and the seal of this court on 26th day of December, 2016.”

12. Similar orders were passed in Civil Suits No. 426607/2016 and 426798/2016 as well.

13. These orders were appealed against by the DDA in RCA Nos. 41/2017, 40/2017 and 02/2018. However, vide impugned orders dated 25th July, 2019, the appeals have been dismissed and the Trial Court's orders have been upheld. Hence these second appeals.

14. The only question that arises herein is whether there is any question of law that arises that requires adjudication in these second appeals. Mr. Sagar, Id. Standing Counsel for DDA submits that the civil suits filed by the Respondents were not maintainable, in view of the provisions of the DLR Act, wherein a remedy of civil suit does not lie before the Civil Courts. He relies upon the following three judgments to argue that the suits were in fact not maintainable and that in any event, the order in the W.P(C)13061-66/2004 would be even for the benefit of the Respondents herein:

- ***Ashok Kumar & Ors. v. Munni Devi & Ors. (supra)***
- ***Hatti v. Sunder Singh [1970 (2) SCC 841]***
- ***National Institute of Mental Health & Neuro Sciences v. C. Parameshwara [(2005) 2 SCC 256]***

15. A perusal of the order dated 11th August, 2004 passed by the Writ Court in W.P(C)13061-66/2004 clearly shows that the possession of none of the persons in possession can be disturbed till their application under Section 74(4) of the DLR Act is disposed of. In case of RSA 58/2020, the Section 74(4) application was not pending on the date when the suit was filed. However, in the other two appeals, the Section 74(4) applications were pending on the dates when the suit was filed.

16. The question of law sought to be raised as to the maintainability of the suit is no longer *res integra* and has already been adjudicated in several judgments, including that of the Supreme Court and this Court. In ***Hatti v.***

Sunder Singh (supra), the Supreme Court had clearly observed and laid down the boundaries of jurisdiction between the Revenue Courts and Civil Courts. It was held in this judgment that the DLR act is complete code in itself. The observations of the Supreme Court are as under:

“...The Act is a complete Code under which it is clear that any one, wanting a declaration of his right as a Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, remedy has to be sought under Section 84, read with Item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil Court had no jurisdiction to entertain the suit.”

17. Similarly, a Id. Single Judge of this Court in **Ashok Kumar & Ors. v. Munni Devi & Ors. (Supra)** has considered Sections 16 and 185 of the DLR Act as also the judgment of the Supreme Court in **Hatti v. Sunder Singh (Supra)**. The Court, has observed as under:

“5. In my opinion, the trial Court has fallen into a grave error in holding that the Civil Courts did not have jurisdiction in view of Section 185 of the Act. Section 185 has already been reproduced above and which Section shows that the Revenue Courts have jurisdiction to try such suits which are mentioned in columns 2 and 3 of the Schedule I of

the Act, and it is only with respect to such suits that the jurisdiction of the Civil Courts will be barred. The sections and type of the suits which are mentioned in columns 2 & 3 of the Schedule I of the Act, do not cover suits such as the subject suit for declaration, injunction and for cancellation of a sale deed/power of attorney on the ground of the same having been forged and fabricated. Such causes of action/reliefs of declaration and injunction which pertain to invalidity of the title documents which are said to have been got executed on the basis of a forged and fabricated General Power of Attorney are not covered under any of the Sections under columns 2 & 3 of Schedule I and they can be thus decided by a Civil Court. A reference to columns 2 and 3 of Schedule I of the Act shows that in none of the Sections or the description of suits, mentioned in Columns 2 and 3 of the Schedule I respectively, the subject suit would be covered. The only sections which can be said to be somewhat related to the issues/causes of action/reliefs in the suit are Sections 13 and 104. Section 13 pertains to an application to regain possession after bhumidari rights are got declared and for which period of limitation is one year from the commencement of the Act. The Act commenced in the year 1954 and the subject suit for declaration and injunction cannot be said to be pertaining to Section 13 of the Act, and also because no declaration of bhumidari rights envisaged under Section 13 is in issue in the subject suit. Therefore, the subject legal proceedings are not covered under serial No. 3 of the Schedule I which pertains to Section 13, being an application to regain possession. So far as the Section 104 is concerned which is the subject matter of serial No. 28 of the Schedule I, the said Section pertains to a declaratory suit which is filed

on behalf of Gaon Sabha against a person claiming entitlement to any right to the land which is the subject matter of the Act. Obviously, the subject suit filed by the private persons is not a suit for declaration, covered by Section 104.

