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Court : Delhi

Decided On : May-26-1995

Reported in : 59(1995)DLT262; 1995(34)DRJ129

Judge : Jaspal Singh, J.

Acts : Delhi Development Authorities Act, 1957 - Sections 53B

Appeal No. : Suit No. 1155 of 1978

Appellant : Ram Dulari

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : Nandini Sahni,; Jayant Bhushan and; Sangeeta Chandra, A

Judgement :

Jaspal Singh, J.

(1) SMT.RAM Dulari is the plaintiff. She claims to be the owner of property bearing municipal No. 33-C, Arjun Nagar, New Delhi, which as per the plaint, comprised, of two shops, five rooms, two bath rooms, three kitchens, two W.C.s and one store on the ground floor, five rooms besides one bath room, two kitchens on the first floor and two looms, one kitchen, one Wc, two store rooms besides water tank and a Verandah on the Barsati floor. She alleges that the entire building was

constructed in the year 1956 and that on 10th and 11th October, 1975 the Delhi Development Authority illegally and without authority of law demolished apart of the building. She claims that fearing further demolition she filed a civil suit in which, on October 19, 1975, the Delhi Development Authority was directed to maintain status quo. Her grievance is that despite that order the remaining portion of the building was demolished on November 4, 1975. She has thus instituted this suit for the recovery of Rs. 3,50,000.00 as damages.

(2) Needless to say, the Delhi Development Authority has contested the suit. It has neither admitted the plaintiff to be the owner of the suit property nor has it accepted the position that the building had been built in the year 1956. Rather, as per the defendant Authority its staff having detected construction work being carried on in the year 1971, a notice was issued under section 30(1) of the Delhi Development Act to the plaintiff on 18th December, 1971 and as thereafter further unauthorised construction was reported on 18th January, 1972, yet another notice under section 30(1) was served upon Rattan Chand Joshi, husband of the plaintiff. It is claimed that demolition order was passed on 7th March, 1972 and as on January 25, 1975 more construction was reported, this too led to issuance of a notice and its service upon the plaintiff and subsequent order of demolition. The passing of the order by the civil court on October 17, 1975 has, however, not been disputed by the Delhi Development Authority but it is claimed that the entire demolition work was carried out on 10th October, 1975 and 11th October, 1975 and that no portion was demolished on November 4, 1975. In short it is the case of the Delhi Development Authority that demolition was strictly in accordance with law and as such furnishes no cause of action to the plaintiff. It is further claimed that the suit of the plaintiff is barred by time the same having not been instituted within six months of the accrual of cause of action as required under section 53(B)(2) of the Delhi Development Act, 1957.

(3) In the replication the case as set up by the plaintiff in the plaint has been reiterated.

(4) The pleadings of the parties led to the framing of the following issues:

1. Is the present suit barred by time as provided by and under section 53(B)(2) of the Delhi Development Act 2. Was any valid notice under Section 53(B) of the Delhi Development Act, 1957 served upon the defendant No.1 If not, what is its effect? Opp 3. Is the plaintiff owner of the disputed premises Opp 4. Was the disputed premises constructed prior to 1956 as alleged and if so what is its effect? Opp 5, Was the action of demolition by defendant No.1 illegal, unauthorised and without jurisdiction as alleged by the plaintiff and if so what is its effect? Opp 6. Is the plaintiff entitled to damages and if so how much? Opp 7. Have Civil courts no jurisdiction to entertain and decide the present suit Opd 8. Relief.

(5) Issues No. 1,4 and 5 For the sake of convenience, I propose to take issues No.1, 4 and 5 together. Since section 53-B of the Delhi Development Act, 1957 (hereinafter called the Act) and more particularly its sub-section (2) formed a major slice of the arguments advanced, let me first reproduce the provision. It reads:

'53-B.Notice to be given of suits. -- (1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, Or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made there under until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaintiff contains a statement that such notice has been so left or delivered. (2) No suit such as is described in sub- section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises. (3) Nothing contained in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.'

(6) Two things emerge out clearly from the provision.

(7) First, no suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, shall lie after the expiration of six months from the date on which the cause of action arises. Clearly thus, where this provision applies, a suit shall not be entertained after the lapse of the prescribed period. Secondly, where the section stands attracted, no question on the merits arises. In such a case, the court would be absolved from considering or determining any such question.

(8) One thing more needs to be said before I embark upon the task of untying the knot. It was common case of the parties that the act done, that is, the demolition of the building, was not in pursuance of the Act. The defense was that it was an act 'purporting to have been done in pursuance of this Act'.

(9) Was it?

(10) Before I venture to answer the question posed, a further comment on what was said for and against the proposition would help.

(11) It was contended on behalf of the Delhi Development Authority that since the entire construction was unauthorised and made in the 'development area' declared as such under section 12 of the Act, the Authority could, under section 30 of the Act carry out demolition and that though the procedure prescribed was scrupulously followed, evidence with regard to the same could not be led.

