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

*Date of decision: 16.10.2023*

+ **RSA 168/2023 & CM APPLs. 45643-45/2023**

**PRABHU DAYAL**

..... Appellant

Through: Mr. U.S. Gautam, Mr. Shubham Shukla, Mr. Dheeraj Raghav and Ms. Shristi Gupta, Advocates

versus

**JATAN SINGH & ORS**

..... Respondents

Through: Mr. J.M. Kalia and Mr. Dhruv Kalia, Advocates for Respondents  
Ms. Manika Tripathy, Standing Counsel for DDA

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**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

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

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

**CM APPL. 45644/2023 (For Exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

**RSA 168/2023 & CM APPL. 45643/2023, 45645/2023**

1. This regular second appeal filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC'), impugns the judgment dated 23.03.2023 passed by the ADJ-01, North East District, Karkardooma Courts, Delhi ('First Appellate Court') in RCA DJ No. 83/2019, titled as "**Prabhu Dayal**



**v. Jatan Singh**”, whereby the First Appellate Court upheld the judgment and decree dated 15.11.2019 passed by the ACJ – CCJ – ARC, East District, Karkardooma Courts, Delhi (‘Trial Court’) in civil suit no. 8976/2016 and dismissed the appeal.

1.1. The civil suit was filed seeking possession of the property no. A-18, measuring about 150 square yards, forming part of Khasra No. 42/2, Village Ziauddinpur, Brijpuri, Opposite Yamuna Vihar, Wazirabad Road, Delhi – 94 (‘suit property’) against the defendants. The Trial Court vide judgment dated 15.11.2019 decreed the suit in favour of the plaintiff and granted the relief of possession of the suit property.

1.2. It is pertinent to note here that initially there were two plaintiffs in the civil suit i.e., plaintiff no.1 namely late Shri Jatan Singh and plaintiff no.2 namely late Shri Hans Raj. However, the plaintiff no.2 was deleted by the Trial Court vide order dated 01.09.2015 in view of an application filed by the plaintiff no.1 under Order I Rule of 10 of Code of Civil Procedure, 1908 (‘CPC’) read with Order XXII Rule 2 of CPC. The plaintiff no.1 was the son of late Shri Lekhraj and plaintiff no.2 was the grandson of late Sh. Gopi Ram and Smt. Chanda Devi.

1.3. The Respondents herein are the Legal heirs (‘LRs’) of deceased original plaintiff i.e., late Shri Jatan Singh. For ease of reference, the since deceased plaintiff and his legal heirs i.e., the Respondents herein, are being referred to as ‘the Respondent’.

1.4. The suit for recovery of possession was filed against three (3) defendants. However, defendant no.2 namely Shri Kamal Singh Raghav and defendant no. 3 namely Sh. Chander Pal Singh Raghav, as well were deleted as a party from the suit vide order dated 16.12.2009. The suit was thereafter



proceeded against defendant no.1 alone.

1.5. The Appellant herein is the original defendant no.1 and is hereafter being referred to as the 'Appellant' for ease of reference. The Appellant is admittedly in physical possession of the suit property.

2. Brief facts leading to the filing of this appeal are as under:

2.1. Initially a (separate) civil suit bearing no. 215/1983 (1<sup>st</sup> suit) seeking permanent injunction was filed by the Appellant against the Respondent and late Smt. Chanda Devi on the ground of threat of dispossession. In the said suit, the Appellant claimed ownership of the suit property on the basis of General Power of Attorney ('GPA'), Agreement to Sell ('ATS'), receipt etc., all dated 30.01.1981, executed by one Sh. B.K. Sharma in favour of the Appellant and his relatives namely Shri Chander Pal and Sh. Kamal Singh.

The Appellant contended that Sh. B.K. Sharma was the GPA holder of Smt. Chanda Devi wife of late Shri Gopi Ram and the said Sh. B.K. Sharma had purchased a portion ad-measuring 350 sq. yards, forming part of Khasra No. 42/2, Village Ziauddinpur, Brijpuri, Opposite Yamuna Vihar, Wazirabad Road, Delhi – 94 from Smt. Chanda Devi vide GPA, Affidavit, Will and ATS, all dated 10.03.1980.

The said civil suit was dismissed by the concerned Court vide judgment dated 03.05.1997, wherein the Appellant herein was held not to be an owner of suit property.

