

Lalit Madhan and anr. Vs. Delhi Development Authority and anr.

Lalit Madhan and anr. Vs. Delhi Development Authority and anr.

SooperKanoon Citation : sooperkanoon.com/701046

Court : Delhi

Decided On : Sep-01-1996

Reported in : 64(1996)DLT497

Judge : Devinder Gupta, J.

Acts : [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Civil Writ Appeal No. 741 of 1990 and Civil Miscellaneous Appeal Nos. 5858 of 1994 and 4768 of 1996

Appellant : Lalit Madhan and anr.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Mr. Bhushan

Advocate for Pet/Ap. : Chetan Sharma,; Ravinder Sethi and; Jayant Bhushan, Adv

Judgement :

Devinder Gupta, J.

(1) The petitioner in this petition filed under Article 226 of the [Constitution of India](#) on 2nd March, 1990 prayed for direction against the respondents to forthwith hand

over peaceful, 'vacant and quiet possession of plot bearing No. A-1/171-A, Janak Puri, New Delhi and further to direct the Delhi Development Authority (for short D.D.A.) to pay interest at the rate of 24% p.a. on the amount deposited with D.D.A. since the date of deposit till the date the respondents handover actual physical possession of the auctioned plot.

(2) Facts in brief are that respondent No. I, which is a statutory body, set up and functioning under the provisions of the Delhi Development Act, 1957 and is empowered to transfer land, placed at its disposal by Central Government, by way of sale, exchange or lease or otherwise, in exercise of its powers on 6th June, 1988 fixed an auction for transfer by way of sale on perpetual lease hold rights in respect of the aforementioned plot measuring about 444 sq.metres. The petitioner participated at such auction and was declared to be the highest bidder in respect of the plot at a bid of Rs. 21,05,000.00 . Petitioner's highest bid was accepted. The petitioner deposited 25% of the bid money amounting to Rs. 5,26,250.00 on the same day. On 13th June, 1988, after the petitioner's bid had been accepted, it is claimed by him that he personally visited the site and found the plot to have been encroached upon. He found three trees, three electricity/telephone poles and about 50 odd unauthorised hutments/Juggins on the plot. Through letter Annexure 'C' dated 14th June, 1988, the petitioner brought the fact of the plot having been encroached upon to the respondents. A photograph taken by the petitioner of site was also sent along with his representation to the respondents. The petitioner states that on 27th June, 1988, a request was made by him through letter Annexure 'D' to refer the deposit of the amount covered by the demand notice dated 22nd June, 1988, by which the petitioner was asked to deposit the balance 75% of the bid money until encroachments were removed. Respondent No. I required the petitioner to comply with the demand notice and threatened to order forfeiture of the earnest money by drawing petitioner's attention to Rule 32 of the Rules framed by the respondents. The petitioner, thus, had no option but to deposit the amount of Rs. 15,78,071 .00 on 20th July, 1988, the due date.

(3) Despite petitioner's having deposited the full amount, possession as per the stipulation contained in auction notice .was not delivered. Respondents were bound to deliver the vacant possession of the plot on receipt of the entire amount

of bid money. From time to time the petitioner had been requesting the respondents to have the plot vacated from the encroachers and to deliver vacant possession and ultimately when the respondents failed to do so, the petitioner was left with no other option except to approach this Court by filing the present petition on 2nd March, 1990.

(4) The respondents in their reply, filed on the affidavit of Shri Rajesh Somaal, Officer on Special Duty (H), Delhi Development Authority have not denied that the plot was purchased by the petitioner in auction and 25% of the bid amount was paid at the fall of the hammer. It is also not denied that on 14th June, 1988 the petitioner brought the encroachment on the plot to the notice of the respondents. Thereafter, demand was raised on the petitioner for payment of the balance 75% of the bid ' money. Receipt of letter dated 27th June, 1988 is also not disputed but respondents have denied that any threat, as alleged, was given to forfeit the amount. It is admitted ' that on 20th July, 1988, the petitioner deposited the balance of 75% of the bid money but the possession could not be delivered to the petitioner because the same was encroached upon by anti-social elements. All genuine efforts made by the respondents to remove unauthorised encroachment did not yield any results in getting rid of the encroachment. The respondents have always been willing to hand over peaceful and vacant possession to the petitioner but it could not be done as unauthorised encroachers were there. The respondents denied its liability to pay interest.