(12) On the other hand it was argued by the learned counsel for the plaintiff that the entire building having been constructed in the year 1956, that is, before the area came to be declared as 'development area', the demolition could not be said to be an act in discharge of the functions of the Authority and that consequently it could not be taken to be an act 'purporting to have been done in pursuance of this Act.'

(13) I think the question as to what construction ought to be put to the phrase 'purporting to have been done in pursuance of this Act' has to be deferred for a while. For, let me first deal with the question as to when the construction was made. It is important in the sense that if the building was constructed in 1956, the

plea that it was unauthorisedly made in 'development area' and as such could be demolished under section 30 of the Act may not be available to the Authority since the area came to be declared as 'development area' only in November, 1958.

(14) During arguments Ms.Sahni chiefly relied upon the report (Ex.P-5) and the statement of Mr.Phool Chand Goel (Public Witness -1). Mr.Goel claims himself to be a Chartered Civil Engineer, a registered architect and an approved valuer. As per him he had inspected the building in the year 1975. As per his opinion the building Was constructed in the year 1956.

(15) What importance should I attach to the Statement and report of Mr.Phool Chand Goel? Hardly any, I think.

(16) MR.GOEL claims at one stage and rather pompously, if I may say so, that he had obtained a degree of Chartered Civil Engineering from the Institution of Chartered Engineers, Anand Parbat, New Delhi. However, in the next breath he had to admit that the said Institution confers neither a degree nor a diploma. As if all this was not enough, he further admitted that the said Institution never ever even imparted any education. This much as regards his claim of having obtained a 'degree'.

(17) Coming to his claim of being a registered architect, interestingly he nowhere claims to have constructed or got constructed any building under his supervision. Besides, he has not said a word which may go to show that he has acquired, by education or by experience any expertise which might entitle him to venture an opinion with regard to age of a building. His opinion with regard to age of the building is thus not admissible. Even otherwise, he did not carry out any test on the material used. He did not even bother to look at the year of manufacture of the bricks used and merely scratched a 'portion of the building' and that too not to determine the age of the building but only to determine 'the quality of the material used'. How did he then determine the age of the building? His answer is: By simply looking at the building. The gentleman, I am told, is dead. What a loss to archeology!

(18) MS.SAHNI was in no mood to shrug her shoulders and give up. She next drew my attention to an Assessment Order passed by the Income Tax Authorities in the year 1975. It contains a claim by the assessed that the building had been constructed in the year 1956. I refuse to be swayed by it. The order relates to the Assessment year 1974-75. It was passed after the demolition of the building. Where are the Assessment Orders and the Income Tax Returns pertaining to the year 1956- 57? It is so easy to make a self-serving statement regarding year of construction after the demolition of the building. And then, can that self-serving statement be taken to be worthy of reliance? Surely not. It is in the Survey Reports of the Municipal Corporation of Delhi that substantial construction work had been done in the years 1971-72. In support let me refer to two such Surveys. They are Exhibits Public Witness 3/10 and Public Witness 3/11. In the Survey Report Ex. Public Witness 3/10 pertaining to the year 1966 only Ground Floor is shown to exist comprising of nine rooms, three kitchens, one store, one bath and one latrine. The next Survey Report (Ex Public Witness 3/11) which is of March, 1972 shows on the Ground Floor six shops, seven rooms, three kitchens and store rooms etc. besides three rooms, three bath-rooms, a Varandah, one store-room etc. on the first floor. What is more, the Survey Report contains three notes. The relevant portion of the first is:

'It is still under construction. To sec again. Sd. 24/2' The second is in Hindi. It reads: 'Moqa dekha Kaarya jari hai' 3/1/72' (Site inspected. The work is in progress.) The third says: 'Back portion on 1st floor completed and occupied w.e.f. 16.3.72.'

(19) This being the evidence, can we rely upon the bald assertion made on behalf of the plaintiff before the Income Tax Authorities after the demolition of the building that it had been constructed in the year 1956? I am sorry. I refuse to eat, chew and digest such evidence. And while lam on it, I may emphasise that it is not the case of the plaintiff that part of the building was constructed in 1956 and part thereafter.

(20) My attention was also drawn by Ms.Sahni to the statements of Ram Sarup (PW-5), Jagir Singh Malwai (Public Witness - 6) and Rattan Chand (Public Witness -7).

(21) Ram Sarup had sold the land in question first by sale deed Ex. PW-1/2 of February, 1956 and thereafter by sale deed Ex.PW 1/3 as in the first sale deed certain Khasra numbers were left out. He says that Rattan Chand Joshi had commenced and completed the construction in the year 1956 itself. As for Jagir Singh Malwai (Public Witness -'6), he claims to have worked as a mason for the plaintiff. He too asserts that construction was commenced in 1956 and that the building comprising of 2-112 storeys was completed in that very year.