2.2. The Appellant being aggrieved by the judgment dated 03.05.1997, filed an appeal bearing no. 225/1997, which as well was dismissed by the concerned Appellate Court upholding the judgment dated 03.05.1997. The Appellant thereafter, filed a second appeal bearing RSA No. 195/2003 before this Court, however, the learned Single Judge of this Court vide



judgment dated 21.01.2011 held that the title claim of the Appellant in the suit property has not been established since the essential link of transfer of title from late Smt. Chanda Devi to Sh. B.K. Sharma has not been proved and therefore, there is no question of the Appellant having acquired any right or title in the suit property. The learned Single Judge consequently, dismissed the second appeal and the said judgment has attained finality.

2.3. In the meantime, the (present) suit was filed by the Respondent in the year 2004 seeking possession of the suit property. The said suit was later renumbered as civil suit no. 8976/2016 (2<sup>nd</sup> suit).

2.4. The Respondent claimed ownership of a land measuring about 1 bigha and 4 biswa forming part of Khasra No. 42/2, Village Ziauddinpur, Brijpuri, Opposite Yamuna Vihar, Wazirabad Road, Delhi – 94 ('subject land'), wherein the suit property, ad-measuring 150 sq. yds., is situated. It was stated that the said piece of land was previously owned by the father of Respondent i.e., late Shri Lekhraj and late Shri Gopi Ram. It was stated that the Appellant had encroached upon a portion of the subject land, ad-measuring 150 sq. yds., which is the suit property.

2.5. The suit was decreed in favour of the Respondent by the Trial Court vide judgment dated 15.11.2019 holding that Respondent is the recorded owner of the suit property and is therefore entitled to decree of possession against the Appellant, who admittedly has no right title or interest in the suit property. The said judgment was upheld by the First Appellate Court vide the impugned judgment dated 23.03.2023.

#### ***Submissions of the parties***

3. Learned counsel for the Appellant states that the suit property ad-measures 150 sq. yds., and is constructed up to second floor. He states that



the ground floor has been leased out and there is a show room of the brand Reebok running from the ground floor. He states that the first floor has been rented out to a third party who is running a coaching centre there. He states that the second floor is being used by the Appellant and his family as their residence.

3.1. He states that the suit property is located in Brijpuri, Wazirabad Road, Delhi -94. He states that this colony was initially unauthorised, however, it has now been regularised by the Government of India and Government of National Capital Territory of Delhi ('GNCTD'). He states that the Appellant herein acquired right, title and interest in the subject property on the basis of GPA, ATS, Receipt and Will prepared on 30.01.1981. He states that the said documents were executed in favour of the Appellant on the basis of a power of attorney dated 10.03.1980 executed in favour of Mr. B.K. Sharma by the predecessor of the Respondents herein.

3.2. He states that in the first appeal, the Appellants herein have brought on record the fact that the subject property was acquired by the Delhi Development Authority ('DDA') in the year 1967 and compensation has been paid to the Respondent. He states that as per records of DDA, the possession of the suit property stands transferred in DDA's favour. He states that therefore, in view of these facts, the Respondent was left with no right, title or interest in the suit property and thus, he could not have maintained this suit. He states that these facts could not be brought before the Trial Court and in view thereof, the suit deserves to be dismissed.

3.3. He fairly admits that in the separate civil suit (i.e., 1<sup>st</sup> suit) filed by the Appellant relying upon the GPA, ATS, Will and Receipt etc. executed by Sh. B.K. Sharma, the Court had held that the GPA dated 30.01.1981 relied



upon by the Appellant as the source for transfer of title by Sh. B.K. Sharma in his favour has not been proved and the suit stands dismissed and the said findings have attained finality.

4. In reply, learned counsel for the Respondent states that there is no dispute that the Appellant is a rank trespasser in the suit property and he has no right, title or interest. He states that the Respondents herein have been litigating against the Appellant since the year 1983 for recovery of the possession of the suit property. He states that the Appellant concedes that the Respondent is the recorded owner of the suit property and is therefore, precluded from challenging the locus of the Respondent.

