

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

**Judgment delivered on: November 29, 2021**

+ RFA 240/2017, CM No. 19118/2021

NAND KISHORE

..... Appellant

Through: Mr. K.C. Mittal, Adv. with  
Mr. Yugansh Mittal, Mr. Sanjay  
Kumar & Mr. Ashish Ranjan, Advs.

versus

DDA

..... Respondent

Through: Mr. Sanjeev Sagar, SC for DDA with  
Ms. Nazia Parveen, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. This appeal has been filed by the appellant / plaintiff, challenging dismissal of the Suit numbered CS 476266/2015 filed by him, vide the judgment and decree dated December 9, 2016 with the following prayers: -

*"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to set aside, modify judgment and decree dated 09.12.2016 passed by Shri G.N. Pandey, ADJ-02 (NE), Karkadooma Courts, Delhi, in CS No. 476266/2015 titled "Nand Kishore vs. DDA", in the interest of justice."*

2. The appellant/plaintiff had filed a suit before the Trial Court seeking a relief of mandatory injunction against the respondent/defendant and further sought conversion of temporary

lease to a permanent lease of a land granted for agricultural purpose in favour of late Mohan Singh (father of the appellant) being 7 bighas in Khasra No. 69/2 located in Village Ghonda Chauhan Khadar which is now known as Plot No. 32, F Block Shashtri Park, Delhi ('suit property' for short).

3. Initially the respondent acquired land from 32 farmers in Mauja Chiragah Sumali against file No. L-6/22/1962, inclusive of the land admeasuring 7 bighas 15 biswa belonging to late Mohan Singh. As per the plaint, in lieu of the said land the respondent allotted land ad-measuring 10 bighas to Late Mohan Singh vide letter No. L-6/22/1962 bearing plot No. 32, Khasra No. 24 in village Chiragah (North). This land was then utilised for building 312 flats by the respondent. The respondent then allotted land ad-measuring 7 bighas out of Khasra No. 69/2 in village Ghonda Chauhan Khadar (suit property) for agricultural purpose on temporary lease vide letter No. F9 (74)/82/CRC/DDA/297 dated December 29, 1982 / January 28, 1983, upon the alleged understanding that the said lease would be converted into a permanent lease after 3 years vide letter no. F.9(74)/82/CRC/DDA/1817 dated May 05, 1983. Late Mohan Singh wrote repeated letters to the respondents to execute the permanent lease. Thereafter in 1993, a suit was filed by late Mohan Singh titled Mohan Singh vs. V.K. Govil for permanent injunction and it was held that late Mohan Singh was in possession of the suit property. The appellant is one of the LR's

of late Mohan Singh; whereas the other LRs have through a relinquishment deed transferred their share in the name of the appellant. Two out of the seven bighas of the suit property allotted to Mohan Singh were utilised for a road project the remaining five bighas are still in possession of the appellant. It is the case of the appellant that in 2010 the PWD (Government of NCT) tried to encroach on the suit property and the appellant filed a suit seeking permanent injunction which was decreed on the basis of appellant's possession. Another suit was filed against EDMC for restraining them from dispossessing the appellant. In 2008 the appellant came to know about the communication regarding conversion of temporary lease into permanent one between Late Mohan Singh and the respondent. After writing letters dated January 29, 2010, June 20, 2011, February 17, 2011 and September 1, 2011 for conversion of temporary lease into permanent lease the appellant filed the current suit before the Trial Court.

4. In the written statement filed before the Trial Court the respondent/defendant took a stand that the appellant had no locus standi to file the suit as it is barred under Order II Rule 2 of the Code of Civil Procedure, 1908 ('CPC' for short). The respondent denied the allotment of the suit property to the late Mohan Singh and contended that he was an un-authorised encroacher on government land in Indraprastha Estate and for construction of power house, government land was vacated. It was on humanitarian grounds that the 32 encroachers / evictees (including late Mohan Singh) were given land which included

land ad-measuring 7 bighas 15 biswa in village Chiragah Sumali on the basis of a one year temporary lease. The land in village Chiragah Sumali was taken by the respondent for construction of Janta flats along with road and the suit land was never allotted to Late Mohan Singh. The stand of the respondent before the Trial Court was that the appellant is an unauthorised encroacher on the suit property and that the respondent had no policy for conversion of temporary lease into permanent lease.

5. The learned Trial Court proceeded to frame the following issues:

- “1. Whether this suit is barred U/o 2 rule 2 CPC? OPD*
- 2. Whether the plaintiff is entitled for decree of mandatory injunction as prayed in the suit? OPP*
- 3. Relief.”*

6. The appellant/plaintiff filed his evidence by way of affidavit which was exhibited as Ex.PW-5/A and had relied upon the documents marked as exhibits EX.PW-5/1 to EX. PW-5/33. A witness from the Court of the Learned Civil Judge, (East) Karkardooma Courts was examined as PW-1 who had brought the record of the case titled Mohan Singh vs. V.K. Goel CS No.356/10. Another witness from the civil record room Karkardooma Court was called as PW-2 along with the record pertaining to Nand Kishore vs. Government of NCT CS No.32/10 and Nand Kishore vs. MCD 196/13 and proved the certified copy of judgement exhibited as Ex. PW-2/1 and Ex-PW2/2 respectively. One Ranbir Singh, Kanoongo, from the DDA appeared with the list of 32 people who had been given

land in village Chiragah Sumali and exhibited the said document as Ex. PW-3/1. Another Kanoongo of the respondent by the name of Bhagwati Prashad Sharma, appeared as PW-4 along with the file No. F-4(58) 2011/CRC/East which was exhibited as Ex. PW-4/1.

7. Next, it was the respondent / defendant which led evidence. DW-1 Om Pal Singh, Kanoongo, employee of the respondent filed his evidence by way of an affidavit which was exhibited as Ex.DW-1/A. After which the evidence of the respondent / defendant was closed.

8. With regard to issue No.1, the question being, whether the suit is barred under Order II Rule 2 CPC. The learned Trial Court came to the conclusion that the onus to prove this issue lay upon the respondent in view of the averments made in the written statement. The Court noted that the respondent neither deposed nor led evidence in that regard. This issue was decided against the respondent in favour of the appellant on the ground that the respondent did not sufficiently prove or duly discharge the onus incumbent upon it.

