

(2018) 11 DEL CK 0110

In the Delhi High Court

Case No : Regular First Appeal No. 822 Of 2018

Guru Ravidas Jainti Samaroh Samiti (Regd.)

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 20-11-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96
Delhi Development Act 1957 — Section 22(1)
Land Acquisition Act, 1894 — Section 16

Citation : (2018) 11 DEL CK 0110

Hon'ble Judges : Valmiki J.Mehta, J

Bench : Single Bench

Advocate : Anil Nauriya, Sumita Hazarika, Chiranjeev Kumar, Mukesh Sachdeva, Ajay Verma, Dhanesh Relan, Gauri Chaturvedi, Mrinalini Sharma

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of

the Trial Court dated 31.07.2018 by which the trial court has dismissed the suit for declaration and permanent injunction filed by the appellant/plaintiff,

and by which suit the appellant/plaintiff had claimed rights in the land/property bearing Khasra Nos. 123(4-6), 124/1(4-5) out of 45-14, 122 (2-17) and

124 min (0-19) said to contain 20 rooms and halls. The total area of the land as stated above claimed by the appellant/plaintiff would be approximately

12,350 sq. yds situated in Village Tughlakabad, New Delhi.

2. The facts of the case are that the appellant/plaintiff filed the subject suit pleading that one Sh. Roopa Nand, was the ancestor of the

appellant/plaintiff/society, who had occupied the suit lands about 160 years ago. Sh. Roopa Nand had dug out a pond/Johar in Khasra No. 123 which was known as 'chamar wala johar'. A hut was built by Sh. Roopa Nand in Khasra No.124/1. The land is pleaded to have been shown as 'Shamlat' (village common land) belonging to Gaon Sabha on the commencement of the Delhi Land Reforms Act, 1954. The possession of the appellant/plaintiff is said to be in the revenue records from the year 1959 till date. It was pleaded that the appellant/plaintiff built a Guru Ravidas Mandir, Ashram and Samadhi of Sh. Roopa Nand and other Saints as also four rooms as part of Dharamshala. The society was pleaded to have been registered in 1959 and the Mandir is said to have been inaugurated by the Minister Sh. Jagjiwan Ram on 01.03.1959. The appellant/plaintiff is also said to have built a school in the name of Guru Ravidas. In terms of the Delhi Land Reforms Act, it was pleaded that though the land was formally transferred to the Central Government, the same was only a book entry. It was further pleaded in the plaint that when the possession of the land was taken by the Central Government, a barbed wire fencing was constructed around the suit land and separate area was provided by the respondents/defendants to access the subject property and the structures therein. It was alternatively pleaded by the appellant/plaintiff that they have become the owner by adverse possession as they have been in possession of the suit land since over 30 years. It was pleaded that the respondents/defendants cannot demolish the suit property without any notice. [At this stage, I may note that essentially the contesting respondent is the respondent no. 2/defendant no.2/Delhi Development Authority (DDA)]. Accordingly in the suit, reliefs of declaration of ownership of the suit land and injunction against the DDA was claimed from interfering in the occupation and enjoyment by the appellant/plaintiff of the suit land and property situated thereon.

3. The suit was contested by the respondent no. 2/defendant no. 2/DDA. It was pleaded that the land comprised in Khasra Nos. 123, 124/1 and 124/2 was acquired under the Land Acquisition Act 1894, and Awards were passed being the Award No. 1533/1962-1963 (Ex.PW1/DX1) and Award No. 1430/1962-1963 (Ex.PW1/DX2). Vacant physical possession of the land under these two Awards was taken by the DDA on 24.04.1963 in terms of

possession proceedings of even date. DDA pleaded that the appellant/plaintiff had time and again sought to encroach upon the government land but

such action of the appellant/plaintiff was thwarted. A demolition programme was undertaken by the concerned branch of DDA on 05.11.1992 with

respect to the unauthorized construction of Khasra No. 123 and 124/1, and which action was also taken to prevent further unauthorized construction.

So far as the land situated in Khasra No. 122 is concerned, the same was acquired by the Award No. 67/1986-1987 (Ex.PW1/DX4). Vacant, physical

possession of this land was taken on 22.09.1986 in terms of the possession proceedings of even date (Ex.D2W1/1). Since the appellant/plaintiff had

filed a writ petition in this Court being W.P. (C) No. 2008/1986, though the respondent no. 2/defendant no. 2/DDA took possession, but it did not carry

out any demolition with respect to some construction in the land of this property. It was pleaded by the DDA that the appellant/plaintiff in the garb of

status quo order was trying to further encroach upon the land. The structures on the land were pleaded to be completely unauthorized. The suit lands

were pleaded to have been handed over to the DDA on 24.04.1963 qua Award Nos. 1533/1962-1963 and 1430/1962-1963 and on 22.09.1986 qua

Award No. 67/1986-1987. DDA is pleaded to have issued the necessary notification under Section 22(1) of the Delhi Development Act 1957, on

03.01.1968 so far as the two Awards are concerned, and on 10.10.1986 so far as the third Award is concerned. It was pleaded that there is no entry

in the revenue record showing the appellant/plaintiff as the owner. The title claimed by the appellant/plaintiff under the doctrine of adverse possession

was also denied. Suit was hence prayed to be dismissed.