4.1. He states that in view of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2019 ('Act of 2019') and the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Regulation, 2019 ('Regulations of 2019'), the Respondent is entitled to regularise its title in the land. He states that list of unauthorised colonies to be regularised which is the subject matter of the Act of 2019 and the Regulations of 2019 duly includes the colony wherein the suit property is situated. He states that the colony known as Brijpuri, Wazirabad Road, Delhi-94 was acquired by the government, however, due to the Act of 2019 and Regulations of 2019, the Respondents are entitled to have their property rights regularised. He states that no substantial question of law arises in this matter and the same deserves to be dismissed.

***Analysis and findings***

5. This Court has considered the submissions of the counsel for the parties and perused the record.



6. In this appeal, the Appellant concedes that the Respondent is the recorded owner of the suit property. This is a material fact since the Appellant has resisted the decree of possession in the pleadings on the ground that the title of the suit property vests in the Appellant and the Respondent are not the owners of the suit property. The relevant portion of the written statement reads as under:

*“That the defendant no.1 is the owner/landlord of the property in suit. He purchased the plot on 30-01-1981 from Sh. B.K. Sharma S/o M.L. Sharma who was the Attorney of Smt. Chanda Devi W/o Sh. Gopi alongwith defendant no.2 and 3. The defendant no.1 constructed the house on the plot from his own earnings and money and is in **exclusive possession** of the house and residing with his family members. The defendant no.2 and 3 have sold their share of the plot to defendant no.2 vide GPA, Sale Agreement, Receipt for payment and Will on 27-1-1998. The defendant no.1 and 2 have received sale consideration in full and final and executed sale documents in favour of defendant no.1”*

(Emphasis Supplied)

6.1. In this regard, it would be relevant to refer to the finding given by the Trial Court on the issue of Respondent’s ownership of the suit property in its judgment dated 15.11.2019:

*“9. The issue-wise finding is as under:-*

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*... PW1 produced ownership documents of the said plot in the form of Khasra Girdawari which is Ex. PW1/X, however, the exhibition of said document was objected to by the defendants, however, the said document is a copy of document Ex. PW3/1 which was produced by PW3 who is Ranvir Singh, Kanungo, SDM Office, Yamuna Vihar, Delhi. Ex. PW1/X has been prepared qua Khasra No 42 and its relevant details, as such, the document Ex. PW1/X if seen in the light of Ex. PW3/1 is correct and the objection regarding its mode of proof stands overruled. Further, PW3 stated that as per record the Khasra No. 42/2 is divided in three equal parts i.e. 1/3rd share each which is squarely reflected in Ex. PW3/1 corresponding to Khasra No. 42.*

*PW4 who is working as Office Kanungo in Office of Tehsildar, Head Quarter Tehsil Building, Tis Hazari, produced document Ex. PW4/1 which is the record of Khatoni for the year. 1979-1980 pertaining to Khasra No. 1 etc./42/2/Min and Ex. PW4/2 which is pertaining to year 1985-1988 qua Khasra No. 1 etc/42/2/Min. These two documents show name of one of the*



*tenure holder as Hans Raj S/o Gopi who happens to be the family member of plaintiff and one of the plaintiff. These documents taken in totality support the claim of the plaintiff qua ownership over the suit property. **The evidence indicate that entire land measuring 1 bigha, 4 biswa forming part of Khasra No. 42/2, Village Ziauddin Pur, Opposite Yamuna Vihar, Abadi Brij Pun is owned by plaintiff and which necessarily cover the portion occupied by the defendants i.e. the suit property.** Nothing has been brought to the fore by the defendants to dislodge the evidence presented by the plaintiff. The documentary evidence presented by plaintiff in the form of Ex. PW3/1, Ex. PW4/1 and Ex. PW4/2 duly supports the claim of the plaintiff regarding ownership over the suit property. **Accordingly, in the considered view of this court, plaintiff is the owner of the suit property which is part of land measuring about 1 bigha and 4 biswa forming part of Khasra No. 42/2, Village Ziauddinpur and same is shown in red colour in site plan Ex. PW1/1. This issue is decided in favour of the plaintiff and against the defendants.**"*

(Emphasis Supplied)

6.2. The aforesaid finding of the Trial Court, which is based on documentary evidence, has not been assailed during arguments. The said finding of fact has thus, attained finality.