9. The second issue which was framed by the learned Trial Court was with regard to the question that whether the appellant was entitled to a decree of mandatory injunction. While referring to Section 39 of the Specific Relief Act, 1963 ('SRA', for short) and the judgments in the cases of *Khoday Distilleries Ltd. & Ors. vs. State of Karnataka & Ors. (1995) 1 SCC 574* and *C Kunhammad vs. C.H. Ahamad Haji, AIR 2001 KER 101*; the learned Trial Court was of the view that the remedy of injunction

being a discretionary and equitable relief would depend on the facts and circumstances of each case. The elements which have to be taken into consideration while granting the relief of mandatory injunction would be; (i) ascertaining the acts required in order to prevent a breach of obligation and; (ii) whether the Court is capable of enforcing such necessary acts. The relief of mandatory injunction ought to be confined to cases where the remedy of damages would be an inadequate remedy for the purposes of meeting the ends of justice. It is trite law that a suit has to be decided only on the basis of the pleadings filed before it while applying the principle of preponderance of probabilities. In this regard the reasoning of the learned Trial Court was rooted in the judgments in the cases of ***Raj Kumar Singh & Ors. vs. Jagjit Chawla & Ors.*** 183 (2011) DLT 418 and ***Vishnu Dutt Sharma vs. Daya Sapra*** (2009) 13 SCC 729.

10. The learned Trial Court examined Sections 101, 103 and 58 of the Indian Evidence Act, 1872 ('Evidence Act' for short) and went on to state that the burden of proving a fact would always lie upon the person who asserts the facts and made a reference to the judgment in ***Uttam Chand Kothari vs. Gauri Shankar Jalan & Ors.*** AIR 2007 GAU 20 in the regard that an admission made in the written statement cannot be allowed to be withdrawn. The learned Trial Court recorded that it was mentioned in the plaint that late Mohan Singh was allotted the suit property in 1982 / 1983 vide letters dated December 29, 1982 and January 28, 1983 on a temporary lease for a period of one year. Therefore, it was incumbent upon the appellant to show that

there existed an obligation upon the respondent in executing the permanent lease and breach of obligation in order to secure the relief. Whereas it is the case of the respondent that no such policy existed in the respondent organisation for conversion of temporary leases into permanent ones. The respondent also denied that the allotment of suit property in favour of late Mohan Singh, however the fact of his eviction along with 32 other persons was confirmed. While examining the letter dated December 29, 1982 exhibited as Ex. PW-5/X-1 which stated that the suit property had been allotted for agricultural purpose, only on a temporary basis, the learned Trial Court held that there was no document on record to show that the respondent undertook to execute the permanent lease in favour of the predecessor of the appellant. Possession does not translate into entitlement for permanent lease, that too when it was for the respondent to decide whether the temporary lease was to be extended or not. The impugned judgment also notes that out of 32 people so evicted only late Mohan Singh was allotted land in lieu of the land in village Chiragah Sumali.

11. While examining the testimony of the appellant/PW-1, the learned Trial Court came to the conclusion that the same was demolished during the cross-examination. The appellant failed to depose whether his predecessor was in unauthorised possession of the place from where he was removed in 1962 and that there exists no letter regarding the allotment of a house by the respondent. The letter which had been exhibited as Ex. PW-5/X-1 and Ex. PW-1/3 is not proved by the appellant regarding

allotment of suit land in favour of his predecessor. As per the impugned judgment, the witness admitted during cross-examination that he did not know whether any letter for converting temporary lease into permanent lease was issued by respondent to any other person who was removed and given land. While arriving at the conclusion that the appellant failed to prove any right in the suit property, the learned Trial Court held that the appellant/plaintiff cannot ask the respondent to execute a permanent lease without any policy.

12. While ultimately dismissing the suit with costs the learned Trial Court looked into the judgements in the cases of *Ram Saroop Rai vs. Lilavati (1980) 3 SCC 452*, *Subhra Mukharjee & Anr. vs. Bharat Coking Coal Ltd. & Ors. AIR 2000 SC 1203* and *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple & Anr. (2008) 8 SCC 752* to come to a conclusion that the appellant failed to produce any oral or documentary evidence to prove the contentions so averred in the plaint, since the burden of proof was upon the appellant and the same was held to be as not discharged.

13. Mr. K. C. Mittal, Advocate, who appeared on behalf of the appellant contended that the respondents admitted that land was given to the father of the appellant on humanitarian grounds on a temporary lease basis for a period of one year in village Chiraga Sumali in the year 1962. He stated that even the written statement admits that the land measuring 7 Bigha and 15 Biswa given to late Mohan Singh at plot no 32 in village Chiraga Sumali which was within Khasra no.24 min of the village

Chiraga Sumali revenue estate, possession of which was subsequently resumed by the respondent along with the land of another plot bearing no.31/2 which was utilised for constructions of 312 Janta Flats and road. Mr. Mittal stated that the respondent has contested the veracity of letters dated December 29, 1982, January 28, 1983 and May 05, 1983 issued by the respondent through file No. F(9)/82/CRC/DDA, which cannot be verified because the file from which these letters are said to emanate from, is untraceable in the respondent's office. Mr. Mittal stated that the respondent contended that the signatures of the Deputy Director (NL) K.K. Satyapalan do not match the signatures on other notings / documents.

14. Mr. Mittal has referred to the written statement of the respondent and argued that the possession of the suit property being with the appellant is not disputed, the appellant is dubbed as an encroacher and has been denied allotment. He argued that as per the written statement of the respondent in paragraph 14 and 15 concerning the letter dated August 09, 2005 issued by the Deputy Director (NL), the respondents contended that the Deputy Director concerned has not confirmed the issuance of the letter dated January 28, 1983 but mentions that the same has been issued by the Deputy Director (NL), who was occupying the post then. However this fact, he stated cannot be confirmed in the absence of the original file. Further, it is his contention is that there is no dispute regarding the issuance of the letter dated August 09, 2005.

15. Mr. Mittal argued that the impugned judgment dismissed the suit only on the basis of findings in paragraph 15 on issue No.2. He cited the exhibited letter dated January 28, 1983 Exh. PW 5/X-1 which clearly refers to the letter bearing the dispatch no. 297 on the left hand side of the page after the file number. This letter has been signed by the then incumbent Deputy Director (NL), K.K. Satyapalan. The appellant who was himself PW5, during his cross-examination denied the suggestion that it was not issued in the name of his father and that it does not bear any diary number/ dispatch number. He has denied the suggestion that this letter was a forged and fabricated document and since the letter itself bears the dispatch no. as “297” on top therefore suggestion that the letter was forged, ought to give way.

16. He referred to another letter dated August 09, 2005 Exhibited as Exh. PW 5/15 wherein one finds a reference to the letter dated January 28, 1983 which would prove the authenticity of the said letter. As per the cross examination of the respondent’s witness Om Pal Singh DW1, the said witness identified the signatures of Pritam Singh and stated that the Pritam Singh was the Deputy Director (NL) in the year 2005, wherein the letter dated January 28, 1983 finds mention. DW1 also acceded, that as per the file brought by him, the appellant’s request for conversion of temporary lease to permanent lease was under consideration, however he added that his request was denied as per the noting on page no. 16/N dated September 12, 2012.

