

d.d.a. & Ors. Vs.ram Kaur & Ors.

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Court : Delhi

Decided On : Apr-20-2017

Appellant : d.d.a. & Ors.

Respondent : Ram Kaur & Ors.

Advocate for Pet/Ap. : Ms. Shalini Kapoor

Judgement :

\$~5 IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

24. 05.2016 Decided on:

20. 04.2017 + RFA4092004, C.M. APPL.9099/2004 D.D.A. & ORS. Appellants
versus RAM KAUR & ORS.

... RESPONDENTS

+ L.P.A No.58/2005, CM No.749/2005, 7754/2013, 7727-7729/2016 MCD
.....Appellant versus D.R. Parashar & Ors Respondents Present: Ms.Mini
Pushkarna, Standing counsel for appellant/ North DMC in Item no.5. Ms.Shobhana
Takiar, Advocate for DDA. Ms.Shalini Kapoor, Ms.Promil Seth, Ms.Ruhini Dey and
Mr.Dikshant Khanna, Advocates for respondents in item no.4. Ms.Asha Jain
Madan and Ms.Nivedita Grover, Advocates for respondent Mr.D.R.Parashar.
Mr.Sanjay Kumar Pathak, Mrs.Kiran Kaomudi Pathak, Mr.Sunil Kumar Jha and
Mr.Kushal Raj Tater, Advocates for R-5 in item no.5. CORAM: HON'BLE MR.
JUSTICE S. RAVINDRA BHAT HON'BLE MS. JUSTICE DEEPA SHARMA MS.

JUSTICE DEEPA SHARMA % 1. This judgment will dispose of two appeals No.RFA No.409/2004 (which challenges a common judgment and decree of the learned RFA4092004 & LPA582005 Page 1 Additional District Judge dated 03.03.2003, in Suit nos. 15

and 204/85) and LPA No.58/2005 (which is an appeal by the Delhi Development Authority (DDA) directed against the judgment and order of a learned single judge dated 19.11.2004 in W.P.(C) No.103/1986). The Municipal Corporation of Delhi (MCD) has preferred this appeal. Facts in RFA No.409/2004 2. In this appeal, DDA has challenges the judgment and decree of the learned Additional District and Sessions Judge (hereafter the trial court) dated 03.03.2003 disposing of two Suits, Nos. 158/2002 and 159/2002. Initially these suits were filed before this court as Suit nos. 15

and 204/85. By order dated 23.08.1990 both suits were consolidated and Suit no.15

was treated as the main suit. Thereafter, due to change in pecuniary jurisdiction of the court, both suits were transferred to the District Court by order, dated 03.10.2002. The suits were renumbered as Suit Nos. 158/2002 and 159/2002. They were were also consolidated. Suit No.158/2002 is a suit for injunction filed by Ram Kaur and others (hereinafter referred to as "plaintiffs") against DDA, in respect of Plot nos. 17 and 18, Block 27 Shakti Nagar. In Suit no.159/2002, the plaintiffs claimed damages against D.D.A for demolition of structures on those plots. Both the suits were decreed in favour of the plaintiffs by judgment dated 03.03.2003.

3. In both these suits, the plaintiffs contend that one of them, i.e. the first plaintiff (Ram Kaur- referred to hereafter by name, as such) had purchased an area measuring 72.92 sq. yards with two kuchha pucca rooms on Plot RFA4092004 & LPA582005 Page 2 No.

Shakti Nagar from Amna Bi by a registered sale deed dated 24.11.1981. To purchase some more portions, Ram Kaur and Gulam Moinuddin son of Sh. Shiekh Qayam Uddin entered into an agreement for purchase of the property from him. On Moinuddins refusal to execute the sale deed, Ram Kaur filed Suit No.604/1981 titled Smt. Ram Kaur vs. Gulam Moinuddin for specific performance of the said agreement to sell. That suit was decreed on 17.05.1982 and Gulam Moinuddin

executed a sale deed dated 10.11.1982 in favour of Ram Kaur, for a portion measuring 75 sq. yards which had a room, one store and two temporary jhuggis built over it, after obtaining necessary permission for execution of the sale deed from Competent Authority under Urban Land (Ceiling and Regulation Act); the permission was given after issuing notices to MCD and DDA. Ram Kaurs name was mutated in the MCDs records (in respect of Plot no.

Shakti Nagar). It was claimed that Ram Kaur had leased out the said property to her son i.e. third plaintiff (Parmanand Parasher referred to hereafter as such) at a monthly rent of ` 100/- exclusive of electricity and water charges.

4. It is submitted that the Delhi Improvement Trust (hereinafter referred to as DIT) by Resolution No.10 dated 28.01.1943, allotted plot No.17 block No.27, to Amina Bi and Plot No.18 Block No.27 to Haji Mohd. Ismail, in lieu of the land, acquired by DIT and by virtue of these allotments Amna Bi and Mohd. Ismail had become the owners of the respective plots. It was further claimed that since sale deeds were not executed in favour of Amna Bi and Haji Mohd. Ismail, the matter was again taken up by DIT in its ordinary meeting on 09.01.1951 when it RFA4092004 & LPA582005 Page 3 passed Resolution No.11 and decided that the interest of Trust would not be prejudiced in any way if the agreements were not executed as it had received the entire consideration and had the right holders in possession and it did not matter if the right holders did not wish for execution of the agreement.

5. The plaintiffs also claimed that they purchased the adjoining plot No.18 of block 27 measuring 223 sq. yards by sale deed dated 07.03.1981 from one R.P. Sharma, son of Pandit Ram Chand who had purchased the said plot from Gulam Moinuddin vide registered sale deed dated 24.03.1979. The plaintiffs further claimed that they had demolished the jhuggies on the said plot and raised construction as per the sanctioned plans. Copy of the Resolution No.10 was also filed. Suit No.159/2002 was filed for recovery of ` 1,50,000/- as damages for illegal demolition of construction on Plot Nos.

and Plot No.

without any prior notice. Compensation for the damage and the theft of goods at the time of demolition was claimed.

6. DDA contested the suits and disputed the plaintiffs ownership as well as their right to construct upon the said plots, alleging that they were the unauthorized occupants of those properties. DDA alleged that the Delhi Improvement Trust (DIT) acquired certain lands on various dates. The owners whose lands were acquired were suitably compensated and few were offered developed plots. The acquired land was developed and divided into blocks that were sub-divided into various plots. Plot No.17/27, Shakti Nagar with an area of 222.91 sq. yards was sold by DIT on 03.03.1943 to K.B Sahibuddin based on his bid through his tender. RFA4092004 & LPA582005 Page 4 Possession of that property was handed over to him on 31.03.1944. After Partition, the said K.B Sahibuddin migrated to Pakistan. Consequently Plot No. was declared as an evacuee property. Later, the plot was sold as an evacuee property in a public auction on 28.11.1955 to Sh. Beli Ram for ` 20,000/-; on 30.06.1962 the sale was duly registered in favour of the legal heirs of Sh. Beli Ram (who had by then died). DDA also alleged that a portion of Plot No. measuring 115 sq. yards was unauthorizedly taken over by MCD which developed a park in that area. The remaining portion was taken over by unauthorized occupants who constructed Jhuggies. Resultantly, vacant possession of Plot No.17/27, Shakti Nagar could not be handed over to the heirs of Sh. Beli Ram. DDA argued that Plot No. plot belongs to it.

7. The plaintiffs in their replication denied DDAs allegations as false. They did not deny however that DIT had developed plots for residential purposes under the Scheme (known as Roshanara Extension Scheme, now known as Shakti Nagar). It is also admitted that the land is called damdama land situated at Delhi Patti Sadhora Estate and was acquired on various dates by DIT for which compensation was paid to its erstwhile landowners who were displaced due to acquisition and those who did not accept compensation were allotted plots in lieu of acquired land. The plaintiffs also admitted that the acquired land was divided into blocks, which were further divided into various plots. They, however, deny DDAs contention that Plot No.

was sold by DIT on 03.03.1943 to Sahibuddin. They claim rather, that DIT was not the owner of the said land at the relevant time because it (DIT) had in a meeting

on 28.01.1943 by RFA4092004 & LPA582005 Page 5 Resolution No.10 allotted developed plots to six persons including Haji Mohd. Ismail and Amna Bi. It was contended that Mohd. Ismail was allotted plot No.18 of block 27 measuring 191.75 sq. yards and Amna Bi was allotted plot No.17 in block 27 measuring 187.50 sq. yards and possession was also handed over to them by DIT and so it could not have been sold to Sahibuddin on 03.03.1943 and he could not have become owner of the property. They do not admit that Sahibuddin left the country after Partition and his property was declared an evacuee property and vested in the custodian of evacuee properties and it was contended that it could not have been sold in public auction and the alleged sale certificate in favour of legal heirs of Beli Ram was void. It was also alleged that all the documents in favour of legal heirs of Beli Ram are forged documents. It is also alleged that DIT in fact had transferred the building activities and mutation of properties in Delhi to MCD and DDA has no rights over the properties. It is admitted that although part of plot No.17 was in occupation of the MCD for park purposes, but denied that it measured 115 sq. yards. It is contended that DDA has no right over the suit property and so cannot hand it over to any one.

8. The court framed the issues as under in suit No.1558/1984:-

"1) Whether the suit is undervalued for purposes of court fee?. If so, to what effect?. OPD2 Whether the plaintiff or their predecessor-in-interest are lawful owners of plots nos. 17 and 18, Block No.27 in Shakti Nagar, Delhi?. OPP3 Whether the construction made on the said plots is duly authorized?. If not, to what effect?. OPP RFA4092004 & LPA582005 Page 6

4) Whether the action taken by the DDA for demolition of the construction made on the said plots is illegal and unjustified?. OPP5 Whether the action of demolition was malafide and at the instance of defendant No.2?. OPP6 Whether the constructions, if unauthorized, could be demolished by the DDA without notice?. OPD7 Whether the plaintiffs are entitled to the injunction claimed for ?. OPP8 Relief. Additional issue was framed on 11.08.1986

1) Whether the plaintiffs have become owners on in account of adverse possession as averred paragraph 13(a) of the plaint?. O.P.P. (The Court had

numbered the additional issue as 2a.) In other suit No.159/2002, following issues were framed:-

"1. Whether plaintiff has locus standi to file this suit?.

2. Whether the suit is barred by limitation under Section 53(h) (ii) of DDA Act 1957 as alleged?.

3. Whether there is no cause of action with the plaintiff as is not the plaintiff and as such the suit disclosed maintainable?. in 4. Whether the defendant had demolished the property no.17 and 18 in Block No.27 Shakti Nagar, Delhi unauthorizedly without any notice, as alleged?.

5. Whether the plaintiff is entitled to claim any damages, if so how much and from which of the defendants?. RFA4092004 & LPA582005 Page 7 6. Relief.

9. The plaintiffs examined five witnesses. The ordersheets dated 11.12.1986, 17.07.1989, 03.08.1989, 24.10.1989, 23.11.1989 reveals that the court had called upon the DDA to admit or deny the documents filed by the plaintiffs and observed that on failure to admit or deny the documents, "the documents shall be deemed to have been admitted". Since DDA did not admit or deny the photocopy of documents of the plaintiffs, the court exhibited the documents of the plaintiffs as Ex.P-1 to Ex.P-57 by its order. However, DDA specifically denied the contents of Resolution No.10 filed by the plaintiffs, though it admitted the signatures on it.