6.3. It is also a matter of record that the Appellant's claim of title based on the documents dated 30.01.1981 has been categorically negated in the proceedings initiated by Appellant herein in Civil Suit No. 215/1983 (i.e., 1<sup>st</sup> suit) wherein this Court vide order dated 21.01.2011 passed in RSA No. 195/2003 held that the Appellant has no title in the suit property as it has failed to prove his ownership in the suit property.

6.4. The necessary sequitur of the said judicial findings is that the Appellant is an encroacher/trespasser in the suit property and he has no right or title in the said property and consequently, no right to continue in possession.

The Appellant set up a title through the predecessor of the Respondent i.e., late Smt. Chanda Devi; however, the same has been specifically negated by the Courts. Further, the Respondent admittedly, did not put the Appellant



in possession of the suit property and litigation between the parties began since the year 1983 qua possession. Therefore, there can be no dispute that the Respondent has a better title than the Appellant and is entitled to maintain the suit for recovery of possession.

7. During the oral arguments, the Appellant has relied upon a status report dated 26.08.2017 filed by DDA to contend that since the land on which the suit property stands was acquired by DDA vide award bearing no. 1954 and dated 03.05.1967, the Respondent herein cannot maintain the present suit for recovery of possession as he has been left with no right, title or interest in the property.

7.1. The Appellant states that the compensation of the said land has been paid over to the Respondent and as per the stand of the DDA, the paper possession of the land has also been taken over by DDA. He states that in view of these facts, the Respondent cannot maintain this suit for recovery of possession.

7.2. The First Appellate Court has rejected the aforesaid submission of the Appellant on two grounds. Firstly, the DDA was not impleaded as a party before the Trial Court and no objection as regards the non-joinder of DDA was raised before the Trial Court. Secondly, these pleas of acquisition of the subject land are beyond the pleadings in the suit. Thirdly, the plea of the Appellant that the possession of the suit property was taken over by DDA during the course of the acquisition, is falsified by the fact that the parties herein have been litigating over possession. The findings of the First Appellate Court in this regard read as under:

“23. Defendant argued that Ld. Trial Court should have impleaded the DDA in the array of parties once it came on the record that suit property was already acquired in the year 1967. In this regard, this court is of the view that



*this ground is without any merit as it is well settled that all objections on the ground of non-joinder or mis-joinder of parties must be taken at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived In the present case, the plea taken by defendant for impleadment of the DDA is not only beyond pleadings but also not taken at the earliest possible opportunity or even taken before Ld. Trial Court.*

24. Defendant further argued that parents of defendant and Late Sh. Hans Raj had already received the compensation and handed over the possession of the suit property to the DDA and for this reason they were left with no right, title or interest over the suit property? Further, by not disclosing these facts, defendant and Late Sh. Hans Raj were guilty of suppression of facts. In this regard, this court is of the view that the pleas raised by defendant at the stage of appeal are sustainable being beyond the pleadings. The plea that the DDA has already obtained possession of the suit property by way of acquisition proceedings and disbursing compensation to claimants is also found devoid of any merit. Had this been the case, the suit for possession of the suit property would not have been by filed by plaintiff against defendant who is in possession of the same and asserting his possession, right, title and interest therein by hotly contesting the suit before the Ld. Trial Court and even by way of present appeal.

(Emphasis Supplied)

7.3. The First Appellate Court has also relied upon the judgment of this Court in **Smt. Shashi Bala Nagpal v. Sh. Rama Kant Shah, (2016) 8 AD (Delhi) 208**, to hold that the dispute, if any, between the Respondent and the land acquiring authority/Government shall be decided in an appropriate legal proceeding filed between the said parties; and it cannot offer any ground to a trespasser such as the Appellant herein to resist a decree of possession as against the recorded owner i.e., the Respondent.

7.4. In the opinion of this Court, the aforesaid findings returned by the First Appellate Court on the issue of acquisition in its impugned judgment does not merit any interference.

