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Court : Delhi

Decided On : Apr-19-2011

Judge : Rajiv Sahai Endlaw, J.

Acts : [Delhi Municipal Corporation Act, 1957](#) - Sections 198, 199 ;

Appeal No. : W.P.(C) 11900/2009.

Appellant : Khurji Devi.

Respondent : Mcd and ors.

Advocate for Def. : Mr. Ajay Arora, Adv.

Advocate for Pet/Ap. : Mr. R.K. Saini; Mr. Sitab Ali Chaudhary, Adv.

Judgement :

1. The petitioner claims to be the owner of property No.WZ-110-B, admeasuring 85 sq. yards, in the Colony of Sant Garh, M.B.S. Nagar, New Delhi, an unauthorized regularized colony of Delhi. The petitioner bases her title on a Sale Deed dated 18 th January, 2008 and further claims that at the time of purchase by her, the aforesaid property was already built up; reliance is also placed on ration card and electricity bills of the earlier occupants of the property. It is further the case of the petitioner that when she after purchase commenced the works of repairs / renovation on the property, objection thereto was taken by the respondent No.4 Sh. J.S. Vohra in occupation of adjoining property and a civil suit was also filed by the respondent No.4 impleading the petitioner and the MCD, to restrain the

petitioner from making illegal construction on the property and to command the MCD to take action with respect to the unauthorized construction being raised by the petitioner; it was the case of the respondent No.4 in the said plaint that the said plot of land was municipal land and in the Layout Plan of the locality earmarked for a Health Centre.

2. It is further the case of the petitioner that the respondent MCD and its officials respondent Nos.2 and 3 without any notice to the petitioner and without in any manner verifying the position with respect to the aforesaid property, on 6th February, 2009 suddenly demolished the construction on the said property and fenced the land with a barb wire and put up a sign board thereon proclaiming the same to be belonging to MCD and meant for a Health Center. Upon the representations of the petitioner to the MCD not meeting with any success, the present writ petition was filed for quashing the action taken on 6th February, 2009 of demolition and dispossession of the petitioner from the property / land aforesaid and for restraining the MCD from interfering in any manner with the possession and enjoyment of the petitioner of the said land. Relief of compensation against the MCD was also claimed.

3. Notice of the petition was issued and vide interim order dated 10 th November, 2009 which continues to be in force, the respondents were directed to maintain the status quo qua title, possession and construction on the property.

4. The respondent No.1 MCD and the respondent No.4 have filed counter affidavits in which they have reiterated that the land belongs to the respondent No.1 MCD and is shown in the Layout Plan as meant for a Health Center and that the Sale Deed relied upon by the petitioner does not pertain to the said property / land and the petitioner was an encroacher over public land and has been accordingly evicted. It further transpires that the respondent No.4, after the action aforesaid on 6 th February, 2009 did not pursue the suit preferred by him which stands dismissed in default.

5. The counsels for the parties have been heard. The counsel for the petitioner with reference to registered Sale Deed in favour of the petitioner and Sections 198 & 199 of the [Delhi Municipal Corporation Act, 1957](#) has contended that once the

title to the aforesaid land is shown to have been vested in the petitioner under the Sale Deed aforesaid, the MCD could have taken possession thereof from the petitioner only by acquisition thereof and not forcibly as has been done. It is further contended that though the MCD in its counter affidavit has claimed the land as belonging to it but has not disclosed as to how it became the owner of the property. Reliance is placed on the judgment dated 30 th October, 2003 of this Court in C.W.P. No.481/1997 titled Atma Ram Jain v. MCD & Ors. contending that this Court in the said judgment in similar facts has held the action of the MCD as illegal and without jurisdiction and restrained the MCD from interfering with the possession of the petitioner therein.

6. The counsel for the respondent No.1 MCD has contended that the petitioner has in the present petition not claimed the relief of declaration of her alleged title to the property nor has sought possession which admittedly has been taken over by the respondent No.1 MCD and thus the writ petition is not maintainable. It is further averred that the action dated 6 th February, 2009 of the respondent No.1 MCD was in accordance with the Zonal Plan.

7. The counsel for the respondent No.4 has argued that the petitioner has not challenged / impugned the Zonal Plan in which the land is admittedly shown as earmarked for a Health Center and is thus not entitled to the relief.

8. In view of the disputes raised in the counter affidavit of the respondent No.1 MCD as to the title of the petitioner to the land/property with respect to which action was taken on 6 th February, 2009 and to the identity of the property mentioned in the Sale Deed relied upon by the petitioner, the relief claimed by the petitioner in this writ petition cannot be granted without a factual enquiry on the said aspects and for which factual enquiry this writ petition is not the appropriate fora. Such factual enquiry would entail examination and cross examination of witnesses and may be also a demarcation/survey for determining the identity of the land. As far as the reliance placed by the petitioner on the judgment of this Court in Atma Ram Jain (supra) is concerned, the writ in that case was preceded by a suit for declaration of ownership and possession of the land and which suit was decided against the MCD and in execution of decree in which suit, the

possession of the land had been taken from the MCD. The Court also expressly noted that there was no dispute in that case as to the identity or demarcation of the land. It was in these facts that it was observed that MCD without disclosing any title to the land could not have taken action with respect thereto. The facts in the present case are not the same and thus the judgment in Atma Ram Jain has no application.

9. The writ petition is accordingly dismissed. However, no order as to costs.

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