

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

% **Date of decision: 15th January, 2020**

+ **CS(OS) No.500/2019**

RAVI GUPTA ALIAS RAVI PRAKASH Plaintiff

Through: Mr. Pravir Kumar Jain & Mr.
Arjan Jain, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR.Defendants

Through: Mr. Shadan Farasat, Ms. Hafsa
Khan & Mr. Bharat Gupta,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff, as per the amended plaint dated 14th October, 2019, has sued the Government of National Capital Territory of Delhi (GNCTD) and the Director, Directorate of Health Services, Delhi Administration, for permanent injunction to restrain the defendants from interfering with the use and occupation of the plaintiff of and from dispossessing the plaintiff from, the plot of land measuring 1000 sq. yds. bearing No. A-2, out of Field Nos.401 to 405, 407 to 414, 415/2, village Siraspur, in the colony known as Indra Enclave, Block-A, Delhi.

2. It is the case of the plaintiff that, (i) the plaintiff, since prior to 1980, is engaged in the business of giving on hire, earthmoving equipment for agriculture and development, in various parts of India and is carrying on the said business either in his own name or in the name of M/s Madhav Developers (India) Pvt. Ltd.; (ii) for the said business, the plaintiff is required to store / park heavy earthmoving

machineries such as bulldozers, excavators, dumpers etc.; the said machines are given on hire to various contractors to work at site and are returned to the plaintiff after completion of the work at site; (iii) to meet the requirement for storage / parking of the said heavy machines and also for other purposes, the plaintiff purchased the plot of land aforesaid vide Agreement to Sell dated 31st October, 1981, for a total sale consideration of Rs.25,000/-; registered payment receipt and registered Will etc. from the erstwhile registered owner of the land viz. Mohan Lal Shelly were obtained; (iv) the plaintiff, besides parking his machinery and equipment on the said land, has since the year 1981-82, been also growing crops thereon and the name of the plaintiff is shown in the Khasra Girdawari for the year 1982-83; (v) the plaintiff has constructed a hutment / structure on the said land, where staff / employees of the plaintiff reside; the said hutment has been in existence for the last more than 35 years; (vi) the plaintiff has been in continuous and uninterrupted use and occupation of the property since the date of its purchase in the year 1981, till date; (vii) in or around 1987-88, the defendants for the first time started claiming leasehold rights on a larger plot of land, including the plot aforesaid and started representing that a hospital was required to be constructed on the said larger plot and from time to time started calling upon the plaintiff to remove his machines and equipment therefrom; (viii) the plaintiff, in or about 1987-88 initiated legal action by filing a writ petition challenging the claim of the defendants of having acquired leasehold rights with respect to the larger piece of land or the subject land and seeking to protect his valuable rights and possession thereof;

however the said writ petition was dismissed on 24th May, 1988; (ix) the defendants, vide letter dated 8th March, 1989 admitted the possession of the plaintiff of the subject land but claimed the plaintiff to be a trespasser and called upon the plaintiff to remove the machinery; (x) however, no action as threatened, of dispossession of the plaintiff was taken thereafter and the plaintiff till date continues in possession; (xi) however in August, 2019, the defendants again started threatening the plaintiff with forcible dispossession; (xii) there has been no effort whatsoever on the part of the defendants to construct a hospital on the subject land and the long delay leads the plaintiff to infer that there is no plan of construction of hospital on the subject land; and, (xiii) the officials of the defendants last came to the subject property on 4th September, 2019 and threatened the plaintiff with forcible dispossession.