17. Mr. Mittal has drawn my attention to the notings of the file at Annexure G from where he stated that it can be seen that after the noting of ADC (W)L that the decision to call the appellant to produce original letters was taken. These notings are a part of the Trial Court Record and stated that no final decision was taken by the respondent and he has also argued that this decision had been kept pending till the final outcome of the suit. The statement of DW1 as on September 12, 2012 with reference to the rejection of the appellant's claim, has been proved to be false with reference to minutes which are also part of the record. According to him, this rejection was never communicated to the appellant and even in the written statement the respondent has not produced the noting before the Court. This information had been obtained by the appellant through reply to an RTI application which Mr. Mittal stated has been exhibited.

18. The appellant has relied upon the minutes to state that the information contained therein would prove the letters dated January 28, 1983 and May 5, 1983; the latter being the communication which contained the proposal to convert the temporary lease into a permanent one. Mr. Mittal has pointed to the fact that these minutes have been admitted. He states that if one were to peruse these minutes, it would leave no room for doubt concerning the veracity of letter dated May 5, 1983 which has been exhibited as Exh. PW 5/3.

19. As per Mr. Mittal, the Trial Court has not looked into the evidence and documents referred to by the appellant in its entirety; and arrived at a wrong conclusion by dismissing the suit.

He has argued, it is the respondent who now seek to change their stand at a belated stage which ought not to be allowed since they had an obligation to for conversion of the temporary lease. Accordingly, the rights have already accrued in the appellant's favour in the year 1983, which right cannot be infringed merely on the ground of a policy decision. Further, in view of the documentary evidence wherein the right to the appellant has accrued under Sections 90 and 92 of the Evidence Act. He also stated that, unbeknownst to the appellant, even if the official records are not available, the same have been sufficiently proved through secondary evidence in accordance with the principle of preponderance of probability. The respondent has failed to rebut the aforementioned evidence and also in light of the decision in favour of the appellant in the suit titled as ***Nand Kishore vs. GNCTD, Suit No. 32/10***, wherein, the issue in the said suit pertained only to the question of possession of the suit property. He has argued that another suit had been filed against the East Delhi Municipal Corporation (EDMC), both these suits, he stated are not concerned with the instant suit as the question involved in the present suit pertains to issue of conversion of lease.

20. Mr. Sanjeev Sagar learned Counsel appeared on behalf of the respondent and argued that the appellant had filed a suit for mandatory injunction in the year 2014 without claiming any relief with regard to the declaration of title. The only relief that had been claimed was restricted to conversion of temporary lease of suit property to permanent lease. He argued that it is the appellant's own case that his father Late Mohan Singh was

allotted land ad-measuring 7 bighas 15 biswas in plot no. 32, Khasra no. 24 in Village Chiraga (North) Delhi. This land was temporarily allotted vide file no. F-6/22/62 and no lease deed had been executed in this regard. Mr. Sagar has pointed to the relevant portion of the file which has been extracted and exhibited as Exh.D1/3.

21. It is his case that if this document was to be examined, it would be proved beyond doubt that the temporary lease-cum-allotment was only for a period of one year, which was never extended thereafter; and no allotment letter was issued in favour of the appellant's father. This fact is clear based on the suit filed by the appellant's father in the year 1996, which has been marked "C" in the Trial Court Record.

22. According to Mr. Sagar, the claims of the appellant that vide letter dated December 29, 1982 or January 28, 1983 (which have been exhibited as Exh. 5/x-1, Exh. PW1/2), his father was allotted the land in village Ghonda Chauhan Khadar, i.e., the suit property for a period of three years. The appellant has claimed that this allotment was once again confirmed by the respondent vide letter dated May 05, 1983 (Exh.-Pw5/1). The factum of issuance of letters dated January 28, 1983 and May 5. 1983 was confirmed vide letter dated 95/05 (Exh.-Pw1/5 / Exh.-PW5/15). The appellant had stated in the appeal (paragraph vii) that his father in 1985 and 1992 approached the respondent for conversion of temporary lease into permanent and had alleged that no action was taken. Mr. Sagar stated that the appellant had admitted to the fact that after 1990, no follow-up had been done

since the appellant's father had been transferred to Madras. As per the averment in the appeal, the appellant stated that his father passed away on September 4, 1996, after which the appellant had taken NOCs from his relatives in order to claim his right over the suit property. It is the case of the appellant that various suits had been filed by the appellant against various encroachers including EDMC, GNCTD, but no suit was filed against the respondent.

23. Mr. Sagar argued that one ought to note the fact that the appellant's father filed a suit against the encroachers in 1996, relevant part of the suit has been marked "C", a direct relief in the suit was sought against the respondent. In that suit, in paragraph nos. 1 to 4, it has been clearly stated that the appellant's father had been allotted the suit land in 1962 and there is no mention of any allotment in the year 1983. This fact has also been admitted in paragraph 9 of the plaint that he has not been allotted the suit land even though it is in his possession. No correspondence between the appellant's predecessor with the respondent has been referred to in the said suit. According to Mr. Sagar, the reading of the plaint proves that the case set up before the Trial Court and this Court is on the basis of false and fabricated letters pertaining to the years 1982, 1983 and 1985.

24. The respondent in their reply had stated that the suit property was acquired by the respondent in terms of the Award No. 4/69 dated June 27, 1969 and the land was placed under the disposal of the respondent vide notification dated February 1, 1972 issued under Section 22 of The Delhi Development Act, 1957 ('DD Act', for short). It has also been clarified that neither

a lease deed nor any allotment letter had been issued after 1969 and 1972. The letters which have been relied upon by the appellant of the years 1982, 1983 and 1985 have clearly been a forgery. It is the stand of the respondent that, the respondent, i.e., the Delhi Development Authority does not have a policy of executing / converting temporary leases into permanent leases. This stand has already been taken by the respondent in the earlier suit filed by the appellant in the year 1996. A copy of the reply filed by the respondent in the suit therein has been made part of the Trial Court Record as well as part of the record filed before this Court. The respondent has explicitly referred to the second paragraph of the said reply and to the award of land acquisition which has also been exhibited along with the notification under Section 22 of the DD Act as Exh. DW1/1 and Exh.DW1/3, respectively.

25. As per Mr. Sagar, an examination of the property plan Exh. PW5/31, juxtaposed with Exh. DW1/3 and Exh. DW1/1 would reveal that khasra no. 69/2 of Village Ghonda Chauhan Khadar is an acquired land on which the appellant cannot have any claim or title. He is merely in illegal possession of the property which cannot translate into a title. The appellant cannot be allowed to fortify his claims over the land by holding the suit property in the form of a permanent lease. Whereas in the suit filed by the appellant against the GNCTD in the year 2010, the appellant has also admitted that an application for interim stay in an earlier suit had been dismissed by the Court in the year 1995. The appeal against this order numbered as CM(M) 33/2005 was

filed and then the same was withdrawn on December 16, 2005 on the clarification that interim orders, if any, stood vacated. The aforementioned suit too was dismissed marked as Exh.PW2/1.

