

Hari Ram Nagar & Ors vs.delhi Development Authority & Ors

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Court : Delhi

Decided On : Aug-22-2019

Appellant : Hari Ram Nagar & Ors

Respondent : Delhi Development Authority & Ors

Advocate for Def. : Mr. Dhanesh Relan, Ms. Gauri Chaturvedi

Advocate for Pet/Ap. : Dr. Surat Singh, Mr. Ashutosh Mishra, Mr. Ravi Nagar

Judgement :

\$~18 * + 1. IN THE HIGH COURT OF DELHI AT NEW DELHI CS(OS) 423/2019, IA No.11365/2019(u/S.80 CPC) & IA No.11366/2019(u/O.XXXIX R.1 & 2 CPC) HARI RAM NAGAR & ORS. Through: Dr. Surat Singh, Adv. with Mr. Ashutosh Mishra & Mr. Ravi Nagar, Advs. Plaintiffs versus DELHI DEVELOPMENT AUTHORITY & ORS. Defendants Through: Mr. Dhanesh Relan, St.Counsel with Ms. Gauri Chaturvedi, Adv. for DDA. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW %

ORDER

2208.2019 The four plaintiffs namely (i) Hari Ram Nagar, (ii) Paras Ram, (iii) Nirmal and (iv) Turmal have instituted this suit, for declaration that the plaintiffs are the true legal owners of land bearing Khasra No.310 i.e. 31

(4-10) + 31

(4-10) + 31

(4-10) + 3

(4-10) = (18-00) - (7-05) = (10-15) and, for permanent injunction restraining the defendants namely Delhi Development Authority (DDA), Union of India and Deputy Commissioner of Police, from disturbing the peaceful and settled possession of the plaintiffs of the said land.

2. The suit came up first before this Court yesterday, subject to office objection as to valuation. . However, the counsel for the plaintiffs, instead of arguing on the said objection, stated that the deficiency in Court fee shall be CS(OS) 423/2019 Page 1 of 7 made up in the course of the day and further contended that demolition by DDA with assistance of police was scheduled by the defendants for today. Thus, the suit was listed for today.

3. The plaintiffs have paid the requisite Court fee 4. Though, the counsel for the defendants had not appeared yesterday but finding that Mr. Dhanesh Relan, Advocate was appearing for the DDA in the writ proceeding earlier preferred by the plaintiffs and as disclosed by the plaintiffs, the Court Master was asked to inform Mr. Dhanesh Relan, Advocate of the listing of the suit for today.

5. Mr. Dhanesh Relan, Advocate for DDA appears today.

6. The counsel for the plaintiffs has argued, (i) that the plaintiffs are the recorded owners of Khasra No.310 in Village Khichripur, Delhi 110091; (ii) that the total area of the said Khasra is 18 bighas; (iii) that out of the said 18 bighas, 7 bighas and 5 biswas was acquired in the year 1971 and plaintiffs continued in possession of the remaining land and have their houses constructed thereon and are in settled possession of the said houses; and, (iv) that though no notice has been served by the defendant no.1 DDA on the plaintiffs of any action intended against the houses of the plaintiffs but the DDA has written to the Delhi Police to provide police help for demolition action scheduled for today.

7. It is inter alia the contention of the counsel for the plaintiffs that the houses of the plaintiffs are part of un-acquired land out of Khasra no.310 and not in the acquired land.

8. Sections 20A, 20B and 20C incorporated in the Specific Relief Act, 1963, by amendment thereof with effect from 1st August,2018, are as follows:-

"CS(OS) 423/2019 Page 2 of 7 20A. Special provisions for contract relating to infrastructure project.-

(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project. Explanation.-For the purposes of this section, section 20B and clause (ha) of section 41, the expression infrastructure project means infrastructure Sub-Sectors specified in the Schedule. the category of projects and

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification. 20B. Special Courts.- The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects. 20C. Expeditious disposal of suits.-Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), a suit filed under the provisions of

this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant: Provided that the said period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court. CS(OS) 423/2019
Page 3 of 7

9. The land having been acquired for planned development of Delhi, to find out whether the present suit falls in the category of suits carved out in Section 20A of the Specific Relief Act i.e. involving the contracts relating to infrastructure projects specified in the Schedule to the said Act, and with respect to which suits special provisions as to grant of interim relief and disposal have been made, I have enquired from the counsel for DDA, the purpose for which the land was acquired and is intended to be used.

10. The counsel for the DDA, though does not have full instructions in this regard, vaguely states that it is required for extension of Lal Bahadur Shastri Hospital at Khichripur.

