

(2019) 11 DEL CK 0411

In the Delhi High Court

Case No : Civil Suits (OS) No. 1582 Of 2013, Miscellaneous Application No. 14425 Of 2015, 15458, 15459 Of 2017, OA No.146 Of 2019

Ritnand Balved Education Foundation

APPELLANT

Vs

Om Sai Mandir Nyas Trust (Regd) & Anr

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 2A, Order 12 Rule 6
Right To Fair Compensation And Transparency Tn Land Acquisition Rehabilitation & Resettlement Act, 2013 — Section 24(2)

Citation : (2019) 11 DEL CK 0411

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajesh Yadav, Ruchira V. Arora, Rajan Chawla, Tanmaya Mehta, Shyam Singh, Anurag Ahluwalia, Akash Nagar, Saahila Lamba

Judgement

Rajiv Sahai Endlaw, J

1. The plaintiff has instituted this suit for recovery of possession of 166.98 sq. mtrs. forming part of the property at site No.2, Mayur Vihar Phase-I, Delhi allotted by the Delhi Development Authority (DDA) to the plaintiff, and for recovery of mesne profits and injunction.
2. The suit was entertained and vide ad-interim order dated 16th September, 2013, the defendants directed to maintain the status quo. The said order was made absolute vide order dated 20th January, 2014.
3. Pleadings have been completed.
4. It is the case of the plaintiff that the defendants, in violation of the ad-interim order, have encroached upon further 69.88 sq. mtrs. of land of site No.2 allotted to the plaintiff and thus today, the portion in unauthorized occupation of the defendants, is 236.86 sq. mtrs.
5. The plaintiff has filed IA No.15459/2017 under Order XII Rule 6 CPC for

decree for possession on admissions in respect of 152.579 sq. mtrs. out of total 236.86 sq.mtrs. in unauthorized possession of the defendants. Pleadings on the said application have also been completed and the counsel for the plaintiff and the counsel for defendant no.1 Om Sai Mandir Nyas Trust (Regd.) have been heard.

6. The counsel for the plaintiff, on enquiry states that defendant no.2 Sai Nath Mandir Sabha was deleted vide order dated 20th January, 2014 and the counsel for the defendant no.3 Surjeet Singh states that the stand of the defendant no.3 Surjeet Singh is the same as the stand of the defendant no.1. On enquiry, it is stated that defendant no.3 Surjeet Singh is the Chairman and face behind defendant no.1 Trust.

7. The counsel for the plaintiff has drawn attention to the written statement of the defendants no.1 and 3, in paragraph 3 of preliminary objections whereof the defendants no.1 and 3 have pleaded as under:

"3. That the Suit is liable to be dismissed with costs as not maintainable vis-à-vis the answering Defendants in view of the principle of adverse possession. The Suit Property is located in Khasra No.147 Min in Village Chilla, Saroda Bangar, Mayur Vihar, Phase-I, Delhi. The Suit Property was originally a part of Gaon Sabha land. Subsequently, the Suit Property and other adjoining areas thereat, including Khasra No.334/80 and 335/80 became DDA acquired land Award No.52E/71-72. On or about 11/05/1977, while taking physical possession of acquired land, the concerned authorities did not take physical possession of the built up land thereat including the Suit Property as these were under the occupation and physical possession of the Villagers of Village Chilla. The Suit Property was under the occupation and physical possession of one Shri Pehlad, S/o Shri Ganga Ram and Shri Meher Chand, S/o Shri Ram Lal. The land in adjoining Khasra No.335/80 was in the possession and occupation of Shri Dhan Pal Singh / Dhannu (Father of Defendant No.3). "Om Sai Mandir" ("Temple") was established in the 1980's with the active participation and contribution of the villagers of Village Chilla. The Temple premises included the Suit Property which was used for various temple activities. Around 1990-1991, the Shiv Parivar, Shani Mandir, Dhoni Dwarka Mai, water points etc. were established thereat. Ever since inception, the Temple acted as an invaluable social infrastructure by actively contributing to social causes, social activities and gained popularity among devotees from far and near. On 18/08/2000, the Defendant No.1 Trust was formed to facilitate better management of the Temple and its resources. The prior existence of the Temple premises on the Suit Property has been acknowledged by the concerned authorities as well. The relevant photos, maps and documents are filed herewith. It is stated that the answering Defendants are in the process of obtaining further documentary proof in this regard from the concerned authorities like DDA, MCD etc. The same will be placed on record as soon as the same are made available to the answering Defendants.

