

**K.L.Sachdeva Vs. M.C.D**

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**Court :** Delhi

**Decided On :** Apr-29-2013

**Judge :** M. L. Mehta

**Appellant :** K.L.Sachdeva

**Respondent :** M.C.D

**Advocate for Def. :** Mr. Rahul Srivastava, Ms. Suparna Srivastava

**Advocate for Pet/Ap. :** Mr. Anil Grover, Ms. Noopur Singhal

**Judgement :**

\* THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 1797/2003, IA 69/2012

Date of Decision:

29. 04.2013 K.L.SACHDEVA ..... Plaintiff Through: Mr. Anil Grover with Ms Noopur Singhal, Adv. for the plaintiff. Versus M.C.D D+ Through: ..... Defendant Mr Rahul Srivastava for Ms Suparna Srivastava, Adv. for defendant MCD. CORAM: HONBLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J.

1. This is a suit for declaration, injunction and damages. It was initially filed against the Municipal Corporation of Delhi (MCD). Subsequently, vide order dated 02.08.2006, the Janak Park Plot Holders Welfare Society (Regd.) was impleaded as Defendant No. 2 (hereinafter referred to as the Society). The plaintiff is stated to be owner in possession of house No. WZ 406/R, Janak Park, Hari Nagar, Clock Tower, situated over plot No. 43 out of Khasra No. 1496, Village Tihar, New Delhi.

Land of the said plot is stated to be admeasuring 427.5 square yards. He stated to have purchased this land vide registered conveyance deed dated 28.03.1963 executed by Assistant Settlement Commissioner, Ministry of Rehabilitation, Govt. of India. His case is that he raised pucca construction on 220 square yards and thereafter built two rooms on additional area of 100 square yards and left vacant remaining area of 107.5 square yards. A Civil Suit for permanent injunction being suit No. 278/1995 was filed by him against one Anil Maria in Civil Court in respect of the vacant area of 107.5 square yards. In the said suit, on 21.07.1995, the Civil Judge passed order of status quo in respect of the said portion of 107.5 square yards. It is alleged that the Society, the defendant No. 2, herein, filed a civil suit against him, being Suit No. 430/1998, alleging him to be trying to encroach upon the areas of plot No.44 & 45 earmarked as public parks. The MCD was also one of the defendants in the said suit. In the said suit, the MCD had stated to be having no concern with the suit land as it was the Ministry of Rehabilitation, Govt. of India which was the custodian of the said land. In the said case, an application under Order 39 Rule 1 and 2 CPC was filed by the plaintiff therein (Society), which came to be disposed vide order dated 29.07.2002 restraining the plaintiff herein from raising any illegal construction on the plots bearing No 44 and 45 of Khasra No. 1496. The plaintiff carried the matter in appeal which was dismissed by the learned ADJ vide order dated 23.05.2003. During the pendency of the said suit No. 430/1998, the society (defendant No.2) filed another suit being suit No. 707/2002 against the plaintiff. All the three suits, noted above, are stated to be pending.

2. The cause of action for filing of the instant suit, as averred by the plaintiff, is that after the dismissal of his appeal on 23.05.2003 by the learned ADJ, the MCD officials demolished a portion of the suit premises on 16.09.2003 and thereafter the Horticulture Department started digging the trenches therein. The plaintiff has sought declaration that he is the owner in possession of the suit premises i.e. House No. WZ-406/R, situated in plot No. 43 admeasuring 427.5 square yards out of khasra No. 1496, Village Tihar and has also sought injunction against the defendants from dispossessing him from the suit premises or any part thereof. He has also claimed damages of Rs.2.00 lakh on account of demolition carried by defendant No. 1 MCD.