(22) Coming to Rattan Chand (Public Witness 7), he is none other than the husband of the plaintiff. As per him too the construction work was commenced and completed in the year 1956 and that the building was constructed by the plaintiff by 'raising loans from the relations, as well as from the savings from her own Stridhan.'

(23) Can we believe these witnesses? Ms.Sahni says yes. I say no

(24) No documentary evidence has been led to prove commencement or completion of the construction. No bills or vouchers have been placed on the record to prove purchase of building material. No supplier of building material has been examined. No evidence has been led to prove the source Of money spent. No accounts have been proved. Though it is claimed that loans were raised, no documentary evidence has been led to prove it. Even the persons who allegedly advanced loans have not been identified and examined. The claim that construction comprising of two and a half storeys was completed in 1956 is falsified by the Survey Reports of the Municipal Corporation already referred to by me above. The evidence led by the plaintiff herself goes to show that she applied for electric connection in 1961. If the building was completed in 1956 why did the plaintiff not apply for the connection in that very year. Why only in 1961? It was slated that supply of electricity and water was commenced in the area only in the Sixties. At least the applications submitted to the Authorities for supply of these amenities could be summoned and proved for they would have shown when the building was constructed.

(25) The fact remains that the plaintiff has failed to prove that the building was constructed in 1956. The area was declared a 'development area' in the year 1958

and the fact that connection for supply of electricity was sought in 1961 leads one to believe that construction had commenced a little before that and that the same had continued in stages well into the seventies. And if that be so, the Delhi Development Authority could take action for its demolition on compliance of certain formalities. The law permitted,it.

(26) However, as already noticed above, there is nothing on the record to prove compliance of the required formalities and that is why the argument that though the action taken was not under the Act, it must be taken to fall within the scope of the phrase 'purporting to have been done in pursuance of this Act.'

(27) This, then, is the lime to reflect on the meaning and scope of the phrase 'purporting to have been done in pursuance of this Act.'

(28) The word 'purport' is defined in the Concise Oxford Dictionary as 'convey', 'state', 'profess', 'be intended to seem'; and the Latin root signifies 'carry forth'. The synonym 'profess' has as two of its definitions 'pretend' and 'openly declare'. It does appear that neither 'profess' nor 'pretend' is an exact synonym for 'purporting' but then we need not go deeper into it since the courts of highest authority have interpreted the words 'purporting to act' in the execution or discharge of the official duly of a public servant.

(29) In Han Ram Singh v. The Crown where the question of sanction under section 197 of the Code was involved, the interpretation which found favor with Varadachariar, J. is slated by him in these terms: .1st

'THERE must be something in the nature of the act complained of that attaches it to the official character of the person doing it'.

(30) In affirming that view, the Judicial Committee of the Privy Council in H.H.B. Gill v. The King observed:

'A public servant can only be said to act or purport to act in the discharge of his official duly, if his act is such as to lie within the scope of his official duty. Thus a judge neither acts nor purports to act as a judge in receiving a bribe though the judgment which he delivers may be such an act nor does a Government Medical

Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.'

(31) And, what does the word 'reasonably' used in Gill's case imply? In Matajog v. Behari : [1955]28ITR941(SC) this word came to be considered. Speaking for the court it was observed by Aiyar J.

'THERE must be a reasonable connection between the act and the discharge of official duly; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.'

(32) We find observations to the same effect in Amrik Singh v. State of Pepsu : 1955 CriLJ865 also.

(33) To summarise, then, there should be a clear relationship between the act complained of and the duties appertaining to the office. Proof of such nexus is indispensable. It matters not even if the act complained of is influenced by an oblique motive [State v. Gorakh Fulaji : AIR1965 Bom124), or the power Itself was not exercisable (Azimunnisa v. Deputy Custodian, E.P. : [1961]2SCR91) or the act was performed in dereliction of official duty [Matajog Dobey v. H.C.Bhari : [1955]28ITR941(SC)

(34) This, 'then, being the import of the words 'purporting to have been done', what we find is that the act of demolition was so integrally connected with the duties of the Delhi Development Authority as to be inseparable from them. Even the allegation that a part of the building was demolished after the Court order directing maintenance of status quo would not take away that act from the ambit and scope of the provision. This being the position, as the suit was not brought within the period prescribed, the entire edifice raised by the plaintiff falls to the ground.

(35) I need say no more on the issues under discussion.

(36) Issues 2,3 & 7 It was not disputed that the plaintiff was the owner of the building, that a valid notice was served and that this court has the jurisdiction to try the suit. I thus decide the issues accordingly.

(37) Issue No.6 In view of my finding on Issue No.1 I need not say anything on this issue. However, since it was a subject of discussion, let me proceed to examine it assuming that the finding on Issue No.1 poses no hurdle.

