

**MirajuddIn Vs. D.D.A.**

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**Court :** Delhi

**Decided On :** Nov-18-2003

**Reported in :** 2004(72)DRJ397

**Judge :** R.S. Sodhi, J.

**Acts :** Delhi Development Act - Sections 53B

**Appeal No. :** Regular Second Appeal No. 17 of 1998 and C.M. 636 of 1998

**Appellant :** Mirajuddin

**Respondent :** D.D.A.

**Advocate for Def. :** Deepak Khadaria, Adv.

**Advocate for Pet/Ap. :** S.D. Ansari, Adv

**Disposition :** Appeal allowed

**Judgement :**

**R.S. Sodhi, J.**

1. This Regular Second Appeal is directed against the judgment and order dated 11.7.1997 of the Additional District Judge, Delhi, in R.C.A. No. 8/1997 which appeal was preferred against the judgment and decree dated 12.10.1996 of the Civil Judge, Delhi, dismissing the suit of the plaintiff-appellant. Vide order dated

11.5.1999 the appeal was admitted by this Court, but no substantial question of law was framed.

2. Brief facts of the case, as have been noted by the learned Additional District Judge, are :

'That DDA had initiated a scheme to remove the unauthorised occupants of government land by giving them alternative plots/place for their business/work. On this scheme, defdt. No. 2 to 7 had applied to DDA for giving them alternative plot as they were in occupation of government land unauthorisedly. DDA offered them alternative accommodation in lieu of their vacating and handing over the possession of government land underneath the unauthorised structure after complete removal of the unauthorised structure. Thus, the defendant No.2 to 7 handed over the possession of the vacant land in their occupation earlier to DDA and DDA took possession of the land and gave them alternative plots. This procedure was adopted by the DDA not only in respect of defendants No. 2 to 7 but, in respect of other unauthorised occupants. Plaintiff had filed this suit claiming that defendants No. 2 to 7 were his tenants. He was in occupation of the land underneath earlier. He had built up kacha and pacca shops and gave it on rent to the defendants No. 2 to 7 and DDA has got no right to deal with them directly and DDA had got no right to allot them alternative plots and of taking possession from them of the land underneath.

3. The stand of DDA was that land in question was a Nazul land forming part of Khasra No.1089/29 and 326/19/25 of Mauza Qadam Sharif. It had been given to the plaintiff on 20 years lease in 1935. This lease got terminated on 31.3.1955. Thereafter, the plaintiff had no right or interest over the land but, he continued in occupation and therefore, DDA had charged the damages from him up to 31.12.1969. After that, plaintiff was not found in possession of the land and the land was found in occupation of other persons. The suit for injunction was not maintainable since the plaintiff was not in occupation. Neither the plaintiff had served a notice upon the defdt, as required u/s 53-B of Delhi Development Act nor the plaintiff has properly valued the suit. It was stated that the different persons who were in occupation of the land in question had applied to the Allotment

Committee of DDA for allotment of alternative plot and after considering their case, the encroachers including defendant No.2 to 7 have been allotted alternative plots and vacant possession was with the defendant..

3. The trial court framed following issues :-

1. Whether the alleged action of the defendant is illegal, ultra virus and without jurisdiction? OPP.

2. Whether the suit is bad for non-joinder of U.O.I. As necessary party? OPD.

3. Whether the suit is bad for want of notice u/s 53-B of DDA Act? OPD.

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.

6. Relief.

6. At the very outset, it is clear that when the plaintiff filed a suit, defdts. No.2 to 7 had already been allotted alternative accommodation and they had surrendered the land to DDA. The question of injunction against dispossession, therefore, does not arise as the act against which injunction was sought was already complete.

3. The trial court, on the basis of material on record, returned a finding that notice under Section 53-B of the Delhi Development Act (for short 'the Act') was mandatory in the facts of the present case; the same having not been given, rendered the suit bad. The trial court also decided other issues against the appellant. On appeal, the First Appellate Court upheld the findings of the trial court, in particular that the suit was not maintainable for want of notice under Section 53-B of the Act.

4. I have heard learned counsel for the parties and with their assistance gone through the record of the case as also the judgments under challenge. From a perusal thereof I find that both the courts have concurrently found that a notice

under Section 53-B of the Act was necessary in the facts and circumstances of the case. Both the courts have held that this was not a case of such an urgency as would bring the case within the exception. Further, it has been observed by the First Appellate Court that in the garb of an injunction suit, the plaintiff claims possession inasmuch as the Delhi Development Authority should not deal with defendants 2 to 7 directly but should deal with them through him and thereby allot an alternative plot to him. Such a suit for injunction which, in reality, claims possession or title cannot come within the exception permitting the maintainability of the suit without serving a notice under Section 53-B of the Act. The two courts having given concurrent findings of fact and having further appreciated the law on the issue of service of notice under Section 53-B of the Act, I find no grounds to differ and, therefore, decline to interfere in Regular Second Appeal under Section 100 of the Code of Civil Procedure.

5. R.S.A. 17 of 1998 and C.M. 636/1998 are dismissed with no order as to costs.

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