

(2014) 11 DEL CK 0141

In the Delhi High Court

Case No : CS(OS) No. 354/2014, I.A. Nos. 2332/2014, 9547/2014 and 11477/2014

Karamjit Kaur

APPELLANT

Vs

Govt. of NCT of Delhi

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 81
Delhi Municipal Corporation Act, 1957 — Section 507
Land Acquisition Act, 1894 — Section 11

Citation : (2014) 11 DEL CK 0141

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Amita Gupta, Advocate for the Appellant; Gautam Gupta, Advocate for the Respondent

Judgement

Manmohan Singh, J.—The plaintiff has filed a suit for permanent and mandatory injunction in respect of property bearing No.C-599 measuring 150 sq. yards forming part of Khasra No.23/1-2, situated within the revenue estate of Village Devli (now forming part of unauthorized colony C-Block, Sangam Vihar, Delhi) (hereinafter referred to as the "suit property") against the defendants.

2. When the suit was listed on the first date, the objection was raised by the defendant with regard to maintainability of the suit. In order to ensure that the suit is not infructuous, an assurance was given by the learned counsel for the defendants not to take precipitative action unless the hearing and order about its maintainability is passed.

3. Brief facts stated in the plaint are that the plaintiff purchased the suit property by way of title documents and after making necessary repairs and renovations, occupied the same for her family for residential purposes and since then the plaintiff has been in exclusive possession and enjoyment of the suit property along with all civic amenities. It is averred in the plaint that from the year 1980

onwards, C-Block, Sangam Vihar, New Delhi started developing as an unauthorized colony and Municipal Authorities provided all civic amenities such as roads, electricity, water supply, telephone, transportation, schools etc. The concerned SDM vested the entire land of C-Block, Sangam Vihar in Gaon Sabha under Section 81 of the Delhi Land Reforms Act, 1954 in the year 1985 though possession of houses/plots remained with the respective owners which was informed by the defendants vide official order dated 12th December, 2007.

4. It is stated that the defendant No.1 along with Government of India framed policies from time to time to regularize and recognize unauthorized constructions in Delhi, details of which has been given in para 8 of the plaint and even before the finalization of the regularization policies by defendant No.1 with approval of the Government of India, the applications were invited from the Resident Welfare Associations(RWA) of all unauthorized colonies in Delhi with their layout plans and other necessary details as per the guidelines of the policies and format developed accordingly.

5. It is further stated that in order to avail the benefits of the regularization policy of the defendant No.1, the RWA of the C-Block, Sangam Vihar, Delhi also filed an application for its regularization along with its layout plan including the suit property in December, 2007. Thereafter, on 17th September, 2008 the defendant No.1 after fulfilling the requirement of Clause 4 of the Regulations of Regularization of unauthorized colonies issued a Provisional Regularization Certificate to the colony of the plaintiff.

6. It is alleged that one Sangam Vihar Vikas Manch allegedly represented itself to be association of residents of C-Block, Sangam Vihar and approached this Court by filing of Writ Petition (C) No.905/2005 for protection of vacant lands in the locality and to allocate the same to different agencies for providing civic amenities. Vide order dated 20th October, 2005, the said petition was disposed of with the direction that the respondents will ensure that no further construction is carried out in C-Block, Sangam Vihar. Possession of 94 plots which were on government land would be resumed and the suit property of the plaintiff which was on private land was protected.

7. It is also the case of the plaintiff that one of the office bearers of the said Vikas Manch residing just opposite to the house of the plaintiff and due to enmity between them filed false complaints with the defendant authorities and the suit property of the plaintiff was also malafidely included in the list of un-built up plots by the said office bearers of Vikas Manch, though the house of the plaintiff has been in existence for more than 22 years. In the year 2006, on the basis of such false complaints, the officials of the defendants had arbitrarily and discriminately threatened to demolish the houses of some occupants including the plaintiff's by treating the same as a "public land".

8. Thereafter, the plaintiff along with other aggrieved persons filed Writ Petition Nos.4317-4322 of 2006 to save their houses from action of sealing which were

disposed of vide order dated 10th May, 2007, on the ground that they involve disputed questions which cannot be satisfactorily adjudicated upon in the writ jurisdiction.

