

Bhoop Singh & Ors. Vs.delhi Development Authority

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Court : Delhi

Decided On : Sep-04-2017

Appellant : Bhoop Singh & Ors.

Respondent : Delhi Development Authority

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RFA No.761/2017 + % BHOOP SINGH & ORS. 4th September, 2017 Appellants Mr. S.S. Tomar, Advocate. Through: versus DELHI DEVELOPMENT AUTHORITY CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA Respondent To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. No.32073/2017 (exemption) 1. Exemption allowed subject to just exceptions. C.M. stands disposed of. RFA No.761/2017 and C.M. Nos. 32074/2017 (stay) & 32075/2017 (for additional evidence) 2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the appellants/plaintiffs impugning the judgment of the Trial Court dated 10.8.2017; by which the trial court has dismissed the suit for possession, declaration, injunction etc filed by the appellants/plaintiffs claiming rights in the RFA No.761/2017 Page 1 of 11 suit property comprising of 260 sq. yds. of khasra no.225, Arakpur Bagh Mochi (Moti Bagh), New Delhi. Trial court dismissed the suit of the appellants/plaintiffs holding that they have no rights to the suit land and also were not in possession thereof. Appellants/plaintiffs were in fact found to be persons endeavoring to encroach public land.

3. The facts of the case as pleaded by the appellants/plaintiffs are that they were the owners of the house bearing no.1, Bagh Mochi known as Moti Bagh forming part of khasra no.224, Bagh Arakpur Mochi (Moti Bagh) New Delhi-110021. Adjacent to this house of the appellants/plaintiffs was the disputed plot/suit property forming 260 sq. yds. in khasra No.225. The appellants/plaintiffs claim that they were since time immemorial in possession of the suit land and which had been acknowledged by the respondent/defendant/Delhi Development Authority (DDA). The appellants/plaintiffs pleaded to having paid chullah tax (cooking tax). The appellants/plaintiffs placed reliance upon various communications of the respondent/defendant with respect to the demand of chullah tax. The appellants/plaintiffs claim that they were earlier tethering the cattle and were then keeping household articles on the suit plot. It was RFA No.761/2017 Page 2 of 11 also pleaded by the appellants/plaintiffs that doors of the house of the appellants/plaintiffs used to open in suit property and also ventilators were installed in the house of the appellants/plaintiffs which was the only source of light and air to the house. The appellants/plaintiffs pleaded that on 20.8.2010 the respondent/defendant closed the entrance door to the suit plot despite protest of the appellants/plaintiffs. The appellants/plaintiffs also pleaded entitlement to the suit land or alternative land on the basis of communication dated 6.8.1974 of the respondent/defendant. The appellants/plaintiffs claim to have been illegally dispossessed by the respondent/defendant on 20.8.2010 and hence the subject suit was filed.

4. The respondent/defendant contested the suit and pleaded that appellants/plaintiffs were in unauthorized occupation of the land belonging to the respondent/defendant. The subject land falling in khasra no.225 was said to be Government/DDA land by virtue of Nazul Agreement of the year 1937. The suit property was pleaded to be in possession of the respondent/DDA being surrounded by stone masonry boundary wall as also a board of the respondent/DDA. It was pleaded by the respondent/DDA that appellants/plaintiffs are RFA No.761/2017 Page 3 of 11 trying to cheat and mislead with false intention to grab valuable government land. It was pleaded by the respondent/DDA that in the case of Shakuntala Narang Vs. State Office DDA in PPA No. vide order dated 16.7.2008 adjoining land of 400 sq. yds. were got vacated by the

DDA on 31.10.2008 and whereafter DDA had fenced the land to avoid further encroachment.

5. After pleadings were complete, the trial court framed the following issues:-

"If the above issue is answered in favour of the plaintiffs, what were (i) Whether the plaintiffs or their predecessors were in possession of the land admeasuring 260 sq. yds. in Khasra No.225 adjacent to the house of the plaintiffs in Khasra No.224, Village Arakpur Bagh Mochi, Moti Bagh, New Delhi?. OPP (ii) the rights, if any, of the plaintiffs to the said land?. OPP (iii) If the plaintiffs are found to have any rights with respect to the said land, whether the plaintiffs have been illegally dispossessed therefrom?. OPP (iv) If the above issue is decided in favour of the plaintiffs, whether the plaintiffs are entitled to the relief of repossession and removal of the wall blocking the openings of the house of the plaintiffs towards the said land or to the relief of alternative land in lieu of the said land?. OPP (v) Relief.