3. The suit, originally filed only against Director, Directorate of Health Services, Delhi Administration, came up first before this Court on 24th September, 2019 when it was enquired from the counsel for the plaintiff, how the suit could lie against an office, as the office of the Director, Directorate of Health Services, Delhi Administration was. Attention of the counsel for the plaintiff was also drawn to Section 20A of the Specific Relief Act, 1963 introduced by amendment thereof of the year 2018, which bars grant of any injunction in a suit involving a contract relating to an infrastructure project specified in the Schedule, where granting of injunction would cause impediment or delay in progress of completion of such infrastructure project and to ***Hari Ram Nagar Vs. DDA*** 2019 SCC

OnLine Del 9747 extending the application of Section 20A to a suit pertaining to infrastructure project, even if not involving a contract and also holding a hospital to be covered under the definition of infrastructure project as it is particularly specified in the Schedule to the Act. Referring to ***Cotton Corporation of India Ltd. Vs. United Industrial Bank Ltd.*** (1983) 4 SCC 625 it was further enquired from the counsel for the plaintiff, that if the sole relief of permanent injunction as sought could not be granted, how could interim injunction be granted.

4. It was also enquired from the counsel for the plaintiff on 24th September, 2019, whether not in law there is a presumption of possession of open land vesting in the title holder thereof. Attention of the counsel for the plaintiff in this respect was invited to ***Anathula Sudhakar Vs. P.Buchi Reddy*** (2008) 4 SCC 594 ***Savyasachi K. Sahai Vs. Union of India*** 2017 SCC OnLine Del 8818 ***Institute of Human Behaviour & Allied Sciences Vs. Govt. of NCT of Delhi*** ILR (2012) 3 Del 247 ***Pankaj Bajaj Vs. Meenakshi Sharma*** 2013 SCC OnLine Del 2303 ***SSP Buildcom P.Ltd. Vs. MCD*** 173 (2010) DLT 354 ***Ishmali Devi Vs. DDA*** 2009 SCC OnLine Del 2550 ***Navalram Laxmidas Devmurari Vs. Vijayaben Jayvantbai Chavda*** AIR 1998 Guj. 17 and ***Murli Devi Vs. NCT of Delhi*** MANU/DE/3152/2018.

5. As far as the claim of the plaintiff in the plaint of Agreement to Sell in his favour of the land is concerned, attention of the counsel for the plaintiff on 24th September, 2019 was invited to ***Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana*** (2009) 7 SCC 363 and (2012) 1 SCC 656, holding the same to be not conferring title.

6. It was yet further enquired from the counsel for the plaintiff on 24th September, 2019, as to how in the face of dismissal on 24th May, 1988 of Writ Petition No.292/1988 earlier filed by the plaintiff for the same relief, the suit was maintainable.

7. On request of the counsel for the plaintiff on 24th September, 2019, the proceedings were adjourned. The plaintiff thereafter applied for amendment of the plaint and for impleadment of the GNCTD and which was permitted and the amended plaint as detailed above taken on record.

8. Though with the filing of the amended plaint, the objection raised on 24th September, 2019 of the suit against the Director, Directorate of Health Services, Delhi Administration being not maintainable in law stands addressed but the other queries made from the counsel for the plaintiff on 24th September, 2019 remain.

9. The counsel for the plaintiff has argued, that (i) though the defendant no.2 in letter dated 8th March, 1989 represented that a hospital was to be constructed on the subject land but no construction for the last thirty years has been commenced and since no project is underway, the question of causing impediment thereto does not arise; (ii) Section 20A of the Specific Relief Act is thus not attracted; (iii) there is no notification of acquisition of the subject land by the defendants and for this reason also, the land cannot be required by the defendants for construction of a hospital and there is no bar to the grant of relief of permanent injunction and interim injunction; (iv) the plaintiff has along with the plaint filed a copy of the registered sale deed dated 6th March, 1972 in favour of the earlier owner of the land,

as also the Agreement to Sell, registered receipt and registered Will executed by the earlier owner of the land in favour of the plaintiff; the plaintiff has also filed Khasra Girdawari showing the name of the plaintiff with respect to the subject land; (v) the possession of the plaintiff is admitted by the defendants also vide letter dated 8th March, 1989 supra and the documents filed with the suit show settled possession of the plaintiff of the subject land for the last more than 38 years; (vi) the suit being for an injunction simpliciter, ***Suraj Lamps and Industries Pvt. Ltd.*** supra is not applicable; (vii) the land is not entirely vacant, a hutment exists thereon as shown in the photographs filed with the petition; and, (viii) the order of dismissal of the writ petition earlier filed by the plaintiff does not bar the present suit as the cause of action for the present suit has accrued in August-September, 2019; dismissal of writ petition challenging vesting of the suit property in Gaon Sabha and creation of lease in favour of defendant no.2 has no bearing on the merits of the present suit for injunction.