7.5. It is a matter of record that DDA was not a party before the Trial Court and no pleading with respect to acquisition of the subject land by the



DDA in the year 1967 was raised by the Appellant in its pleadings. On the contrary, as noted above, the Appellant raised the specific defence of independent title (acquired in the year 1981) in his favour in the pleadings. The Appellant has now abandoned the said defence; admits the Respondent is the recorded owner and has set up a fresh plea of DDA's title, which has no foundation in the pleadings and the evidence led. The Appellant is now seeking a declaration that the title of the suit property vests in DDA in these proceedings. The Supreme Court in ***Bachhaj Nahar v. Nilima Mandal and Anr., (2008) 17 SCC 491***, has held that in a civil proceeding, a party cannot be permitted to raise any plea which is beyond pleadings or led evidence which is beyond pleadings. The relevant portion of the judgment reads as under:

*“11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.*

*12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.*

*13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an*



*opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.*

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*17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad [AIR 1966 SC 735] and Ram Sarup Gupta [(1987) 2 SCC 555 : AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.*

(Emphasis Supplied)

7.6. As is apparent, this fact of acquisition of 1967 by DDA, pre-dates the facts/documents (dated 30.01.1981) which have been relied upon by the Appellant to prove his possession or right to remain in the possession in both the 1<sup>st</sup> suit and the 2<sup>nd</sup> suit. The acquisition proceedings are not a subsequent





event and the Appellant does not claim any right to continue in possession through DDA.

The Appellant claims entering into possession of the suit property i.e., 1981, on the basis of documents (of the year 1980) purportedly executed by the predecessor of the Respondent. The said documents (of the year 1980) having not been proved, the possession of the Appellant is that of a trespasser and hence, illegal. The Appellant claims the possession through the Respondent's predecessor; the Appellant having failed in this claim cannot dispute the right of the Respondent (i.e., the recorded owner) to maintain the suit for recovery of possession.

8. The learned Single Judge of this Court in ***Shashi Bala Nagpal*** (supra) in similar facts held that the rights of government or the land acquiring authority, in acquisition proceedings are not affected by the adjudication of inter-se disputes between a trespasser and the recorded owner. The relevant portion of the said judgment reads as under:

*“16. In fact, I would like to note that the facts of this case are more or less similar to the facts of the judgment in the case of Govindan Soman (supra) and ratio of the said judgment, including of lack of locus to question title documents by a stranger, applies to full force inasmuch as respondent/defendant in this case also does not claim any ownership rights but only has claimed tenancy rights however, these tenancy rights have not been proved and in fact the so called landlords under whom the respondent/defendant claimed to have become tenant, namely Sh. Satya Pal Singh and Sh. Ajit Singh, have appeared as witnesses for appellant/plaintiff as PW2 and PW3 and denied that they had at all inducted the respondent/defendant as tenant in the suit property.*

The sequitur of the above discussion is as under:-

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*(v) There is no dispute between the appellant/plaintiff and the government/land acquiring authority and in case the land acquiring authority seeks to take possession of the subject land from the appellant/plaintiff on the*



ground that it is an acquired land then at that stage such issues will be decided in such appropriate independent legal proceedings.

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19. Finally, I may note at the cost of repetition that nothing in this judgment is a reflection to the entitlement to the suit land as between the appellant/plaintiff and the Union of India or any other land acquiring authority, and which aspect will be considered in accordance with law if the same may arise as between the land acquiring authority/Union of India and the appellant/plaintiff."

(Emphasis Supplied)

8.1. Similarly, these proceedings between the Respondent and the Appellant are not binding on DDA. The rights of Respondent and DDA inter-se will be decided in the appropriate independent legal proceedings, if any, initiated by DDA. However, the Appellant who is a trespasser and has perpetuated his possession in the suit property since the year 1983 through multiple litigations cannot resist the decree of possession against the recorded owner i.e., the Respondent.

9. With respect to subsisting rights of the Respondent in the suit property, as noted above the Respondent has relied upon the provisions of Act of 2019 and Regulations of 2019 to show that with respect to the subject land which lies in a now regularised colony, the Government of India has permitted regularisation of the title rights of the said land, despite acquisition, subject to fulfilment of the conditions laid down therein.

9.1. At this stage, it would be relevant to refer to the provisions of Act of 2019 and the provisions of the Regulations of 2019, which substantiate the stand of the Respondent that it is permissible to regularise the title in the subject land on which the suit property stands in spite of the acquisition in the year 1967. The relevant portion of the Regulation of 2019 reads as under:



*“2. **Definitions.** – In these regulations, unless the context otherwise requires,*

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(g) “**unauthorised colony**” means a colony or development comprising of a contiguous area, where no permission has been obtained for approval of layout plan or building plans and has been identified for regularisation of such colony in pursuance to the notification number S.O. 683€ dated the 24<sup>th</sup> March, 2008 and includes colonies as identified by the Delhi Development Authority under these regulations as specified in **Annexure II (1797 colonies)**.

