

**Santosh Kohli Vs. Delhi Development Authority and ors.**

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**Court :** Delhi

**Decided On :** Nov-01-1995

**Reported in :** 61(1996)DLT81; 1995(35)DRJ541

**Judge :** S.K. Mahajan, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 14, Rule 5

**Appeal No. :** Interim Application No. 100 of 1986 and Suit No. 2262 of 1990

**Appellant :** Santosh Kohli

**Respondent :** Delhi Development Authority and ors.

**Advocate for Pet/Ap. :** Geeta Mittal,; Jayant Bhushan,; B. Mohan and;

**Judgement :**

**S.K. Mahajan, J.**

(1) This order will dispose of the application filed by the defendant under Order 14 Rule 5 for amendment of issues.

(2) In the scheme of redevelopment of Hudson Line, Kingsway Camp, Delhi the plaintiff, who was the owner and in possession of house No.A-62, Hudson Line, Kingsway Camp, Delhi had been offered an alternative plot which was subsequently cancelled by Delhi Development Authority. Against the alleged

wrongful cancellation of the allotment of alternative plot, a petition being C.W.P. No.2096/86 was filed in the High Court of Delhi and by order dated 16th December, 1987, Delhi Development Authority was directed to allot a flat to the plaintiff and give its possession preferably within two months. A further direction was given by the Court to Delhi Development Authority on 29th September, 1989. It is the case of the plaintiff that the Delhi Development Authority without any notice demolished his house bearing No.A-62, Hudson Line and also damaged the goods of the plaintiff lying in the said house. In spite of the orders of the Court dated 16th December, 1987 and 29th September, 1989, the plaintiff is alleged to have been forced to pay extra money to which the Delhi Development Authority was not entitled. The plaintiff in the present suit has, therefore, claimed the refund of the said extra money as well as damages of Rs.14,00,000.00 on account of wrongful demolition of her house and damage to the property.

(3) In the written statement, the defendant has denied the allegations made in the plaint and it is stated that without prejudice to what has been stated in the written statement, the defendants were protected by the principles of sovereign immunity and as their actions had been taken in good faith in the discharge of their duties, they could not be tortuously held liable. The demolition is stated to have been done after intimation to the residents, including the plaintiff.

(4) On the pleadings of the parties following issues were framed : -

1. Whether the suit is barred by limitation? Opd 2. Whether the proper court fee has not been paid on plaint? If so, to what effect? Opd 3. Whether the action of the defendants are in good faith, in discharge of their duties, protected by principles of sovereign immunity? Opd 4. Whether the defendants had served any notice or passed any order of destruction in respect of A-62, Hudson Line, Kingsway Camp, Delhi and whether the action of destruction/demolition of structure on 10.1.1987 legal and with authority? Opd 5. Whether the action of the defendants in issuing show cause notice for cancellation of the Sfs flat, as per declared policy, legal and bona fide? Opd 6. Whether the defendants No.1 to 4 had any power or authority to over-ride the letter dated 15.11.1983 of the Government of India and the defendants No.7 and 8, and the provisions of the Land Acquisition Act? Opd

7. Whether defendants have any right or authority to cancel the allotment of plot No.1845, Kingsway Camp Redevelopment Scheme in Outram Line, Delhi to the plaintiff or to allot the same or hand over the possession to any other person? Opd

8. Whether the action of the defendants in issuing the show cause notices, cancellations, refusal to hand over possession of the flat and plot No.1845, demolition etc., mala fide, arbitrary, illegal, in violation of contractual and statutory rights of the petitioner, fraud on and misuse of power, malicious, dishonest, without application of mind, suffering from lack of diligence, without power and authority amounting to misuse of public machine? Opp

9. Whether the plaintiff gave up her right in the property No.1845, in view of orders in C.W.No.2090/86? If so, to what effect? Opd

10. Whether the plaintiff is entitled to the relief of possession of the property at Hudson Line, Delhi, detailed in the plaint? If not, to what effect? Opp

11. Whether the plaintiff is entitled to the damages and amounts claimed in the plaint? Opp

12. Whether the plaintiff is entitled to interest on the amount awarded? If so, at what rate and for what period? Opp

13. Relief.

(5) The present application has been filed by defendant alleging, inter alia, that onus of proof of issues 3 to 7 and 9 has been wrongly placed upon the defendants. It is stated that all Government actions are presumed to be legal and bona fide until proved otherwise. It was, therefore, incumbent upon the plaintiff to prove that such actions of the Government were illegal and mala fide. The plaintiff, therefore, wants that onus of proof of issues 3 to 7 & 9 to be upon the plaintiff. No reply to the application has been filed.

(6) Under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private

business, in their relations to the facts of the particular case. Under illustration (e) to Section 114 all official acts are presumed to have been regularly performed. In this case, it is the case of the plaintiff that the action of the defendant in demolishing the structure being No.A-62, Hudson Line Kingsway Camp was without any authority of law and that the cancellation of allotment of alternative plot No.1845, Hudson Line, Kingsway Camp, Delhi was illegal and arbitrary. The specific issue has been framed as issue No.8 whereby onus of proving the illegality and arbitrariness of the action of the defendant in demolishing the structure in Hudson Line and the cancellation of the plot being No.1845 has been placed upon the plaintiff. However, the onus of proving issue Nos.3,5,6 & 7 had been placed upon the defendant.

(7) In view of the onus which has been placed upon the plaintiff in issue No.8, in my opinion, onus of proving issues No.3 and 5 should also have been placed upon the plaintiff. Burden of proving a thing which is presumed to be correct under Section 114 has to be placed upon the person who is denying such thing to have existed. Onus of proving issue Nos. 4, 6, 7 & 9 is, however, placed correctly upon the defendants. The latter part of Issue No.4 is, however redundant in view of issue No.8. While, therefore, reframing issue No.4, I amend issues 3 and 5 as to place onus of proving these issues upon the plaintiff. After amendment issues 3, 4 and 5 will read as under : - Issue No.3. Whether the action of the defendants are not in good faith or in discharge of their duties, protected by principles of sovereign immunity? Opp Issue NO.4 Whether the defendants had served any notice or passed any order of destruction in respect of A-62, Hudson Line, Kingsway Camp, Delhi. Opd Issue NO.5 5. Whether the action of the defendants in issuing show cause notice for cancellation of the Sfs flats, as per declared policy, is illegal and not bona fide? Opp With these observations, the application is disposed of.

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