10. PW1 Jai Ram Sharma (the second plaintiff) examined himself on behalf of all i.e. Ram Kaur (plaintiff No.1) and Parmanand Parasher/third plaintiff pursuant to the Power of Attorneys (Ex.P-58 and Ex.P-59) executed by them in his favour. He deposed that Amna Bi who obtained that plot from DIT on 28.01.1943 by Resolution no 10, Ex.P-60, owned Plot No.17, Block No.27 measuring 223 sq. yards. Another resolution of DIT dated 09.01.1951 was marked as Mark A. He further deposed that Amna Bi through her attorney Sh. R. P. Sharma, sold 73 sq. yards of the said plot to Ram Kaur (first plaintiff) by sale deed dated 16.11.1981, Ex.P-61. In 1979, Gulamuddin purchased 150 sq. yards of this plot from Amna Bi and sold it to the first by Sale Deed Ex.P-62 dated 10.11.1982. He also deposed

that Kunti Devi was a tenant in some portions of the plot and Lachhman, Nanhe Devi and Sohan Lal had trespassed some portions of the plot and he got RFA4092004 & LPA582005 Page 8 those portions vacated from them; they had also given affidavits Ex.P-63 (Lachhman), Ex.P-64 (Nanhe Devi). Sh. Sohan Lal also surrendered the possession by receipt Ex.P-65 and was also paid `150/- as his hut was demolished. The said property was mutated in favour of the first plaintiff (Ram Kaur) in MCDs records by document Ex.P-66. Since then she had regularly paid house tax; the house tax receipts were proved as Ex.P-67. Ex.P-68 and Ex.P-69 are electricity and water bills. He further deposed that an application seeking regularization of construction on the plot was accepted and a compounding fee of `1726/- was paid, by receipt Ex.P-71 and a letter Ex.P-70 was received from MCD. A house tax notice Ex.P-72 was also received. Gulamuddin wrote letter to the Minister of Housing and Rehabilitation (Ex.P-73). Letters Ex.P-74 and Ex.P-75 were received from DDA. In 1978, the Slum Department (JJ Section) was transferred to DDA. The witness had stated that since he was working in the MCDs Slum Department (JJ Section) he was transferred to DDA. He further deposed that when the plot was purchased, the only constructed portion was a room on it, which was demolished by the plaintiffs and a new construction over a covered area of 600 sq. feet was raised. He further deposed that Mohd Ismail, who owned Plot No.18, Block 27 measuring 223 sq. yards sold it to Gulamuddin through sale deed dated 28.07.1948 (Ex.P-76). He (Gulamuddin) in turn sold it to Sh. R. P. Sharma by registered sale deed dated 24.03.1979 (Ex.P-77). Sh. R. P. Sharma sold the said plot to the plaintiffs by registered deed dated 07.03.1981, Ex.P-78. Document Ex.P-79 mutated the plot in the plaintiffs names in the MCDs records. House tax was paid by receipt Ex.P-80. Sh. Madan Lal was a tenant in the said plot and Gulamuddin had filed a suit for eviction against him. The entries in the RFA4092004 & LPA582005 Page 9 Rough Assessment Register were proved as Ex.P-81 to P-85. He deposed that the sanction plan was Ex.P-86 and sanctioning letter as Ex.P-87. The witness further deposed about partition of this plot and of arbitration agreement and an award (certified copy of which was marked as Ex.P-88), which he states became rule of the court. It was also deposed that Jhannu Ram, Pir Abdul Shakur, Babu Ram, Chotte Lal, Har Parshad, Gainda Devi and Ram Wati had unauthorizedly occupied the said plot. A

suit was filed against them, which was decreed, and the certified copy of which was produced as Ex.P-89. Kunti Devi vacated her portion by relinquishment deed Ex.P-91. Chunni Lal, who was a trespasser on portion of the said plot, vacated it by virtue of an agreement Ex.P-92. Madan Lal who was occupying a portion of plot no.18 also vacated it under an agreement Ex.P- 93 as did Jhannu Ram by agreement Ex.P-94. Gaimda Devi, Har Parshad, Chotte Lal, Ram Wati, Ved Ram, Babu Ram and Sarvati Devi vacated the portions occupied by them, as evidenced by their affidavits Ex.P-95 to 101. The trespassers also vacated the open land between the road and the plot in their occupation, and executed their affidavits. He also deposed that his son was a tenant in Plot no.17 at monthly rent of ` 100/-. The death certificate of Amna Bi was produced as Ex.P-126. He further deposed that the disputed property is free hold and is not part of any development land and DDA has no concern with it. It was also stated that DDA had demolished their property without any notice. The witness was duly cross-examined. In the cross examination, he admitted that Roshanara Area Extension was renamed as Shakti Nagar and was earlier under the control of DIT, which had acquired the said land and besides giving compensation for that land, it had also given alternate plots to the owners whose lands were acquired. RFA4092004 & LPA582005 Page 10 DDA had cross-examined him and also put their defence to the witness who had denied it as incorrect.

11. It was also put to the witness that Plot No.17 was owned by Beli Ram and later, his heirs and when possession of this plot could not be handed over an alternative plot, No.18 was offered to them for allotment. In cross- examination, he deposed that area of Plot No.17 was 220.91 sq. yards but denied that MCD had occupied 115 sq. yards for a park. He volunteered that the whole plot was in his possession. However he also volunteered that MCD had fenced the area, which was removed in 1984 and that three or four huts were constructed in some area of plot. He has admitted that DIT had not executed any title deed in favour of Mohd. Ismail. In cross examination, he admitted that he had never seen the Original resolution no.283 dated 30.10.1941 of DIT.

12. PW2 is a formal witness. PW3 Sh. R. P. Sharma deposed that Aman Bi had executed a General Power of Attorney in his favour, copy of which is Ex.P-138 and

as such attorney, he sold portion of plot No.

measuring 76 sq.yds by registered sale deed Ex.P-61 and map Ex.P76-A, to the first plaintiff. He identified the signatures of Gulam Moinuddin on sale deed exhibited as Ex.P-66. He deposed that Kunti Devi was a tenant in Plot no.17 and identified her signatures on the rent note Ex.P-139. He also deposed that Mohd. Ismail, husband of Amna Bi owned Plot No.17 and she became owner only after his death. He also deposed that Mohd. Ismail was owner of Plot no.18 and after his death his son Mohd. Farooq acquired title and later sold the plot to Gulam Moinuddin; Gulam Moinuddin sold it to RFA4092004 & LPA582005 Page 11 him in 1979 and signed the sale deed Ex. P-77. He then sold the plot to the plaintiffs by sale deed Ex. P-78. He further deposed that some trespassers (who later vacated the said plots) had unauthorizedly occupied these plots. He has deposed that Amna Bi executed a sale deed in favour of Gulam Moinuddin, and exhibited it as Ex.P-140. The Court however took the document on record subject to production of original sale deed. This witness was duly cross-examined. In the cross examination, he has admitted to not having made any effort to collect the original Power of Attorney in his favour by Amna Bi from the office of Sub -Registrar because he never felt the necessity. He deposed that Amna Bi got this plot from DIT in the year 1951 or 1952, through a letter of allotment and no lease deed was executed by DIT in favour of Amna Bi or Mohd. Ismail. The witness deposed that a DIT resolution conferred title on them. PW4 was an architect and valuer who inspected the suit property and submitted a report and proved it as Ex.P-141 and Ex.P-142. PW5 deposed that Plot No.17 was in occupation of Kunti Devi as a tenant and Madan Lal was running a small store on that plot and that DDAs officials demolished the walls of the said plot.

13. DDA examined two witnesses. Sh. S. C. Tyagi, Meeting Cell DDA was examined as DW-1. This witness produced the original record also containing Resolution no.10 of 1943 dated 28.01.1943 of DIT and gave his deposition on the basis of the original record and proved the copy of original Resolution No.10 as DW1/1. On objection to the exhibition of the document by the learned counsel for plaintiffs, the court compared the Resolution, Ex. P-60 exhibited by plaintiffs with the original record and on RFA4092004 & LPA582005 Page 12 finding and noting discrepancies in Ex. P-60 as compared with the original documents, permitted

DDA to file copy of the original and exhibited it as DW1/1. In his cross-examination, DW- 1 has stated that the record was kept under lock and key and all necessary steps were taken to preserve it. DDA examined another witness Sh. S. C. Tuteja, Deputy Director of Old Scheme Branch, DDA as DW-2. His testimony is also based on the official record maintained by DDA. The court by its order, dated 24.02.1999 had directed to keep DDA files in a sealed envelope. This order was passed on DDAs application under Order XIII Rule 2 CPC. That sealed envelope opened and the witness, proved the tender Form, Ex.DW2/1, the acceptance note relating to allotment of plot no.

to Sahibuddin as Ex.DW-

and stated that the area of the plot was 222.91 sq yards. He has further proved the document- agreement to sell in favour of Sahibuddin as Ex.DW-

and deposed that the possession of the plot was handed over to him on 31.03.1944. He has also deposed that Sahibuddins property was treated as evacuee property, upon his migrating to Pakistan. The Plot was then re-auctioned and sold to highest bidder Sh. Beli Ram. On his demise, it was mutated in the name of his legal representatives namely Vidya Wati and two sons by document Ex.DW-2/5. A letter written by Vidyawati demanding possession is proved as DW-2/5. Possession of the plot could not be handed over to the bidders heirs as it was encroached upon. He further deposed that a part of the plot was encroached upon by DMC (Delhi Municipal Corporation). Upon a specific query by learned counsel for the plaintiffs, the witness stated that on other part of the plot name of Jai Ram Sharma was there. The witness has also produced the office copies of the letters dated 03.10.96, 19.06.1967, 28.12.1971, 05.12.1983 (marked as DX-RFA4092004 & LPA582005 Page 13 2, DX-3. DX-4 and DX-6) to DMC. The MCDs two replies dated 19.05.1969 and 08.09.1971 were proved as Ex. DW26 and Ex. DW27 and a letter, dated 29.01.1970 from MCD was marked DX-7. The witness further categorically stated after seeing the original Minutes Book, that Ex. P-60 is not the same as the original and endorsed that the copy of original is Ex.DW-1/1. He has further deposed that DDA could not hand over the plot or the alternative plot No.18 to Beli Rams heirs since the plots were encroached upon. The witness was cross-examined at length. In the cross- examination, the witness acknowledged that his deposition was based on official record and not on his

personal knowledge. Two officials files bearing nos. 46A(13)(39) and S-9(2) 79 (part-1 OSB) were produced in the court and the witness stated that a copy of Ex.P-60 is found in file No.S- 9(2)79 of the part 1 but reiterated on the basis of original minutes book Ex.P-60 was not the true copy of Resolution No.283 of 30.10.1941. At the request of learned counsel of the plaintiffs, part one of original file No.S- 9(2) 79 was directed to be numbered and kept on the record. The court also noted that the document i.e. photocopy of Ex.P-60 was at Page 32 of the file and exhibited its photocopy as Ex.DW2/P-A. This (Ex.DW2/P-A) was compared with Original resolution no.283 dated 30.10.1941 and the witness clarified that the contents in the original resolution, did not match with. He has admitted a document which is photocopy of the photocopy of letter dated 12.08.1974 of the then Vice Chairman, DDA addressed to L. C. Gupta, Director, UD, Government of India as Ex.DW2/PB which was found on file (No.TN5(17)84/P2). Sanjay Garg brought the summoned record from the Department of Archives and submitted that indenture dated 13.12.1948 registered as Document No.399 in additional book no.1 RFA4092004 & LPA582005 Page 14 Volume 130 on pages 171 to 175 on 29.03.1949 executed between Keshav Singh son of Sh. Rao Bahadur Sardar Singh resident of 47, Daryaganj, New Delhi executed in favour of DIT and exhibited the copy as Ex.DW2/PC. This is an exchange deed executed between Keshav Singh and DIT by which property of Keshav Singh was taken by DIT and in exchange plot nos. 2,3 & 4 of Block 33 of Roshanara Extension Scheme were allotted to him. The witness has also produced in court the record relating to the transfer of plot in favour of Vidyawati and proved the mutation through document Ex.DW2/PK in her favour. He also proved the document, a letter 09.08.79 as Ex.DW2/PL. The witness compared the document Ex.DW2/PB with the copy of the document available on record file brought by him and deposed that both the documents are the similar copies.

14. The trial court decreed both the suits in favour of the plaintiffs. The reasoning given by the learned trial court is as under: Finding on Issue Nos. 2,4 & 6 14. Onus of proving this issue was on the plaintiff. In support of the case, he filed the sale deed executed in their favour and the earlier predecessor in interest is EXB.P. 76 and sale deed executed in favour of Ram Kaur. R.P. Sharma on behalf of Amina Bi had executed the sale deed as per attorney and he signed the sale deed, the

same is Ex. P-61. Gulamuddin executed and registered sale deed in favour of R.P. Sharma, the same is EXB P-77. R.P. Sharma executed and registered sale deed in favour of plaintiffs which is EXB P-78, the mutation was done vide EXB P.79. Resolution in favour of Amina Bi is Ex. P60. As against this, defendant has proved on record another resolution executed in favour of the plaintiff as defendant has proved on record the resolution which according to them is the genuine to which as against P60 is EXB. DW11. I have compared both there are discrepancies the resolutions, RFA4092004 & LPA582005 Page 15 to sell shows letter of agreement regarding the allotment of different plot in the different parties in the resolution. Signature on EXB. P60 was admitted by the earlier counsel who appeared on behalf of defendant, but content were denied. It is the contention of the Ld. Counsel for the defendant that this plot was originally sold to a Muslim who left over the plot in favour of the Improvement Trust and it was resold in favour of Sh. Beilly Ram through auction, though possession of the same was never handed over to the said Baily Ram. It was sold to Sh. Belly Ram in the year 1963. Sale certificate was issued when the legal heirs applied for the same in the year 1963. The site plan which was annexed to the original the correct boundaries, even otherwise it is the case of the defendant that it was sold by the defendant after some time after the possession was not taken by the allottee and it was sold to some other person, i.e. Belly Ram by way of public auction and subsequently his legal heirs were issued letter of sale certificate, but possession was not given to them.

15. As against the plaintiff has produced on record the chain of ownership right from the beginning vide resolution EXB P.60, signature on original of the same were admitted by the defendant counsel, but contents were denied, but till date no action has been taken against the Officer with those admitted signature by way of another document has been filed on record in favour of the case of the defendant by the defendants counsel today. Counsel for the plaintiff has argued that he has issued innumerable notice U/O12 Rule 8 CPC to the defendant, but no reply were given despite the fact that they are admittedly served upon the defendant even otherwise the resolution EXB. P60 bears the signature in original of the Admitted Field Officer dealing with the land of the concerned area and who has signed the EXB. P60 for Chairman and with those signature the defendant has filed certain

documents relating to allotment by him to another person. Comparison of the signature shows that both the signatures are similar, if not the same. Hence, on the basis of the documents placed on record by the plaintiff, it has been proved on record that the plaintiffs were the owners in possession of the plot No.17 and 18 as per chain of information RFA4092004 & LPA582005 Page 16 of sale members in their favour, but filing the sale deed on record executed in their favour on the basis of which they were paying the house tax as well as the mutation has been done in respect of plots in suit and mutation has been in the MCD record as proved by the plaintiff. Plaintiff has duly proved on record the sanction letter in that respect is EXB.P.87. Admittedly, as per the Director of Land, DDA has hand over the building activity to the MCD and they have given the construction made on the plot was duly authorized and action of DDA was illegal and unjustified.