4. After pleadings were complete, the trial court framed the following issues:-

1. Whether the suit without service of notice under Section 53B of the Delhi Development Act and Section 80 of the Code of Civil Procedure is maintainable?

2. Whether the suit is properly valued for the purposes of Court fees and jurisdiction?

3. Whether the plaintiff is a society registered under the Societies Registration Act and suit has been signed, verified and instituted by an authorized person on behalf of the plaintiff?

4. Whether the plaintiff has become owner by adverse possession of the property

in khasra numbers 123,124/1,122 and 124 min? If so to what effect?

5. What is the effect of acquisition of the suit land by the defendant under the Provisions of Land Acquisition Act and issue of the notification under

Section 22(1) of the Delhi Development Act?

6. To what relief, if any, is the plaintiff entitled.â??

5. The following aspects are required to be examined in this appeal:-

(a) Whether the appellant/plaintiff was at all at any time the owner of the suit land?

(b) Whether the suit lands were acquired by the government under the Land Acquisition Act and possession thereof taken, whereby it was the

government which became owner of the suit lands, and which land was transferred thereafter to the respondent no. 2/defendant no. 2/DDA?

(c) Whether the appellant/plaintiff has become owner by adverse possession?

(d) Whether the appellant/plaintiff is entitled to the relief of protection of its structures existing in the suit property, and which essentially will be one

small room painted in white used as Guru Ravidas Mandir having a dome, with a small courtyard in front thereof, two other small rooms and in which

the Pujari is said to be living. Essentially this is the construction which was found by the Local Commissioner appointed in the suit, and who gave his

report dated 28.05.1997. Also, there exist about 4 samadhis on the suit land.

6. So far as the claim of the appellant/plaintiff to the ownership is concerned, the appellant/plaintiff has not filed and proved on record any document

whatsoever that Sh. Roopa Nand or the appellant/plaintiff society was ever the owner of the suit land. In fact, the suit lands are subject matter of the

Awards which have been proved and exhibited by the respondent no. 2/defendant no. 2/DDA as Ex.PW1/DX1, Ex.PW1/DX2 and Ex.PW1/DX4.

Not only the land was acquired, physical and vacant possession of the lands was also taken in terms of the possession proceedings which have been

proved as Ex.PW1/DX5 and Ex.D2W1/1. Clearly therefore, the appellant/plaintiff is not the owner of the suit land and the appellant/plaintiff cannot

succeed on the ground that the appellant/plaintiff is the owner of the suit land. Once possession was taken by the Central Government under Section

16 of the Land Acquisition Act in terms of the possession proceedings proved, and exhibited in the trial court, the Central Government became the

owner of the land, and which land has been thereafter transferred to the DDA, and hence respondent no. 2/defendant no. 2/DDA is now owner of the suit land.

7. Appellant/plaintiff also cannot claim ownership by adverse possession because adverse possession has to be proved for over a continuous period of

30 years. Also, the adverse possession has to be proved to the satisfaction of the Court by clinching documentary evidence. Courts look at disfavor to

the claim of adverse possession because the claim of adverse possession commences in a wrong and continues against a right. In the facts of the

present case, it is seen that except making a self serving averment by a witness of the appellant/plaintiff, Sh. Rishipal, who deposed as PW-1, no

documentary evidence whatsoever has been filed to show that the appellant/plaintiff has been in continuous and uninterrupted possession of the suit

land for over 30 years. Trial court therefore was completely justified in holding that the appellant/plaintiff cannot be held to be the owner of the suit

land by adverse possession. It is also noted that an endeavour to encroach and commit illegal acts of possession of government lands, are looked at

disfavor by Courts, and the trial court has in this regard rightly relied upon various judgments in paras 26 to 29 of the impugned judgment, including the

oft cited judgment of the Supreme Court in the case of Premji Ratansey Shah & Ors. v. Union of India & Ors JT 1994 (6) SC 585, and which

judgment holds that Courts should not grant injunction with respect to government/public lands. Nothing could be argued before this Court on behalf of

the appellant/plaintiff by placing reliance of clinching documentary evidence for 30 years to show that the appellant/plaintiff had become owner of the

suit lands by adverse possession.