It is alleged that one Gyan Singh lodged false complaint to the local police against the plaintiff alleging that the house of the plaintiff is un-authorized and on the basis of this false complaint, the officials of the defendants came to the house of the plaintiff and illegally and arbitrarily threatened to dispossess the plaintiff on 18th November, 2013 and on 24th January, 2014.

9. Thereafter, the plaintiff filed Writ Petition (C) No.7355 of 2013 on 20th November, 2013 for a writ to mandamus to defendants not to dispossess the plaintiff from her property but the same was dismissed as withdrawn as disputed questions of facts were involved. The plot of the plaintiff or any other surrounding lands has never been notified under the Land Acquisition Act, 1894 or acquired by making an award under Section 11 of the said Act, at any point of time, therefore, the land over which the suit property is situated has been free from all encumbrances. The land on which the suit property is built up is a private land like each and every house forming an integral part of C- Block, Sangam Vihar colony, therefore the same shall be kept on equal footing with the other properties or lands in the colony and the same is entitled for regularizations. Moreover, like other properties in C-Block, Sangam Vihar colony, status quo is required to be maintained in respect of the built up property of the plaintiff which is protected under the NCT of Delhi Laws (Special Provisions) Second Act, 2011 till 31st December, 2014.

10. It is alleged that the Government of NCT of Delhi/Central Government are seized with the issue of regularization of the unauthorised colonies in Delhi under Section 507 of the Delhi Municipal Corporation Act, since the year 2002 and thereafter, vide ordinance dated 19th May, 2006.

11. Written statement has been filed by the defendants wherein it has been contended that the plaintiff has not placed on record a single document which shows that the plaintiff is in the occupation/ownership of the suit property. The documents i.e. General Power of Attorney and Agreement to Sell placed by the plaintiff are not even registered and as such no reliance can be placed on the same.

12. The defendants carried out a survey from 15th November, 2003 to 19th November, 2003 and found that the suit property was situated within the Gaon Sabha Land and not on the private land and was lying vacant.

13. It is admitted in the written statement that writ petition was filed in this Court bearing WP(C) No.905/2005 titled as Sangam Vihar Vikas Manch vs. Union of India and Ors. with the prayer that some unscrupulous persons are continuing to construct on the plots and revenue authorities are not taking any action. During the course of hearing this Court had ordered for the survey of vacant land situated in C-Block, Sangam Vihar, New Delhi. In pursuant to the aforesaid order,

the officials of the defendants carried out survey on 1st February, 2006, 6th February, 2006 and 7th February, 2006 of the vacant land wherein the suit property was situated. During the course of survey, it was found that the plaintiff has done illegal construction on the suit property and in order to remove the illegal encroachment by the plaintiff on the suit property, a demolition was carried out on 2nd February, 2009 and the suit property was retrieved and possession was taken.

14. It is alleged in the written statement that the concerned SDM had followed the mandatory provisions of law and was pleased to conditionally vest the entire land under Section 81 of Delhi Land Reforms Act, 1954, now forming part of C-Block, Sangam Vihar, in Gaon Sabha, Devli in the year 1985. It is further stated that the plaintiff herein have not placed on record a single document which shows that the plaintiff is in the occupation/ownership of the aforesaid property in question. It is further stated that the General Power of Attorney, Agreement to Sell placed by the plaintiff herein are not even registered and as such no reliance can be placed upon the same.

15. It is admitted by the defendants in the written statement that the plaintiff and other occupants filed Writ Petition bearing No.4317-4322/2006 restraining the defendants from sealing, or taking any other coercive action including demolition against the properties bearing No.C-565, C-597, C-598, C-599, C-531 and C- 299B situated in the area of village Sangam Vihar wherein this Court vide order dated 10th May, 2007 was please to dismiss the writ petition on account of the aforesaid properties being located in an unauthorized colony. Thereafter, the plaintiff herein filed another Writ Petition bearing No.7355/2013 against the defendants herein restraining the defendants with the same prayer as aforesaid Writ Petition No.4317-4322/2006 wherein this Court vide order dated 6th January, 2014 had dismissed the said writ petition as the same was withdrawn by the plaintiff herein. It is averred by the defendants that this Court vide order dated 6th January, 2014 has not given any liberty to the plaintiff herein to file a fresh suit in accordance with law. Since the liberty was not granted by this Court to the plaintiff herein for filing the present suit with the respective subject matter, the instant suit is liable to be dismissed on the principle of res-judicata.

