

Chattar Singh and ors. Vs. Mcd

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Court : Delhi

Decided On : Apr-15-2014

Judge : Pradeep Nandrajog

Appellant : Chattar Singh and ors.

Respondent : Mcd

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: April 15, 2014 + LPA13022007 CHATTAR SINGH & ORS Represented by: Appellant Mr.Jagmohan Sabharwal, Sr.Advocate instructed by Mr.R.P.Sharma, Mr.Samir Sagar Vasisht and Mr.Vaibhav Mehra, Advocates. versus MCD Represented by: Respondent Ms.Shilpa Dhawan, Advocate for Mr.Ajay Arora, Advocate
CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.

(Oral) 1. Listed in the category of Final Hearing Matters, WP(C) 6115/1998 filed by the appellant was dismissed by the learned Single Judge vide orders dated February 05, 2007. The order was passed in the absence of any representation from the side of the appellants.

2. The learned Single Judge noted that the lay-out plan produced by the Municipal Corporation of Delhi would evidence that the land which was subject matter of dispute was earmarked for use as a Community Centre and that a demarcation

conducted on November 07, 2002 had confirmed that the land was comprised in the khasra numbers statedly claimed by the appellant as land belonging to them.

3. Application being filed to recall the order and hear the matter afresh, the learned Single Judge dismissed the application vide order dated May 17, 2007 relying upon the fact that under sale-deeds 177 bigha and 17 biswa land had been sold by the appellants or their ancestors to M/s Bharat Builders and Colonizers in the year 1956. The learned Single Judge has held that a decree dated November 05, 1981 in Suit No.577/1978 was the result of a fraud. Costs in sum of `25, 000/- (Rupees Twenty Five Thousand only) has been imposed.

4. Having heard learned counsel for the parties we are of the opinion that the matter needs to be remanded before the Estate Officer, MCD for a proper decision.

5. Our reasons.

6. Appellants filed writ petition pleading that they were the owners of land comprised in Khasra Nos.1364, 1365, 1366, 1367, 1370 Basai Darapur, New Delhi. They pleaded that on December 12, 1978, when MCD attempted to demolish a structure raised by them on khasra No.1367 they were constrained to file Suit No.577/1978 which was decreed on November 05, 1981, holding that title to the land comprised in the five khasras was that of the appellants. It was pleaded in the writ petition that MCD filed an application before its Estate Officer to eject the appellants from the lands in question which was contested by the appellants. It was pleaded that on July 26, 1993 the Estate Officer remanded the matter directing MCD to have the land demarcated which order was challenged by the appellants by way of an appeal before the District Judge, Delhi under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. It was pleaded that the appeal was pending. It was pleaded that in appeal, orders directing status quo to be maintained were passed on October 20, 1994 and were continuing. It was pleaded that in spite thereof officers of MCD attempted to forcibly take possession of the lands in question and demolished a structure raised by the appellants.

7. In a short counter affidavit filed by MCD it was pleaded that a colonizer named M/s Bharat Builders had got approved the lay-out plan of a colony in the year 1956-1957 and that 6 bigha and 9 biswa land comprised in khasra No.1364, 8 bigha and 9 biswa land comprised in khasra No.1365, 6 bigha and 15 biswa land comprised in 1366, 7 bigha and 14 biswa land comprised in khasra No.1367 and 5 bigha and 9 biswa land comprised in khasra No.1370 were shown in the plan as available for public utility services. It was pleaded that the record being old, MCD could not produce the relevant record.

8. It so emerged that under four sale-deeds dated October 22, 1969, August 19, 1970, August 19, 1970 and September 07, 1970, land comprised in khasra Nos.1364 (5-0), 1365 (6-0), 1368 (2-0)min, 1369 (10-6), 1372 (410), 1375 (7-15), 2317 (0-13), 2318 (29-6), 3279/2319 (7-13), 2320 (0-11), 3560/3280/2319 (2-0), 2321 (10-11), 2322 (5-17), 2325 (7-4), 2333 (12-3), 2336 (3-16), 2337 (14-19), 2338 (0-6), 2339 (14-14), 2344 (15-14), 2345 (05), 2351 (3-6), 2354 (6-0), 2355 (2-17), 2361 (2-17)min and 2362 (1-11) min were sold by the co-owners thereof to M/s Bharat Builders and Colonizers. The sale-deeds would evidence that total land comprised in khasra no.1364 was 10 bigha and 9 biswa out of which only 5 bigha was sold. Total land in khasra No.1365 was 8 bigha and 9 biswa out of which 6 bigha was sold. Total area of khasra no.1368 was 4 bigha and 5 bishwa out of which 2 bigha was sold.