A reference to all other sections which are the subject matter of column 2 of the Schedule I and the description of such suits under those Sections as stated in column 3 of Schedule I shows that there is no section for filing of a suit of the nature of the suit in question. A reference to the column 2 and the description of the Sections in column 3 shows that the proceedings which are the subject matter of the Revenue Courts are those proceedings, which are with respect to either declaration of Bhumidari rights (as distinguished from inter se dispute of claim of ownership/bhumidari rights on account of transfer by title deeds/sale deeds including by forging a power of attorney), suits which are with respect to exchange of Bhumidari land or for partition of a bhumidari land or suit for ejectment filed by an Asami or a suit for injunction or damage caused to a holding of a person etc etc. These suits which the Civil Courts are barred from taking cognizance of are basically suits of a bhumidhar or Asami or Gaon Sabha and that too provided they are first of all the subject matter of the Sections which are stated in Column 2 of the Schedule I.

18. From the above, it is clear that the questions of law sought to be raised have already been settled by various decisions as set out above and simple suits for injunction would not be maintainable. Thus, insofar as declaration of *bhumidari* rights is concerned and possession in respect thereof, Revenue Courts have jurisdiction. It is only in cases which involve declaratory relief in respect of documents of title, that a suit for declaration

would lie.

19. A perusal of the relief sought in the present suits shows that all the Respondents have merely sought permanent injunction against the DDA from interfering in their possession, in any manner. For example, the relief sought in CS(OS) No. 425389/16, which is impugned in RSA 56/2020, is as under:

“It is therefore prayed to the Hon’ble Court that the defendants or anybody purporting to be working under them may kindly be restrained from interfering with the possession of the plaintiffs in the land admeasuring 4 Bigha 16 Biswa allotted to the plaintiff for cultivation out of khasra number 393 min in the area of village Nasir Pur, New Delhi.

Any other or further orders as this Hon’ble Court may deem fit in the facts and circumstances of the case may also be passed in favour of the plaintiffs and against the defendant.

Cost of the suit may also be awarded in favour of the plaintiffs. ”

20. These suits, in view of the settled legal position are not maintainable. However, the Respondents would be entitled to the benefit of the order passed in the writ petition being W.P(C)13061-66/2004 as it is unanimously agreed that the Respondents are similarly placed to the Petitioners in the said writ petitions. A perusal of the impugned injunction orders also shows that the effect of the same is that the Respondents cannot be dispossessed, until and unless the proceedings before the Revenue Authorities have attained finality, which is exactly the order passed in W.P.(C) 13061-66/2004. It is submitted by ld. counsels for parties that the Section 74(4) proceedings in respect of all the Respondents are still pending.

21. In view of the above discussion, the appeals are disposed of with the observation that the order passed in W.P.(C) 13061-66/2004 as set out in paragraph 8 above would enure to the benefit of and be applicable to the present Respondents as well. The said order is reproduced once again below for ready reference:

“Writ petition is accordingly disposed of holding that petitioners possession in respect of the aforesaid land cannot be disturbed till their application under Section 74(4) is disposed of. If decision is in favour of the petitioner, possession would not be disturbed. Only if the decision is against the petitioner and subject to their right to challenge the order and on the proceedings attaining finality against the petitioner alone can petitioner possession be disturbed by the respondents.”

22. The questions of law no longer require adjudication. The present second appeals, along with all, pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 1, 2020

Rahul /A