3. The common case as set up by both the defendants in their written statements is that plaintiff is, in fact, owner of plot No. 43, admeasuring 220 square yards in Khasra No. 1496, village Tihar and has encroached upon the adjacent plots No. 44 and 45 which are earmarked as public park as per the plan regularized by the MCD in 1962 and as also shown in modified regularized plans of Janak Park dated 16.01.1982. The background facts of the colony of Janak Park are stated that it came into existence in 1958 and the plaintiff had purchased the plot No.43 measuring 220 square yards in 1958. Each plot in the colony was of the area of 200 square yards excepting the corner plots which were of 220 square yards. It is stated by defendant MCD that earmarking of the lands for roads and parks was mandatory for regularization of plans and that the plots No. 44 and 45 were earmarked for public park, but, the plaintiff taking advantage of his plot being adjacent, encroached upon these plots. The MCD also stated that it was not a party in the civil suit No. 278/1995, filed by the plaintiff against Anil Maria and that with regard to the stand taken by the MCD in the suit No. 430/1998 that it had no concern with the suit lands, an inquiry was ordered by the Commissioner. The MCD also submitted that the demolition was carried on the plots No. 44 and 45 of Khasra No. 1496 which were earmarked as park and no demolition was carried on any portion of the building on plot No. 43 of the plaintiff and thus there is no question of any damages suffered by the plaintiff.

4. The defendant No. 2 Society corroborating the averments of defendant No. 1 MCD, also further stated that initially one Keshav Das Sahani had carved out this colony of Janak Park in 1957 claiming himself to be the owner of the lands of Khasra No.1495, 1496 and 1499 of Village Tihar and he started selling the plots to different persons, some of whom were refugees. Later on it came to be known that he was not the owner of the lands and an FIR was lodged against him on 23.09.1959. The plaintiff had also purchased plot No. 43 from Mr. Keshav Das Sahani. When the lands of these khasras were put to auction by the Settlement Commissioner, Mr. Keshav Das Sahani was made to participate in the auction and got the bid for Khasra No. 1495, 1496 and 1499, village Tihar and deposited 10% of the bid amount. He, however, failed to deposit the balance. And that is how the defendant No. 2 Society came in direct correspondence with the Settlement Commissioner. It is averred that subsequently society gave a representation to the

Government with the details of the purchasers as also the areas in their actual possession. The statement prepared by the Society also showed the areas of the plots in occupation of purchasers, the shares of the plot holders to the common areas for roads and parks and the total area of each plot holder. It is averred that for calculation of above areas, the same development plan was followed upon which Mr. Sahani sold in 1958-59 and as per the regularization plan approved by defendant MCD subsequently. It is averred that the plaintiff, like others, had purchased the plot of the size of 220 square yards and 147.5 square yards was his share towards road and 60 square yards towards park and, thus, in this way his area was shown as 427.5 square yards. It is stated that in the conveyance deed as executed by the Settlement Commissioner, the said practice was followed to all the individuals who purchased plots in these khasra numbers strictly as per the list of defendant No. 2 Society. It was essential as the whole auction price of lands of these Khasras was to be paid due to non-payment of balance by Mr. Sahani and also because the possession and title of the persons was to be validated. This unauthorized colony was regularized by the MCD on 23.03.1962 as per the site plan submitted by the defendant No. 2 Society.

5. It is the defendants further case that the plaintiff has been in different positions in the management committee of defendant No. 2, Society since its inception till 1987 and he is well aware of all these facts, but has suppressed and concealed the facts and has not come to the Court with clean hands. The defendant Society stated that the plaintiff was in possession of Plot No. 43 measuring 220 square yards since 1958-59 and has been paying municipal tax upon his declaring of this plot measuring 220 square yards and having come into possession thereof after purchase from Keshav Das Sahani. It is denied that the plaintiff came into possession of this plot from the date of the conveyance deed as executed by the Settlement Commissioner in July 1963.

6. The suit that was filed by the plaintiff against Maria is alleged to be collusive. It is alleged that it was only on 24.05.1998 that the plaintiff started raising construction on the land measuring 107.5 square yards meant for park, and which forced the defendant No. 2 Society to file suit No. 430/1998 against the plaintiff. Further, it is also averred that relief of declaration sought is not maintainable and

was time barred inasmuch as defendant No. 2 Society had filed suit No. 430/1998 against the plaintiff in 1998 challenging his right in plots No. 44 and 45 and thus cause of action, if any, for seeking declaration, had arisen in 1998. Further the suit is also stated to be not properly valued as per the market value of the land which was Rs.40,000/- per square yards and thus it was liable to be rejected under Order 7 Rule 11 CPC.