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**3. Classification of land.** – The categories of land that are to be considered for conferring or recognising ownership or transfer or mortgage rights shall be as under–

(a) Category- 1 of land shall include the following, namely:

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(ii) **land acquired by the Government for which compensation has been paid or deposited by the acquiring agency; and**

(Emphasis Supplied)

9.2. It is admitted by both the parties that the subject property is located in Brijpuri, Wazirabad, Delhi-94 which colony has been granted Provisional Regularisation Certificate by the government and its name appears at sl. no.736 in the Annexure II to the Regulations of 2019.

9.3. The Respondent has also relied upon the order dated 12.12.2007 i.e., policy documents of GNCTD available in the public domain which show that in cases of unauthorised colony which have been regularised by the Government of India, it is the intention of the Government to regularise the title in the said land even if the land owners have received the compensation.

9.4. Therefore, in view of the provisions of the Act of 2019 and Regulations, 2019 it becomes evident that the effect of the acquisition of the subject property and payment of compensation to the Respondent in a regularised unauthorized colony qua Respondent will be governed by the said provisions. The rights of the Respondent qua DDA will be decided in





the appropriate legal proceedings, if any, initiated by the Respondent and/or DDA.

10. However, in view of the fact that the Appellant is a rank trespasser, the Appellant herein cannot resist the decree of possession in favour of the Respondent i.e., the recorded owner. The Appellant herein is not eligible for regularisation of its title rights under the provisions of Act of 2019. In this regard, it would also be relevant to refer to the following relevant provisions of the provisions Act of 2019, which reads as under:

***“2. Definitions***

*In this Act, unless the context otherwise requires,--*

- (a) ***“resident” means a person having physical possession of property on the basis of a registered sale deed or latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;***

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***3. Recognition of property rights.***

- (4) ***Any resident of an unauthorised colony having registered or un-registered or notarised Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration shall be eligible for right of ownership or transfer or mortgage through a conveyance deed or authorisation slip, as the case may be, on payment of charges referred to in sub-section (2).***

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- (6) ***The tenants, licensees or permissive users shall not be considered for conferring or recognising any property rights under this Act.***

(Emphasis Supplied)

10.1. In view of the findings of the Court in civil suit no. 215/1983 (i.e., 1<sup>st</sup> suit) holding that the Appellant has no valid title on the basis of the GPA, Will, Receipt, ATS all dated 30.01.1981 and the subsequent judgments upholding the said finding that the Appellant herein does not have a valid



chain of the title documents in his favour, he is ineligible from making any claims of regularisation under the Act of 2019 and Regulations of 2019.

11. The actual physical possession of the suit property is with the Appellant herein and therefore, its new plea in the first appeal that the physical possession vests with DDA is contrary to his stand.

12. In view of the above, this Court is of the opinion that no question of law much less a substantial question of law arises for consideration in this appeal and the grounds merely challenge the finding of facts.

12.1. In this regard, it would be appropriate to refer to the case of *Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57* wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-appreciate the evidence in a second appeal. The operative portion to this aspect reads as under:

*“22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. **It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.**”*

*23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 Cr.*

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*28. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.*

***29. To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and***





**it must be necessary to decide that question of law for a just and proper decision of the case.”**

(Emphasis supplied)

13. This second appeal is accordingly dismissed and the judgments of the First Appellate Court and the Trial Court are upheld. Pending applications, if any, stands disposed of.

14. It is clarified that nothing in this judgment refers to the entitlement of the Respondent to the suit property as between the Respondent and DDA or any other land acquiring authority/Union of India, and which aspect will be considered in accordance with law if the same may arise as between DDA/ the land acquiring authority/Union of India and the Respondent; including an application filed under the Act of 2019 and Regulations of 2019. The rights of the DDA/land acquiring authority/Union of India are not a subject matter of adjudication in the present proceedings, as noted hereinabove.

**MANMEET PRITAM SINGH ARORA, J**

**OCTOBER 16, 2023/msh/aa**

*Click here to check corrigendum, if any*