It is stated that the Temple and subsequently, Defendant No.1 Trust has been in

continuous, public, hostile and adverse possession of the Suit Property as against the title of DDA i.e. the true and real owner for more than twelve years to the knowledge of DDA. DDA did not initiate any legal proceedings to assert its right and title over the Suit Property. As on date, the DDA cannot in law assert its right and title over the Suit Property to reclaim possession of the Suit Property in view of the adverse possession thereof by the Temple / Defendant No.1. It is stated that when the DDA, who is the true and real owner and lessor, has lost its right and entitlement over the Suit Property, the Plaintiff, who is allegedly a lessee and allegedly derives interest / leasehold rights from the DDA, cannot seek to enforce the same over the Suit Property through the present suit."

8. The counsel for the plaintiff has next drawn attention to the writ petition No.629/2016 titled "Om Sai Mandir Trust (Regd.) Vs. Govt. of NCT of Delhi & Ors.", filed by the defendant no.1 Trust before this Court, copy whereof has been filed by the defendants no.1 and 3 themselves at page 111 of Part III-B Volume 3 file, for declaration in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013 in respect of land measuring 8 Biswas out of Khasra No.335/80 Min (1 Biswa), 151 Min (1 Biswa), 150 Min (4 Biswa) and 147 Min (2 Biswa) of village Chilla Saroda Bangar, Revenue Estate Shahdara, Delhi which was claimed to be in possession of the defendant no.1 Trust. It is pointed out that the defendant no.1 Trust in the said writ petition pleaded the land in its possession in Khasra No.147 to be 2 Biswas only. On enquiry, it is stated that 2 Biswas is equal to 84.281 sq.mtrs. The defendant no.1 Trust, in paragraph 1 of the said writ petition, has inter alia pleaded as under:

"1. That the present petition is directed against an illegal, arbitrary, discriminatory, unjust and malafide action on the part of the respondents in trying to disturb and dispossess the petitioner- trust from its legitimate possession of land bearing Khasra No.335/80 min (1 biswa), 151 min (1 biswa), 150 min (4 biswa), 147 min (2 biswa) (hereinafter referred to as the "DEMISED LAND") at village-Chilla Saroda Bangar, revenue estate Shahdara, Delhi now known as Mayur Vihar Phase-I, New Delhi-110091 and to demolish its temple named "Om Sai Temple" situated on the aforesaid demised land for last more than fifty years on the basis of false, frivolous, malafide and motivated complaints and in collusion with the land grabbers despite fully knowing that the petitioner"s possession is not only protected under the rule of "adverse possession" but also protected under the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 inasmuch as after land acquisition notification in the year 1965, neither DDA took possession of the said land nor any compensation was received by the individual land owners and thus, the land being "private land" is not the Government/DDA/Public land."

9. On enquiry, it is informed that the aforesaid writ petition was dismissed for non-prosecution.

10. The counsel for the plaintiff has argued, that the defendant no.1, in the writ petition having claimed right only with respect to 2 Biswas i.e. 84.281 sq. mtrs., the plaintiff is entitled to a decree forthwith for the remaining 152.579 sq. mtrs. of land in unauthorized possession of the defendants.

11. The counsel for the plaintiff has lastly drawn attention to the letter dated 3rd June, 2008 of the DDA to the plaintiff at page 85 of the Part III-A Volume I file whereunder DDA, in response to an earlier letter dated 16th May, 2008 of the plaintiff, informed that an area of 5670 sq. mtrs. was handed over by the DDA to the plaintiff free from encroachment at Mayur Vihar on 1st July, 2004 and as per the inspection then carried out by the field staff, the area in possession of the Society was 5503 sq. mtrs. and land ad-measuring approximately 167 sq. mtrs. was under encroachment.