16. Witness of the defendant i.e. Dy. Director has admitted on record that before a demolition is carried out in the property in suit order is required to be obtain from Vice Chairman and no order was obtained from Vice Chairman regarding this case because this case was on unauthorized encroachment. However, it has been proved that plaintiff was owner of the property in suit and the construction being carried out by them was not unauthorized. Moreover, the defendant No.1 had no authority to demolish the property in suit because as per the admitted case of the Director (Land), DDA who appeared in the Court today during the course of arguments along with the counsel as the building activity has been handed over to MCD who has given sanction plan in favour of the plaintiff. Hence, these issues are decided accordingly. 15. The court also observed that Issue No.2(a) i.e. (whether the plaintiffs have become owners on account of adverse possession as averred in paragraph 13(a) of the plaint), was not pressed by the plaintiffs. No findings were given on that issue. In the suit for damages, the learned judge found that since title of the property vested in the plaintiffs, they had locus standi and concluded that DDA had unauthorizedly carried on the demolition. It awarded a token amount of ` 1001 as damages. These judgments and decrees have been challenged by DDA in RFA No.RFA4092004 & LPA582005 Page 17 409/2004. LPA No.58/2005 16. MCD has appealed against the order, dated 19.11.2004 in W.P.(C) No.103/1986.

17. The writ petition was filed by D.R. Parashar & Ors (hereinafter referred to as the petitioners"), the legal heirs of Beli Ram, against Regional Settlement Commissioner, DDA and MCD. They sought possession of Plot No.17, block no 27 of Shakti Nagar as lawful owners contending that their father (late Beli Ram) purchased Plot No.17 measuring 222.9 sq yards in a public auction on 28.11.1955 which was held under Section 20 of the Displaced Persons (Compensation & Rehabilitation Act), 1954 (hereinafter referred to as the Act). It is further contented that the said land initially belonged to DIT, who had acquired it and after developing it sold it to Shahibudin under an agreement to sell dated 07.10.1944. On migration of Shahibudin to Pakistan, the property was considered as an evacuee property and was put into compensation pool and was subsequently put to auction and was purchased by their father. After the demise of their father on 06.04.1958, the property was mutated in the name of their mother. The vacant possession of the said property was never handed over to their father in compliance of condition No.9 of the auction notice dated 28.11.1955. The sale certificate was issued in their favour on 30.06.1962 by the office of Regional Settlement Commissioner vide letter dated 26 April 1963. Smt. Vidyawati also expired on 08.12.1975 without getting physical possession of the land during her lifetime. During her lifetime, she had made several unsuccessful attempts to get possession of the plot. The DDA had in response to her letter, dated 18.01.1966 by its letter 07.10.1966 asked her to RFA4092004 & LPA582005 Page 18 approach the Regional Settlement Commissioner, which was done through a letter dated 01.11.1966 (which enclosed the copy of the letter, dated 07.10.1966 to DDA) but to no avail. Despite reminders and efforts and contacting various authorities and repeated communications, possession of the plot was not handed over to the heirs of Beli Ram. The agencies kept shifting responsibility to one another. DDA by letter, dated 03.06.1967 said that the responsibility of handing over the plot was that of the Rehabilitation Department and Department which did nothing. By letter dated 19.05.1969, M.C.D informed the Regional Settlement Commissioner that since the plot was encroached upon (by the fencing and Jhuggies), the Settlement Commissioner was obliged to remove the Jhuggies. M.C.D in its letter, dated 03.11.1969 shifted the burden on D.D.A to remove the Jhuggies. When there was no progress, the petitioners wrote letter dated

20.12.1972 to Settlement Commissioner for allotment of the adjoining plot No.18, which had same dimensions similar to Plot No.17. This request was considered positively according to the petitioners, as evident from the letter dated 24.12.1975 of MCD. The petitioners also learnt that M.C.D had also encroached upon the part of Plot No.17. By letter, dated 12.05.1978, D.D.A asked M.C.D to remove the encroachment. Also by letter dated 05.12.1983 the heirs of the allottee asked MCD to vacate the portion of Plot 17 upon which a park was situated. Field staff of the respondents also confirmed that two rooms, latrines and bathrooms had been constructed and some portion on the top was covered by ACC sheets; that the said unauthorized construction had been raised by Jai Ram Sharma, an employee of M.C.D on another portion of the said plot. M.C.D was also asked to remove the said encroachments. The reminders were sent by RFA4092004 & LPA582005 Page 19 petitioners by letters dated 11.04.1984, 15.10.1984 and 03.02.1985 to the M.C.D but again to no avail. By letter dated 08.02.1985, Delhi Administration also assured the petitioners that they would look into the matter. However nothing was done. Finally, by letter dated 27.02.1985, MCD showed its inability to get Plot No.17 vacated.

18. MCD, in its counter affidavit disputed the petitioners ownership rights i.e of legal heirs of Beli Ram. According to it, Plot No.17 was purchased by Ram Kaur, wife of Jai Ram Sharma from Amna Bi daughter of Late Noor Illahi and wife of Mohd. Ismail and from Gulam Moinuddin. It relied on the sale deed filed by it in Suit No.6

dated 17.05.1982. MCD also stated that Ram Kaur had paid the compounding fee by receipt No.265019 dated 05.09.1984 and the unauthorized construction was compounded. M.C.D admitted the letters dated 07.12.1966 by its Land and Estate Department and the one dated 29.01.1968 by a Garden Superintendent. It also admitted to have fenced the garden for proper access to the plot and to avoid any encroachment. It is alleged that Plot No.18 of Block No.27 measuring 223 sq. yards was owned by R.P. Sharma son of Pandit Ram Chand who sold it to Jai Ram Sharma, Ram Kaur and Parmanand by registered sale deed dated 07.03.1981.

19. The Regional Settlement Commissioner in the counter affidavit admitted the ownership rights of Beli Ram in plot no.17 and stated that MCD was repeatedly asked to remove the encroachments vide several letters including the letter dated 04.01.1967.

20. On 24.09.2003 the court passed the order -- RFA4092004 & LPA582005 Page 20 MCD is directed to indicate the current status as to the allotment of a plot measuring approximately 222 sq. yds., in a locality situated similarly to the locality for which the predecessor-in-title of the petitioner had paid for. In case the MCD is not able to locate the plot of the same area for which the predecessor-in-title of the petitioner had made payment for, this Court may award the current market value of the said plot to the petitioner on the next date by adjusting the payment already made by the petitioners predecessor-in-title. List on 13th November, 2003."

Copy of this order be given Dasti to the parties subject to the payment of usual charges. 21. Upon hearing the parties, the learned Single Judge by its order dated 19.11.2004 held as under:-

"By the order dated 10.5.2002, it was found that the petitioner had made a payment of plot No.17, Block-27, Shakti Nagar, Delhi admeasuring 222.91 Sq.Yards. The petitioner paid a sum of Rs.20,000/-for the said plot on an auction held on 28.11.55 as reflected in the order dated 10.5.2002. This plot was not delivered to the petitioner and a finding recorded by this Court on 10.5.2002 that the petitioner had not been delivered the plot in spite of having made a payment as far back as 1955. Thereafter several adjournments were taken by the MCD counsel in respect of a suit No.6

the pendency of which was said to affect the properties in question in the writ petition. In spite of several adjournments, the MCD did not file such details. Eventually on 24.9.2003 the MCD was given a last opportunity to indicate the current status of the plot measuring approximately 222 sq. yards in its similarly situated locality for which payment have been made. This court had indicated in the order dated 4.9.2003 that if a similarly situated plot could not be provided then the current market value of the said plot to the petitioner will be made after adjusting the payment already made by the petitioner. The matter was thus

directed to be again listed on 3.11.2003. No decision were indicated on behalf of the respondent No.3/MCD and consequently the petitioner was the availability of RFA4092004 & LPA582005 Page 21 directed to file an affidavit indicating the valuation of the plot he had bid for and the respondent was directed to file its response to the said affidavit of valuation before the next date of hearing. The said affidavit of valuation was filed on 18.3.2004. Thereafter also no response has been filed to the aforesaid affidavit of valuation which disclosed that the plot will be valued at Rs.70 lakhs @ Rs.30,000 to 32,000/- per sq. yds. in plot No.17, Block-27, Shakti Nagar, Delhi. Consequently, the MCD not having responded to the valuation given by the petitioner, the Court is left with no other option but to accept the valuation of Rs.70 lakhs of today. However, even today no one is appearing on behalf of the MCD. In the interest of justice, list the matter on 10th September, 2004. In case the non-appearance on behalf of the MCD, this Court will be left with no other option except directing the MCD to release the payment of Rs.70 lakhs to the petitioner by allowing the writ petition. Accordingly, the respondent/MCD is directed to pay Rs.70 lakhs on or before 15th December, 2004 The petitioner is also entitled to costs quantified at Rs.30,000/- in view of the large number of hearings which the MCD/respondent, which amount is also payable on or before 15th December, 2004. The petition and all other pending applications stand disposed of accordingly. the absence of took place in 22. The MCD challenges this order alleging that the learned Single Judge failed to appreciate that the responsibility and liability to hand over possession of Plot No.17/27, Shakti Nagar, Delhi was that of D.D.A. Though it is not disputed that the MCD occupied a portion of the land, it is submitted that it was done in public interest since it was lying vacant. It was also contended that till the question relating to the title to the property was settled, the MCD could not have been penalized. It was contended that it was not clear whether the plaintiff in Suit No.158/2002 and Suit No.159/2002 or legal representatives of Beli Ram who filed the W.P.(C) No.103/1986 were the owners of the property. It was argued that in Suit No.RFA4092004 & LPA582005 Page 22 158/2002 and 159/2002, learned ADJ by its judgment, dated 03.03.2002 held that Ram Kaur, Jai Ram Sharma and Parmanand Parasher (hereinafter referred to as plaintiff No.1, 2 and

3) were the owners of the suit property No.

& 18/27, Shakti Nagar, Delhi. It is again reiterated in the appeal that the legal representatives of Beli Ram did not have clear title to the land.

23. DDA urges that suit property was sold by DIT to Sh. K. Shahbuddin on free hold basis on payment of ` 7343.43/- by an agreement to sell dated 07.10.1944 with the condition that the Sale deed would be executed after the completion of the building over it. No construction was undertaken on the property, and on Partition, in 1947, he migrated to Pakistan. The plot then became an evacuee property and came to vest with Custodian of Evacuee Properties who auctioned it to Beli Ram on 28.11.1955 but the possession could not be delivered to him. On his death, the plot was transferred to his legal representatives by the sale certificate dated 30.06.1962. It is contended that M.C.D encroached upon the plot and developed a park on more than half portion; the remaining portion was occupied by jhuggi dwellers. Despite various requests by D.D.A, M.C.D neither removed the park nor removed jhuggies from the plot and D.D.A was not able to hand over the plot to its rightful owner. M.C.D by its letter, dated 29.01.1970 showed its inability to shift the park and asked D.D.A to consider the allotment of an alternate plot to owners of Plot No.17/27. DDA considered allotting the alternative Plot, No.18 consisting of the same dimensions, to heirs of Beli Ram but found that it too was encroached upon. It wrote a letter, dated 12.05.1978 to M.C.D, appraising it of these RFA4092004 & LPA582005 Page 23 facts and asking for the removal of encroachments. By its reply M.C.D (dated 06.11.1978) shifted the responsibility of removal of jhuggies on D.D.A on the ground that Plot No.18 belonged to it. The matter was then brought to the notice of Vice Chairman D.D.A who by order, dated 18.05.1979 approved action against the encroachers. The matter was referred to the Estate Officer VIII to initiate action under Public Premises Act for evicting the unauthorized occupants but DDA was informed that in terms of the field report dated 29.9.1983 there were no jhuggi dwellers on Plot No.18. The authorities were also informed in Suit No.

vide judgment dated 01.04.1981 one Gulam Mohinuddin was declared as the owner of Plot No.18. It is urged that D.D.A was not a party to the said suit and it seems that Gulam Moinuddin sold the plot to the second plaintiff an employee of M.C.D. DDA also contended that the report dated 29.09.1983 of Junior Engineer

relating to Plot No.17 shows that unauthorized construction had also been raised on the said plot by Jai Ram Sharma. When D.D.A started eviction proceedings and partly demolished the unauthorized construction on Plot no.17, the plaintiff filed Suit No.15

for prohibitory injunction. This suit was initially filed in this Court with respect of the plot No.

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and later it was transferred to the District Courts. It was decreed on 03.03.2003 by the trial court. A challenge to that judgment is made in RFA No.409/2004 and the impugned decree has been stayed. DDA submits to making every effort to hand over the physical possession of the plot to its rightful owner.