(5) After the parties exchanged their affidavits, on 24th February, 1994 an order was passed, when learned Counsel for the respondents stated that the respondents will make every endeavor to deliver possession of an alternate plot to the petitioner. It was directed that the respondents will finalise the offer of allotment of an alternate plot within a period of six weeks; failing which the respondents will pay interest at the rate of 18% p.a. on the deposit from the date the sum was received by it. The case was adjourned to 25th April, 1994. The order passed on 24th February, 1994 reads:

'It is not disputed that the plot was auctioned on June 6, 1988 and the petitioner being the highest bidder deposited Rs. 5,26,250.00 with the respondent, /D DA. He

within 30 days of the demand, deposited a further sum of Rs. 15,78,761 / - with the respondent-DDA. From his side, the petitioner completed all the formalities. The respondent however, was unable to deliver possession as in the meanwhile there was large scale encroachment of the site. The petitioner for no fault of his, has suffered for the last more than 5 years. Neither the possession of the plot has been handed over to him nor interest has been paid on the deposit by the respondent. Learned Counsel for the respondents states that respondent-DDA will make every endeavor to deliver possession of an alternate plot to the petitioner. Having regard to the circumstances of the case, the respondents are directed to finalise the offer of allotment of an alternate plot within six weeks from today, failing which the respondent-DDA will pay interest @ 18 per annum on the deposit from the date the sum was received. List the matter on 25th April, 1994. Director, Lease Administration, Dda should be present on the next date. Copy of the order be given dusty to the learned Counsel for the respondents.'

(6) On the adjourned date, it was observed that the petitioner had not been handed over possession of an alternate plot. Learned Counsel for the respondents stated that compliance of the order was being made by handing over the possession of the same plot, which originally was allotted to the petitioner. The case thereafter was adjourned and ultimately on 13th September, 1994, a statement was made by learned Counsel for the respondents that jhuggies had been got vacated the previous day and that it would take a few days more to clear the site of the jhuggies. Accordingly a direction was made to the respondents to hand over the possession of the plot in question to the petitioner by 30th September, 1994. Byway of an interim relief to the petitioner respondents were directed to pay to the petitioner a sum of Rs. 1,00,000.00 , without prejudice to the respondents' contention that interest is not payable. The Court observed that the question of interest shall be finally decided at the time of final disposal of the writ petition. The respondents were also directed to make an attempt to remove the underground wires, the poles etc. from the plot before handing over possession of the plot to the petitioner. The order, which passed on 13th September, 1994 reads :

'MR.Bhushan, learned Counsel for the-respondent, submits that Jhuggies have been vacated yesterday and it will take a few more days to clear the site of the Jhuggies. I direct the Dda to hand over the possession of the plot in question to the petitioner by 30th September, 1994.. As an interim relief to the petitioner a sum of Rs. 1 lac shall be paid by the Dda to the petitioner and this payment will be without prejudice to the respondent's contention that interest should not be ordered. The question of interest shall have to be finally decided at the time of final disposal of the writ petition and in case the Court directs that the interest need not be paid, the petitioner should be prepared to refund this amount. It is also clarified that the Dda shall make an attempt to remove the underground wires, the poles etc. from the plot before handing over possession of the plot to the petitioner. If there is any problem it shall be reported to this Court. I am told that there is a Peepal tree in the centre of the plot. The same shall be removed. The interim relief which is granted as above is without prejudice to the claim of the petitioner vide order dated 24th February, 1994 as well as the contentions of the respondent. The payment shall be made within a week. Call on 3rd October, 1994 for final disposal in Anum (at the end). C.C.P. will also be listed on that date. Coy of this order be furnished to Mr. Bhushan learned Counsel for the respondent dasti.'

