

**Delhi Development Authority Vs. R.L. Jain and ors.**

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**Court :** Delhi

**Decided On :** Aug-14-1991

**Reported in :** 45(1991)DLT421

**Judge :** S.N. Sapra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100

**Appeal No. :** Regular Second Appeal No. 71 of 1989

**Appellant :** Delhi Development Authority

**Respondent :** R.L. Jain and ors.

**Advocate for Pet/Ap. :** I.S. Mathur and; Y.K. Kapoor, Advs

**Judgement :**

**S.N. Sapra, J.**

(1) By the impugned judgment dated March 18, 1989, Shri, V.S. Aggarwal, Additional District Judge, Delhi, accepted the appeal, relating to the contempt of Court, filed by the appellant, Dda, in part, but, confirmed the decree and judgment of the trial Court in other respect, whereby, appellant herein, was directed to remove superstructure from the plot in question, within a period of 4 months.

(2) Aggrieved by the impugned decree and judgment, appellant has filed the present Regular Second Appeal.

(3) Briefly stated, the facts, giving rise to the filing of the appeal are as under: Shri ft.L. Jain, respondent no. I herein, filed a suit for perpetual injunction, against Union of India, Secretary, Land and Building, Delhi Administration, and Delhi Development Authority to restrain them, from making or proceeding with any construction upon the plot of land in dispute, or disposal of the same, by means of sale, in any manner, whatsoever. \*

(4) According to plaintiff in suit, he was the owner of the plot of land measuring 1 Bigha 11 Biswas, bearing Khasra No. 223, in village Kharera, Mehrauli Road, New Delhi. This plot of land was purchased by plaintiff, from the Government of India, in an open auction, held on April 8, 1960. The plot was conveyed to plaintiff, vide sale certificate dated August, 1, 1961, with clear title and free from all encumbrances. The aforesaid plot of land was acquired, vide awarded dated December, 30, 1961/January, 8, 1962, by the Land Acquisition Collector, Delhi, on the basis of the notification dated November, 13, 1959, issued under Section 4 of the Land Acquisition Act. Plaintiff challenged the acquisition of his land, by filing a suit for declaration, in which plaintiff claimed that the notification, issued under Section 6 of the Land Acquisition Act, was illegal and ultravires. The suit of plaintiff was decreed by the Court of Shri Joginder Nath, Sub Judge, 1st Class, Delhi, vide judgment dated April, 12, 1967.

(5) In other words, the ownership of plaintiff was restored. In the land in question. As defendants threatened to proceed with the constructions on the plot in question, so, plaintiff filed the suit for permanent injunction.

(6) During the pendency of the suit, and on March, 26, 1969, an undertaking was given to the Court by the Delhi Development Authority, to the effect that no construction would be raised on the plot. As, the Dda continued the construction, even after giving an undertaking to the Court, plaintiff sought amendment of the plaint, so as to convert the suit for permanent injunction, into one for mandatory injunction. The amendment was allowed.

(7) Vide judgment dated January, 19, 1980, Shri R.N. Jindal, Sub Judge 1st Class, Delhi, decreed the suit of plaintiff, while holding that up to the date of undertaking dated March 26, 1969, there was no construction, raised by defendants, on the plot in question, and that Dda, by raising the construction, after the undertaking, violated the order of the Court.

(8) Under Section 100 of Civil Procedure Code, the second appeal can be entertained only if, a substantial question of law is involved. In the grounds of appeal various points have been raised. But, the main contention, urged before me by Shri Ishwar Sahai, learned counsel for appellant, was that the suit, filed by plaintiff (respondent no. 1 herein) for permanent injunction, and subsequently converting the same into that of mandatory injunction, was not maintainable under law, as he was not in possession of the plot. According to Mr. Ishwar Sahai, under law, plaintiff ought to have claimed a relief for recovery of possession. In support of his plea, reliance has been placed upon the judgments in C.S. Maha Sabha v. Anna Sohan IO//AIR 1927 Rang 256 Mosque known as Masjid Shahid Ganj and others v. Shromani Gurdwara Parbandhak Committee, Amritsar Air 1938 Lah 369 Jemman v. Raghu A. IRI 770 nss & 12 and Joaquim Mascarenhas Fiuza v. Smt. Jalme Rebello and another (1989) 66 Com Cas 349

(9) On behalf of respondent no. 1, Mr. Y.K. Kapur, argued that admittedly, appellant has no right, title or interest of any kind, whatsoever, in the plot in question. Appellant was a mere trespasser and, the suit, filed by respondent no. 1, was maintainable under law.

(10) Mr. Kapur placed upon the judgments in Somasundram Chelty and others v. Bappu alias Ramiah and others, Indian Cases Vol. Xii page 635; Jethalal Birachand Vakil v. Lalbhai Dalpatbhai Seth, Indian Law Reports 1904 Bom 298 the Milka Singh and others v. Th. Diana and others, Air 1964 Jammu & Kashmir 99; Nurain Dass v. Atma Ram and others ; Prabhoov. Doodh Nath and others : AIR 1978 All 178 and Chauhan Ranchhodbhai Fatehsingh v. Valand Keshavlal Nathlal 1983 Guj L R 779

(11) In the judgments C S. Maha Sabha, Mosque Known as Masjid Shahid Ganj and others, Jemma and Joaquim Mascarenhas Fiuza (supra), it was held that if

plaintiff was out of possession of the suit property, he was not entitled of the relief for injunction, without claiming recovery of possession. It was also held that the relief, under Section 38 of the Specific Relief Act, could be granted only when, plaintiff himself was in possession of the property or when having been deprived of possession, he sought as one of the reliefs, the restoration of the property.

(12) In my view, the facts in C.S. Maha Sabha, Mosque known as Masjid Shahid Ganj and others, Jemma, and Joaquim Mascarenhai Fiuza (supra), were different from the facts and circumstances of the present case.

(13) It is not disputed that respondent no. 1, who filed the suit, is the owner of the plot in question and Dda, the appellant-herein, has no right, title or interest in the plot. Admittedly, from the pleading of the parties, it was established, that when the suit for permanent injunction, was filed by respondent no. 1, plot in question was lying vacant and there was no construction on the same. As, there was an apprehension, that the construction would be raised by the Dda, therefore, respondent no. 1 filed a suit against the present appellant, the Union of India and the Secretary. Land and Building Department, Delhi Administration, to restrain them from raising any construction. On March 26, 1969, an undertaking was given to the Court, by the Dda, to the effect that no construction would be raised on the plot. In spite of this undertaking, given to the Court, Dda raised construction on the plot of land. In these circumstances, the plaint was amended and the relief of permanent injunction was converted into one for mandatory injunction. As, there was breach of the undertaking, the decree for mandatory injunction was rightly granted by the Courts below.

(14) If a person gives an undertaking to the Court, not to raise a construction, but in violation of the undertaking, he raised construction, then, that person must face the consequences. This exactly, what has happened in the present case.

(15) By concurrent finding, the trial Court and the First Appellate Court, have rightly held that Dda and/or the Government has no right, title or interest in the plot in question and also that the construction was raised by the Dda, in violation of the undertaking given to the Court.

(16) In these circumstances, in my view, the appellant has failed to raise any substantial question of law in the present appeal. It will be better for the appellant, to settle the matter amicably with respondent no. 1. This is, however, for the parties to agree. 7. R.S.A. 71/89 is dismissed in liming.

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