24. The fifth respondent Office of Regional Settlement Commissioner in also filed its counter affidavit sworn by Sh. R.R Singh, Assistant RFA4092004 & LPA582005 Page 24 Settlement Commissioner (Evacuee Property Cell, Land and Building Department in Govt. of NCT Delhi). He affirms the affidavit on the basis of the records of Evacuee Property Cell, Land and Building Dept. He has averred that the property was sold in an auction to Beli Ram on 28.11.1955. It is stated that provisional possession was handed over to auction purchaser on 19.10.1956. A copy of the report of Provisional Possession Memorandum is also annexed showing that the plot in question was lying vacant at that time. On the basis of this report, the allotment letter was issued and the Department vide its letter dated 15.11.1956 informed the purchaser that the plot was lying vacant. Copy of the said letter was also annexed. It was also stated that Beli Ram was the displaced person claimant and on his demise on 06.04.1958, his wife and two sons were substituted in his place and thereafter sale certificate dated 30.06.1962 was issued. Copy of this sale certificate is also placed on record. It was learnt that although the land was owned by the answering respondent/Office of Regional Settlement Commissioner but later it was encroached upon by M.C.D. This land was initially sold to one Sahibuddin by DIT, predecessor of D.D.A. D.D.A was also informed after the sale certificate was issued vide letter dated 26.04.1963, the name of LR's of Beli Ram was substituted in place of K. Sahibuddin and had been permitted to construct building over it. However since the plots were encroached, possession could not be handed over to legal representatives of Beli Ram.

25. Learned Counsel for the M.C.D argued that they had removed the encroachment and that it was the DDAs duty, to handover the vacant possession of the said plot to its rightful owner. M.C.D was not under any RFA4092004 & LPA582005 Page 25 obligation to hand over the possession to the rightful owner and hence the order dated 19.11.2004 is liable to be set aside.

26. On the other hand, it is argued by learned Counsel Ms. Shobhana Takiar on behalf of DDA that MCD had admittedly encroached upon a portion of plot No. Shakti Nagar, Delhi and did not vacate it for handing over to the rightful owners. Hence, the impugned order and judgment is justified and the appeal has no merit and is liable to be dismissed. The Regional Settlement Commissioner argued that in terms of the commissions record the property is now owned by legal representatives of Sh. Beli Ram who are entitled to vacant possession of the said property. Arguments in RFA No.409/2004 and LPA No.58/2005 27. It is argued by Ms. Shobhana Takiar for DDA that the plaintiffs have encroached the suit properties and their entire case is based on forged and fabricated documents. DDA relies on the original record which proves that in the year 1941, DIT (which under a development scheme acquired certain lands belonging to several persons including father of Amna Bi and Mohd. Ismail) in a board meeting held on 30.10.1941 vide resolution No.283. In lieu of this acquisition it proposed allotting to Amna Bi Plot No.5 measuring 187.50 sq. yards and to Haji Mohd. Ismail Plot No.2 measuring 191.75 sq. yards in Block No.33 as well as other plots in the block to those others whose lands were acquired. This was by resolution dated 28.01.1943 (Ex. DW-1/1). Such acquired lands were developed and divided into blocks and plots. It is submitted that Plot No.17 Block No.27 measuring 222.92 sq RFA4092004 & LPA582005 Page 26 yards was sold by DIT to Sh. Sahibuddin by tender/offer form Ex. DW-

and his tender was accepted by Ex. Dw-
and agreement to sell Ex. Dw-

was executed on 07.10.1944 in his favour. It is submitted the area of the plot as shown in document is 222 sq. yards. Upon Partition in 1947, Sahibuddin left the country and his property (Plot No.17 of Block No.27) was declared an evacuee property. It was subsequently sold to Beli Ram in auction, and tender form Ex. DW-2/1, Acceptance note DW22, Agreement to Sell Ex. DW23, Sale Certificate

DW25, all prove that plot No.17 was sold to Beli Ram and thereafter devolved upon his heirs and legal representatives. It is further argued that legal representatives of Beli Ram filed W.P.(C) No.103/1986 wherein placed on record the documents showing public auction of this property by Assistant Settlement Commissioner and issuance of sale certificate dated 30.06.1962 certifying that the bid of Beli Ram of ` 20,000 in the auction dated 28.11.1955 was accepted and his legal representatives were substituted upon his demise. Possession of the plot could not be handed over to him and to his legal heirs since some portion was unauthorizedly occupied by M.C.D by developing a park; the rest was taken over by unauthorized occupants. Plot No.18 of Block No.27 was never sold and had remained with DIT. It now belongs to DDA It is contended that Ex. P-60 the alleged copy of Resolution No.10 showing allotment of Plot nos. 17 and 18 to Amna Bi and Mohd. Ismail is a fabricated and interpolated document. It is further argued that even otherwise this document only shows that there was merely a proposal to allot; the proposal does not transfer any right in plots in favour of Amna Bi and Mohd. Ismail. It is argued that no other documents in the form of allotment letter, payment receipt, etc. to show transfer of RFA4092004 & LPA582005 Page 27 property in the names of Amna Bi and Mohd. Ismail is proved on record. Since Amna Bi and Mohd. Ismail has no right, title or interest in Plot No.17 and 18 of Block No.27, they could not have transferred any right in the said plots and all the sale deeds allegedly executed by them are of no avail. It is further argued that once DDAs counsel had categorically denied the contents of Ex. P-60 it was the duty of the plaintiffs to prove its contents by producing the original of Ex. P-60. Despite the fact that the plaintiffs did not produce any original document of which Ex.P-60 is the copy, considerable reliance was placed on this document by the trial court, whereas the original resolution Ex. DW-

produced by the DDA was discarded, without any valid reasons. It is further argued that despite observing the fact that the counsel of DDA only admitted the signatures on resolution Ex. P-60 and denied the contents the trial court, nevertheless based its findings on contents of Ex.P-60. It is further argued that learned Judge failed to compare the two documents Ex. P-60 and Ex. DW- and failed to notice the vital contradictions between the two. It is argued that Resolution No.10, Ex. DW-

shows that the proposal to allot an alternate plot was for Plot No.5 and Plot No.2 of block No.33 to Amna Bi and Haji Mohd. Ismail; not plot nos. 17 and 18 of Block No.27. Furthermore, it is argued that another fundamental fact completely ignored by the court was that Ex.P-60 and subsequent sale deeds and other documents are forged and manipulated documents. This is with reference to the areas of plots mentioned in Ex. P-60 and alleged sale deed. It is argued that while Ex.P- 60 shows that Plot No.18 of block No.27 measured 191.75 sq yards, but the sale deed Ex.P-77 by which this property was sold shows the area of RFA4092004 & LPA582005 Page 28 Plot No.18 as 223 sq. yards. This throws questions about the veracity of the document Ex. P-60.

28. It is further argued that Ex.DW-

is the correct copy of the original resolution, produced in court. It shows that the Plots in Block No.33 were offered to Haji Mohd. Ismail and Amna Bi (as legal heir of her father whose land was acquired) and not plot nos.

and 17/27, and hence they did not have right, title or interest in Plot nos.

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and could not have transferred any valid title. The plaintiffs are unauthorized occupants of the suit properties and pursuant to the order of this Court in appeals, meetings were held with MCD and the minutes were drawn and placed on the record of this court. The minutes show that MCD admitted that the plaintiffs were occupying the suit properties by forging documents and it was decided to lodge an FIR against them; it was subsequently done. It is also argued that the equities do not favour the plaintiffs. The impugned judgment dated 03.03.2003 is contrary to law and is liable to be set aside and that Plot No.17 of Block No.27, Shakti Nagar, Delhi be allowed to be handed over to the legal heirs of Late Shri Beli Ram, the petitioners in W. P.(C) No.103/1986.

29. Ms. Shalini Kapoor, learned counsel for the plaintiffs has argued that DDA in its written statement only talked about plot No.

and has taken no plea regarding plot No.18/27. It is submitted that plaintiffs specifically contended that the Plot No.18 of Block No.27 was allotted to Haji Mohd. Ismail by Resolution No.10 dated 28.01.1943 and that his son subsequently sold it after his death to Shiekh Gulam Moinuddin by Sale RFA4092004 &

LPA582005 Page 29 deed dated 28.07.1948 he then sold the said plot measuring of 223 sq. yards to Sh. R. P. Sharma who in turn sold the said plot to the plaintiffs. In the written statement, there is no specific denial of these averments, it is deemed to have been admitted by DDA; there is no need for further proof.

30. Relying on findings in Kalyan Singh Chouhan vs. C.P. Joshi AIR 2011 SC1127 National Textile Corporation vs. Nareshkumar Badrikumar Jagad AIR 2012 SC264 and Sudhir Engineering Co. vs. NITCO Roadways Ltd. 1995 (34) DRJ86 it is argued that since D.D.A never pleaded document Ex. DW- in the written statement, the document cannot be relied upon by the Court. It is further argued that M.C.D has also never denied the documents like payment of property tax and mutation of the property in favour of the plaintiffs. It is further argued that the documents Ex. DW24 and Ex. DW-2/5, the sale certificates in favour of Beli Ram are of no consequence as no notification under Section 7 of the Administration of Evacuee Property Act is proved on record to show that after K. B. Sahibuddin left for Pakistan in 1947, the property was notified as an evacuee property. Reliance is placed on findings in Syed Mirza & Ors v. UOI & Ors 2008 (101) DRJ437 Sheo Ram & Ors. v. UOI through the Secretary Incharge Rehabilitation Department Central Government & Ors 2013 (2) RCR (Civil) 634 and Deen Mohammad & Anr. v. State of Haryana & Anr (P&H) RSA No.1898 of 1988 decided on 25.02.2016.

31. The plaintiffs also urged that there is no document on record to show that the suit properties belong to DDA. It is argued that DIT had allotted RFA4092004 & LPA582005 Page 30 these properties to Amna Bi and Mohd Ismail in lieu of the land, owned by Mohd. Zahiruddin and Haji Mohd. Ismail, which it acquired. It was further argued that the plaintiffs had purchased these properties through various sale deeds and thus the right, title and interest in the said plots vested in them. Furthermore no suggestion was given to plaintiff's witness in the cross examination that Ex.P-60 was a forged document or there was some other resolution. It is also argued that the minute books contained no signatures and the pages of the books were unnumbered. The document is just a typed copy, which was pasted in the minute book. It is further argued that in terms of Resolution Ex.P-60, Karan Singh too was allotted Plot No.20 to 22 in block No.24. It is further

argued that no plots were allotted as per Ex. DW11 in Block No.33, Roshanara Extension Scheme. The record produced by the plaintiffs showed that Plots nos. 2,3 & 4 in block 33 of Roshanara Extension were sold to Keshav Singh by documents Ex. DW2PC dated 13.12.1948. It is submitted that Ex. P-60 was duly proved in view of the fact that the signatures on it were admitted by the counsel for DDA and by order dated 28.08.1987, the original file No.S-9 containing the original of this document was produced by Ajay Singh, UDC, DDA.

32. It was further submitted that the plaintiff had confronted DW-2 by summoning the File No S-9 (2) of 79, which contained a copy of Resolution No.10, from DDAs office. It is further submitted that Ex. P-60 shows that the consideration was paid. Resolution No.11 dated 09.01.1951 (P-137) clearly shows that no agreement was executed in favour of the allottees because of a policy decision. Ms. Kapoor argued that the documents filed along with the writ petition could not be relied upon since RFA4092004 & LPA582005 Page 31 they were not proved. It is also argued that Beli Rams death certificate was not proved and in its absence, the suit property could not have been mutated in the name of his heirs and DDA did not offer any explanation. It was further submitted that the site plan attached to sale certificate Ex. DW-

in favour of Beli Ram does not confirm to the actual sale of Plot No.17. It is argued that the trial court had visited and inspected the suit property on 20.02.2003 in the presence of parties and their counsels and observed that the sale certificate issued by office of Regional Settlement Commissioner to heirs of Beli Ram on court file Page No.27 did not match with the actual plot site. It is further argued that DDA did not contest the matter deliberately in W.P.(C) No.103/1986 since they did not have any documents to prove their case. Findings 33. The ownership of Plot Nos. 17 and 18, Block 27 (hereafter called No.17 and No.18 respectively), Shakti Nagar is in dispute. The suits filed by the plaintiffs were for prohibitory injunction and damages. In a prohibitory suit, the plaintiffs are required to establish their rights, which need protection. They claim ownership of the suit properties. Their plea is that the properties were initially allotted to six individuals including Amna Bi and Haji Mohd. Ismail by document Ex. P-60 and they had purchased the same through chain of registered sale deeds. The property was also mutated in their names in the official records and that they were consistently paying property

tax and electricity bills and had even contested eviction suits and secured order for ejectment of tenants from their RFA4092004 & LPA582005 Page 32 properties. The plaintiffs also argue that a suit for specific performance was filed by them which was decreed in their favour by the Court. In execution, the sale deed was executed in their favour. Since suit properties were occupied by jhuggi dwellers, they had it vacated, by entering into agreements and those occupants executed affidavits, which were proved on record. In W.P.(C) No.103/1986, Beli Rams legal representatives claimed ownership of Plot No.17 Block 27 and sought possession of the said plot or in alternate allotment of Plot No.18. And their claim is based on title derived by reason of the auction in which Beli Ram was the highest bidder and consequent payment - within the time stipulated, of the entire consideration.