10. On 24th September, 2019, direction was also issued to the Court Master to inform the Standing Counsel, Civil of GNCTD of the present matter. The counsel for the defendants appeared on 11th October, 2019, 9th December, 2019 and appears today as well and states that the building plans for construction of a hospital over the subject land have been submitted to the Municipal Corporation of Delhi (MCD) for sanction.

11. Before proceeding further, I must record that the counsel for the plaintiff, during the hearing has also referred to Article 112 of the Schedule to the Limitation Act, 1963, though no mention has been

made of the same in the short note of submissions handed over in the Court and tagged to Part-I file.

12. The said Article prescribes limitation of 30 years for any suit by or on behalf of Central Government or any State Government and the counsel for the plaintiff has contended that the limitation available to the defendants for instituting a suit against the plaintiff for recovery of possession of the subject land has also expired. Further, it is contended that Section 27 titled “Extinguishment of Right to Property” of the Limitation Act, 1963 provides that at the determination of the period limited by the said Act to any person for instituting a suit for possession of any property, the right of such person to such property shall stand extinguished.

13. The plaintiff however in the plaint, has not set up title to the subject land by way of prescription or adverse possession and on the contrary has set up a case of lawful title as an agreement purchaser in possession in part performance of the Agreement to Sell. Attention of the counsel for the plaintiff is invited to plethora of judgments particularly in *Vidya Devi Vs. Prem Prakash* (1995) 4 SCC 496, *Annasaheb Bapusaheb Patil Vs. Balwant* (1995) 2 SCC 543, *Mohan Lal Vs. Mirza Abdul Gaffar* (1996) 1 SCC 639, *Karnataka Board of Wakf Vs. Government of India* (2004) 10 SCC 779, *T. Anyanappa Vs. Somalingappa* (2006) 7 SCC 570, *P.T. Munichikkanna Reddy Vs. Revamma* (2007) 6 SCC 59, *L.N. Aswathama Vs. P. Prakash* (2009) 13 SCC 229 and *Mandal Revenue Officer Vs. Goundla Venkaiah* (2010) 2 SCC 461, holding that the plea of lawful title is antithetical to the plea of adverse possession and the two cannot co-

exist. The plaintiff having approached this Court with the plea of lawful title as an agreement purchaser in possession of the property in part performance of the Agreement to Sell, cannot urge a plea of adverse possession.

14. No further argument in this respect has been made by the counsel for the plaintiff.

15. Else, I do not find merit in any of the contentions aforesaid of the plaintiff.

16. My reasons therefor are as under:

A. The plaintiff on his own pleas, as per dicta in ***Suraj Lamps and Industries Pvt. Ltd.*** supra has no title to the property, injunction against dispossession wherefrom is claimed. Section 53A of the Transfer of Property Act, 1882 enshrining the doctrine of part performance is a bar to recovery of possession only against the agreement seller or anyone claiming title under the agreement seller and not a bar against others. It is well settled that Section 53A does not create any right or title; it merely imposes a bar, only on the transferor, to seek possession. Thus Section 53A can only be used as a shield and not a sword as it does not confer any title on the party in possession nor allows him to maintain a suit on title and can only be used as a defence against the transferor. Reference can be made to ***Prabodh Kumar Das Vs. The Dantmara Tea Co. Ltd.*** AIR 1940 PC 1, ***Delhi Motor Company Vs. U.A. Basrurkar*** AIR 1968 SC 794 and ***Patel Natwarlal Rupji***

Vs. Kondh Group Kheti Vishayak (1996) 7 SCC 690. It is not the case of the plaintiff that the defendants are claiming title to the land under the plaintiff. Thus, the benefit of Section 53A cannot be available to the plaintiffs against the defendants.