(7) On 6th December, 1994, it was stated at the bar that the petitioner had been duly put in possession of the plot. The Court observed that the question, which survives was the petitioners' entitlement to interest on the amount deposited with the Dda on account of delay on the part of the Dda in handing over the possession. This is how the question, which survives for consideration is being decided by this order, for which learned Counsel for the parties have been heard.

(8) It maybe observed that the petitioner on 16th May, 1994 also filed C.C.P.232 / 94 for taking proceedings against the respondents under the Contempt of Courts Act in not complying with the order dated 24th February, 1994. The said C.C.P.232/94 has also been heard.

(9) In the meanwhile, respondent No. 1 had also filed an application (C.M.5858 / 94) under Section 151 of the Code of Civil Procedure on 26th July, 1994, seeking extension of time to comply with the order dated 24th February, 1994. In the said

application seeking extension of time to comply with the order, it is stated that after the order was passed on 24th February, 1994, the respondents took urgent steps to comply with the order. Since no other plot was available, the only solution for the problem was to get the encroachment removed and hand over physical possession of the plot in question to the petitioner. Before the unauthorised Jhuggies could be removed, the same had to be re-located on an alternative site and the procedure for the same, as per the policy of the Government was to pay a sum of Rs. 29,000.00 per Jhuggi, which amount under the policy is paid by Dda to the M.C.D. where after the M.C.D. does the actual re-location. This amount, which worked out to Rs. 22,33,000 / -, was sanctioned by the Vice Chairman and Finance Member of the Dda on 13th April, 1994 and 16th April, 1994 respectively. Cheque dated 22nd April, 1994 in favor of Additional Commissioner, Mcd was prepared and sent to Mcd along with letter dated 22nd April, 1994. M.C.D. was requested to initiate the work of removal of Jhuggies on top priority basis. A joint survey of Jhuggies cluster was carried out by the staff of Dda and MCD. Despite having sent the cheque and issuing reminders, the Jhuggies cluster was not removed. Another reminder was sent on 7th June, 1994. Order of the Court was also communicated to the Director (Slum & JJ) MCD. It is further stated that Director (Slum & JJ) was further informed of the urgency of the matter. Since respondent No. 1 was under an obligation to put the petitioner in actual peaceful possession of the property under the orders passed on 24th February, 1994, in these circumstances extension of time was sought for delivery of possession to the petitioner.

(10) It is not in dispute that the petitioner was duly put in possession of the plot in question prior to 6th December, 1994, well within the time stipulated in the order dated 13th September, 1994. The question in the light of the circumstances aforementioned is of the payment of interest only.

(11) The facts are not in dispute that the plot was put to auction on 6th June, 1988, on which date 1/4th of the bid money was paid. The balance amount was payable within a period of 30 days. According to the petitioner, under the terms of the bid, after payment of the balance amount and the other amounts payable, possession of the plot was liable to be handed over to the petitioner, where after lease deed

was to be executed and duly registered. The possession could not be delivered by the respondents since unauthorised encroachment had come up on the plot in question, which prevented the respondents in delivering the physical possession to the petitioner. The petitioner's case is that immediately after the bid, respondents' attention was drawn by him to the unauthorised occupants and existence of Jhuggies, when for the first time on 14th June, 1988, a notice was served by him upon the respondents. Despite this notice the petitioner was made to pay the balance 75% amount under the threat of cancellation of the bid and forfeiture of the 1/4th of the bid amount and, thus, the petitioner has to deposit of the entire bid money which remained with the respondents till September /October, 1994 and thus the petitioner was deprived of the interest on the amount from July, 1988 till 1994, namely, for about six years, for which the respondents must be directed to compensate the petitioner by paying interest.