26. Mr. Sagar has argued that the respondent has no policy for converting temporary lease into permanent lease. This issue stood closed on the respondent's end on June 19, 2012 and subsequently on September 12, 2012. The noting on which reliance has been placed which are of the Director of the respondent and the note of the Kanoongo dated August 19, 2012, bears no meaning nor can a reliance be placed on such notings. Once the request of the appellant had been denied by the respondent, these notings have no bearing with regard to the issue at hand since the official stand of the respondent on this question has always been clear. Once this official stand has been communicated to the appellant, there ought to be no need to conduct such an impractical enquiry, even when no direction or injunction can be passed against the lawful owner of the suit property. He argued that the position of law on this proposition has been clarified by the Supreme Court in the recent judgment of *Joginder Singh & Ors. vs. State of Haryana & Ors., (2021) 3 SCC 300* wherein it was held that, if there is no policy with regard to trespassers, they have to be evicted.

27. The respondent in their written statement, evidence and in their cross examination have maintained at all stages that the letters of the years 1982, 1983 and 1985 have been forged and fabricated. The stand that the suit property has been acquired and that the appellant has no right vis-à-vis suit property has been

brought to the notice of Court at every stage of the trial. Mr.Sagar argued that the appellant in his evidence had not proved his case and the list of 32 persons filed by the appellant as Exh.PW1/1 was disproved by statements of PW1, as the witness in his evidence recorded on July 02, 2014 stated that the lists filed by the appellant and the list filed by the respondent are different. Mr.Sagar has drawn my attention to the original list which has been marked as “A”.

28. The appellant who appeared before the learned Trial Court as PW5, whose evidence has been recorded as PW5/A, has in his cross examination admitted that he does not have any allotment letter nor has he any lease deed. There was also an admission made by the appellant that his father was allotted land for a house in lieu of the acquired land. There has also been a clear admission that the land was acquired in 1981 for construction of flats. Mr. Sagar stated that the land acquisition proceedings, i.e., the issuance of notifications under Sections 3, 4, 6 and 7 under the then prevalent The Land Acquisition Act, 1894 had been issued by the Union of India for acquiring the suit property in the year 1969. Subsequently, another notification of the vintage 1972, wherein the entire acquired land inclusive of the suit property had been placed at the disposal of the respondent was never challenged, quashed, set aside by any Court, lapsed and / or recalled by the Union of India. These land acquisition proceedings have neither been challenged by the appellant in this suit for injunction nor is it a subject matter of the present appeal. The question for proving the land acquisition

related documents does not arise since these documents were already on record and in light of the admission made by the appellant on this issue. Mr. Sagar placed reliance on the judgments of the Supreme Court in the case of **V. Chandrasekaran & Anr. vs. The Administrative Officers & Ors., (2012) 12 SCC 133** and **Mahadeo Savlaram Shelke & Ors. vs. Pune Municipal Corporation & Anr., (1995) 3 SCC 33**.

29. Mr. Sagar referred to the judgment of **Anathula Sudhakar vs. P. Buchi Reddy (DEAD) by LRS. And Ors., (2008) 4 SCC 594** on the issue that the appellant has no right to claim title in a suit for injunction that too when the said title was disputed. He argued that in the present appeal the appellant has not cleared the shadow over his title in the suit property. The learned Trial Court had dismissed the suit and held that the appellant had failed to prove his case. In a subsequent judgment in **Ashok Atree vs. Municipal Corporation of Delhi & Anr., 2019 SCC Online Del 6988**, the view taken in the case **Anathula (supra)** had been adopted by a Coordinate Bench of this Court. Mr. Sagar argued that from the above-mentioned judgments it is clear that the Trial Court has rightly dismissed the suit and additional grounds for dismissal of suit ought to have been that;

- (i) no prayer for declaration had been made by the appellant;
- (ii) the earlier litigations filed by the appellant on the same cause of action amounted to res judicata and a fresh suit was barred under Order II Rule 2 CPC;

(iii) even as per the Evidence Act, in light of Sections 90 and 91 the records of the year 1969, 1972 and 1981 were deemed to be true and correct which is another reason why the suit was rightly dismissed;

(iv) the suit was for grant of injunction and not for declaration of title / ownership of the suit property;

(v) the appellant was neither the owner nor possessed any right in the suit property;

(vi) the appellant had failed to meet the obligation in terms of Section 38 of SRA as no case had been made out against the respondent, as such no injunction / declaratory relief is to be granted to an individual who is not owner of the suit property.

30. Mr.Mittal in his rejoinder arguments contended, the respondent has failed to produce evidence in order to show that the letters dated January 28, 1983, May 5, 1983 and August 09, 2005 were false and fabricated. Save for the fact that simply an allegation has been made in the written statement. The onus shifted on the respondent to prove the untruthfulness of these documents, in the light of the fact that these letters have been made a part of the official minutes as on Page 240 of the Trial Court Record. The respondent has not brought expert witnesses, such as a handwriting expert witness to prove otherwise, that too when the signatures appended to the document have been admitted. He has argued that the Trial Court ought to have drawn an adverse inference against the respondent on the ground of failure to produce any evidence in support of their argument.

According to him, in so far as this appeal is concerned, the original shifting from Indraprastha estate in 1962 is matter of fact but rights of the appellant flow from the documentary evidence with respect to the suit property.

31. Mr. Mittal contended that only the finding on issue no.2 of the impugned judgment has been challenged by way of the present appeal, and since there was no other issue framed during the trial, which is why according to him this Court ought to examine only the erroneous finding against the issue no. 2. He stated that the appellant has proved his case based on the documents of the respondent, viz., letters dated January 28, 1983, May 5, 1983 and August 09, 2005 and the minutes of the meeting.

32. He argued that the judgments which are now being relied on by the respondent are not relevant in the facts of this appeal, nor would they defeat the subsisting claims and rights of the appellant over the suit property.

33. Having heard the learned counsel for the parties and perused the record, some of the brief facts as noted from the record are the father of the appellant, Late Mohan Singh along with 31 persons was granted on humanitarian ground a temporary lease of an agricultural land admeasuring 7 Bighas 15 Biswas, Village Chiragah Sumali in the year 1962 for a period of one year. The said land was reclaimed by the authorities. It was the case of the appellant that his father was allotted suit property in the year 1982/1983 for a period of three years and the said land was confirmed by the respondent/DDA on May 05, 1983. It was

his case that the respondent/DDA had represented to his father about the conversion of temporary lease into a permanent one. His father approached the DDA in the years 1985 and 1992 and also he himself in the years 2010 and 2011 for conversion of temporary lease into permanent lease and the DDA not taking any action resulted in the filing of the suit wherein the impugned order has been passed. The respondent/DDA had said that the father of the appellant was allotted a temporary lease of the land, details of which already referred above and the land was acquired by the government and the possession thereof was given to the DDA and the acquisition has not been contested. In that respect, the award No.4 of 69 dated June 27, 1969 is placed on record Ex. DW1/1. In other words, the father of the respondent was not allotted the suit property.