- B. Though the Courts in the past have granted injunctions against dispossession without following due process of law to protect long settled possession but the same has resulted in exploitation of legal process and abuse of the process of the Court by those having no title to the property and being rank trespassers or by those, who though claiming to be entitled to title, do not take any legal steps for acquiring title. In *S.P. Chengalvaraya Naidu Vs. Jagannath* (1994) 1 SCC 1 and in *Mandal Revenue Officer Vs. Goundla Venkaiah* (2010) 2 SCC 461 as well as in *Pankaj Bajaj Vs. Meenakshi Sharma* MANU/DE/1808/2013, *Ashok Kapoor Vs. Municipal Corporation of Delhi* 2014 (142) DRJ 473, *Bindu Dhanwal Vs. Balwinder Kumar* 2015 SCC OnLine Del 6577 and *M.F. Buildcon Pvt. Ltd. Vs. Anjali* 2019 SCC OnLine Del 8584 judicial notice has been taken of the fact that the process of the Courts is being abused by land grabbers and those in unauthorized possession and it has been held that no injunctions in favour of such persons protecting their unauthorized illegal possession are to be granted. There is no explanation why the plaintiff, if an

agreement purchaser from the lawful title holder of the property, has not taken any steps for acquiring title to the property by filing a suit for specific performance of the Agreement to Sell or by taking recourse to other remedies. The reason is quite obvious. The plaintiff, in law is not entitled to do so due to the land being part of the unauthorized colony which has come up over acquired land and sale deeds with respect thereto would not be registered. The relief of permanent injunction is a relief in equity which is discretionary and discretion is refused to be exercised in favour of the plaintiff who, on his own pleas, has no title to the property and who has been squatting over public land. Persons such as the plaintiff do not deserve any protection from the Courts, having already defeated the public purpose for which land was acquired. The facts, in this case speak for themselves. The Khasra Girdawari relied upon by the plaintiff does not show the name of the plaintiff in the column 4 titled "Name of tenure holders as classified in part I of the khatauni" and in fact does not contain the name of the agreement seller of the plaintiff also; the same contains the name of the plaintiff only to the extent of clarifying that the plaintiff, in 1982-83 was found in possession of the land.

- C. Mere long possession does not confer any title, as very recently also reiterated by the Supreme Court in

Mallikarjunaiah Vs. Nanjaiah 2019 SCC OnLine SC 606. Further reference can also be made to *Roop Singh Vs. Ram Singh* (2000) 3 SCC 708, *Jagdish Chander Talwar Vs. Uday Sarin* 2013 (134) DRJ 677, *Chanan Kaur Vs. Ajit Singh* 202 (2013) DLT 433, *Om Prakash Vs. South Delhi Municipal Corporation* MANU/DE/0933/2016, *Shekhar Shah Vs. Government of Maharashtra* 230 (2016) DLT 145 and *Pankaj Shah Vs. Rafat* 2018 (170) DRJ 346.

- D. The plaintiff, in paragraph 6 of the amended plaint, with respect to the writ petition earlier filed pleaded “that as there was threat of forcible dispossession of the plaintiff from the suit property owned and possessed by the plaintiff under the garb of construction of a hospital in or about 1987-88, the plaintiff initiated legal action by filing a writ petition challenging the claim of the defendants of having acquired any leasehold rights in respect of the larger piece of land or the suit property and seeking to protect his valuable rights and possession of the property but the said writ petition was dismissed on 24.05.1988”. The plaintiff has however along with the suit filed only a copy of the order dated 24th May, 1988 of the Division Bench of this Court in Writ Petition No.292/1988 to the effect “we find no reason to interfere with the impugned order. Dismissed.” and wherefrom, the claim of the plaintiff in the writ petition earlier filed cannot be