(12) The only defect, which existed, namely, unauthorised encroachments on the plot due to which actual possession could not be delivered to the petitioner was not a latent defect of which the petitioner could not have become aware, when he participated and made his highest bid for the plot. It was a patent defect and encroachment could have been noticed by him. It was for the petitioner to have ensured, before he offered the bid, that the plot is such of which physical possession could be obtained immediately on deposit of the balance amount. It is not unknown in a place like Delhi that unauthorised encroachments by Jhuggi dwellers are made on vacant plots and it is not easy to get rid of the encroachers except by having recourse to law. Before the bid was offered the petitioner ought to have carried out inspection of the plot. Nobody prevented him from doing so. Before the petitioner deposited 75% of the bid money he had become aware of the encroachments and the difficulty, which would have been experienced by the respondents in getting the plot cleared from the encroachers. Despite that' the petitioner chose to make deposit of the 75% At that stage there was an option with the petitioner, either to claim refund of the 1/4th of bid money and claim damages for the injury suffered till then or to take delivery office possession of the plot in the same condition and thereafter claim such damages, as might have been suffered by him, in getting the plot vacated from encroachers. Instead of exercising any option, he decided to deposit the amount and insisted for vacant possession. In

these circumstances the petitioner will be deemed to have acquiesced with the situation that he would get possession only when the encroachers are removed by the respondents.

(13) There is no denial on behalf of the petitioner that under the policy, which is in vogue, for removal of Jhuggies, even if those are unauthorised, on re-location the same can be vacated, for which purpose per Jhuggi, the Dda has to pay a sum of Rs. 29,000.00 to M.C.D. for re-location. where after it is for M.C.D. to take steps to make actual re-location. There is also no dispute on behalf of the petitioner that the respondents paid a sum of Rs. 22,33,000.00 for getting the plot vacated from 77 Jhuggi dwellers, which amount the respondents deposited with the M.C.D. The petitioner having acquiesced in the situation and himself being not remaining vigilant before offering the bid for the plot, when it was petitioner's responsibility and duty to have carried out such inspection of the plot in question, before bidding at auction and for that reason, the petitioner cannot claim any damage on the deposit since the respondents made all genuine efforts and paid a sum of Rs. 22,33,000.00 for getting the plot vacated. This amount deposited by the respondents with M.C.D. is more than the amount, which was deposited by the petitioner with the respondents towards the bid money. The petitioner has already been paid a sum of Rs. 1,00,000.00 by the respondents under the direction of the Court. In the facts and circumstances, the respondents cannot be made to pay any further amount to the petitioner by way of damages or interest.

(14) The inconvenience, if any, caused to the petitioner in not taking prompt action was the controversy, when attention of the respondents was drawn by the petitioner in the year 1988. The respondents did not come in action till orders were passed by the Court to deliver possession of the plot in question or of an alternate plot. The amount of Rs. 1,00,000.00 already paid by the respondents to the petitioner for the delay which occasioned on the part of the respondents in not taking action to get rid of the encroachers, in the facts and circumstances of the case, can be considered to be reasonable and adequate.

(15) The respondents till date have not executed or got registered the requisite perpetual lease deed, which the respondents are bound to do.

(16) In view of the facts and circumstances, the writ petition is allowed only to the extent of directing the respondents to execute and get registered, in accordance with law, the requisite perpetual lease deed in petitioner's favor within a period of two months from today. Parties to bear their respective costs. Rule is discharged. CM.5858/94: It is formally allowed by extending the time up to the date when the possession of the plot was delivered to the petitioner. 503 CM.4768/96 : Dismissed as infructuous. C.C.P.232/94: There is no willful disobedience on the part of the respondents in not complying with the orders passed on 24th February, 1994 and in view of the application (CM.5858/94) having been allowed, the notice is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com