9. It is thus apparent that neither claim of the appellants nor that of the MCD is fully correct when each one of them asserts complete title to the land.

10. As regards the appellants, learned Senior Counsel Sh.Jagmohan Sabharwal concedes that such lands which were sold by the appellants/their predecessors-in-interest cannot be claimed as owners thereof by the appellants. Similarly, learned counsel for the MCD concedes that such lands which do not find an mention in the four sale-deeds cannot be treated as lands sold to the colonizers and through them to the MCD, unless there is evidence of further sales.

11. Concededly,vide resolution No.60 dated March 9, 1957 approved DDA the lay-out of a colony called Mansarover Garden. The approval was in favour of M/s Bharat Builders and Colonizers. The resolution records that the proposed lay-out

plan submitted for approval covered a gross area of 124.90 acres, breakup whereof was as follows: 1. Residential plots (754) 55.30 acres 2. Shopping Centres (2) 5.10 acres 3. Cinema Plot (1) 1.30 acres 4. School plot:

12. (a) High School (1) 3.90 acres (b) Primary School (2) 4.20 acres 5. Dispensary (1) 0.33 acres 6. Community Centre and Restaurant 3.05 acres 7. Roads and Parks 5.27 acres The resolution records that the colonizers have not purchased the entire land forming part of the colony and thus the unacquired pockets were shown in the plan. The approval granted was to such lands which were acquired by the colonizers under the sale-deeds.

13. The learned Single Judge has overlooked the aforesaid aspects.

14. The position which would thus emerge would be that approval sought covering 124.9 acres lands was restricted to only such lands which were under the ownership of colonizers. Which parts were approved for colonization and which were not were indicated in the lay-out plan.

15. The said lay-out plan has not seen the light of the day. Unless one sees the lay-out plan and then super imposes the same on the revenue map it would just not be possible for anyone to determine where is the site of the community centre. It has to be kept in mind that out of 10 bigha and 9 biswa land comprised in khasra No.1364, 5 bigha was admittedly owned by the colonizers. Similarly out of 8 bigha and 9 biswa land comprised in khasra No.1365, 6 bigha was owned by the colonizer. The sale-deeds do not refer to the lands comprised in khasra No.1367. The entire land comprised in khasra No.1369 was owned by the colonizers. No land comprised in khasra No.1370 was owned by the colonizer.

16. Whether or not the colonizer purchased the remaining land is not forthcoming from the pleadings of the parties. Whether or not the colony Mansarover Garden finally came up on the entire 124.90 acres land or not is not forthcoming from the pleadings of the parties. For if finally, seven hundred and sixty four residential plots, two shopping centres, one cinema, one High School, two primary schools and one dispensary came up on the lands it would mean that a presumption could be raised that the colonizer acquired title to the entire lands. If the colony which

finally came up is less than what was proposed, it would obviously mean that the colonizer did not acquire title to the entire land.

17. Under the circumstances we dispose of the appeal setting aside the impugned order passed by the learned Single Judge. The writ petition filed by the appellants is disposed of remanding the matter to the Estate Officer of the Municipal Corporation of Delhi (which would mean now the North Delhi Municipal Corporation). At the remanded stage the Estate Officer would give an opportunity to the appellants as also the Corporation to lead further evidence keeping in view the present order. Lest there be any dispute of service, the Estate Officer would intimate the date of hearing to the appellants by sending a notice by Regd.A.D.Post at the address of appellants counsel Sh.R.P.Sharma, Advocate 1E/3, East Patel Nagar, New Delhi.

18. No costs. (PRADEEP NANDRAJOG) JUDGE (JAYANT NATH) JUDGE
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