34. The plea of Mr. Mittal was primarily by relying upon the letters dated December 29, 1982 / January 28, 1983 (Ex.PW1/2) and May 05, 1983 (Ex.PW 5/1) issued by the DDA which letters could not be verified because the file from which the letters were emanating was untraceable. According to him the possession of the suit property being undisputed, the appellant could not be termed as an encroacher of the land. In fact, Mr. Mittal heavily relied upon the letter dated August 09, 2005 Ex.PW 1/5 which confirms the issuance of letter dated January 28, 1983 Ex.PW 1/2. In substance it is submitted that the Trial Court has not looked into evidence and documents referred to by the appellant in its entirety and has arrived at a wrong conclusion by dismissing the suit.

35. The letters as relied upon by Mr. Mittal, Ex.PW 1/2 and Ex.PW 1/5 are reproduced as under: -

*"F.9(74)/84/CRC/DDA/297*                      *New Delhi December 29, 1982*  
*K. K. Satyapalan*                                              *28-1-83.*  
*Dy. Director (New Leases)*  
*To*

*Sh. Mohan Singh,*  
*S/o Shri Tara Chand*  
*R/o H-122, New Seelampur,*  
*Delhi-110053.*

*Sub: Allotment of land in lieu of (Nazul) agriculture land in village Chiragah (North) on temporary lease basis in Village Ghonda Chauhan Khadar, Delhi.*

*Sir,*

*In response to your letter I am directed to inform that you have been allotted land vide letter No.L-6(22)/1962 plot No.32, Khasra No.24, in Village Chiragah (North) which has already been utilised in 312 flats and in lieu of that land you have been allotted land in Khasra No.69/2 measuring 7 bigha in Village Ghonda Ghauhan Khadar for agricultural purposes on temporary lease.*

*Yours faithfully*  
*Sd/-*  
*(K. K. Satyapalan)*  
*Dy. Director (NL)."*

*"F.9(74)/82/CRC/DDA/East/pt.150*

*Pritam Singh*  
*Dy. Director (N.L.)*

*Dated 98/05*

*Shri Nand Kishore,*  
*S/o Sh. Mohan Singh,*  
*Plot No. 39, 'F' Block,*  
*Shastri Park,*  
*Seelampur, Delhi-53.*

*Sub:- Regarding allotment of land in lieu of Nazul Agriculture in Village Chiraga North on temporary lease basis in Village Gharonda Chauhan Khadar*

Sir,

*In response to you letter dated NIL, I am directed to inform you (sic.) that the letter bearing no. F.9(74)/82/CC/DDA/297 dt. 28.1.83 on the above cited subject seems to have been issued by the then Dy. Director (N.L.) who was posted in N.L. Branch in January, 1983.*

*Sd/-  
(Pritam Singh)  
Dy. Director (N.L.)”*

36. For the purpose of determining the issue, it is necessary to refer to the deposition of the appellant before the Trial Court wherein he appeared as PW5 and deposed on February 05, 2016 as under:-

*“I rely upon the documents in my affidavit EX.PW-5/A i.e. EX. PW-5/1 to EX.PW-5/33. The documents EX.PW-5/10, PW-5/11 and EX.PW-5/19 are the photocopies and shall be read after the production of original documents.*

*XXXXX by Sh. M.S. Bhana, Ld. Counsel for the defendant.*

*My father was allotted agricultural land by DDA after removal from I.P. Estate, Power house. I do not know when my father was removed. Again said, my father was removed in 1962. I am aged 45 years. I was not born at the time of removal and the fact of removal is told to me by my father. I am not aware that my father in an unauthorized possession of the place from where he was removed in the year 1962. Total 32 persons were removed from the said place including my father. After removal my father was allotted the land in lieu of the removed land at Khasra No.24, plot No.32, Chiraga Sumali. My father was also allotted / home in lieu of the removed house at Seelampur. I do not have any allotment letter regarding allotment of the house by the DDA.*

*It is wrong to suggest that my father was not allotted any house as deposed by my above. I have the allotment letter regarding allotment of the Khasra No.24, plot No.32, Chiraga Sumali in the name of my father.*

*It is wrong to suggest that no allotment letter has been issued in the name of my father regarding any plot as deposed by me and therefore I have not filed any such allotment letter on record. The plot was allotted for agriculture. It is wrong to suggest that no land / plot was allotted to my father for agriculture and the*

land was given only for period of 1 year for cultivation alongwith other 31 persons and even the lease for 1 year was not executed in the name of my father. It is correct that the DDA has constructed flats on plot no.31-32, Khasra No.24, Chiraga Sumali in the year, 1981.

It is wrong to suggest that no other plot was allotted to my father after the DDA constructed flats on plot no.31-32, Khasra No.24, Chiraga Sumali in the year, 1981. I am not aware that no plot was allotted to anyone as well against the plot no.31, when constructed by DDA. It is wrong to suggest that letter dt. 28.01.83 Ex. PW-5/X-1 was never issued by DDA in the name of my father as the same do not bears any diary no. / dispatch no. from the DDA. It is wrong to suggest that Ex. PW-5/X-1 is forged and fabricated by me. It is wrong to suggest that the suit property was never allotted to my father and I am in unauthorized possession of the said property. The suit property is lying vacant at this time and I am not permitted to cultivate the land by DDA. I have made complaint to the DDA in this respect vide EX.PW-1/3 (controverted with the contents as no such complaint regarding cultivation is made therein). I have not made any other complaint to the DDA except EX.PW-1/3.

Presently, I am in possession of the suit land and I have constructed two rooms and I also reside there. I cannot tell the area of the rooms in my possession. I am in possession of the total suit property including vacant land. I have constructed the boundary wall / fence of the suit property but now most of it has been demolished / broken. It is wrong to suggest that there is no boundary wall / fence of the suit property and I am deposing falsely in this respect. It is wrong to suggest that the suit property is being used for parking by me and I am earning from the parking of vehicles there. It is wrong to suggest that defendant has not issued any letter for making permanent lease in respect of the suit property in my favour. It is wrong to suggest that Ex. PW-5/1 is forged and fabricated by me. It is wrong to suggest that my father was given land for only one year in 1962 and thereafter the defendant has never extended the said period. I do not know of any letter issued by DDA for extension of time. I do not know whether any letter for making permanent lease was issued by DDA to any other person who were removed and given land alongwith my father. It is wrong to suggest that DDA has issued no such letter to any other person who were removed and given land including my father. It is wrong to suggest that suit property is a government land. Vol. It has been allotted to my father.