16. This Court vide order dated 19th February, 2014 granted status quo order only till the next date of hearing i.e. 24th March, 2014. Thereafter, on 24th March, 2014 this Court did not extend the status quo order. Therefore the defendants demolished the suit property of the plaintiff. It is stated by the learned counsel for the defendants that the present suit has become infructuous in view of the fact that the suit property has already been demolished by the defendants

17. Learned counsel for the plaintiff has stated that the plaintiff deposited development charges of Rs. 7875/- on 4th April, 2001; Rs.2625/- on 22nd March, 2001 and on 20th March, 2002 to Delhi Vidyut Board, Rs. 63/- towards property tax on 29th July, 2005. The plaintiff also paid electricity charges to

Pundir Associates, authorized by Delhi Vidyut Board during the year 2005; General Power of Attorney and Agreement to Sell and other documents executed by Sh.Krishan Lal and Smt. Rehana Praveen for transfer of the property in dispute to plaintiff.

18. Learned counsel for the plaintiff also stated that Delhi Land Reforms Act, 1954 does not apply to land which has been built upon and is no more an agricultural land. Disputes cannot be decided by Revenue Authorities when agricultural land has been converted into unauthorized/authorized colonies. Thus, vacant land cannot be vested under Section 81 of the Delhi Land Reforms Act, 1954.

19. The learned counsel has also stated that the suit property was never retrieved nor its possession was ever taken over by the defendants and the plaintiff has been in possession of the same since 1st April, 1985.

Learned counsel for the plaintiff has relied on the judgment of Patri Vyapar Mandal Delhi (Regd.) Vs. M.C.D. Town Hall and Others, wherein it has been held that Central Act would have primacy over Administrative orders.

20. Having gone through the plaint and the written statement filed by the defendants as well as from the entire gamut, it appears to this Court that the suit filed by the plaintiff is not maintainable and the same is liable to be dismissed on the following reasons :

(i) The suit property is a government land. The documents filed by the plaintiff i.e. power of attorney, agreement to sell and other documents are unregistered and unstamped documents. The reliance on these documents cannot be taken into account. The plaintiff is not able to show that she is the owner of the suit property.

(ii) It is also a matter of fact and is not disputed by the learned counsel for the plaintiff that prior to the filing of present suit, the plaintiff has filed the writ petition directly or indirectly before this Court raising the same plea. The factum of the writ petition is admitted by the plaintiff in para 15 of the plaint. The extract of the said para reads as under :

"15. That in order to protect her property, the petitioner approached this Hon"ble Court vide WP(C) No.7355 of 2013 on 20.11.2013 with the prayer that writ in the nature of mandamus, prohibition, order or direction be issued to the defendants not to act arbitrarily by pick and choose, to dispossess the plaintiff from her property, but the same was allowed to be withdrawn for filing a suit because of some disputed questions of facts. Hence, this suit."

(iii) The exact order passed in writ petition on 6th January, 2014 is reproduced as under :

"After some arguments, Mr.Mathur wishes to withdraw the present writ petition and pending application. Accordingly, the same are dismissed as withdrawn."

It appears from the order passed by this Court that the writ petition was withdrawn after arguments. No liberty whatsoever was granted to the plaintiff. The statement made by the plaintiff in para 15 of the plaint is not correct. The writ Court, in fact, after hearing has passed the order dated 6th January, 2014. The present suit was filed after passing of the order dated 6th January, 2014. The pleas raised in the present suit and writ petition are same as admitted by the plaintiff. Thus, this Court is of the considered view that once the matter is withdrawn after hearing the same, on the same subject, similar proceedings cannot be initiated.

21. The suit is accordingly dismissed. The interim order passed is vacated. Pending applications also stand disposed of.

22. No costs.