

Ram Narain Agarwal and Another Vs. D.D.A. and Others

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Court : Delhi

Decided On : Jan-31-2000

Reported in : 2000IIIAD(Delhi)559; AIR2000Delhi206; 84(2000)DLT530; (2000)125PLR19

Judge : Vikramajit Sen, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 4

Appeal No. : I.A. No. 5367/98 & 9265/99 IN SUIT NO.1302/98

Appellant : Ram Narain Agarwal and Another

Respondent : D.D.A. and Others

Advocate for Def. : Mr. V.K. Sharma, Advocate

Advocate for Pet/Ap. : Mr. Ravi Gupta, Advocat

Judgement :

ORDER

Vikramajit Sen, J.

1. A permanent injunction has been prayed for restraining the Defendants from creating any obstruction or interference in carrying out the additions/alterations and repair work in the property in suit. Interim orders

to this effect were granted on 2.7.1998. Subsequently, the leadings had been completed and the Defendant No.1/DDA has also filed an application under Order XXXIX, Rule 4 for vacation of these interim orders. By consent of Learned Counsel for the parties the application under Order XXXIX, Rules 1 and 2 as well as the aforementioned application has been taken up for hearing and disposal jointly.

2. It has been contended by Shri V.K. Sharma, Learned Counsel for the Defendant that the disputes stand concluded by a decision of a Division Bench of this Court rendered in the case entitled 'Sudershan Kapoor and Another Vs. U.O.I. C.W.P. No. 3351/1991 in which the suit property, i.e. Khasra Nos. 891 and 892 situated in village Nawads Majra Hastal, New Delhi, was specifically in consideration, but the Writ Petition was dismissed. It is not in dispute in the present proceedings that the suit property is also located in these Khasras. It is the contention of the Learned counsel for the DDA that acquisition proceedings in respect of the suit property have been completed. The interests of Plaintiffs, as well as the writ petitioners before the Division Bench, can be commonly traced to Smt. Shanti Devi, wife of Mauji Ram. Mr. Sharma contended that since the Writ Petitioners are similarly placed as the present Plaintiffs the dismissal of the Writ Petition would be sufficient reason to vacate the ex parte ad interim injunction, earlier passed by this Court.

3. Learned Counsel for the Plaintiff has submitted that the land in question before the Division Bench is different to the land in suit and that no acquisition proceedings have been taken in respect of the present land. In the plaint it has been averred that the Plaintiffs had purchased and acquired land measuring 960 sq. yards forming a part of Khasra Nos. 891 and 892 which are now publicly known as Plots 5, 6 and 7 in a residential colony known as Shanti Park, Village Nawada, Delhi. It has been further averred that notices under Sections 4 and 6 had been issued in respect of the whole chunk of land measuring 37377 sq. yards forming part of various Khasra Nos. But acquisition proceedings in respect of the property in suit did not culminate in any acquisition since the suit land was built upon and occupied. Learned Counsel emphasised that possession of the suit land has not been taken by the Land Acquisition Collector. My attention was drawn to a Written Statement filed on behalf of the U.O.I. in the Court of the Additional District

Judge, Delhi in respect of award No. 154/86-87 where it has been specifically pleaded on behalf of the U.O.I. that possession of Khasra No. 890 (0.05) and 891 (1-5) had not been taken by the Government, these tracts of land being built up areas. He has further drawn my attention to the document filed on behalf of the DDA, being Award No. 159(86-87) wherein an area of 317 Bighas and 13 bids was from the Khasra Nos. in question was excluded from that Award. He has further submitted on the basis of the award itself that the entire land in Khasra Nos. 891 and 892 has not been acquired and that at least prima facie, the land owned and occupied by the plaintiff falls within the land not so acquired. He has relied on R.D. Gupta v. Lt. Governor, Delhi Administration, A.I.R. 1987 SC 2097, Amrik Singh Sabharwal v. Kanta Devi, (54) 1994 DLT 401 and Samir Sobhan Sanyal Vs. Tracks Trade Private Ltd. and Others, : AIR 1996 SC 2102 in support of his contention that a person in settled possession has the protection of law and cannot be dispossessed without due process. He has also relied on : [1988] 1 SCR 590 (supra) in which it has been observed that unless possession has been taken, the rights of owners whose land was to be acquired cannot be held to have been extinguished.

4. At this stage of the suit, in granting or declining an injunction, the Court is to consider only three factors, i.e. existence of prima facie case, the balance of convenience being in favor of the applicant, and that he would suffer irreparable loss in the event that the injunction is not granted. In my opinion a prima facie case has been made out by the Plaintiff. There is no controversy or dispute on the question that the Plaintiff is in possession of the property and/or that the DDA has not taken possession thereof. Since the Awards have already been published it would be appropriate to assume that possession has continued with the Plaintiff for the stated reasons that acquisition of certain properties could not be completed because they had been built upon. No uncontrovertible evidence has been placed by the DDA to show that the suit land falls within the property acquired. It has also not been averred that the Plaintiffs are continuing in possession of the land by resisting the efforts of the DDA to take possession of the property. A refusal to grant the injunction prayed for would have the effect of completely non-suiting the plaintiff. The argument of Learned Counsel for the DDA that the ratio of decision of the Apex Court in : [1988] 1 SCR 590 (supra) would not be of any advantage to the Plaintiff since his ownership is not clearly established,

is not sufficient reasons for rendering him ineligible to the protection of the Court. But this question would be an issue yet to be determined by the Court either the DDA should be able to definitively dispel the Plaintiff's prima facie case on this aspect, which in my view has not been conclusively done. Therefore it can only be concluded that the Plaintiff has set up a prima facie case. The Learned Division Bench had dismissed the Petition advocating the above policy inter alia on the ground that the title of THE petitioners before them was inchoate since no registered document of title had been registered. However, the controversy before the Division Bench was as to the legal propriety of the acquisition proceedings. In the present case it is whether the Plaintiffs' possession should be protected. This decision, therefore, would not warrant and justify the DDA filing the present application under Order XXXIX, Rule 4 for the vacation of the suit.

5. The balance of convenience is in favor of the Plaintiff and against the DDA. I would venture to trace the genesis of decision protecting settled possession to the consideration that unless an injunction of the nature prayed for in these proceedings is granted, the interests of the Plaintiff would be irretrievably altered. It is in the interest of justice that pending a final decision in the suit the status quo should be maintained and this can only be achieved if the ex-parte ad interim injunction already granted, is confirmed.

6. Ouster from possession of an immovable property, or other aspects of interests in immovable property have been recognised as causing irreparable loss and injury to the party concerned. Failure to confirm the interim orders already passed are certain to cause irreparable injury to the Plaintiff.

7. For the above consideration I find that no sufficient grounds have been disclosed for vacating the interim orders passed earlier. The application, being I.A. No. 9265/1999 is dismissed. I have declined to award costs in favour of the Plaintiff but have declined to do so since it cannot be said that the application was wholly vexatious. I would, however, confirm the ex-parte ad interim injunction granted on 2.7.1998.

8. I.A. No. 5365/1998 is allowed and the interim orders shall continue during the pendency of the suit.

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