6. The evidence which is recorded by the parties is referred to in paras 8 to 12 of the impugned judgment and which paras read as under:-

"8. To prove his case, plaintiff examined Sh. Inder Singh as PW1. He tendered his evidence by way of affidavit as Ex.PW1/A. He proved documents: a) site plan as Ex.PW1/1; RFA No.761/2017 Page 4 of 11 b) c) d) e) f) letter from DDA as Ex.PW1/2; letter dated September, 1974 from Honble Lt. Governor of Delhi as Ex.PW1/3; letter dated 06.12.1989 as Ex.PW1/4; receipt dated 25.08.1964 as Ex.PW

already Ex.P1; receipt dated 24.04.1989 bearing no.116793 as Ex.PW

already Ex.P2; g) five photographs Ex.PW1/7; h) copy of notice Ex.PW1/8. Ld counsel for defendant cross examined PW1 at length.

9.

10. PW2 Sh. Pramod Singh, Naib Tehsildar, Tehsildar Nazur Section brought the summoned record in respect of file No.TN2-40/73. He referred copy of letter which is already Ex.PW1/2.

11. PW3 Sh. Jarnail Singh, UDC, L.G. Secretariat, deposed that the summoned record has already been weeded out vide order dated 07.02.2012. Copy of said order is Ex.PW3/1.

12. In defence Sh. Jai Prakash working as Kanoongo with Delhi Development Authority stepped in witness box as DW1 and relied upon documents such as Nazul Agreement 1937 as Ex.DW1 and Jamabandi 1973-79 as Ex.DW2. 7. As regards claim of the appellants/plaintiffs to be in possession of the suit land, trial court has held that the documents being the letter dated 6.8.1974 relied upon by the appellants/plaintiffs issued by the President of Gram Sabha Samiti, Arakpur Bagh Mochi, New Delhi could not be relied upon as it was not proved because the court had made an observation that copy on the record is a copy without any signature and the witness PW-2 deposed that no other copy of the record was available. By this letter of 6.8.1974, the appellants/plaintiffs pleaded that they had a right to the suit property. This letter Ex.PW dated 6.8.1974 reads as under:-

"RFA No.761/2017 Page 5 of 11 6.8.1974 Executive Officer (Lands) No.TN2(40/73) From: W.C. Khambra, PCS To The President, Gram Sudhar Samiti, Arakpur Bagh Mochi, New Delhi Dear Sir, With reference to your letter dated 18th April, 1974 addressed to the Commissioner (Implementation), D.D.A., I am directed to say that it has been decided that all the Chullah-tax payers & their direct descendents whether in occupation of the land within or outside the Lal Dora will be assessed to Chullah-tax and they will not be required to pay any damages. However, if the occupation of any individual Chullah-tax payer interferes with the village redevelopment plan, he will be removed under the due process of law and provided with an alternative accommodation according to his eligibility. In view of this decision, the question of demarcation of the Lal Dora does not arise. Yours faithfully, Sd/- (W.C. Khambra) Executive Officer (Lands) No.TN2 (40)/73 Dated:

6. 8.74 Copy forwarded to the Co-ordinating Officer (Damages), D.D.A., Regal Building, New Delhi with the request that no damage should be assessed against the Chullah Tax Payers or their direct descendants of village Arakpur Bagh Mochi. Sd/- (W.C. Khambra) Executive Officer (Lands) 8.(i) In my opinion, the trial court

has rightly held the document not to be proved, but in any case even for the sake of argument even if this letter is looked at, it is seen that this letter bears no correlation to the suit property as this letter dated 6.8.1974 has no reference to the subject khasra no.225. Valuable rights of the RFA No.761/2017 Page 6 of 11 Government in public land cannot be destroyed by uncertain documentary evidence such as the letter dated 6.8.1974. Before a letter creates rights in an immovable property amounting in effect to ownership rights it is necessary that the letter must clear cut show entitlement of a person to the valuable immovable property inasmuch by creation of rights in favor of appellants/plaintiffs ownership rights of the respondent/defendant are also simultaneously extinguished in valuable public land having value of crores of rupees. Therefore in my opinion the trial court has rightly rejected the letter dated 6.8.1974, and more so because the letter dated 6.8.1974 does not pertain to the suit property. (ii) It is noted that the respondent/defendant had proved the documents Ex.DW