11. If it is so, then the present suit would fall in Section 20A supra. inasmuch as the Schedule to Specific Relief Act, 1963, while prescribing the category of projects which constitute infrastructure projects, includes hospitals within its ambit.

12. The present suit for declaration and injunction, certainly is a suit under the Specific Relief Act. While Section 34 of the Specific Relief Act provides for declaratory decrees, Section 38 thereof provides for permanent and mandatory injunction.

13. I have however considered, whether the present suit, in which there is no contractual relationship between the plaintiffs and the defendants, would attract Section 20A supra.

14. Though Section 20A makes provision for a suit. involving a contract but does not require the relationship between the plaintiffs and the defendants to be contractual. The words involving a contract relating to an infrastructure project are of wide magnitude and would also, in my opinion cover a suit under the Specific

Relief Act, to stall an CS(OS) 423/2019 Page 4 of 7 infrastructure project, but by a plaintiff who has no contractual relationship with the defendants. Such stalling of an infrastructure project would also involve a contract. Judicial notice can be taken of, invariably all infrastructure projects being executed by entering into contracts, either on a turnkey basis or of other nature. Any stalling of an infrastructure project at the behest of anyone would certainly affect the contract under which the said infrastructure project is being executed and would thus involve a contract. Had the legislature intended otherwise, Section 20A would have provided for, suits by a party to a contract to execute an infrastructure project and which the legislature chose not to do so.

15. In interpreting Section 20A, I have chosen the purposive instead of literal interpretation thereof. Literal interpretation of Section 20A would defeat the efficacy thereof. The intent behind Sections 20A, 20B and 20C of the CPC is to ensure that infrastructure projects are not delayed on account of pendency of Court proceedings with respect thereto and/or on account of orders in such Court proceedings.

16. The present suit is thus ordered to be treated as an infrastructure suit and the Registry is directed to make an endorsement in bold to the said effect on the file cover and on the instructions issued in this regard coming into effect, re-number this suit as an infrastructure suit.

17. Once it is so, Section 20A(1) provides that no injunction shall be granted by the Court in a suit involving an infrastructure project.

18. I have asked the counsel for the plaintiffs, to show me from the Shajra of Khasra No.310, the 7 bighas 5 biswas thereof which was acquired and which is in possession of or available to the DDA for the subject project.

19. The counsel for the plaintiffs has drawn attention to Page 74 of Part CS(OS) 423/2019 Page 5 of 7 III-A File, being a site plan of land, but is unable to show the part which is acquired and in possession of DDA. What is pointed out in the plan are only the houses of the plaintiffs. The counsel for the plaintiffs, by waving his hand, states that the acquired land is on the other side and seeks to place the

onus on the defendants to prove the same.

20. Once the plaintiffs have approached this Court for an urgent relief, it is for the plaintiffs to make out a prima facie case and to show the acquired land which is available for the infrastructure project, as distinct from the land with respect to which interim relief is claimed. The infrastructure project cannot be stalled in such a casual manner, without even establishing where the acquired land is, especially when acquisition is admitted.

21. The counsel for the defendants DDA contends that the plaintiffs have not disclosed all the facts and in fact there have been earlier proceedings/suits which have not been disclosed and which disentitle the plaintiffs from maintaining the present suit. Though the counsel for the DDA has sought to show me certain orders from his file but it is deemed appropriate that the DDA files all the relevant documents on which it seeks to rely, so that the matter can be heard.

22. DDA is also directed to depute a Senior Officer to this Court who is in know of all the facts and site, including the purpose for which the land is intended to be used.

23. The counsel for the plaintiffs, in an attempt to take away the suit from the category of infrastructure suit, has contended that the acquisition and the use of the land is not for hospital but for a road.

24. However, the said submission is made without realizing that even then, the suit would fall in the category of infrastructure suits. CS(OS) 423/2019 Page 6 of 7 25. It is made clear that there is no stay and no restraint on any action planned/intended by the DDA.

26. It is also found that the counsels of government/government authorities are not aware of incorporation of Section 20A, 20B and 20C in the Specific Relief Act and are thus not bringing it to the notice of the Courts that a particular lis falls thereunder. The same will defeat the very purpose of the legislative amendment.

27. A copy of this order be forwarded to Secretary, Ministry of Law & Justice, Government of India, to consider familiarising the Advocates for

government/government authorities with the legislative amendment.

28. List on 26th August, 2019. Dasti under signatures of the Court Master. RAJIV SAHAI ENDLAW, J AUGUST22 2019 ak/pp.. CS(OS) 423/2019 Page 7 of 7

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