

**Padma Mohan Vs. M.C.D.**

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**SooperKanoon Citation :** [sooperkanoon.com/681918](http://sooperkanoon.com/681918)

**Court :** Delhi

**Decided On :** Feb-05-2003

**Reported in :** 2003IIAD(Delhi)286; 103(2003)DLT182; 2003(68)DRJ699

**Judge :** S. Mukerjee, J.

**Appeal No. :** Suit No. 2405 of 1992

**Appellant :** Padma Mohan

**Respondent :** M.C.D.

**Advocate for Def. :** Nemo

**Advocate for Pet/Ap. :** J.P. Singh, Adv

**Judgement :**

**S. Mukerjee, J.**

1. The Plaintiff claims to have purchased a plot of land measuring about 500 sq. yards bearing No. EC-27, Inderpuri, New Delhi vide registered sale deed dated 4th February, 1956 from coloniser one M/s. 'The Engineering & Industrial Corporation Ltd.

2. In the year 1965, the defendant sought to acquire the suit property from the Engineering & Industrial Corporation Ltd., whereupon the said coloniser, had

made it clear to the defendant that the suit property belonged to the plaintiff.

3. It is the further case of the plaintiff, that in order to protect her interest in the suit property, she filed a suit for permanent injunction on 11/12th May, 1977 in the Court of the Senior Sub-Judge Delhi. However notwithstanding the pendency of the said case, the defendant allegedly took forcible possession of the suit property, and constructed thereon some rooms of a primary school.

4. During the above said suit proceedings, the defendant took a stand that the Corporation vide its decision No. 2024/GW/Corp. dated 3.11.1976, had approved the acquisition of land in dispute and acquisition proceedings in respect thereof, were alleged to be going on.

5. The defendant also made an offer to purchase the suit property from the plaintiff, but as the plaintiff's valuation was not acceptable to the defendant, as such no agreement could materialise.

6. Thus, according to the plaintiff it stands established that the land has neither been acquired in accordance with law nor has any compensation whatsoever been paid to the plaintiff.

7. The Plaintiff thereafter made several representations to the defendant and the Lt. Governor, Delhi for release of the land and/or for an alternative residential plot. The defendant inspired by having considered and acceded to the request of the plaintiff for the alternative plot of 500 sq. yads. to be carved out of the vacant plots No. EC 23 and EC 24, Inderpuri, still has not implemented its decision so far.

8. On 19.8.97, defendant was proceeded against ex parte, but the same was set aside vide order dated 8.12.2000 on the concession of the learned Counsel for the plaintiff.

9. On 18.4.2001, the matter came up for framing of issues, on which date this Court directed that having regard to the controversy involved and before issues are framed, the defendant should produce the relevant file and also that the Director (Estate) should be personally present after appraising himself about the issues involved. Thereafter, on 2.8.2001, the defendant informed that there is no

Director (Estate) in the MCD and the concerned officer is the Additional Deputy Commissioner (Lands) and that on the said date, the new incumbent to the post had not joined.

10. Thereafter, the matter came up on 19.9.2001 when Shri J.P. Aggarwal, Additional Deputy Commissioner (Lands) of MCD was present in the Court and took the stand that the land in question Along with three other plots had been acquired by the Land & Building Department of Government of N.C.T. of Delhi which in turn had placed it at the disposal of MCD, which is running a primary school there. Since this was not a defense contained in the existing written statement which was then on record, this Court granted sometime to the defendant to apply for amendment of the written statement.

11. The matter was thereafter listed on 2.11.2001 when request for adjournment was made on behalf of the defendant. After five months, the matter was listed again on 15.4.2002. During this period, no application for amendment was filed. Thereafter, the matter was again adjourned by about four months but when it came upon 6th August, 2002, neither any application for amendment of written statement or any amended written statement was on record. In these circumstances, after taking note of all these lapses on the part of defendants on 6.8.2002 and the immediately preceding date i.e. on 15.4.2002, the defendant was once again proceeded ex parte on 6.8.2002.

12. The ex parte evidence was already on record from the time of the earlier order for ex parte proceedings, and the documents stood exhibited.

13. Although the matter could have been heard on that date itself for final arguments and disposal, I adjourned the case to 23.8.2002 for hearing when again none appeared for the defendant. After hearing the plaintiff, I reserved judgment on 23.8.2002. Since then, a period of almost one month has elapsed but no one has come forward on behalf of the defendant with any application etc.

14. In the above background, I find that on the basis of the unrebutted ex parts evidence on record, the plaintiff has established that she is the owner of the suit property as per duly registered sale deed in her favor which is Exh. PW-1/2. She

has also deposed generally in favor of her contention that defendant had failed to get the possession of property in the year 1965 and the coloniser had informed the defendant about the rights/interests of the plaintiff.

15. She has also deposed that during the pendency of suit filed by her before the District Courts, MCD took possession of the property by force. It has been her unrebutted deposition that in the said suit defendant took the stand that vide decision No. 2024/GW/CORPC dated 3.11.96, it had approved acquisition of the land and that acquisition proceedings were going on.

16. Plaintiff has further deposed that defendant made an offer to the plaintiff to purchase her property vide letter dated 8.3.79 which is exhibited as PW-1/3. In view of the contents of this letter sent by defendant itself, it is bound to accept the ownership of the plaintiff and the liability to pay a just price for the plot.

17. Despite an earlier ex parte order being recalled and thereafter specific direction and opportunity granted to defendant to place on record its stand regarding acquisition of the said plot by the Government of N.C.T. of Delhi, nothing has been pleaded or otherwise brought on record. In this view of the matter, the suit of the plaintiff is decreed by grant of decree of possession in favor of the plaintiff and against the defendant for possession of plot No. EC-27, Inderpuri, New Delhi as set out in site plan Ex. PW-1/1. However, since the plaintiff has claimed as alternative relief for a money decree for Rs. 40 lakhs as price of plot in lieu of claim for possession of plot, and also as the defendant (MCD) had made an offer to plaintiff to purchase and in alternative to handing over the possession of plot No. EC-27, Inderpuri, New Delhi it is directed that in case defendant (MCD) deposits to the credit of the plaintiff an amount of Rs. 40 lakhs in this Court within a period of six months from the date of this judgment, Along with copy of proposed deed of conveyance as sought in favor of the defendant (MCD), then the suit shall stand decreed instead, for the alternative relief of price of the plot No. EC-27, Inderpuri, New Delhi.

18. The claimed price of plot itself is being considered as adequate and reasonable price in relation to the cited example of sale of similar plot land of equal area being auctioned by Income Tax Department for Rs. 43.50 lakhs in the

year 1993, which other property was reportedly sold at almost double price of Rs. 86.96 lakhs in June 1996; vide Ex. PW-2/2.

19. Even assuming that claim of plaintiff was towards the higher side in 1992 when suit was filed but considering the auction sale price to be of 1993, and also that the payment is to be made now twelve years later, as such the amount of Rs. 40 lakhs is reasonable and adequate amount, also considering that no interest for delay in payment by about 12 years is being awarded or claimed. Since the plaintiff has not brought on record any evidence at all to justify the claim for damages, the prayer for damages at Rs. 36,000/- is declined.

20. Resultantly, the suit of the plaintiff is decreed but only to the above extent with proportionate costs.

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