7. The plaintiff filed replications to the written statements of the defendants and reiterated what was stated in the plaint. On the pleadings of the parties, the following issues were framed: (i) Whether the plaintiff is owner and in possession of the suit property i.e. WZ 406/R, Janak Park, Hari Nagar, Clock Tower, situated over plot No. 43 out of Khasra No. 1496, Village Tihar, admeasuring 427.5 sq yards, as shown in red colour in the site plan? OPP. (ii) Whether the plaintiff is entitled for a decree of permanent injunction as prayed? OPP. (iii) Whether the plaintiff is entitled to a decree of recovery for a sum of Rs.2,00,000/- on account of damages suffered by him? OPP. (iv) Whether plaintiff was an encroacher of public land and raised illegal construction on the plot (nos. 44 and

45) which is meant for a public park? OPD 1 & 2. (v) Whether the suit is barred by the provision of DMC Act, 1957 for want of service of mandatory notice upon defendant No. 1? OPD-1. (vi) Whether the written statement filed by defendant No. 2 has been signed and verified by the competent persons? OPD-2. (vii) Whether the declaratory relief claimed by the plaintiff is barred by limitation OPD-2 (viii) Whether the suit of plaintiff has not been properly valued? OPD-2. (ix) Whether the regularization plan which has been stated in para no. 1 of the preliminary objections of written statement filed by the defendant No. 1 was implemented. If so, its effect? OPD-1. (x) Relief. The plaintiff examined himself as only witness as PW-1. The defendant MCD examined its officer B.P. Sharma as the only witness as DW-1. There was no assistance rendered by the defendants or their counsel. The learned counsel appearing for the defendant MCD did appear at the time of final hearing, but, did not make any submission. Despite that he was permitted to file written synopsis, even the same has not been filed. The conduct of MCD in conducting the case before the Civil Judge made the learned Judge to direct inquiry by Commissioner. Even in the instant case, the conduct of the MCD was

specifically noted by this Court on 02.08.2006 when cost of Rs.50,000/- was imposed on the defendant MCD and filing of personal affidavit of the Commissioner was ordered. However, I have heard the learned counsel for the plaintiff and perused the records. My findings on the issues are thus: Issues No. 1, 2 and 3.

8. There is no dispute that the plaintiff was the owner in possession of the property bearing municipal No. WZ-406/R, Janak Park, Hari Nagar which was on Plot No. 43 of Khasra No. 1496, Village Tihar. According to the plaintiff he had purchased this plot from the Settlement Commissioner by way of a registered conveyance deed dated 28.03.1963. There cannot be dispute as regard to the conveyance deed that it was in respect of plot No. 43 of Khasra No. 1496 and measured 427.5 square yards. However, that is vehemently disputed by the defendants. Their case is that the plaintiff had purchased plot No. 43 out of Khasra No. 1496 from Keshav Das Sahani like others and that all the plots in that area were of 200 square yards excepting the corner ones which were 220 square yards. It is explained by the defendant Society that since Mr. Sahani was not the owner of the land, an FIR was registered against him and thereafter he gave a bid of the lands to the Settlement Commissioner, but, ultimately he defaulted and that is how the land was purchased by the individuals who were in possession of those plots by making payments to the Settlement Commissioner. It was stated that like all others, this plot No. 43, when acquired by the plaintiff, measured 427.5 square yards and that is how the size of this plot was mentioned in the conveyance deed. It was stated that the entire lands of the Khasra were to be purchased from the Settlement Commissioner, but, before the execution of the conveyance deed, the MCD had made regularized plans of the colony in the year 1962 and mandatorily earmarked some portions of those plots for the roads and the parks. It was in this way, that the plot bearing No. 43 was shown as admeasuring 427.5 square yards in the conveyance deed, but in fact, as per the regularized plan of MCD, it was a corner plot admeasuring 220 square yards. The remaining part of this land out of 427.5 square yards, was stated to be forming part of plot No. 44 and 45 which were earmarked for public parks.