(38) Vaguely it was suggested by Mr.Bhushan for the defendant that it being allegedly a case of negligence of the officers of the defendant Authority and they having not been proceeded against, no liability can be fixed on the Authority. I find myself unable to sub scribe to this view. If the officers can be sued personally for which there is no dearth of authority, I see no rationale for the proposition that though the officer may be liable, the Authority is not. Gone are the days when distinction between sovereign and non- sovereign functions or governmental and non-governmental functions could be invoked to determine the liability of the State. In any event, the present being a case of exercise of such State function which is neither primary nor in alienable, the State cannot claim any immunity. Anyhow, since the proposition was put vaguely and half heartedly (if I may say so), I need not dwell into it in any further detail. What perhaps would suffice is a reference to what was stated by Lord Blackbum in Geddis v. Proprietors of Bonn Reservoir (1878) 3App. cases 430 at page 435.

'NO action will lie for doing that which the Legislature has authorised, if it be done without negligence, damage to anyone; but an action does lie for doing that which the Legislature has authorised if it be done negligently.'

(39) What, then, should be the measure of damages? I have found it to be quite a tough question. And, surely I am not the first one to feel so. It was Lord Halsbury, L.C. who said in The Mediana (1900) A.O. 113: 'The whole region of inquiry into damages is one of extreme difficulty.'

(40) And, Baron Wilde felt that the question of the measure of damages has produced more difficulty than, perhaps, any other branch of the law (1860) 6 H & N 211

(41) MS.SAHNI leaned heavily on the judgment of the Supreme Court in N. Nagendra Rao & Co. v. The State of Andhra Pradesh : AIR 1994 SC2663 and Smt. Nilabati Behera v. State of' Orissa and Others : 1993 CriLJ2899 . But then, they were cases relating to violation of Constitutional rights. The question involved was the granting of monetary relief to the victims for deprivation of their fundamental rights in proceedings through . petitions filed under Articles 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party. Surely this is not the case here.

(42) On the other hand, Mr.'Bhushan placed reliance on Moss v. Christ Church Rural District Council (1925) 2 K.B.750 which lays down that the measure of damage is the value to the owner of the properly at the time it was destroyed. Unfortunately this too, as I will presently show, docs not smoothen the path of inquiry.

(43) Excepting the solitary bald statement of Mr.Phool Chand Goel and of course, his report to which reference has already been made by me above, there is absolutely no evidence to show as to how much had been spent by the owner on construction of the building or what was its value at the time of demolition. It was a fact exclusively within the knowledge of the owner and she obviously was the best wilness. But then she did not even care to enter into the witness-box.

(44) Coming to Mr.Phool Chand Goel, I have already endeavored above to show that he cannot be taken to be worthy of reliance. Let me make some further additions to what has already been said. He says that the building was constructed in 1956. If that be so, in assessing the cost of construction why is he relying upon the C.P.W.D. Schedule of Rates of the year 1974? In not very unsimilar circumstances the report of the architect was rejected in Diwan Chand v. Tirath Ram 1972 R.C.R. 88. Not only this, Mr.Goel has given estimate with regard to electricity and sanitary installation without giving their details either in his report or in his statement as PW-1 and while giving that estimate he goes beyond the C.P.W.D. Schedule of Rates and provides no legitimate basis for doing so. As if all this was not enough, he determined the quality of the material not by subjecting it to any scientific lest but by 'scratching' it here and there. I, thereforee, feel no

hesitation in rejecting what Mr.Goel says in the witness-box or what he projects in his report Ex.P-5.

(45) We are thus left with no evidence on the value of the properly either at the, time of its construction or at the lime of its demolition.

(46) Should I, then, reject' the claim? Unfortunately for the defendant Authority I am not inclined to. The Survey Reports do show the extent of construction and it does not require Solomon's wisdom to say that it costs money to raise such construction. It is also general knowledge that in the Fifties and Sixties, the cost of construction was 'peanuts' (if I may be allowed to use this American slang). But then, before I venture to assess damages I need to make a few remarks.

(47) It must be kept in mind that the entire construction was illegal and unauthorised and that the owner had reaped dividend by renting it out. Equally significant is the fact that it is not a case of a willful wrong perpetrated by design, or fraud or malice. To me, the wrongful act docs not go beyond what is, in the language of Roman law, purely culpa. The injury caused is surely not the result of dolus or culpa lata.

(48) And, despite all this my inquiry into damages still remains, as said earlier, to be 'one of extreme difficulty'. I feel Rs.50,000.00 would do. And if speculation and uncertainty in measuring the quantum of damages has crept in, I find it inevitable and thus am not apologetic about it.

(49) Relief In view of my finding on Issue No.1 the suit is dismissed but with no order as to costs.