deciphered. The plaintiff has shied away from filing a copy of the writ petition and only on perusal wherefrom, the nature of the claim of the plaintiff therein and the relief claimed therein could have been known. The plaintiff however in the written note of submissions handed over today and which is under the signature only of the counsel for the plaintiff, has contended that the writ petition challenged vesting of the suit property in Gaon Sabha and creation of lease in favour of defendant no.2 and further contended that the dismissal thereof can have no bearing on the merits of the present suit for injunction. The plaintiff having shied away from pleading in this suit that the writ petition challenged vesting of the suit property in Gaon Sabha and creating of lease in favour of the defendant no.2 and on the contrary having pleaded as aforesaid in paragraph 6 of the amended plaint, the contention contained in a note of arguments under signature of the counsel for the plaintiff cannot be accepted. On the plea in the plaint, the writ petition was for the same relief as claimed in this suit and dismissal of the writ petition bars the plaintiff from a second round of litigation for the same relief by way of a suit. The principle of *res judicata* vis-à-vis suit qua orders / judgments in a writ petition has been invoked in ***Gulabchand Chhotalal Paukh Vs. State of Bombay*** AIR 1965 SC 1153, ***Union of India Vs. Nanak Singh*** AIR

1968 SC 1370, *State of Tamil Nadu Vs. State of Kerala* (2014) 12 SCC 696, *State of Punjab Vs. Bua Das Kaushal* (1970) 3 SCC 656 and *Samanit Enterprises Vs. Delhi Development Authority* 2014 (144) DRJ 46.

- D. The plaintiff in the plaint as originally filed has not pleaded existence of any hutment on the subject land and claimed that the land was being used only for storage / parking of heavy machines. In the site plan filed of the land also, no hutment is shown and property is described as a plot only. Further, the documents filed by the plaintiff also referred to the property subject matter thereof as a plot of land. However in the note of arguments handed over and which as aforesaid is under the signature of the counsel for the plaintiff only, it is contended that a hutment exists at the site, obviously to get over the query raised on 24th September, 2019. As recorded above, no credence can be given to what is contended in the note of arguments but is not pleaded. The photograph of the property filed by the plaintiff and referred to in the note of arguments also does not show any hutment and shows only an open plot of land. One of the photographs at page 182 of the Part III-A file shows only a plastic sheet in a triangular form spread over bamboos and the same can by no stretch of imagination stop the property from being described as open land. Moreover, the coverage by the said plastic sheet is of a

minuscule portion of the total land. The property thus remains open and vacant land and the judgments to which attention of the counsel for the plaintiff was drawn on 24th September, 2019 apply. No injunction against dispossession from open land can be granted and the defendants can always enter upon the land and carryout any work including construction thereon. The plaintiff having no title to the land, has no locus to challenge the title of the defendants to the land.

- F. The defendants, in the letter dated 8th March, 1989 to the plaintiff, copy whereof is filed by the plaintiff at page 13 of his documents, informed the defendant that “Delhi Administration is constructing a 100 bedded hospital at Siraspur to provide Medical benefits to the public of the area. On this hospital land, some material belonging to you has been stored unauthorisedly. The construction of the hospital has been adversely affected due to the illegal encroachment.” The same unequivocally establishes the land having been earmarked for construction of a hospital.
- G. The Legislature in its wisdom, vide Act 18 of 2018 inserted Section 20A in the Specific Relief Act and which bars grant of injunction by a Court in a suit under the Specific Relief Act involving a contract relating to a infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in

the progress or completion of such infrastructure project. In Section 41 titled “Injunction when Refused” of the Specific Relief Act also, clause (ha) has been inserted vide the same amendment and whereby an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being subject matter of such project. Significantly, while Section 20A refers to a contract relating to an infrastructure project, clause (ha) of Section 41 does not require a suit to be relating to a contract. In ***Hari Ram*** supra to which attention of the counsel for the plaintiff was drawn on 24th September, 2019, I had, without noticing addition of clause (ha) to Section 41 of the Specific Relief Act, held that grant of injunction, which would interfere with an infrastructure project, even if the suit did not entail a contractual relationship, could not be permitted. I may add that in the Schedule also inserted to the Specific Relief Act by the said amendment specifying the category of projects and infrastructure sub-sectors, ‘Hospitals’ are included at serial No.5(c). Thus, the suit for injunction is also barred by Section 41(ha) of the Specific Relief Act.

17. The suit is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 15, 2020

‘gsr’..

(Corrected and released on 10th February, 2020)