and Ex.DW

being copy of the agreement between the Government and the Delhi Improvement Trust as also the Jamabandi/old revenue record of rights that ownership of the khasra No.225 was of the respondent/defendant. (iii) In fact trial court has rightly observed inter-alia in para 18 of the impugned judgment, that the appellants/plaintiffs are not able to place even a single document to prove their possession of the suit property RFA No.761/2017 Page 7 of 11 from time immemorial. This Court would also like to observe that mere possession does not mean legal right, title and interest in valuable government land. Valuable government land is owned either in terms of proper conveyance deed or a lease deed or an allotment letter etc and this Court would be very hesitant to give rights in valuable public land on fragile evidence as is sought to be relied upon by the appellants/plaintiffs. Payment of chullah tax would only create at best a very temporary licensee rights to use the land but such user does not get converted to ownership rights.

9. Learned counsel for the appellants/plaintiffs sought to take this Court through the photographs at pages 90 and 91 of the paper book of this appeal and it is seen that in fact these photographs clearly show that the appellants/plaintiffs are in fact encroachers because very thick and old masonry stone walls of the

respondent/DDA have been sought to be broken open by constructing a door/opening. The nature of the walls in these photographs is shown to be very old walls of olden time and more particularly it is noted that this wall is not a wall of any normal residential property but is a wall found ordinarily around old fortification. Really therefore the RFA No.761/2017 Page 8 of 11 photographs relied upon by the appellants/plaintiffs at pages 90 and 91 do not help the appellants/plaintiffs and to the contrary show the endeavour of appellants/plaintiffs to encroach upon valuable public land.

10. Learned counsel for the appellants/plaintiffs then sought to place reliance upon the documents Ex.P1 and Ex.P2 at pages 86 and 87 of the paper book to argue that these documents clearly show that the chullah tax was demanded by the respondent/DDA, however, and as already stated above, mere demand of chullah tax in my opinion will not show that any right, title and interest is created in favour of the appellants/plaintiffs with respect to the suit property. In fact claim of chullah tax will also show a sort of a limited licence created in the suit property without any legal right thereto and a mere licensee of public land would not have such rights therein so as to make the temporary licensee an owner of the public land with respect to which chullah tax is paid. Also, it is seen that the document Ex.P1/Ex.DW

is of the year 1989 and this document in itself will not show long possession since time immemorial of the appellants/plaintiffs of the suit property. Reliance placed by the RFA No.761/2017 Page 9 of 11 appellants/plaintiffs on Ex.P2/Ex.PW

being the claim of the unauthorized occupation charges from April, 1963 to December, 1965 will again not help the appellants/plaintiffs because such a document does not show any legal entitlement of the appellants/plaintiffs to claim ownership or title and interest in the suit property. As already stated above casual documents of temporary licence over some period cannot create ownership rights in immovable property.

11. Learned counsel for the appellants/plaintiffs sought to place great stress on a receipt dated 25.8.1964 said to have been issued by the respondent/defendant, however it is seen that this document has not been proved before the trial court. Even if we take this document to be proved this document dated 25.8.1964 will

once again only show payment of some chullah tax, and that payment of chullah tax will not create any ownership rights or any right, title and interest in the suit property in favour of the appellants/plaintiffs and against the respondent/defendant.

12. In sum and substance, it is seen that the appellants/plaintiffs claim ownership of the valuable public land without their existing even a single document showing allotment of RFA No.761/2017 Page 10 of 11 such land to the appellants/plaintiffs and much less execution in favour of the appellants/plaintiffs of any conveyance deed or any lease deed. Payment of chullah tax with respect to land cannot entitle the appellants/plaintiffs to claim ownership rights in the suit land. Being in possession in law does not automatically entitle ownership rights of the land more so with respect to valuable public land. Long possession unless has ripened into adverse possession of 30 years against the Government will not mean that appellants/plaintiffs succeed to claim ownership of the suit land. As already stated above, the best document which the appellants/plaintiffs can rely upon is the letter dated 6.8.1974, however, this letter addressed by the respondent/DDA has no reference whatsoever to the suit property situated in khasra no.225, and therefore, this document cannot help the appellants/plaintiffs to claim ownership rights in the suit property.

13. There is no merit in the appeal. Dismissed. SEPTEMBER04 2017 Ne VALMIKI J.

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