It is correct that in the suit filed by bearing No.32/10 me against Govt. of NCT (PWD), DDA was not a party in that suit. It is wrong to suggest that I had not intentionally impleaded DDA. In the said suit with a view to conceal the status of land as

*government property. It is correct that in the suit filed by bearing No.196/13 me against EDMC & Ors., DDA was not a party in that suit. It is wrong to suggest that I had not intentionally impleaded DDA In the said suit with a view to conceal the status of land as government property.*

*It is wrong to suggest that suit property is a government land and I have no right in the same and I have unauthorized possession of the same and I am deposing falsely in this regard."*

37. Similarly, the defence witness of the DDA (Om Pal Singh) has in his affidavit deposed as under:-

- "1. That I am working as Kanun go in section NL-I, East Zone with Delhi development authority and well conversant with the facts and circumstances of the case and therefore is competent to depose the fact by way of present affidavit.*
- 2. That the suit land Khasra No.69/2 (correct no. is I.E.T.C. 69/2 measuring 15 Bigha 10 Biswa) Village Ghonda, Chauhan Khadar is a Govt. Land acquired by award number 4/1969 (exhibit DW-1/1).*
- 3. That after acquisition physical possession thereof was handed over to the DDA by LAC on 27.06.1969. Possession proceeding is Exhibit DW-1/2.*
- 4. For further development of this land it was placed at the disposal of DDA by Gazette notification no.F-8 (49)/63/L7H dated 1.02.1972 issued under the provision of section 22(1) of Delhi Development Act, 1957.*
- 5. That for the construction of power house, the Govt. got vacated the Govt. land of Inderpat Estate from unauthorised encroacher including one Sh.Mohan Singh son of Sh. Tara (father of the plaintiff) in the year 1962. Keeping humanitarian view the 32 squatters/encroacher/evictees including Mohan Singh were given land for agriculture cultivation in Chiraga Sumali on temporary lease basis only for one year in the year 1962. The temporary lease was never extended thereafter.*
- 6. That Mohan Singh was given land bearing plot no.32 (Khasra No.24min) measuring 7 Bigha 15 bishwa in village Chiraga Sumali on temporary lease basis for one year only. The defendant DDA was vested with rights to resume the possession of land so given on temporary lease basis as and when the same is required by the DDA.*

7. *That in the year the possession of plot no. 31/2 (which was given to evictee Pooran son of Sh. Ram Chand) and of the plot no. 32 (given to Mohan Singh) was resumed for construction of 312 Janta Flats, and road.*
8. *That no alternative land was given to these two persons (Mohan Singh & Pooran) after resuming the possession of land given to them earlier as the DDA was not under any obligation to give alternative land. Moreover the temporary lease of one year had already expired and was not extended thereafter.*
9. *That it is further stated that no allotment of alternative land was given to Mohan Singh vide letter no.F9(74)/82/CRC/DDA/297 dated 29.12.1982/28.01.1983. The claim of the plaintiff about allotment of alternative land (suit land) is absolutely wrong and baseless.*
10. *That no allotment letter dated 29.12.1982/28.01.1983 was issued by the then Deputy Director Sh. K. K. Satyapalan. The letter produced before the Hon'ble Court is absolutely forged.*
11. *That the letter dated 05.05.1983 alleged to be issued by the K. K. Satyapalan, the then Deputy Director for permanent lease to Sh. Mohan Singh is also forged. It is stated also that since there is no policy/decision of the defendant/DDA for converting temporary lease to permanent lease and therefore the question of issuance of any such letter particularly to Sh. Mohan Singh does not arise.*
12. *That the plaintiff is in authorised occupation of Govt. Land/suit land of Khasra No.1 etc. 69/2 in Village Ghonda Chauhan Khadar. It is further stated that no agriculture cultivation is being done at suit land but the same is being used as parking of vehicles by the plaintiff unauthorisedly."*

38. Similarly, the relevant part of the deposition from the cross-examination of the witness of the DDA, Om Pal Singh dated October 08, 2016 is reproduced below: -

*"It is wrong to suggest that the land in Chirag Sumali was not allotted to Sh. Mohan Singh by DDA only for a period of one year. I do not know whether any documents have been filed by defendants on record to show that the land in Chiragah Sumali was allotted to Sh. Mohan Singh for a period of one year. It is wrong to suggest that no such documents has been filed since the land was allotted to Sh.*

*Mohan Singh only for a period of one year. I do not know whether any documents have been filed by defendant on record to show that the land in Chiragah Sumali was allotted to Sh. Mohan Singh was resumed for construction of Janta Flats and Roads for DDA. It is wrong to suggest that land in Khasra no. 69/2 Ghonda Ghauhan Khadar bearing plot No. 32 i.e. suit property has been allotted by DDA to Sh. Mohan Singh when his land in Chiragah Sumali has been utilized by DDA. It is wrong to suggest that DDA having utilized the land allotted to Sh. Mohan Singh was under obligation to allot alternate land to Sh. Mohan Singh. I have seen the copy of the said letter dt. 29.12.82/ 28.01.1983 which was annexed with the representation of the plaintiff made to DDA. There is no letter on record informing the plaintiff that the said letter dt. 29.12.82/28.01.83 is forged and fabricated. The file NO.F9(74)/82/CRC/DDA/297 is not traceable in DDA record. I cannot say since when the said file but the same could not be traced. It is wrong to suggest that defendant is intentionally alleging the said file to be not traceable in DDA record. It is wrong to suggest that the letter dt. 29.12.82/28.01.83 has been issued by DDA to Sh. Mohan Singh. It is wrong to suggest that the letter dt. 29.12.82/28.01.83 is not a forged documents. I have seen the copy of the said letter dt. 05.05.83 which was annexed with the representation of the plaintiff made to DDA. There is no letter on record informing the plaintiff that the said letter dt. 05.05.83 is forged and fabricated. It is wrong to suggest that the letter dt. 05.05.83 has been issued by DDA to Sh. Mohan Singh and assured that the temporary shall be converted in permanent lease. It is wrong to suggest that the letter dt. 05.05.83 is not a forged documents.*

*It is correct that Mr. Pritam Singh was the Deputy Director NL of DDA in the year 2005. I have worked with under Sh. Pritam Singh and I can identify the signatures. The letter Ex.PW1/5 bears the signatures of Sh. Pritam Singh. It is wrong to suggest that plaintiff is not the unauthorized occupant of the suit property. It is wrong to suggest that plaintiff is in legal possession of the suit property. It is wrong to suggest that suit property has been allotted to Sh. Mohan Singh by DDA. I am not aware if DDA taken any proceedings against plaintiff for recovery of possession since it pertains to Land management East Zone DDA. It is wrong to suggest that plaintiff is entitled for the relief as prayed in the suit.”*

39. In the deposition of the DW1, he has confirmed that the land at village Chiragah Sumali was allotted to Late Mohan Singh for a period of one year. He has denied the suggestion that

the suit property has been allotted by DDA to Mohan Singh. With regard to the letters dated December 29, 1982, January 28, 1983, it was his case that the same are forged and fabricated. He has denied the suggestion that the said letters are not forged documents. Though he has deposed that the Ex.PW1/5 which is a letter of 2005 bears the signatures of Pritam Singh, a reading of the deposition of Om Pal Singh, DW1, clearly suggests that the land at village Chiragah Sumali was allotted to Mohan Singh for a period of one year. In so far as the suit property / land in Khasra No.69/2 Ghonda Chauhan Khadar bearing Plot No. 32 is concerned, the same was not allotted to late Mohan Singh.