9. In the statement made by the defendant No. 2 Society to the Settlement Commissioner, the details of the individuals with their plot numbers and total areas of the plots and the area in their occupation was submitted. A look at this would show that all the individuals had purchased the plots of somewhat bigger sizes, but were in possession of the plots of lesser sizes. In the case of plaintiff, it specifically shows that area of the plot was 427.5 square yards, whereas the area in his possession was 220 square yards. Area of 147.5 square yards was his share towards road and 60 square yards towards Public Park. Similarly, the shares of all the individuals towards roads and parks were shown. The plea of the defendants appears to be logical that when the plots were sold by Mr. Sahani, these were of different sizes, but when the regularized plans were prepared, certain areas were earmarked for roads and parks and the share of each individual was taken out from their holdings.

10. The plaintiff in his membership form of the defendants society had categorically stated to be in possession of plot No. 43 admeasuring 220 square yards and the property number of this plot being WZ406/R. This is also not disputed by the plaintiff. It was also suggested to him that he had paid developmental charges for the plot measuring 220 square yards vide receipt No. 74054 dated 11.10.1984, which he denied, though he stated that he had paid the same in good faith of Mr. Puri and Mr. Bhalla. Further, in reply to a notice under Section 126 of DMC Act for the assessment years 1988-89 and 1989-90 also, the plaintiff had shown himself to be in occupation of 220 square yards of WZ-406/R. This property admeasuring 220 square yards has been assessed to house tax in his name since then. In a complaint that was made by the plaintiff himself to the police vide DD No. 13 on 09.04.1988, he had stated to be owner in possession of plot No. WZ406/R and alleged the office bearers of the defendant society intending to open its office in the plot adjoining to his and earmarked as park and belonging to MCD. It was suggested to him in his cross examination that the area of 427.5 square yards, as mentioned in conveyance deed Ex. PW1/1 was arrived at after including his plot area plus his share of area of public park and road and that this area was included in the plot just to facilitate payment of whole khasra to the Settlement Commissioner. Though, while denying the suggestion that he held various posts in the societys managing committee during 1959 to 1982, he

admitted that he was its President in 1971-72.

11. From the above, it would be seen that though the size of the plot bearing No. 43, which was shown in the conveyance deed was 427.5 square yards, but, as noted above, it was because of the fact that the plaintiff like all others had purchased plot from Mr. Sahani. Because of the non-payment of the balance auction price by Mr. Sahani, the balance payment was agreed to be payable by the defendant No. 2 Society to the Settlement Commissioner for the entire lands of Khasra No. 1455, 1456 and 1499. It was in this way that the sizes of the plots of the individual persons, as shown in the list submitted by defendant No. 2 Society to the Settlement Commissioner, were reflected in the conveyance deeds in their names, whereas, in fact, at the time of regularization of the colony in 1962, the MCD, as mandatorily required, had earmarked certain portions of the lands for the roads and the public parks. This was the requirement as per Section 313 of Delhi Municipal Corporation Act for the approval of the regularization plan of the colony that the lay out plan submitted were necessarily to reserve lands for streets, open spaces and public park etc. Contribution of each individual towards roads and public parks was reflected in detail in the plan submitted by the defendant No. 2 Society. Thus, the conclusion comes out to be that though the plaintiff was owner of the plot No. 43 of which municipal number is WZ-406/R, and the size of which plot when purchased was 427.5 sq. Yards, but, in reality the actual area of this plot was 220 sq. Yards, the rest of the same being the share of the plaintiff towards roads and public parks.

12. The submission of the learned counsel for the plaintiff is that no portion of the land of the plaintiff could be taken by the MCD without acquisition and payment of compensation thereof. I am in complete agreement with the learned counsel for the plaintiff. This was in fact held by the Supreme Court in the case of Pt. Chet Ram Vashist Vs. Municipality Corporation of Delhi, 1995 AIR 430. In the said case the resolution passed by the Corporation directing the appellant to transfer the space for tube well, school and parks in its favour free of cost was held to be depriving the owner of his property and vesting it in corporation against law.

13. The Apex Court elaborately dealt with the provisions contained in sections 312 to 330 of Delhi Municipal Corporation Act and observed that reservation or allotment of any site in the layout plan for any open space, park or school is to be provided by clause (b) of Section 313 DMC Act and that the open space left for such purposes in the private colony cannot vest in the Corporation. The Apex Court, however, further held as under: Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property by itself.