34. In the injunction suit, an issue whether the plaintiffs or their predecessor were lawful owners of Nos. 17 and 18 was framed which was decided in favour of the plaintiffs. To prove their right, title and interest in the properties in dispute, the plaintiffs relied on the document Ex.P-60, the copy of Resolution No.10 dated 28.01.1943 allotting land to Amna Bi and Haji Mohammed Ismail from whom the property devolved on them through various sale deeds. DDA denied contents of Ex.P-60 though it admitted the signatures of the concerned official on it at the time of admission and denial of documents. In its evidence, DDA produced the original Resolution No.10 and exhibited its copy as Ex. DW-1/1, to prove that Haji Mohd. Ismail and Zahur Uddins land, besides land belonging to others, were acquired by DIT by Resolution No.283 on 30.10.1941. By Resolution No.10 dated 28.01.1943, DIT proposed to allot Plot No.2 consisting of 191.75 sq. yards (out of an area in Block No.33 of the RFA4092004 & LPA582005 Page 33 Roshanara Extension Scheme) to Haji Mohd. Ismail and Plot No.5 (187.50 sq. yards) in Block No.33 to Amna Bi as Zahur-Ud-dins heir and contended that the two plots were never proposed to be allotted or allotted to Haji Mohd. Ismail or Amna Bi.

35. The plaintiffs and DDA both have produced document, Resolution No.10 dated 28.01.1943. While the Plaintiffs rely on a photo copy Ex. P-60 of Resolution No.10, DDA produced the original records and proved Ex. DW- its copy. The court is to discern which of the document stands duly proved on record and can be relied upon.

36. The plaintiffs urged that since the signature on Ex. P-60 was admitted in the admission and denial by DDA therefore there was no need to prove the document by any other mode. It was also argued that original of Ex. P- 60 was produced by Sh. Gajay Singh, UDC, DDA when the record was summoned and the original record of file No.S-9 (2) of 79 was produced and put to DDA witness and the photocopy was retained on the record which is placed at page- 431 of LCR Vol. III and it is identical to that of Ex.P-60, and therefore, Ex. P-60 is the true and correct copy of resolution No.10 dated 28.01.1943. It is also argued that copy of Ex. P-60 also finds its place on file No.S-9 (2) of 79 which finds reference in order dated 28.08.1987 and the file was directed to be kept in court after its pagination during the cross examination of DW-2 on 01.02.2002 and was exhibited as Ex. DW2PA.

37. Admission of signatures on a document does not per se or automatically prove its contents. In U. Sree v Srinivas, (2013) 2 SCC114 RFA4092004 & LPA582005 Page 34 the Supreme Court held that Mere admission of a document in evidence does not amount to its proof. There is no dispute that the burden to prove the case is always on those who come before the Court and seek relief from it for the protection of their rights. The Supreme Court in Anil Rishi vs Gurbaksh Singh, (2006) 5 SCC558 held that- In terms of Section 102 (Indian Evidence Act, 1872) the initial onus is always on the plaintiff to prove his case and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances if any, which would disentitle the plaintiff to the same. 38. A fact can be proved either by oral or documentary evidence; the burden is however on the plaintiffs - in this case to prove that Amna Bi and Mohd. Ismail were the owners of Plot No.

and

and had acquired title lawfully. The plaintiffs rely upon documents Ex. P-60 to say that the plots were allotted to Amna Bi and Mohd Ismail by that document and they purchased the plots from the said two individuals through a series of intervening transactions, evidenced by documents. A document is defined in Section 3 of Indian Evidence Act as under:-

"Document- Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those

means, intended to be used, or which may be used, for the purpose of recording that matter.

39. Section 59 of Indian Evidence Act, 1872 states that except contents of documents, all other facts can be proved by oral evidence. The contents of a document thus cannot be proved by oral testimony. Section 61 of Indian Evidence Act, 1872 clearly states that the contents of the document can be proved either by primary or secondary evidence. RFA4092004 & LPA582005 Page 35 40. Section 62 of Indian Evidence Act defines primary evidence - Section 62 Primary evidence means the document itself produced for the inspection of the Court. Explanation 1.-Where a document is executed in several parts, each part is primary evidence of the document: is executed Where a document in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. Explanation 2.-Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

41. Section 64 is relevant and is reproduced as under:-

"64. Proof of documents by primary evidence.-Documents must be proved by primary evidence except in the cases hereinafter mentioned. 42. Section 64 of the Indian Evidence Act, 1872 mandates that the documents must be proved by primary evidence except for the cases, the enumerated. Thus, the best evidence to prove a document is the primary evidence i.e the original documents. The law permits that where a document cannot be proved by primary evidence; the same can be proved by secondary evidence.

43. The plaintiffs had urged that they summoned file No.S/9 (2)/79 dated 09.08.79 and complete file No.LA-46 (1) and file No.46 (13/39) relating to RFA4092004 & LPA582005 Page 36 plot No.20 to 22 Block 24, Shakti Nagar owned by Lala Karan Singh; these files were preserved in the Court. File No.S/9 (2)/79 dated 09.08.79 which was produced by DDA's witness DW-2 and it was put to him in the cross examination, pursuant to order of the Court, it was also numbered (pages 1

to

37) and this file contains a copy of Ex. P-60 at page 32 and the document on the file was exhibited as Ex. DW2/PA. It is further argued that since the record brought by the witness contains the copy of Ex. P-60 exhibited as Ex. DW2/PA and since Ex. DW2/PA is the part of official record of DDA and as it is identical to Ex. P-60, the contents of Ex. P-60 stands proved by the official document.

44. Ms. Shobhana Takiar for DDA had controverted this argument and has stated that file no S/9 (2)/79 dated 09.08.79 does not contain the original resolution. What it contains was again a photocopy of Resolution No.10. It is further argued that this file relates to transfer of Plot No.21 of Block No.24, Roshanara Extension Scheme in the name of Sukhram who applied for mutation of the property in his name. He filed the photocopy of Resolution No.10; DW2 had only admitted that the Ex. DW2/PA formed part of file No.S/9 (2)/79 dated 09.08.79. DW-2s deposition shows that the witness compared the document with the original Resolution No.10 which he brought in the Court. He categorically stated that contents of the document differ with the original. In this context, DDA states that merely because an official file contained a photocopy, which was received along with an application for processing some request, did not mean that it, i.e such photocopy became an official document. DDA also stated that the photocopy placed at page 431 of Vol. III of LCR is only a photocopy of RFA4092004 & LPA582005 Page 37 this document and not of any original document. The plaintiffs failed to prove the contents of the document Ex. P-60 as they never produced its original. Therefore Ex. P-60 is inadmissible in evidence.

45. As discussed above, the requirement of law is that the contents of the document have to be proved by producing the document itself. The plaintiffs argument is that since they had produced an official file of DDA containing document Ex. DW2/PA, of which Ex. P-60 is the copy and this proves the contents of the document. Under Section 62 of the Indian Evidence Act, the primary evidence means the document itself.

46. This court has considered the file S/9 (2)/79 dated 09.08.79 (Part 1 OSB) which is preserved in the court on the plaintiffs request and found that at Page 32,

document Ex. DW2PA is placed. That document is not the original document but a photocopy. Also, it seems that this photocopy is there because one Sukhram sought mutation of plot No.21 in block 24, Shakti Nagar, Roshanara Extension on the basis of this and other documents. He sent the photocopy of Resolution No.10 to DDA in support of his claim of mutation of property in his name. This document does not form part of the official record of DDA containing resolutions and it is also not an original document. This document Ex. DW2/PA, like Ex. P-60, cannot be termed a document which forms part of the official record maintained by DDA. It is also noteworthy that DW-2 compared the document Ex. DW2/PA with the original record of Resolution No.10 which he had brought in the Court and found that Ex. DW2/PA is not the true copy of the original Resolution No.10. The production of a photocopy of a RFA4092004 & LPA582005 Page 38 document cannot be termed as being proved by another photocopy of the same document. What is needed is the production of the original document as per Section 64 of the Evidence Act. Neither did the plaintiffs care or apply for exception under that provision and state how and what reasons led to omission to produce the original or an authenticated copy of it. The plaintiffs have thus failed to prove the primary evidence to prove that by Resolution No.10 dated 28.01.1943, plot Nos. 17 and 18 were in fact allotted to Amna Bi and Mohd. Ismail. A document may also be proved by leading secondary evidence, when primary evidence cannot be produced. Secondary evidence is defined in Section 63 of Indian Evidence Act:-

"63. Secondary evidence means and includes- (1) Certified copies given under the provisions hereinafter contained; (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies; (3) Copies made from or compared with the original; (4) Counterparts of documents as against the parties who did not execute them; (5) Oral accounts of the contents of a document given by some person who has himself seen it.

47. Section 65 of Indian Evidence Act, 1872 contemplates such situations and stipulates conditions in which the secondary evidence relating to the documents can be given. Section 65 reads as under- Section 65- Cases in which secondary evidence relating to documents may be given.-Secondary evidence may be

RFA4092004 & LPA582005 Page 39 given of the existence, condition, or contents of a document in the following cases:- (a) When the original is shown or appears to be in the possession or power- of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it; (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest; (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time; (d) when the original is of such a nature as not to be easily movable; (e) when the original is a public document within the meaning of section 74; (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India]. to be given in evidence²; 1[India]. to be given in evidence²; (g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the the written admission In case (b), RFA4092004 & LPA582005 Page 40 general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

48. Discussing Section 65 of the Indian Evidence Act, the Supreme Court in the case B.B. Ayesha vs. Bihar SSM Avaquaf AIR 1969 SC253 held that in Sections 65 (a) to (c), any secondary evidence is admissible and in terms of Sections 65 (e) and (f), only certified copies are admissible. From the provisions of Sections 62, 64 and 65, it is apparent that the contents of a document can be proved either by the production of the document itself or by secondary evidence in the eventualities covered under Clauses (a) to (g) of Section 65. The Court has in a recent judgment H.Siddiqui (dead) by LRs. versus A.Ramalingam (2011) 4 SCC240has discussed admissibility of Secondary Evidence and has held as under:

12. "The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement RFA4092004 & LPA582005 Page 41 thereon. (vide Roman Catholic Mission v. State of Madras AIR 1966 SC1457 State of Rajasthan v. Khemraj, (2000) 9 SCC241 LIC vs. Ram Pal Singh Bisen, (2010) 4 SCC491 and M.Chandra v. M.Thangamuthu, (2010) 9 SCC712"

49. In the case H.Siddiqui (supra), admissibility of a photocopy of a document on which the signatures were admitted but the contents were denied, was considered by the Supreme Court and the Court has held that the trial court's reliance on a photocopy of power of attorney only because the document was admitted to have been executed by the respondent is not proper in the absence of production of original document (Power of Attorney) in the court. The court has further observed as under: 14. In our humble opinion, the trial court could not proceed in such an unwarranted manner for the reason that the respondent has merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. 50. Secondary evidence can also be given as to the existence, condition, or contents of a document in the situations mentioned in Clauses a to g of Section 65 of Indian Evidence Act. The plaintiffs as noticed earlier not produced the original of this document Ex. P-60. Since DDA has denied the contents of Ex. P-60, only course open to the plaintiffs was to prove it by leading secondary evidence, which they could do having regard to the terms Section 65 of the Indian Evidence Act. When the original of a document is shown or appears to be in

possession or power of a person against whom the document is sought to be proved and when after the notice given under Section 66 such person does not produce it, in that RFA4092004 & LPA582005 Page 42 scenario, the secondary evidence is admissible as per clause (a) of Section 65 of the Indian Evidence Act. The plaintiffs argument, that file No.S- 9(2) 79 (Part 1 OSB) of DDA containing Resolution No.10 was summoned and so no notice under Section 66 of Evidence Act was needed, has no merit. The Plaintiffs summoned two files and alleged that file No.S-9 (2) of 79 (Part 1 OSB), which is official file contain Resolution No.10 (which is identical to Ex. P-60). This Court has already discussed that file No.S-9(2) 79 (Part 1 OSB) of DDA did not contain the original of P-60 but that document which was exhibited as Ex. DW2/PA itself was a photocopy of alleged Resolution No.10 of 1943 and a photocopy of a document cannot prove another photocopy of the document. The record, which contained the original of document needed to be summoned. Clause e of Section 65 permits the secondary evidence of a public document.

51. A public document is defined in Section 74 of the Indian Evidence Act reproduced as under- The following documents are public documents:-

"(1) Documents forming the acts, or records of the acts-- (i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth].., or of a foreign country; (2) Public records kept [in any State]. of private documents. RFA4092004 & LPA582005 Page 43 A document, which is prepared by a public servant in discharge of his official duties, is a public document. The (erstwhile) Mysore High Court in M.N. Krishana Rao vs. Board of Trustees, City Improvement Trust Board, (1972) 1 Mys LJ101 dealt with issue whether the Board of Trustees is a public body and it is held that a body which is exercising a public function under the State Government and to which certain powers and duties were attached by a statute is a public body and the documents prepared by such body are public documents. Also in Roshan Lal Khandelwal vs. Dr. Jagdish Chand AIR 2008 NOC2043(Allahabad), the Allahabad High Court held that the documents of Ghaziabad Development Authority are public documents. Therefore the documents of DIT and now its successor, DDA, are therefore, held to be public

documents.

