

Devender Kumar Vs. Delhi Development Authority and Others

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Court : Delhi

Decided On : Sep-09-1998

Reported in : 1998VIIAD(Delhi)105; 1998(47)DRJ297

Judge : M.S.A Siddiqui, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order XXXIII(1)

Appeal No. : I.P.A. No. 17/94

Appellant : Devender Kumar

Respondent : Delhi Development Authority and Others

Advocate for Def. : Mr. Ravinder Sethi, Sr. Adv., ; Mr. Abhilekh Verma and; Mr

Advocate for Pet/Ap. : Mr. Ashok Gurnani, Adv

Judgement :

M.S.A Siddiqui, J.

1. In this suit under Order XXXIII Rule 1 CPC, the plaintiff has, inter alia, claimed the following reliefs:

(i) Pass a decree of declaration in favor of the Plaintiff and against the Defendants more particularly against the Delhi Development Authority i.e., Defendant No. 1 to the effect that the act on the part of the Delhi Development Authority i.e.

Defendant No. 1 to demolish the construction as raised by the Plaintiff over the suit property is in gross violation of the principles of natural justice and Section 30 of the Delhi Development Act, 1957 and as such the act of the Defendant No. 1 is unconstitutional, ultra vires, against Rule of Law and is liable to be set aside and interfered by the Hon'ble Court and as such, be declared ultra vires, unconstitutional and non-existent in the eye of law.

(ii) pass a decree of mandatory injunction directing the Defendants more particularly the Defendant No. 1 to restore the property (construction) as it was before demolition i.e. to restore status quo ante as of the day before demolition(s).

(iii) pass a decree of declaration to the effect that the act on the part of the Delhi Development Authority to dispossess the Plaintiff by use of force or otherwise in any manner whatsoever as on 20th of July, 1994, or on any day, is in gross violation of the principles of natural justice, Rule of Law and the provision of the Public Premises Act, 1971 and as such is liable to be set aside and the Delhi Development Authority is under an obligation to undo of its act as done on 20th of July, 1994, or on any other day.

(iv) pass a decree of mandatory injunction against the Defendants more particularly against the Delhi Development Authority i.e. Defendant No. 1 directing the Defendants to put the plaintiff back in possession of the property in question measuring 5 bighas 13 bids was in Khasra No. 12/5, village Kakrola, New Delhi.

(v) in the alternative, pass a decree of possession in favor of the Plaintiff and against the Defendants more particularly against the Delhi Development Authority i.e. the Defendant No. 1 with respect to the suit property measuring 5 bighas 13 bids was in Khasra No. 12/5 village Kakrola, New Delhi.

(vi) pass a decree for recovery of an amount of Rs. 1 lakh as compensation to be granted to the Plaintiff for the demolition having been done by the Delhi Development Authority as on 8th of June, 1994, and 20th of July, 1994 on the suit land.

(vii) pass a decree of recovery of an amount of Rs. 25,000 in favor of the Plaintiff and against the Defendants with respect to each crop season for past since the date of dispossession and in future till the possession of the suit land is handed over to the plaintiff by means of an interim order or final order.

(viii) pass a decree of declaration that the award No. 1/93-94, relating to village Kakrola, New Delhi is unconstitutional, ultravires being in violation of Section 3B, 5A, 9(3), 16 of the Land Acquisition Act, 1894, and does not effect the rights of the plaintiff qua the suit land i.e. 5 bighas 13 bids was of Khasra No. 12/5, village Kakrola, New Delhi, and be declare as such.

(ix) pass a decree of declaration that the invoking of the provisions of Section 17 of the Land Acquisition Act, 1894, in the present case was uncalled for, unwarranted and is a fraud on the statute and as such, all the subsequent acts of the Defendants be declared to be ultra vires, unconstitutional and non-existent in the eye of law and the Defendants be directed to undo whatsoever has been done on the basis of such ultra vires, unconstitutional and unwarranted act, including that of restoring the possession of the suit land i.e, 5 Bighas 13 bids was in Khasra No. 12/5, Village Kakrola, New Delhi, by means of a decree of mandatory injunction or possession.

(x) in the alternative, the act of taking possession by the Defendant particularly. The Land Acquisition collector and the Delhi Development Authority from the Plaintiff is in gross violation of the proviso to Sub-Section 2 of Section 17 of The Land Acquisition Act, 1894 and as such, is ultravires non-existent in the eye of law and the Defendants more particularly the Delhi Development Authority and The Land Acquisition Collector are under an obligation to undo whatsoever has been done by Defendants to restore the possession of the suit land i.e. 5 Bighas 13 bids was in Khasra No. 12/5, Village Kakrola, New Delhi by means of a decree of Mandatory Injunction or Possession as the case may be.

(xi) without prejudice to all the prayers as mentioned above, the Hon'ble Court may kindly be pleased to direct the Defendants to allot an alternative plot having the same size and value of the suit land i.e. 5 Bighas 13 bids was in Khasra No. 12/5, village Kakrola, New Delhi to the Plaintiff for having acquired and taking

possession of the suit land conferring the same status on the Plaintiff.