14. Further, as observed by the Apex Court, even a plain reading of sub-section (5) indicates that the land which is subject matter of a layout plan cannot be dealt with by the owner except in conformity with the order of the Standing Committee. In other words, the section imposes a bar on exercise of power by the owner in respect of land covered by the layout plan, though it does not create any ownership right or interest of the Corporation in the land so specified. As is noted above, it would be seen that the regularization plan was sanctioned in March 1962 by the defendant/MCD and that a modified regularization plan was also approved in 1982. The plaintiff was not an ordinary resident of the colony, but, actively involved in its management, even being the President of the Colony for considerable time. He was rather a party to the submission of layout plans of the MCD for regularization. He did not raise any objection at any point of time and

rather, as noted above, accepted himself to be the owner of the plot measuring 220 sq. yards, as discussed above. The MCD has been exercising right over the disputed land, as a public park, as per the regularization plan since 1962 and the right to manage the same as it was in the public interest. Since the defendant MCD has not acquired the ownership rights in the suit lands, but, as discussed above, was within its rights to manage the same for public park, as per the judgment of Chet Ram Vashist (supra), it was entitled to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded in 1962.

15. Since the demolition that was carried by the defendant MCD was, admittedly, not on any portion of the plot admeasuring 220 sq.yards, but on the adjoining land, which are described as plots No. 44 and 45, earmarked for public park, the plaintiff is not entitled to any damage or injunction since he had ceased to be legal owner thereof and was holding the same for the benefit of the society or the public in general. Issue No.4 16. In view of my findings on the above issues, the plaintiff was certainly an encroacher of public land forming part of plot numbers 44 and 45 which were meant for Public Park. Hence, issue No. 4 is decided against the plaintiff. Issue No.5 17. Having seen above that the layout plan relating to regularization of the colony was sanctioned in March 1962 and that the suit land forming part of plots described as plots No. 44 and 45, was meant for Public Park, the plaintiff, as discussed above, is left with no legal ownership thereof. The defendant MCD was under an obligation to manage the suit land as a public park.

18. In view of this, the suit was apparently barred for want of service of mandatory notice upon the defendant MCD as per Section 478 of Delhi Municipal Corporation Act. Issue No

19. There is nothing on record to suggest that the WS signed and filed by defendant No. 2 is not signed and verified by a competent person. Mr. M.L. Puri, who had signed and verified the WS on behalf of defendant No. 2 as President of defendant No. 2, was competent to sign and verify the same. The issue is, thus, decided in favour of defendant No.

2. Issue No

20. The suit was filed in September 2003. The defendant Society had filed suit No. 430/1998 against the plaintiff in 1998. It is discussed above that the plaintiff was well aware of the land adjoining to his house No. 406/R, having been earmarked as public park in the regularization plan in 1962, but, no action was taken by him. Further, cause of action, if any, to seek declaration arose in his favour in 1998 when the defendant society filed civil suit No. 430/1998 against him. The suit having been filed much after the expiry of limitation period of three years is, apparently, barred by time. The issue is decided against the plaintiff. Issue No

21. Nothing has been said or brought on record by defendant No. 2 to aver that suit was not properly valued. This issue stands decided in favour of the plaintiff. Issue No

22. The defendant society has placed on record the regularization plan (Ex. DW1/P1) and also modified regularization plan (Ex. PW1/D8) of the colony. The regularization plan was approved in 1962 and was modified in 1982. The residents of the colony including the plaintiff have already paid developmental charges as also the house tax to the authorities. A suggestion was given to DW-1 Mr. B.P. Sharma, the Deputy Director of MCD that these plans Ex. PW1/D8 and Ex. DW1/P1 are not implemented, which he categorically denied.

23. From all this, it is evident that the regularization plan of the colony had been duly implemented by the defendant MCD. The issue is decided against the plaintiff. Relief 24. In view of my findings on the issues as above, the plaintiff is not entitled to any relief.

25. The suit is dismissed. M.L. MEHTA, J.

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