52. This court in Prakash Rai vs J.N. Dhar AIR1977 Del 73 held that the contents of a public document can be proved by production of certified copy of the same. There is no dispute that Resolution No.10 dated 28.01.1943 is an official document being a resolution and thus a public document as defined in Section 74 of Indian Evidence Act and under Clause Section 65 (e), the secondary evidence is admissible which should be the certified copy of the document and no other kind of secondary evidence is admissible. Ex. P-60 is not the certified copy but a photocopy of the public document hence, not admissible in evidence as secondary evidence.

53. The plaintiffs have not been able to prove Ex. P-60 either by producing primary or by secondary evidence. Mere exhibition of a document is not RFA4092004 & LPA582005 Page 44 sufficient to prove its contents. The plaintiffs therefore cannot rely on Ex. P-60 to prove allotment of land to Amna Bi and Mohd. Ismail.

54. DDA challenged the genuineness of Ex. P-60 stating that it is forged. It produced the original file containing original of this public document i.e. Resolution No.10 which DW-1 had stated were kept under lock and key and under supervision of Assistant Director. D.D.A has proved the copy of this original Resolution No.10, which was produced in Court as Ex. DW- 1/1. Ex. P-60 - as noted earlier, does not tally with the original resolution No.10 produced by D.D.A witness, DW-1 in the Court. The court has noted the discrepancies in the document Ex P-60 of the plaintiffs and the original Resolution No.10 produced by the defence witness. These discrepancies are noted by the Court in the testimony of DW -1 as under:-

"the plaintiff At this stage Ld. Counsel for the defendant has sought to submit a photocopy of the resolution brought by the witness which is vehemently opposed on behalf of the defendant. It is essential to observe that on a perusal of the original resolution brought by the witness and submission made on behalf of that resolution No.10 dated 28.1.43 has already been exhibited as Ex. P-60 on 27.09.90, the JR has compared Ex. P-60 on record with the original brought by the witness today and it is found that Ex.P-60 is not identical with the original

resolution brought by the witness today and the words Dam Dama land in relation to Mohd. Ishak and Mohd. Rashid are not found mentioned on the original resolution brought today and it is also observed that in para 2 of the original resolution brought today there is mention of Block No.33 as being the proposal to allot the same but in Ex.P- 60 the allotment proposed is shown to be block Nos. 24 and or 27 and the plot nos. shown to have been allotted RFA4092004 & LPA582005 Page 45 also are not identical nor are the names of the allottees identical in Ex.P-60 when compared with the original brought today. In these circumstances it is considered essential to take on record the copy of resolution No.10 dated 28.1.43 brought by the witness today by the witness today, and photocopy thereof is directed to be supplied by the defendant to Ld. counsel for the plaintiff, which has so been supplied now. Ld. counsel for the defendant Mr. J.K. Seth, Sr. Advocate has further submitted that Ex. P-60 had been submitted by the DDA official on 28.8.87. Photocopy of resolution No.10 dated 28.1.43 brought by the witness, now taken on record on which the witness has identified at point A to be the signatures of Mr. Laxman Assistant Director Meeting Cell DDA on which he has stated his signatures are there at point B qua the comparison of the same is exhibited as EX DW11.

55. What the law requires is that the original document should be produced to prove a document and in case the document is a copy of a public document, a certified copy can be proved on record without necessitating the production of the original document. Both the defence witnesses, who produced the files relating to Resolution No.10 dated 28.01.1943, and in their testimonies clearly deposed that Ex.P-60 does not confirm to the original document. Ex.DW-

is rather the document which the court asked the witness to place on record after seeing the original resolution and comparing it with Ex. P-60. The defendant therefore by producing the original Resolution No.10 dated 28.01.1943, (copy of which is Ex.DW-1/1) has proved the said resolution by producing primary evidence i.e. the document itself. This document does not show that Plot Nos. 17 and 18 (of block No.27) were proposed to be allotted to Amna Bi and Mohd. Ismail. The plaintiffs have not produced the original document, the copy of which RFA4092004 & LPA582005 Page 46 they say is Ex.P-60 for the inspection of the court, they therefore have failed to produce the primary evidence. They have also not

produced the secondary evidence to prove the contents of the documents. Counsel for DDA had highlighted, correctly that there are marked discrepancies between Ex. P-60 and Ex. DW1/1. The trial court also noticed these in the testimony of DW-1. Yet the trial court had chosen to base its reasoning on the copy and not the original.

56. Ex.P-60 is read as under:-

"Copy of Resolution No.10 passed at an ordinary meeting of the Delhi Improvement Trust held on the 28th January, 1943 ITEM The Board in their resolution No.283 of the 30th October, 1941, decided to acquire the plots of land referred to in the statement below and falling in the Trusts Roshnara Extension Scheme Area by giving the owners an exchange developed land in the same locality on valuation basis. Various owners to be given credit for what they had paid for these plots and the trust land to be valued at Rs.8/- per sq. yds. S. No.Present Owner Area of Land Consideration paid by them. Heirs of Mohd. Zahir 1 Bigha Rs.1500/- Uddin L. Ram Roop 10 Biswas L. Joti Pershad Ram 10 Biswas Rs. 750/ Rs. 750/- Kishan Das H. Mohd. Ismail 1000 sq. yds. Rs. 153

Mohd. Ishaq Mohd. (Damdama land) Rs. 25

1 2 3 4 5 RFA4092004 & LPA582005 Page 47 6 7 8 9 10 11 12 13 14 15 Rashid Azim Uddin Mohd. Sadiq Manbhari 200 sq. yds. 100 sq. yds. 164 sq. yds. 100 sq. yds. Abdul Ghafoor 100 sq. yds. Rehmat Ullah 250 sq. yds. Rs. 1

Rs. 21

Rs.1

Rs.1

Rs. 3

Mohd. Din 1871 sq. yds. Rs. 18

Mohd. Yusuf Batla 500 sq. yds. Rs. 6

Karan Singh Badri Kishan 754 sq. yds. 526 sq. yds. Rs. 94

Rs. 65

W.H. Sinclair 1236 sq. yds. Rs.158

2. Negotiations have since been carried out with the owners of these plots. Those mentioned at serial number 1, 4, 11, 12, 13 (compensation for acquisition of equivalent land in Bagh Ghatia) and 15 have accepted the terms of exchange and

it is proposed to allot them developed land in Block No.24 and/or 27 of the Roshnara Extension Scheme as per statement below (plan to be placed on the table) S. No.Name Purchased Area of the Plot No.Price developed land to be allotted Mr. W.H. 1588-5-0 198.50 sq. yds. 1 Sinclair H. Mohd. Ismail 1534/4/- 191.75 sq. yds. Sh. Mohd. Yusuf 615/10/- 76.87 sq. yds Batla Mohd. Deen 1856/12/- 232 sq. yds. Mst. Amna Bi 1500/- 187.50 sq. yds. 18 3 4 17 Karan Singh 942/8- 750 sq. yds. 20 to 22 1 2 3 4 5 6 RFA4092004 & LPA582005 Page 48 XXX XXX XXX Copy forwarded to:-

"L. Karan Singh, Bagh Ghatia, Sabzimandi, Delhi for information reference Item No.13 above regarding Plot No.20 to 22, Block No.24 in Roshnara Extension Scheme, Delhi.

57. Ex. DW-

(produced from DDAs custody, the original of which was produced in court) is reproduced as under:-

"The Board in their resolution No.283 of the 30th October, 1941, decided to acquire the plots of land referred to in the statement below and falling in the Trusts Roshanara Extension Scheme area by giving the owners in exchange developed land in the same locality on valuation basis, viz the owners to be given credit for what they had paid for these plots and the Trust land to be valued at Rs.8/- per sq. yard. S.No.Present Owner Area of land Consideration paid by him. (Rs.) 1. Heirs of Mohd. 1 bigha 1500/- Zahur Uddin L. Ram Rup 10 biswas L. Joti Pershad 10 biswas 750/- 750/- Ram Kishandass H. Mohd. Ismail 1000 sq. yds. 1534/4/- Mr. Md. Ishaq 200 sq. yds 258/4/- Mohd. Rashid Mr Azim Uddin 100 sq. yds 1 Mr Mohammad 164 sq. yds 21 Sadiq Mst. Manbhari 100 sq. yds 1 Mr Abdul Ghafur 100 sq. yds 1 2.

3. 4 5 6 7 8 9 10 Mr Rahman Ullah 280 sq. yds 3

RFA4092004 & LPA582005 Page 49 11 Mr Mohammad 1871 sq. yds 18

Din 12 Mr Mohd. Uusaf 500 sq. yds 6

Batla Mr Abdul Jalil 754 sq. yds 942/8/- Pt. Badri Kishan 526 sq. yds 657/8/- Mr

W.H. Sinclair 1236 sq. yds 1588/5/- 13 14 15 2. Negotiations have since been carried on with the owners of these plots. Those above mentioned at serial Nos. 1 and 4, 11, 12, 13 and 15 have accepted the terms of exchange and it is proposed to allot them developed land in Block No.33 of the Roshanara Extension Scheme as per statement below (plan to be placed on table):-

"S. No.Name Purchase Area of the Plot No.Price Developed land now to be allotted allotted. 1 2 3 4 5 6 Mr W. H. 1588/5/- 198.50 sq. yds Sinclair H. Mohd. 1534/4/- 191.75 sq. yds Ismail Sh. Mohd. 615/10/- 76.87 sq. yds Yusuf Batla Mohd. Din 1856/12/- 232 sq. yds Mst. Amna 1500/- 187.50 sq. yds 1 2 3 4 5 Bi for heirs of Zahir Uddin Mr Abdul 942/8/- 117.75 sq. yds 6 Jalil RFA4092004 & LPA582005 Page 50 3. The owners of the remaining plots owned only small pieces of land and it is not possible to give them in exchange on valuation basis plots of reasonable dimensions fit for residential purposes. They are not even prepared to take a plot of minimum size sufficient for a residential house and pay the difference in cash to the trust. It is therefore proposed to buy there plots on payment of the amounts of consideration mentioned against each in the statement in para 1 above. Cost of execution and registration of sale deeds will be paid by the trust. Boards sanction is requested to:-

"(i) allotment of plots in Block No.33 of the Roshanara Extension Scheme as per statement in para 2 above; (ii) purchase of plots belonging to the remaining owners on payment of the amounts mentioned against each in column 3 of the statement in para 1 above. (File No.L/52(2-41) RESOLUTION Resolved that the proposals be accepted. 58. On comparison, it is apparent that both Ex. P-60 & Ex. DW-

differ materially from each other. Besides the differences noted by trial court in testimony of witness there are other major differences as well. Whilst in Ex.DW-at Serial No.13, reflects Abdul Jalils name. He too was a landlord whose property was acquired. His name figures at serial No.6 in the column showing the names of those offered developed land in Block No.33. His name, however, is missing in Ex.P-60. Instead Karan Singhs name appears in Column 13I, his name again appears in Column 6 in the list of the persons to whom developed land was offered. In Ex. P-60, the RFA4092004 & LPA582005 Page 51 plots were offered in

blocks 24 and/or 27; however, in the column showing plot numbers, only plot numbers are given and there is no mention which of the plots nos. 1, 18, 3, 4, 17, 20 to 22 relates to Block No.24 and which falls in Block No.27. Although it was argued that plots 20-22 in Block No.24 were offered to Karan Singh, yet Ex.P-60 does not throw light or specify the block in which plots 20-22 were situated. The mention of block number 24 having plot numbers 20-22 allegedly allotted to Karan Singh appears only in the noting forwarding the copy of this document to Karan Singh. On the other hand, Ex.DW-

shows that the proposal was to allot the plots only in one block i.e. Block No.33, therefore it is apparent that although in the body against the names of the persons to whom the plots were proposed to be allotted, only the plot numbers were given but document itself shows that all these plots were situated in block No.33. These are vital facts that the trial court ignored or failed to consider. The plaintiffs give no explanation as to why the government had chosen to forward a copy of the document of which Ex. P-60 to Karan Singh only and not to others (including Amna Bi). If the authorities had decided to forward the copy of the proposal to the proposed allottees they would have forwarded it to all the other proposed allottees including the plaintiffs predecessors.

59. Besides these, there is other evidence on record which creates doubt about the genuineness of Ex.P-60. The plaintiffs have relied upon sale deeds to prove that Plot No.

was purchased from the previous owners. The sale deed exhibited as Ex.P-61 whereby Ram Kaur had allegedly purchased the portion of 72.92 sq. yards from Amna Bi and another sale RFA4092004 & LPA582005 Page 52 deed dated 10.11.1982 Ex. P-62 according to which she had purchased portion measuring 75 sq. yards of Plot No.

Shakti Nagar from Gulam Moinuddin who had purchased the plot measuring 160 sq. yards of plot No.

Ram Kaur, had thus purchased total area measuring 147.92 sq yards of this plot from Amna Bi and Gulam Moinuddin by these two sale deeds i.e. Ex.P-61 and Ex.P-62. It is interesting to note certain discrepancies in the sale deeds allegedly executed between Amna Bi and Gulam Moinuddin dated 26.04.1979 (Ex.P-140), Amna Bi and Ram Kaur dated 16.11.1981 (Ex. P-61) and between Gulam

Moinuddin and Ram Kaur dated 10.11.1982 (Ex. P-62).

