

Badal & Ors. Vs.m/s Niranjn Proptech Pvt. Ltd. & Ors.

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Court : Delhi

Decided On : Apr-25-2018

Appellant : Badal & Ors.

Respondent : M/S Niranjn Proptech Pvt. Ltd. & Ors.

Advocate for Pet/Ap. : Mr. Praveen Suri

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % BADAL & ORS. RFA No.178/2018 25th April, 2018 Through: Mr. Praveen Suri, Advocate. Appellants Versus M/s NIRANJAN PROPTech PVT. LTD. & ORS.

... RESPONDENTS

CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. No.16397/2018 (exemption) 1. Exemption allowed subject to just exceptions. C.M. stands disposed of. Review Petition No.175/2018 (filed by appellants) 2. This review petition is filed by the appellants seeking review of the judgment passed by this Court on 22.2.2018 dismissing the first appeal filed under Section 96 CPC. By the review petition, review is prayed on the ground that a Division Bench of this Court has passed a judgment on 24.11.2004 whereby the notification of the urbanization with respect to the Village Bijwasan has been stayed and consequently it is argued that trial court has wrongly arrived at a RP

No.175/2018 in RFA No.178/2018 Page 1 of 6 finding that land, which is subject matter of the Agreement to Sell and the suit is urbanized, and which finding was reiterated by this Court in para 10 of the judgment passed on 22.2.2018. I note that the issue of urbanization of Village Bijwasan arose because if Village Bijwasan is urbanized then the Delhi Land Reforms Act, 1954 (hereinafter referred to as the DLR Act) will not apply to the suit land and thus Section 33 of the DLR Act benefit of which was claimed by the appellants for pleading illegality of the subject Agreement to Sell would not apply. 3.(i) This first ground on which review is sought, that the Village Bijwasan is not urbanized, is in my opinion not maintainable for two reasons. Firstly, it is seen that the judgment passed in the appeal on 22.2.2018 proceeds on two independent grounds. The independent ground for dismissing of the appeal on merits was, besides the village being urbanized, that even assuming Section 33 of the DLR Act applied even then Section 33 of the DLR Act would not apply as the appellants/sellers did not have remaining with them in the village less than 8 standard acres of land, and since this was the position, hence the trial court held and which finding was upheld by this Court, that the entering into the agreement to sell of the suit RP No.175/2018 in RFA No.178/2018 Page 2 of 6 property was not barred by Section 33 of the DLR Act. This aspect has been dealt with in paras 8 and 9 of the judgment dated 22.2.2018, and therefore on the ground that Division Bench has passed a judgment on 24.11.2004 in W.P.(C) No.2596/2001 staying operation of the urbanization notification that Village Bijwasan is not urbanized, will not change the conclusion of the judgment which also was independently based on non-applicability of Section 33 of the DLR Act taking the village in question not being urbanized. (ii) The second reason for not accepting the argument of the appellants based on the judgment passed by the Division Bench of this Court on 24.11.2004 is that the judgment of the Division Bench of this Court dated 24.11.2004 in W.P.(C) No.2596/2001 only stays operation of the urbanisation notification of the said village till a decision is taken on the minutes dated 25.6.2002 and which were the notes/minutes in the meeting in the office of the Lieutenant Governor of Delhi. There is no plea in the review petition now filed that the final decision on the minutes dated 25.6.2002 has not been taken by the competent authority and which is a sine qua non for the temporary suspension of the urbanization

notification ordered in terms of the RP No.175/2018 in RFA No.178/2018 Page 3 of 6 judgment dated 24.11.2004 in W.P.(C) No.2596/2001. Therefore in the absence of any specific averments by the appellants that no final decision has been taken in terms of the minutes dated 25.6.2002 by the Lieutenant Governor, it cannot be held that urbanization notification continues to remain stayed. In any case, as already stated above, independent of this aspect, the appeal has also been dismissed on account of non-applicability of Section 33 of the DLR Act as already stated above. 4.(i) The second reason which is urged to argue the review petition is that the appellants have now come across a revenue record showing that they have houses in the Village Bijwasan, and which is filed as Annexure P-2, that therefore since the appellants have land in the village, consequently the impugned judgment of the trial court had to be set aside because Section 33 of the DLR Act applied. (ii) Firstly, I do not find any specific averment in the review petition and a ground which urges that appellants after entering into of the Agreement to Sell continued to have land in the said village which is less than 8 standard acres, and therefore the provision of Section 33 of the DLR Act will bar the subject Agreement to Sell. Also, in any RP No.175/2018 in RFA No.178/2018 Page 4 of 6 case, the bar with respect to 8 standard acres is of agricultural land and not abadi land i.e land which is built upon. Once the houses are built up, the land ceases to be agricultural land. In any case however irrespective of anything else the fact of the matter is that this evidence which is now relied upon was very much available for the appellants to be led as evidence before the trial court, but the appellants did not lead such evidence assuming that this evidence supports the appellants. Not only the evidence which is now relied upon by the review petition was not filed in the trial court, the same was not even filed till the first appeal stage when the first appeal was disposed of by the judgment dated 22.2.2018 and now after disposal of the suit as also the first appeal additional evidence cannot be allowed. Therefore, in the facts of the case, a review petition cannot be allowed as if the appellants had filed an application under Order XLI Rule 27 CPC for additional evidence in the first appeal, and that such application was allowed by this Court, and yet thereafter this Court dismissed the appeal on merits.

5. The facts of the present case show that appellants are out and out dishonest persons. Appellants are completely dishonest people RP No.175/2018 in RFA No.178/2018 Page 5 of 6 because under the subject Agreement to Sell they received the entire consideration of the property and also handed over possession of the property subject matter of the Agreement to Sell to the respondents/defendants. This is the finding of the trial court and which has been upheld by this Court. Obviously, the appellants are trying to be clever by half. Some litigants, and if I can say so even some Advocates inasmuch as the Advocate who has argued the review petition is the same Advocate who argued the main appeal decided by the judgment dated 22.2.2018, are never satisfied. The scope of review petition is not to re-argue the matter on merits which has been decided by a detailed judgment.

6. The review petition being an abuse of process of law is dismissed with costs of Rs.50,000/-, and which costs shall be deposited by the review petitioners/appellants with the website www.bharatkeveer.gov.in within six weeks. Receipt be filed within two weeks thereafter in this Court. In case the appellants do not deposit the costs as stated above the Registry will list the matter in Court for taking appropriate action against the appellants/review petitioners. APRIL25 2018/ Ne VALMIKI J.

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