12. The counsel for the plaintiff has also drawn attention to the reply filed by the defendants no.1 and 3 to the application under Order XII Rules 6 of the CPC, where the defendant no.1 and 3 in paragraph 5 have inter alia pleaded as under:

"5.Regarding Defendant no.1 claiming 2 biswas of land in Khasra No.147 in W.P(C) No.629/2016 filed by it under Section 24(2) of the Land Acquisition Act 2013, it is submitted that the area recorded under the revenue records is not exact. In the old days, area used to be measured by furlongs (pags) and thus area recorded under revenue records is not an exact calculation of area owned by a land owner. Thus, the Suit Property is in fact 2 biswa only but actual size of the suit property is 166.98 sq. m. (which is approximately 200 sq. yards), and the same is reflective of the ground reality in view of the approximate measurement done by furlongs (pags). Thus, the 2 biswas mentioned by Defendant No.1 are equal to the size of the suit property, i.e. 166.98 sq.m. (which is approximately 200 sq. yards). It is further submitted the size of biswa is not uniform in Delhi and every biswa has varying measurement size all across Delhi."

13. The counsel for the defendants no.1 and 3, at the outset, on enquiry of the defence of the defendants no.1 and 3, states that the allotment in favour of the plaintiff, of the land aforesaid, has been cancelled by the DDA in 2010 and the plaintiff has preferred a writ petition against such cancellation and which is still pending.

14. On enquiry whether DDA has taken over possession of the land allotted to the plaintiff from the plaintiff, the answer is in the negative and it is stated that there is an interim order in favour of the plaintiff in the writ petition.

15. On further enquiry as to whether school building has been constructed on the remaining land or the entire land is lying vacant, the answer is that the school is functioning on the land.

16. Else, the counsel for the defendants no.1 and 3 states that the defendants no.1 and 3 have set up a defence of adverse possession and the suit needs to be

put to trial thereon.

17. I have considered the rival contentions.

18. There is indeed a contradiction in the pleadings of the defendants no.1 and 3 in this suit and in the writ petition aforesaid filed by the defendants no.1 and 3. The defendants, in the written statement in this suit have unequivocally pleaded the land in their possession, pleaded in the plaint to be admeasuring 166.98 sq. mtrs., to be forming part of Khasra No.147 but in the writ petition claimed the land in their possession in Khasra No.147 to be of 2 biswas only and which it is not disputed is equivalent to 84.281 sq. mtrs. The attempt of the defendants no.1 and 3 in the reply to the application under Order XII Rule 6 CPC, to explain the said contradiction, does not succeed. Rather, the claim of the defendants no.1 and 3, by that though the land in their possession in Khasra No.147 was 2 biswas only but on site is 166.98 sq. mtr., is itself an admission of the possession of the remaining 82.70 sq. mtrs. (i.e. 166.98 sq. mtrs. minus 84.28 sq. mtrs.) being unauthorized.

19. I have rather put to the counsel for the defendants no.1 and 3, whether not the plaintiff, on the basis of the aforesaid pleas of defendants no.1&3 in the written statement and in the writ petition, is entitled to a decree of recovery of possession for the entire land and not merely for land measuring 152.579 sq. mtrs. as claimed in the application under Order XII Rule 6 CPC. I say so because the claim of defendants no.1 and 3, as late as in the year 2016, in the writ petition preferred by them, with respect to the land in their possession in Khasra No.147 forming part of the site No.2 allotted to the plaintiff is of lawful title thereto, under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act belies their plea in the written statement in this suit of adverse possession. I may notice that though the defendants no.1 and 3, in the writ petition also, used the phrase "adverse possession" but the very fact that the defendants no.1 and 3 were claiming right as lawful owners, negates the plea of adverse possession. The proposition that the two pleas, of lawful title and adverse possession are mutually inconsistent and negate the plea of adverse possession is well entrenched and reference in this respect may be made to Pushpa Rathi Vs. Jugnu Bansal 2017 SCC OnLine Del 10881, DDA Vs. Kumud Makhija 2018 SCC OnLine Del 11075, Manmohan Bedi Vs. Ramesh Kumar Guria 2018 SCC Online Del 9958, T Anjanappa Vs. Samolingappa (2006) 7 SCC 570, P.T. Muni Chikkana Reddy Vs. Revamma (2007) 6 SCC 59, L.N. Aswathama Vs. P. Prakash (2009) 13 SCC 229, Mohan Lal Vs. Mirza Abdul Gaffar (1996) 1 SCC 639, Karnataka Board of Wakf Vs. Government of India (2004) 10 SCC 779, Mandal Revenue Officer Vs. Gaundla Venkaiah (2010) 2 SCC 461, Vidya Devi Vs. Prem Prakash (1995) 4 SCC 496, Annasaheb Bapusaheb Patil Vs. Balwant (1995) 2 SCC 543.