60. Relevant portion of sale deed dated 16.11.1981 exhibited as Ex.P - 61 is reproduced as under:-

"This sale deed is made at Delhi on this 16th day of November, 1981 by Shrimati Amna Bi d/o Late Noor Ilahi widow of Mohammed Ismail, Choone Wali, Bara Hindu Rao, Delhi - 110006, through her General Attorney Shri R.P.Sharma son of Pt.Ram Chand, r/o 36 Sri Nagar colony, delhi -110052 hereinafter called the Vendor in favour of Smt.Ram Kaur wife of Shri Jai Ram Sharma, resident of Village Kharka, District Rohtak, at present residing at House No.39/9, Shakti Nagar, Delhi, hereinafter called the Vendee. xxx xxxx Whereas the vendor was the absolute owner of Plot No.17 Block 27, R.S.S. Shakti Nagar, Delhi, measuring 222.92 Sq. Yds. This abandoned plot which forms a part of Khata No.

and

Jamabandi of 1933 and 1934 purchased by Vendors Late husband H. Mohd. Ismail vide sale deed Registered No.1704, Book No.1, Vol. No.1854 on pages No.302.303, registered on 2nd May, 1936. Major portion of which was acquired by the Delhi Improvement Trust Roshanara Extension Scheme wherein Plot No.17 was abandoned vide Delhi Improvement Trust Resolution No.283 of 30th October, RFA4092004 & LPA582005 Page 53 1941 and the Vendor had obtained sale permission under Ceiling Act No.F.1(558)/78-79/ADM(IA) dated 17.3.1979. 61. Amna Bi is shown to be in possession of an area comprising of 222.92 sq. yards of plot No.17 block No.27, Shakti Nagar. Ram Kaur's stated position was that she was allotted Plot No.17 by Ex.P-60. But the Sale deed Ex.P-61 by which Amna Bi proposed to sell Plot no.17 to the plaintiff No.1, she states "that Plot No.17 was abandoned vide Delhi Improvement Trust Resolution No.283 of 30th October, 1941."

She does not say that this plot was allotted to her by DIT. This document also shows that the vendor i.e. Amna Bi obtained permission under the Urban Land Ceiling Act by a document (No.F.1(558)/78-79/ADM(IA) dated 17.3.1979) yet, Ram Kaur did not file a copy of the letter by which permission for sale was given to Amna Bi under Urban Land Ceiling Act. If for the sake of the argument, we accept

the genuineness of this document, (Ex. P-60), it proposes to allot an area of 187.50 sq yards, of Plot No.17 to Amna Bi. It is inexplicable how Amna Bi became owner of an area of 222.92 sq. yards which she had declared in sale deed Ex. P-61 reproduced above.

62. It is also noteworthy that in this deed, dated 16.11.1981 (Ex.P-61) Amna Bi claimed to have sold a portion measuring 150 sq. yards to Gulam Moinuddin. The relevant portion of Ex.P-61 is reproduced as under:

"Whereas the Vendor had sold out a portion of the abovesaid plot measuring 150 sq. yds. towards Damdama land on the Southern side vide Sale Deed Registered as Document No.1735, Book No.I, Volume No.3715 on pages from 115 to 117 dated 26th April, 1979 to Shri Gulam Muin Uddin son of Sheikh Qayam Uddin resident of 2959, Kalan Masjid, Delhi."

RFA4092004 & LPA582005 Page 54 63. However the sale deed Ex.P-140 dated 26th April 1979 by which Amna Bi had allegedly sold her property to Gulam Moinuddin, claims that she was exclusive owner of Plot 17, Block 27 measuring 160 sq. yards. The relevant portion of the said sale deed is reproduced as under:-

"This sale deed is made at Delhi on this 26th day of April, 1979 by Shrimati Amna Bi D/o Late Noor Ilahi widow of Mohd. Ismail-Chooree Wala, Bara Hindu Rao, Delhi-6 hereinafter called the vendor in favour of Shri Gulam Moin Uddin son of Sheikh Qayam Uddin resident of 2959, Kalan masjid, Delhi, hereinafter called the vendee. Whereas the Vendor is the exclusive owner and occupier of Plot No.17, Block No.27, Shakti Nagar, Delhi, measuring 160 sq. Yards and bounded as under:-

"East- Service Lane West : Main Road. North: Plot No.18 of Pt. R.P Sharma. South: Damdama Land acquired portion of the property Late Haji Mohd. Ismail. And this abandoned plot No.17 Block No.27 which forms a part of Khata No. and

Jamabandi of 1933 and 1934 purchased by my late husband vide Sale Deed Registered No.1704, Book No.1, Vol. No.1854 on pages No.302-303, registered on 2nd May, 1936. Major portion of which was acquired by the Delhi Improvement

Trust Roshanara Extension Scheme wherein Plot No.17 was abandoned vide Delhi Improvement Trust Resolution No.283 of 30th October, 1941 and the Vendor had obtained sale permission under Ceiling Act No.F.1(558)/78-79/ADM(IA) dated 17.3.1979. 64. This document further shows that she had sold the whole of her property to Gulam Moinuddin and not a portion of Plot No.17. The relevant RFA4092004 & LPA582005 Page 55 portion of the covenant which fortifies the fact that she had allegedly sold the whole plot to Moinuddin is reproduced as under:-

"Whereas the vendor has agreed to sell the said plot of land No.17,Block No.27, Shakti Nagar, Delhi upto the Vendee for a sum of Rs. 10,000/- (Rupees Ten Thousand) to be received at the time of registration of the sale deed before the Sub- Registrar, Delhi. 65. This agreement is anti-dated to the sale deed dated 16.11.1981 (Ex. P- 61 which is between Amna Bi and Ram Kaur). The vendor/seller had claimed herself owner and occupier of plot No.17 block No.27, Shakti Nagar measuring 160 sq. yards, allegedly and transferred it to Gulam Moinuddin. Gulam Moinuddin thus had allegedly purchased the whole of plot No.17 comprising of 160 sq. yards from Amna Bi. But in sale deed dated 10.11.1982 (Ex. P-62) executed by Gulam Moinuddin in favour of Ram Kaur, he had stated that he had purchased an area of 150 sq. yards from Amna Bi vide registered sale deed dated 26.04.1979 exhibited as Ex.P-140.

66. The relevant portion of his sale deed in favour of Ram Kaur dated 10.11.1982 exhibited as Ex. P-62 is reproduced as under:-

"This deed of sale is executed on this 10th day of November, 1982 at Delhi by Shri. Gulam Moinuddin son of Sheikh Qayyam Uddin R/o 2958, Kalam masjid, Turkman Gate, Delhi; hereinafter called the vendor of the first part in favour of Shrimati Ram Kaur wife of Sh. Jai Ram Sharma resident of village Kherka Gajan Haryana presently at 3

Shakti Nagar, Delhi hereinafter called the VENDEE of the other part. RFA4092004 & LPA582005 Page 56 The expression the vendor and the said vendee both include their heirs, executors, representatives and assigns respectively. WHEREAS the vendor is the sole and absolute owner of the property bearing

Municipal No.11567 Plot No.17 Block No.27 situated at Shakti Nagar Delhi on and upon a piece of land measuring 150 Sq.yds. having purchased from Shmt. Amna Bi vide sale deed regd as No.1755 in Add. Book No.1 Vol. No.3715 on pages 115 to 117 regd on 26.4.1979 in the office of the S.R Delhi."

67. Furthermore, the plaintiffs contend that they purchased 72.92 sq. yards by sale deed Ex. P-61 dated 16.11.1981. If by Ex. P-140, dated 26.04.1979 Amna Bi has sold whole of the plot No.17 to Gulam Moinuddin, she was left with no property to sell subsequently on 16.11.1981 (Ex. P-61) to the plaintiff no.1. These sale deeds of the plaintiffs, in view of the above discussion, are unreliable. The other important factor to note is that in the sale deed Ex.P-140, and Ex.P61 Amna Bi has not claimed that Plot No.

was allotted to her by DIT. In the document, she claims that plot was an abandoned plot of DIT. Wherein Plot No.17 was abandoned by Delhi Improvement Trust (DIT) Resolution No.283 of 30.10.1941.

68. The document speaks of Amna Bi obtaining sale permission under Ceiling Act No.F. 1(558)/78-79/ADM (LA) dated 17.03.1979; yet no such sale permission was attached with the alleged sale deeds. Although according to the plaintiffs, Amna Bi was allotted plot No.

(with an area of 187 .50 sq. yards but this area- of 187.50 sq yards was never shown to have been sold by Amna Bi either to Gulam Moinuddin or to Ram Kaur RFA4092004 & LPA582005 Page 57 nor the various sale deeds show that Amna Bi had ever claimed to be the owner of an area measuring 187.50 sq. yards of Plot No.17. Oral testimonies of plaintiffs witnesses also do not match with these documents. While PW-3, deposed that he sold Plot No.17 (measuring 76 sq. yards, belonging to Amna Bi) to the Ram Kaur, Ex. P-61 gives the area of the land sold as 72 .92 sq. yards. Oral testimony of plaintiffs witnesses also do not confirm to the contents of Ex. P-60. PW-1, Jai Ram Sharma, deposes that area of plot No.17 was 223 sq. yards but Ex. P-60 shows an area of plot No.17 as 187.50 sq. yards.

69. The plaintiffs also claimed ownership of Plot No.18, alleging that it was allotted to Mohd Ismail by resolution Ex. P-60, and upon his demise, his son Mohd. Farooq

sold the said plot to Gulam Moinuddin by a sale deed dated 28.07.1948 (Ex. P-76). Gulam Moinuddin subsequently sold this plot measuring 223 sq. yards to Sh. R.P. Sharma by sale deed Ex. P-77 dated 24.03.1979. R.P. Sharma in turn sold this plot measuring 223 sq. yards to the plaintiffs by Sale deed dated 07.03.1981, Ex. P-78. This chain of documents is full of discrepancies - which creates doubt as to the genuineness of the allotment and sale. In order to prove that Plot No.18 was allotted to Mohd. Ismail reliance was placed -by the plaintiffs on Ex P-60. In this document, the area of this plot shown is 191.75 sq. yards. It is incomprehensible whether this plot measuring 191.75 sq. yards was allotted to Mohd. Ismail by Resolution Ex. P-60 and if so, how could his son sell an area of 223 sq. yards (of Plot No.18) to Gulam Moinuddin. Even PW-1 Sh. Jai Ram Sharma has deposed contrary to the contents of this document. PW-1 has deposed that plot No.18 was 223 sq. yards which was owned by RFA4092004 & LPA582005 Page 58 Mohd. Ismail. Contents of Ex. P-60 were not proved by oral testimony; instead the oral testimony led, contradicts its contents. Another important factor, which creates a doubt about the whole transactions relating to allotment and subsequent sales of Plot nos. 17 and 18, is that on 28.07.1948 son Farooq of Mohd. Ismail had allegedly sold plot 18 to Gulam Moinuddin as his legal heir, although at that time Mohd. Ismail's wife, i.e. Amna Bi was very much alive. There is no document on record to show that Mohd. Farooq was nominated as the only legal heir of Mohd. Ismail, or that others relinquished their rights in favour of Mohd. Farooq. In oral testimony, the plaintiffs witness R.P. Sharma made a stunning revelation that Mohd. Ismail was owner of Plot No.17.

70. On the other hand, DDA produced the original record from its office and proved the copy of original Resolution No.10 as Ex.DW- by which no allotment of any plot in block No.27, Shakti Nagar was proposed and the proposal was to allot plots in block No.33 and the area of those plots is also given in Ex. DW11. The area of developed land to be allotted in Ex. P-60 reflects that Mohd. Ismail for a purchase price of 153 was proposed to be allotted 191.75 sq. yards, an area of developed land in plot No.18 and Msd. Amna Bi for purchase price of ` 1500 was proposed to be allotted 187.50 sq yards of the developed land in Plot No.17 and in Ex. DW11, Mohd. Ismail was also proposed to be allotted developed land in block No.33 for

purchase price of 1534/4, an area of 191.75 sq. yards in plot No.2 and Msd. Amna Bi at a consideration of ` 1500, an area of developed land measuring 187.50 sq. yards in plot No.5. It seems that the only column (in the document) i.e a changed one- showing block no and the plot RFA4092004 & LPA582005 Page 59 numbers in Ex. P-60. The manipulation of document Ex. DW11 cannot be ruled out. In view of the above-mentioned facts, which shows that what was proposed to be allotted to Mohd. Ismail and Amna Bi were 191.75 sq. yards and 187.50 sq. yards of land in Plot nos. 2 and 5 of Block No.33. The area of plot No.17 of block No.27 was not 187.50 sq. yards as shown in Ex. P-60, but it was 222.9 sq. yards as it is clear from the various documents produced on record by defendants in the suit and petitioners and Regional Settlement Commissioner (respondent No.5) in a W.P.(C) No.103/1986.

71. To prove their case i.e. the ownership rights in the suit properties, the only document the plaintiffs have relied upon is Ex. P-60. The document is just a photocopy and it is not admissible in evidence for the reasons that neither it is proved in terms of Sections 61, 62, 63, 65, 66, 74 & 76 of Indian Evidence Act, 1872 nor the contents of the document confirm to the contents of the original Resolution No.10 dated 28.01.1943 produced before the court, and also from the various sale deeds executed contradicts the plaintiffs document Ex. P-60 and oral testimony is also not in conformity to this document.