8. In fact, learned counsel for the appellant/plaintiff during the course of arguments did not very strenuously dispute the findings of the trial court with

respect to the ownership of the suit lands presently vesting with the respondent no. 2/defendant no. 2/DDA and that the appellant/plaintiff could not be

the owner by adverse possession, however, reliance was placed by the learned counsel for the appellant on certain observations in para 21 of the

judgment of the Supreme Court in the case of Murari and Others vs. Union of India and Others (1997) 1 SCC 1,5 to argue that the appellant/plaintiff,

since has a Guru Ravidas Mandir on the spot, as also some structures and

samadhis, the appellant/plaintiff be held entitled to make a representation to the DDA and that the DDA should be directed to consider the representation and take a decision as observed in para 21 of the judgment in

Murari's case (supra).

9. Learned counsel for the respondent no. 2/defendant no. 2/DDA has very vehemently opposed the submission of the appellant/plaintiff that the

appellant/plaintiff should be allowed to continue to retain the relevant illegal structures as existing on the suit land because the ownership of the suit

land indubitably belong to the respondent no. 2/defendant no. 2/DDA. It was also argued on behalf of the respondent no. 2/defendant no. 2/DDA that

the suit lands are green lands and therefore no structures can be allowed to exist on the suit land.

10. As regards this last argument, I would like to note that it is the admitted case of the respondent no. 2/defendant no. 2/DDA that on account of the

status quo Order dated 29.09.1986 passed by the High Court in W.P. (C) No. 2008/1986 filed by the appellant/plaintiff, no demolition of whatever

structures as are presently existing in the suit property, have been carried out. Whatever structures are existing, are essentially a small temple with a

courtyard, two small rooms, and a few samadhis. Though the writ petition W.P. (C) No. 2008/1986 stands dismissed in terms of the Order dated

19.08.2004 passed by a Division Bench of this Court, the aforesaid structures of the small temple and other structures have not been demolished by

respondent no. 2/defendant no. 2/DDA till date. Though I do not agree with the arguments urged on behalf of the appellant/plaintiff that the

appellant/plaintiff is entitled to the benefit of para 21 of the judgment in the case of Murari (supra), inasmuch as in Murari's case (supra)

possession of the lands was not taken over by the government, and in the present case possession of the lands has already been taken over by the

government in terms of possession proceedings which have been proved and exhibited in the trial court, however in the opinion of this Court, the

respondent no. 2/defendant no. 2/DDA can consider that the temple and the two rooms can be shifted from the existing location to barely about 400

ft. at the boundary/periphery of this land (which is green area as per DDA) and there would be an independent access to the small temple with two

rooms by the appellant/plaintiff society and its members without the need to use

or access any other area/land of the respondent no. 2/defendant no.

2/DDA. In fact, to be fair to the respondent no. 2/defendant no. 2/DDA, such an argument without prejudice to the right of the respondent no.

2/defendant no. 2/DDA, was made by DDA itself (and subject to this position permissible in accordance with the law) and which stand the respondent

no. 2/defendant no. 2/DDA took up only in the interest of justice, but the counsel for the appellant/plaintiff on instructions from the office bearers of

the appellant/plaintiff rejected the offer to shift the temple to a very nearby place at the periphery of this subject land which is a green area.

Therefore, in my opinion, though the appellant/plaintiff is not entitled to the benefit of the observations in para 21 of the Murariâ??s case (supra) of

making a representation to DDA for its consideration, yet in case the appellant/plaintiff within a period of four weeks from today makes a

representation to the respondent no. 2/defendant no. 2/DDA that the present small one room temple called as Guru Ravidas Samadhi with a small

courtyard in front thereof, and two small rooms, be allowed to be relocated a small distance away at the boundary/periphery of the patch of the green

land, then the respondent no. 2/defendant no. 2/DDA will liberally consider such representation. It is however clarified that the area to which the

temple and two rooms are shifted, will be an identical area to the area where presently the small temple and two rooms are situated. I may also note

that as far as samadhis are concerned, they are very small samadhis, and they can continue to exist in the green area, of course without any legal right

being granted to the appellant/plaintiff or its members or anyone else for the said samadhis. Also, if the appellant/plaintiff agrees to make a

representation even to shift these samadhis adjacent to the area to which the temple and the two rooms are now to be re-located, the respondent no.

2/defendant no. 2/DDA will consider such representation by giving some minor additional land/area, similar to the area where few samadhis being

approximately 4 in number are presently located.

11. In view of the aforesaid discussion, there is no merit in the appeal which is dismissed, but liberty is given to the appellant/plaintiff to make a

representation subject to the terms as stated above.