20. Even otherwise, the defendants no.1 and 3 have not pleaded any act of adverse possession. It is not their claim that they, at any time applied to any authority, declaring themselves as owner of the land in their possession or

claiming adversely to the DDA. The first claim adverse to the title of DDA was by way of filing the writ petition in the year 2016 and which claim has also been dismissed. However the very fact that the defendants no.1 and 3 in the year 2016 were claiming lawful title to the land, does not permit them to, in this suit, take a different stand of adverse possession. Else, the law is very clear. Mere possession, for howsoever long, does not enure any title to the possessor. Reliance in this regard may be placed on Roop Singh Vs. Ram Singh (2000) 3 SCC 708, followed by this Court in Jagdish Chander Talwar Vs. Uday Sain (2013) SCC OnLine Del 444, Charan Kaur Vs. Ajit Singh 202 (2013) DLT 433, Om Prakash Vs. South Delhi Municipal Corporation 2016 SCC OnLine Del 2445, Shekhar Shah Vs. Government of Maharashtra 230 (2016) DLT 145, Pankaj Shah Vs. Rafat 2018 SCC OnLine Del 8943.

21. As far as the contention of the counsel for the defendants no.1 and 3, of the allotment in favour of the plaintiff having been cancelled, is concerned, the settled law in this regard, though with respect to landlord-tenant but which would apply qua persons in unauthorized occupation also, is that mere cancellation effected by the government / governmental authorities does not prevent the allottee from securing his possession of the land and / or from taking action for removal of encroachments and / or tenants therefrom. Reference in this regard can be made to Shanti Sharma Vs. Ved Prabha (1987) 4 SCC 193, The Gondals Press Vs. Punjab National Bank MANU/DE/5680/2012 (DB) and Continental Advertising Pvt. Ltd Vs. Raj Rani Aggarwal 2013 SCC OnLine Del 4497. It cannot be lost sight of that the land and the school constructed thereon, even if were to be reverted to the DDA, has to be reverted in entirety and it is not as if any undue advantage or benefit is being given to the plaintiff, during the pendency of the litigation impugning cancellation, securing the entire property and recovering possession thereof.

22. I am therefore of the view that the plaintiff is entitled to a decree for possession, not only of 152.579 sq. mtrs as sought, but to a decree for recovery of possession of the entire land allotted to the plaintiff at site No.2, Mayur Vihar Phase-I, Delhi by the DDA, in possession of the defendants no.1 and 3.

23. The plaintiff has also claimed a decree for recovery of mesne profits and for costs.

24. Besides that the application being IA No.14425/2015 of the plaintiff under Order XXXIX Rule 2A CPC directed against defendant no.3 and other trustees of the defendant no.1 Trust, for violation of the order of the Court, is also pending consideration.

25. However, the counsel for the defendants no.1 and 3 states that he would like to place the matter before the defendant no.1 Trust, in light of the above. In this view of the matter, I refrain from adjudicating the claim for mesne profits and costs.

26. However as far as possession is concerned, a decree is passed, in favour of

the plaintiff and jointly and severally against defendants no.1 and 3 viz. Om Sai Mandir Nyas Trust (Regd.) and Surjeet Singh respectively, of recovery of possession of entire land ad-measuring 236.86 sq. mtrs. or more or less forming part of site No.2, Mayur Vihar Phase-I, Delhi.

27. Decree sheet be drawn up.

28. I have also requested the counsel for the defendants no.1 and 3 to counsel defendants no.1 and 3 to amicably remove themselves from the aforesaid property to prevent forceful ejection from the property on which it is informed that shops etc. attached to the temple and other appurtenants of the temple on the adjoining land exist.

29. List on 11th December, 2019.

Dasti under signature of Court Master.