72. The plaintiffs contention that Ex. DW-

is not genuine because while it shows that plots were offered for allotment in block No.33, the other document Ex. DW2PC of DDA clearly shows that plot nos. 2, 3 and 4 of block No.33 were handed over to Keshav Singh in an Exchange Deed dated 13.12.1948 between him and DIT. This argument is not merited for the simple reason that document Ex. DW-

which is dated 28.01.1943 is RFA4092004 & LPA582005 Page 60 anti-dated to Ex. DW2PC and moreover, this document Ex. DW11 is not an allotment letter but simply a resolution which proposed to allot these plots in Block No.33 to certain persons. The plaintiffs have not shown that DIT ever acted on this proposal and issued allotment letters to the persons mentioned in Ex. DW11. The best evidence, i.e. the allotment letters and possession slip issued contemporaneously

would have established their claim to be owners.

73. The plaintiff argued that there was no document on record to show that the suit properties belonged to DDA. The argument is unfounded because of the provisions of the Delhi Development Act, which came into force w.e.f 30.12.1957 by an Act of Parliament. Section 1(2) states that this Act extends to the whole of the National Capital Territory of Delhi. The Act was enacted with the object of planned development of Delhi. After this Act came into force, all the movable and immovable properties vested in Delhi Improvement Trust or the Delhi Development (Provisional) Authority came to vest in DDA by virtue of provisions of Section 60 (2) (d). Section 60 (2) (d) of Delhi Development Authority Act noted as under:-

"60. Repeal, etc. and saving (2)Notwithstanding the provisions of sub-section (1)-(d)all properties movable and immovable vested in the Delhi Improvement Trust or the Delhi Development (Provisional)Authority shall vest in the Authority; RFA4092004 & LPA582005 Page 61 By virtue of these express provisions of the Act, DITs property vested in DDA. The plaintiffs undeniable case is that the property belonged to DIT which was allotted to them by Ex. P-60.

74. From the above discussion, it is apparent that the plaintiffs failed to prove that they are the owners of suit properties No.17 and 18 of Block 27, Shakti Nagar. DDAs position, in its written statement is that DIT owned Plot No.17/27, first auctioned it to Shahbuddin and then to Beli Ram but its vacant possession could not be handed over to him or to his legal heirs despite their sincere efforts as the property was unauthorizedly occupied by certain persons. DDA also claimed that Plot No.

was never allotted to anyone and under DDA Act, it owns in it. On sustained persuasion by legal representatives of Beli Ram, DDA thought of allotting Plot No.18 as an alternate to plot No.17; however several persons including the plaintiffs unauthorizedly occupied this plot. It was in support of these contentions that DDA produced the original record maintained by it. Ex. DW-

is the copy of the original Resolution No.10 produced in court. This original record is the best evidence.

75. The court holds that the plaintiffs argument that DDA traveled beyond its pleadings when it produced the original public record maintained by it, is insubstantial and unmerited. This document was been produced to prove DDAs contention that Plot No.17 belonged to the LR's of Beli Ram to whom it was auctioned by DIT. Thus, the findings in Kalyan Singh (supra) and National Textile (supra) are not relevant on the facts of this case. The finding in the case Sudhir Engineering (supra) relied upon by the plaintiffs RFA4092004 & LPA582005 Page 62 does not support them. In this case, this Court has clearly held that mere admission of a document in evidence is not proof of that document. The Court has held as under:-

"(8) I am firmly of the opinion that mere admission of document in evidence does not amount to its proof. 8.1 Admission in evidence of a party's document may in specified cases exclude the right of opposite party to challenge its admissibility. The most prominent examples are when secondary evidence of a document within the meaning of Sections 63-65 of the Evidence Act is adduced without laying foundation for its admissibility or where a document not properly stamped is admitted in evidence attracting applicability of Section 36 of Stamp Act. 8.2 But the right of a party disputing the document to argue that the document was not proved will not be taken away merely because it had not objected to the admissibility of the document. The most instructive example is of a Will. It is a document required by law to be attested and its execution has the manner contemplated by Section 68 of the Evidence Act read with Section 63 of the Succession Act. The party challenging the Will shall not be excluded from demonstrating at the final hearing that the execution of the Will, though exhibited, was not proved is statutorily required. to be proved in (9) The law laid down by the Supreme Court in Sait Taraji Khimechand VS . Yelamarti Satvam AIR 1971 SC1865 is :-

"The mere marking of an exhibit does not dispense with the proof of documents. 76. The plaintiffs have also relied on the findings in the case Syed Mirza case (supra), Sheo Ram case (supra) and Deen Mohammad (supra) and it was argued that it is for DDA to prove that property was an evacuee property and thus could be auctioned and since DDA has not proved on record the notification declaring the property as an evacuee property so it RFA4092004 & LPA582005 Page 63

cannot take the plea that the property was auctioned by DIT being an evacuee property. It is apparent the issue before the Court was not whether the suit property was an evacuee property; rather, the issue was whether plaintiffs were the owners of the suit properties. The failure on the part of DDA to prove its contention does not imply that the plaintiff's are absolved of the burden of proving their case by producing relevant and admissible evidence having probative value. The plaintiffs claim has to stand on its own legs. Therefore, the findings in the cases noted (supra) regarding whether the property was evacuee property does not discharge the burden of proof laid upon the plaintiffs.

77. A document which creates right, title or interest in the suit property is sufficient to prove the rights of the plaintiffs. A faulty title of the original seller transfers only the faulty title and the subsequent transfers of that faulty title does not validate the title. Moreover, the payments of the house tax, securing electricity connection or the water connection does not create ownership rights, title or interest in an immovable property. Title to property can be transferred in terms of Transfer of Property Act. Even continuous long stay does not create any ownership rights, title or interest in a property unless such rights are claimed by virtue of the principle of adverse possession. Although the plaintiffs urged adverse possession, it was a simple plea which was not pressed before the trial court and also the person against whom the adverse possession was claimed, were not made party to the suit even through in the written statement D.D.A has specifically pleaded that plot No.17 belonged to Beli Ram and his legal heirs having been purchased by Beli Ram in an auction from DIT. The RFA4092004 & LPA582005 Page 64 Supreme Court in Chhati Konati Roa & Ors v Palle Venkala Subba Rao 2010 (14) SCC316 categorically stated that mere possession, no matter howsoever long, does not mean that it is adverse to the true owner. In order to defeat the rights of the true owner, it is for the petitioner to plead and establish all facts necessary to establish adverse possession.

78. The trial court failed to discuss the admissibility of document Ex. P-60 and also ignored the discrepancies recorded by the Court in the testimony of Ex.DW-1 (who produced the original file containing Resolution No.10 dated 28.01.1943 and proved it as Ex. DW-1/1) between Ex. P-60 and original Resolution No.10 dated

28.01.1943. The learned Judge did not also give any reasons to disbelieve the document Ex. DW-

and why he preferred Ex.P-60 over Ex. DW11. The learned Judge has erred both in law and on facts. The findings of the trial court are erroneous and liable to be set aside.

79. The plaintiffs other contention is that in the writ petition of the legal representatives of Beli Ram, DDA did not contest their case and in the suits filed by them, DDA has taken a specific plea that suit property was sold by DIT to Beli Ram and subsequently was mutated in the name of legal representatives and so LR's of Beli Ram were the owners of this plot, is not proved by DDA on record. The arguments have no merit because the plaintiffs under the law are not entitled to relief on the ground that the defendants have failed to prove their defence. DDA, on the other hand, to prove its defence produced the original record of the property and has proved on record tender form (Ex. DW21), acceptance note (Ex. DW22), RFA4092004 & LPA582005 Page 65 agreement to sell (Ex. DW23), sale certificate (Ex. DW25), which clearly proves that this land was sold to Beli Ram by DIT in an auction and thus it belonged to him and after him, his legal heirs owns this property. Although, DDA has all along recognized the rights of LR's of Beli Ram in plot No.17, yet not been able to hand over the possession of the property for the last so many years only because the properties have been unauthorizedly occupied by certain persons including the plaintiffs in suit nos. 158/2002 and 159/2002. The plaintiffs witness PW-1 in his deposition stated that in Plot No.17, Lachhman, Nanhe Devi and Sohan Lal were trespassers from whom he got the property vacated. He also produced Lachhmans affidavit as P-63 and that of Nanhe Devi as Ex. P-64 and the document evidencing surrender of possession by Sohan Lal as Ex. P-65. The witness further deposed that Sohan Lals jhuggi was demolished and he (PW-1) paid him ` 150. He deposed that one Babu Lal, Jhannu Lal , and Chottey Lal were trespassers in Plot No.18 and Madan Lal was also occupying half portion of the plot and he vacated the said portion vide agreement P-93. The document handing over possession by Jhannu Ram is proved as Ex. P-94. He further stated that other trespassers namely Gainda Devi Har Prasad, Chhote Lal, Ramwati, Ved Ram, Babu Ram, Saraswati Devi were also unauthorisedly occupying the said property and they while affidavits Ex. P-95

to Ex. P-101 vacated the said property in favour of the plaintiffs. This deposition proves that the trespassers from whom plaintiffs took possession by paying money or other means, had encroached the plots. The plaintiffs failed to prove their entitlement to the plots. The facts reveal that it is not as if the property was encroached upon by the plaintiffs alone. MCD as well had unauthorisedly occupied a portion of Plot No.

by RFA4092004 & LPA582005 Page 66 making a park on it. MCD failed to vacate that portion and also failed to remove the other unauthorized occupants and had initially denied it occupation of part of property. However, in its letter, dated 29.01.1970, MCD showed its inability to shift the park boundary and had requested DDA to consider the possibility of allotment of an alternate plot to Beli Rams LRs. These facts clearly show that the authorities, whose prime duties included maintenance of the properties and to ensure that properties were not encroached upon, itself encroached private property and failed to vacate it despite the repeated requests of those rightfully entitled to it. It is apparent that both the DDA and MCD have been shifting the responsibilities of getting the property vacated from the encroachers on each other.

80. The Court had, during the proceedings in these set of appeals made efforts to ensure handing over of the possession to the rightful owners of the plot and also urged DDA and MCD to have a joint meeting of Commissioner, MCD and Vice President DDA. This meeting took place and the minutes of the meeting were placed on the record of this court on 23.08.2005. Thereafter, two meetings were held in the Chamber of Vice Chairman, DDA on 16.08.2005 and 19.08.2005 (Page 463 of Volume II LPA). After deliberating upon the issue, the minutes of the meeting were drawn. In their meeting held on 16.08.2005, they had decided to take various courses of actions including registration of FIR against the plaintiffs, possibility of locating an alternate plot, shifting of park and removal of encroachers from Plot nos. 17 and 18. The site too was inspected and the site inspection showed that MCD had constructed a RFA4092004 & LPA582005 Page 67 landscaped garden encompassing almost 500 sq. feet of Plot No.17. In the subsequent second meeting held on 19.08.2005, it was noted that FIR had already been registered against the plaintiff for committing forgery of various documents and a decision was taken to allot to the LRs of Beli Ram Plot No.18, which was

mostly vacant except encroachment on some portion of the plot. It is apparent that despite these meetings and the decisions taken at the higher level, MCD and DDA had failed to hand over the vacant possession to LR's of Beli Ram after removing the encroachers from the suit properties.

81. MCD although was aware that plot No.17 belonged to LR's of late Sh. Beli Ram and the plot was required to be handed over to them, continued with possession of the park on said plot and did not vacate it within the time given by the Court. In these circumstances, we find no reason to set aside the order of Learned Single Judge imposing costs of ` 30,000/-.

82. The Court has already held that plaintiff in suits nos. 158/2002 and 159/2002 are unauthorized occupants in the suit properties. They are therefore directed to vacate the said property within four weeks from today. In case, the plaintiffs fail to vacate the suit property within four weeks, DDA and MCD are within their rights to get the property vacated within four weeks thereafter with the help of police force. After getting the properties vacated, the vacant possession of Plot No.17 shall be handed over to the LR's of Beli Ram. The plaintiffs are also restrained from creating any third party interest in the suit properties. The compliance report shall be furnished with this Court within three months from today. RFA4092004 & LPA582005 Page 68 83. In W.P.(C) No.103/1986, the single judge, in the impugned judgment had directed MCD to pay ` 70 lakhs to the petitioners towards current market value of Plot No.17 block No.27, Shakti Nagar since it had failed to handover the vacant possession of the plot to them. Since the Court has already issued directions for vacation of plot No.17 and then delivery of its possession to the writ petitioners i.e. legal representatives of Beli Ram, the order of payment of ` 70 lakhs is therefore set aside. MCD is directed to render all assistance to DDA to get both Plots 17 and 18 vacated.

84. With these directions, RFA No.409/2004 is allowed. The decree and judgment of the learned ADJ is hereby set aside. It is held that the LR's of Beli Ram are the true owners of the suit property. LPA No.58/2005 along with all the pending applications stands disposed of in terms of the directions given in the preceding paragraphs. DEEPA SHARMA (JUDGE) S. RAVINDRA BHAT (JUDGE) APRIL20