40. I have seen the exhibits at Ex.5/X-1, Ex.PW1/2 and Ex.PW5/1. A perusal thereof shows that the alleged signature of K.K. Satyapalan differs in all the alleged letters referred above and even the date in one of the alleged letter of Pritam Singh is depicted as 98/05, which does not depict the date on which it was issued.

41. That apart even the Ex.5/1 which I have reproduced above, the contents thereof do not make any sense. In any case being the conceded case of the appellant and accepted by the respondent that his father was allotted the land at village Chiragah Sumali on temporary lease for a period of one year and also in the absence of any allotment letter with regard to the suit property at Ghonda Chauhan Khadar which is acquired and it is the case of the respondent / DDA that there is no policy for conversion of a temporary lease to a permanent lease and the appellant has not produced any evidence that in other cases land

has been converted into permanent lease, the learned Trial Court was justified in dismissing the suit filed by the appellant. Assuming that the letters dated December 29, 1982, January 28, 1983 exhibited as Ex.PW1/2 and Ex.PW5/1 are said to be proved, no evidence has been placed by the appellant that the respondent in the said letters stated that the temporary lease shall be converted into a permanent lease, as neither a policy in support of the contention in the letters has been placed on record nor in the case of similarly placed persons, the temporary lease has been made permanent. The learned Trial Court has rightly discarded the letters referred to and reproduced above being Ex.5/X-1, Ex.PW1/2 and Ex.PW5/1 in its finding on issue No.2 which I reproduce as under:

*“11. The injunction is a discretionary relief and its grant of refusal depends upon the circumstances and facts of a particular case. The discretion has to be reasonable guided by judicial principles and law. It must not be arbitrary, vague and fanciful. As held in JT 1994 (6) SC 588. interest of right not shown to be in existence cannot be protected by injunction. Issuance of order of an injunction is absolutely discretionary and equitable relief. It is not mandatory that for mere asking such relief should be given. The interest or right not shown to be in existence cannot be protected by injunction.*

*12. Two elements have to be taken into consideration for granting a mandatory injunction under S. 39 of the Specific Relief Act. In the first place, the Court has to determine what acts are necessary in order to prevent a breach of obligation; in the second place the requisite acts must be such as the Court is capable of enforcing. Caution is required in the grant of preventive relief. The exercise of power to grant mandatory injunction must be attended with the greatest possible caution and is strictly confined to cases where the remedy of damage is inadequate for the purpose of justice and the restoring of things to their former*

*condition is the only remedy which will meet the requirements of the case. The court will not interfere except in cases where there are extreme serious damage caused which cannot be compensated: C. Kunhammad v. C.H. Ahamad Hail A.I.R. 2001 KER. 101.*

*13. It is well settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit before the trial court in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. Being a civil suit for injunction, this suit is to be decided on the basis of preponderance of probabilities. As held in Raj Kumar Singh & Anr. Vs. Jagjit Chawla. reported in 183 (2011) DLT 418. "A civil case is decided on balance of probabilities. In the case of Vishnu Putt Sharma Vs. Dava Sapra. reported in (2009) 13 see 729. the Hon'ble Supreme Court was pleased to observe as under:*

*" 8. There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceedings at the same time. Both the proceedings, thus, can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-a-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit " preponderance of probability" would serve the purpose for obtaining a decree".*

*14. Section 101 of the Evidence Act, 1872 defines " burden of proof" and laid down that the burden of proving a fact always lying upon the person who asserts the facts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of other party. In view of Section 103 of Evidence Act, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is*

provided by any law that the proof of that fact shall lie on any particular person. Further, Section 58 of the Indian Evidence Act contained that no fact need to be proved in any proceedings which parties thereto or their agents agree to admit at the herein, or which, before the hearing, they agree to admit by any writing under their hands or which by any rule of pleadings enforce at the time they are deemed to have admitted by their pleadings. As held in judgment reported as Uttam Chand Kothari Vs. Gauri Shankar Jalan. AIR 2007 Gau. 20. admission in the written statement cannot be allowed to be withdrawn. In view of this legal position of the Evidence Act, it is clear that it is for the appellant to prove that he has right, title or interest in the suit property.

15. As mentioned in the plaint itself, Lt. Sh. Mohan Singh was allotted the suit property on temporary lease for 1 year. Now the plaintiff is praying for conversion of temporary lease into permanent lease and therefore the plaintiff has to show the existence of obligation on behalf of the defendant in executing the permanent lease and breach of obligation for the entitlement of relief. The defendant has categorically stated that there is no policy in the DDA regarding conversion of temporary lease into permanent lease. It is further observed that 32 persons were evicted along with Lt. Sh. Mohan Singh. The defendant in the WS has denied categorically that suit land was ever allotted to Lt. Sh. Mohan Singh. I have gone through the said letter dt. 29.12.1982 Ex. PW5/X-1 and the letter itself contend that the suit land has been allotted for agricultural purpose on temporary lease. There is no document on record to show that the defendant has ever undertook to execute the permanent lease in favour of the plaintiff or Mohan Singh in respect of the suit property. The plaintiff cannot ask the defendant to execute the permanent lease. Merely the plaintiff being in possession does not mean that he is entitled for permanent lease and it is for the defendant to decide as to whether the lease is to be extended or not. It is interesting to note that none of the other 31 persons except Mohan Singh was allotted any land in lieu of the land in Chiragah Sumali.