(xii) that without prejudice to all the prayers as mentioned above, the Defendants more particularly The Land Acquisition Collector i.e. Defendant No. 4 be directed to pay compensation to the Plaintiff as per the provisions of The Land Acquisition Act, 1894, for having acquired the suit land equivalent to the market value of the suit land.

2. Challenge in this suit is to be validity of the acquisition proceedings and the award No. 1/93-94 relating to the disputed land. On 12th August, 1996, when the case came up for hearing, my learned brother Anil Dev Singh, J. raised an issue: Whether the suit is maintainable in view of the decision of the Supreme Court in Laxmi Chand and other Vs . Gram Panchayat and others : AIR 1996 SC523 Learned counsel for the plaintiff submitted that the present suit is maintainable under Section 9 of the Code of Civil Procedure on the following grounds:-

(a) that there is no express bar of jurisdiction of the Civil Court under the Land Acquisition Act (for short the Act);

(b) that the plaintiff has challenged the validity of the acquisition proceedings and the award in question on the ground that the mandatory provisions of Sections 4, 6, 9(3) and 17(3-A) of the Act have been violated and the competent authority under the Act had not acted in conformity with the fundamental principles of judicial procedure?

(c) that the Collector has not paid compensation to the plaintiff even though he was in possession of the acquired land before his forcible dispossession there from.

3. Reliance has been placed by the learned counsel for the plaintiff on the decision of the Supreme Court in Dhulabhai Vs . State of Madhya Pradesh : [1968]3SCR662 in support of the said contention. On the contrary, learned counsel for the defendant, relying upon the decision of the Supreme Court in Laxmi Chand (supra) and State of Bihar Vs . Dharendra Kumar & Ors. : [1995]3SCR857 , contended that the Act is a complete code by itself and the

plaintiff cannot invoke jurisdiction of a Civil Court to impugn the acquisition proceedings, which have now attained finality.

4. In *Dhulabhai (supra)*, the Apex Court has laid seven principles for the courts to see if the suit was barred under Section 9 of the Code of Civil Procedure or not. It is worth mentioning that there is no express bar of the jurisdiction of the civil court under the Act but it is well settled that jurisdiction of a Civil Court can be excluded even without an express provision. In *Kamla Mills Ltd. Vs . State of Bombay : [1965]57ITR643(SC)* , it was observed that:

'The jurisdiction of a Civil Court can be excluded even without an express provision. In every case, question about the exclusion of the jurisdiction of Civil Courts either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose.'

5. In the instant case, the admitted facts are that the land in question had been acquired by the Government under Section 7 of the Act and the possession of the land had also been taken over by the Government in pursuance of the award No. 1/93-94. In short, the notification under Section 4 read with Section 17 and Section 6 of the Act had become final and the acquisition proceedings had attained finality. It is also undisputed that the plaintiff is not the recorded owner of the land acquired under the Act. On the contrary, the plaintiff claimed title to the disputed land on the basis of his possession thereon. The plaintiff had challenged validity of the acquisition proceedings on the ground that notices under Section 4 read with Sections 17, 9, 10 and 11 of the Act were not issued to him. In *State of Gujarat Vs . Panch Nani Hamam's Pole : AIR 1986 SC803* it was held that Section 4(1) of the Act could not be interpreted to mean that a personal notice to each and every interested person is the requirement of Section 4 and in absence of such a notice acquisition proceedings are vitiated. In a full Bench decision of this Court in *Roshnara Begum v. Union of India 1996 (1) AD 1*, it was held that even if there has been no service of notices under Section 9 and 10 of the Act the same would not affect the acquisition proceedings. In *Nasik Municipal Corporation Vs . Harbans Lal Laikwant Rajpal and others : AIR 1997 SC1701* , it was held that

absence of notice or failure to serve notice under Section 9 of the Act does not invalidate the award made by the competent authority. It is also worth mentioning that under the Scheme of the Act, after taking over possession of the land either under Section 17(2) or Section 16 the acquired land vests in the State free from all encumbrances. Thereafter, there is no provision under the Act to divest the title which was validly vested in the State. Reference may, in this connection, be made to the decisions of the [Supreme Court in State of Punjab Vs . Sadharam : (1997)9SCC544 Market Committee Vs . Krishan Murari : (1996)1SCC311 State of Rajasthan Vs . D.R. Laxmi : (1996)6SCC445 State of Tamil Nadu Vs . Mahalakshmi Ammal : (1996)6SCC445 State of Tamil Nadu Vs . Mahalakshmi Ammal : (1996)7SCC269 : G.M. Telecommunication v. Dr. Madan Mohan Pradhan 1995 Supp. (4) SEC 268; Sanjeeva Nager Medical and Health Coop. Housing Society Vs . Mohd. Abdul Wahab : [1996]2SCR308 .

6. In Laxmi Chand and others (Supra) and State of Bihar v. dhirendra Kumar (supra), it was held by the Supreme Court that the Act is a complete code by itself and a party cannot invoke the jurisdiction of a civil court to impugn the acquisition proceedings Relying on the aforesaid authorities, I find and hold that the present suit is not maintainable.

7. In the result, the plaintiff's suit is dismissed. The plaintiff shall pay costs of the defendants and bear his own.

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