16. I have through the testimony of the plaintiff / PW-1 and the testimony of the PW-1 was too tally shattered during, the cross-examination of the witness. He failed to depose as to whether Lt. Sh. Mohan Singh was in unauthorized

*possession of the place from where he was removed in 1962 and there is no allotment letter regarding allotment of house by the DDA. The letter Ex. PW-5/X-1 and EX. PW-1/3 is not proved by the [plaintiff regarding allotment of the suit land in favour of Lt. Sh. Mohan Singh. The witness admitted during cross-examination that he do not know whether any letter for making permanent lease was issued by the DDA to any other person who were removed and given land to his father. The injunction is a discretionary relief and the plaintiff cannot ask the defendant to execute permanent lease without any policy. Needless to say, the plaintiff failed to prove any right in the suit property.*

*17. The pleadings of the parties and evidence on record reveals that the plaintiff categorically proved the contentions in the pleadings. The ratio of judgment reported as 1982 (1) RCR 637 is squarely applicable in the facts of this case. Further, as held in Subhra Mukharjee Vs. Bharat Coking Coal Ltd., AIR 2000 SC 1203. the party which makes the allegation must prove it. The plaintiff failed to produce any oral or documentary evidence to prove the contentions. Undisputedly, the burden lies on the plaintiff to establish such facts claimed in the plaint. The plaintiff is accordingly not entitled for the relief, as prayed in the suit.*

*18. I have gone through the judgment reported as (2003) 8 SCC 752. As held:-*

*Whether a civil or a criminal case, the anvil of testing of "proved", "disproved" and "not proved" as defined in Section 3 of the Indian Evidence Act, 1872 is one and the same. It is the valuation of the result drawn by the applicability of the rule contained in Section 3 of the Evidence Act, 1872 that makes the difference. In a suit for possession of property based on title, if the plaintiff creates a high degree of probability of his title to ownership, instead of proving- his title beyond any reasonable doubts, that would be enough to shift the onus on the defendant. If the defendant fails to shift back the onus, the plaintiffs burden of proof would stand discharged so as to amount to proof of the plaintiff's title. The present case being a civil one, the plaintiff could not be expected to prove his title beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus the*

*plaintiff's burden of proof can safely be deemed to have been discharged. In the opinion of this Court the plaintiff has succeeded in shifting the onus on the defendant and therefore, the burden of proof which lay on the plaintiff had stood discharged.*

*The ratio of the judgment is squarely applicable in the facts and circumstances of this case.*

*19. In view of the aforementioned discussions and materials on record, this court is of the considered opinion that the plaintiff failed to prove the case against the defendant. The plaintiff is accordingly not entitled for the relief, as prayed in the suit. Issue No. 2 is decided in favour of the defendant and against the plaintiff.”*

*(emphasis supplied)*

42. Mr. Sagar is justified in relying upon the judgments of the Supreme Court in the case of ***Joginder & Anr. vs. State of Haryana (supra)*** wherein the Supreme Court has held as under: -

*“13. It is required to be noted that the persons in illegal occupation of the government land/panchayat land cannot, as a matter of right, claim regularisation. Regularisation of the illegal occupation of the government land/panchayat land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the government land/panchayat land are not entitled to regularisation. As observed by this Court in the recent decision in State of Odisha v. Bichitrananda Das [State of Odisha v. Bichitrananda Das, (2020) 12 SCC 649] , an applicant who seeks the benefit of the policy must comply with its terms. In the present case, the policy which was formulated by the State Government which culminated in Rule 12(4) of the 1964 Rules specifically contained a stipulation to the effect that the illegal/unauthorised occupation up to a maximum of 200 sq yd only can be sold on regularisation and on fulfilment of other conditions mentioned in Rule 12(4) of the 1964 Rules. The petitioners are found to be in illegal occupation of the area of more than 200 sq yd. Therefore,*

*one of the conditions mentioned in Rule 12(4) is not satisfied and therefore both, the competent authority as well as the High Court, have rightly held that the petitioners are not entitled to the benefit of the provisions of Rule 12(4) of the 1964 Rules. We are in complete agreement with the view taken by the High Court as well as the competent authority.”*

43. Similarly, Mr. Sagar is justified in advancing the proposition that the property given on temporary lease for one year having been acquired and which acquisition has attained finality, and the suit property (having not been allotted) could not have been allotted to late Mohan Singh by relying upon the judgment in case of **V. Chandrasekaran & Anr. (supra)** wherein paragraphs 25, 26 and 31 it was held as under: -

*“25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period. [Vide Awadh Bihari Yadav v. State of Bihar [(1995) 6 SCC 31] , U.P. Jal Nigam v. Kalra Properties (P) Ltd. [(1996) 3 SCC 124 Allahabad Development Authority v. Nasiruzzaman [(1996) 6 SCC 424] , M. Ramalinga Thevar v. State of T.N. [(2000) 4 SCC 322] and Govt. of A.P. v. Syed Akbar [(2005) 1 SCC 558].*

*26. The said land, once acquired, cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances. (Vide State of M.P. v. Vishnu Prasad Sharma [AIR 1966 SC 1593] , Lt. Governor of H.P. v. Avinash Sharma [(1970) 2 SCC 149] , Satendra Prasad Jain v. State of U.P. [(1993) 4 SCC 369] , Rajasthan Housing Board v. Shri Kishan [(1993) 2*

SCC 84] and Dedicated Freight Corridor Corpn. of India v. Subodh Singh [(2011) 11 SCC 100].

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31. In view of the above, the law can be crystallised to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.”

44. Mr. Sagar is right in contending that mere suit for mandatory injunction without a prayer for declaration that the appellant has the title in the suit property, at Ghonda Chauhan Khadar (now Shashtri Park) no relief could have been granted by the Trial Court by relying upon the judgment in **Anathula Sudhakar** (*supra*) wherein in paragraphs 13, 13.3, 14, 21, 21(b) and 32 the Supreme Court held as under: -

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

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13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the

*plaintiff will have to file a suit for declaration, possession and injunction.*

*14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.*

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*21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*

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*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly*

*and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

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*32. We are conscious of the fact that the suit was filed in the year 1978 and driving the plaintiffs to a fresh round of litigation after three decades would cause hardship to them. But the scope of civil cases are circumscribed by the limitations placed by the rules of pleadings, nature of relief claimed and the court fee paid. The predicament of the plaintiffs, was brought upon themselves, by failing to convert the suit to one for declaration even when the written statement was filed, and by not seeking amendment of issues to include an issue on the question of title. In the absence of a prayer of declaration of title and an issue regarding title, let alone the pleadings required for a declaration of title, the parties cannot be said to have an opportunity to have a full-fledged adjudication regarding title.”*

45. From the above, it is clear in the absence of the appellant proving the title to the suit property in Khasra No. 69/2 (7 bighas) located in Village Ghonda Chauhan Khadar which is now known as Plot No. 32, F Block Shashtri Park, Delhi by not even producing a letter of allotment in his favour, even the letters dated December 29, 1982, January 28, 1983 and May 05, 1938 have been held to be, not proved and also in the absence of any written policy placed by the appellant on record stating that there is a policy in DDA for conversion of temporary lease to a permanent lease, the learned Trial Court has rightly rejected the suit. On a consideration of a complete record, this Court is also of the view that the appellant has failed to make out any case for interference with the judgment / decree of the Trial Court.

46. The appeal is dismissed. No costs.

**CM No. 19118/2021**

Since, I have heard the parties finally on merits and in view of my decision in the appeal above, this application does not survive. Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**NOVEMBER 29, 2021/aky/jg**

