

(1996) 05 DEL CK 0107

In the Delhi High Court

Case No : Interim Application No's. 2572 of 1995, 2662 of 1995 and 3121 of 1995 and Suit No. 691 of 1995

Sachdeva Educational Society

APPELLANT

Vs

Residents Welfare Association, Government of India Press Colony

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1996) 3 AD 229 : (1996) 64 DLT 768 : (1996) 39 DRJ 475

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mukul Rohatagi, A.S. Gambhir, E.X. Joseph, Jyoti Singh, Ravinder Sethi and Sumeet Bansal, for the Appellant;

Judgement

N.G. Nandi, J.

(1) In the suit by the plaintiff educational society for decree for permanent injunction seeking to restrain defendants No.1 to 9 from dispossessing the plaintiff society from the suit land measuring 1.20 acres (4900 sq. mtrs.) situated at G-8 Area, Press Colony, Rajouri Garden New Delhi, more particularly shown in colour Red in the rough site plan. Schedule "A" and or from interfering in the peaceful possession, use and enjoyment of the suit land and for a decree of mandatory injunction requiring defendants No.10 and 11 to enforce the directions by this Court and to protect the plaintiff's lawful possession and its rights and enjoyment over the suit land, by. I.A. No-2572/95, the plaintiff seek to restrain the defendants in identical terms, by I.A. No-2662/95, the plaintiff seeks to restrain defendants No.1 to 9 from obstructing/ interfering in any manner whatsoever the plaintiff in erecting/constructing the boundary wall around this suit plot measuring 1.20 acres (approximately 4900 sq. mtrs.) situated in G-8 Area, Press Colony, Rajouri Garden New Delhi, pending the hearing and disposal of the suit.

(2) Defendant No.5, by I.A. No.3121/95 under Rule 4 of Order 39 CPC prays for the discharge and setting aside of the orders passed exparte in I.A. No.2572/95 on 23rd February 1995 and I.A. No.2662/95 on 25th March 1995 (both under Order 39 Rules 1 & 2 Civil Procedure Code) alternatively praying to vary the stay orders for the maintenance of status quo as it was before the filing of the suit.

(3) The case of the plaintiff shortly stated is that the plaintiff is an educational society duly registered under the Societies Registration Act. That in August 1987, the plaintiff society made an application to D.D.A. for allotment of land for primary/middle school. As per the rules, the Director of Education, Delhi Administration recommended the case of the plaintiff society to D.D.A. (defendant No.10) for allotment of land vide letter dated 7th October 1987. Vide letter dated 27th March 1991, D.D.A. proposed to allot the plot of land measuring two acres (one acre for the school building and the remaining one acre for playfield) on perpetual leasehold basis for running a middle school in Rajouri Garden, G-8 Area, Press Colony, New Delhi on usual terms and conditions; That as D.D.A. did not allot and give possession of the land to the plaintiff society, the plaintiff was obliged to file a civil writ petition being C.W.P. No.1366/92; Vide order dated 12th March 1989, this Court allowed the plaintiff's petition and permitted the plaintiff to deposit the balance amount of Rs.9.75 lakhs with D.D.A, and the Court further directed the D.D.A to give possession of the land in question to the plaintiff on plaintiff depositing the said sum. The plaintiff on 23rd April 1993 vide challan No.2044, deposited the said sum with D.D.A; That as D.D.A. failed to allot and give possession of the land to the plaintiff, the plaintiff was required to file second contempt petition being C.C.P. No.433/94 on 9th November 1994; that the said contempt petition is pending disposal before the Court. That ultimately, the D.D.A. has now given the land measuring 1.20 acres approximately at Rajouri Garden, G-8 Area, to the plaintiff on 13th March 1995 followed by its confirmation letter dated 14th March 1995; that the plaintiff society, thereafter on 19th March 1995, commenced construction of the boundary wall around the said plot measuring 1.20 acres and also pitched a small tent at the site for site office to supervise the construction of the boundary wall. That defendants No. 1 to 9 obstructed the plaintiff in the construction of the boundary wall and created all sorts of hurdles. That the plaintiff is the owner and in possession of the suit land admeasuring 1.20 acres; that defendants No.1 to 9 have been taking law into their hands and that defendant No.11 has been conniving with defendants No.1 to 9 with the result the plaintiff has not been able to construct the boundary wall around the suit land though he is the lawful owner and in possession thereof as well as for the relief aforestated described more carefully in the prayer clause of the plaint.

(4) That defendants No.1 to 4 and 7 to 9 on 8th December 1995 by their communication to this Court caused their appearance in this suit in person without engaging any counsel. Thus, defendants No.1 to 4 and 7 to 9 have been served and appeared in person.

(5) Defendant No.5 filed written statement to the suit inter-alia contending that the plaintiff has absolutely no claim or right or entitlement to the land which is the subject matter of the suit as the said land belongs to the Government and has been allotted to the Government of India Press, Mayapuri, New Delhi; that the plaintiff has encroached into the land and complaint have already been made to the police in regard to the encroachment; that the land belongs to Government of India Press, Mayapuri, New Delhi and the suit is an abuse of the process of law filed with an idea of covering up the illegal encroachment made by the plaintiff and with the idea of making the encroachment appear to have the sanction of the court; that the suit land has been allotted and belongs to the Government of India Press. So, there is no question of handing over the physical possession of the land measuring 1.20 acres at G-8 Area, Rajouri Garden, New Delhi to any other party; that the D.D.A. cannot allot the said land to any other party and if any such letter has been issued, it is the result "of fraud and corruption and is ipso facto null and void; that the land in question was handed over by the D.D.A. to the Central Public Works Department in 1966 and that the land in question is in possession of Government of India Press since 1966 and "the same is meant for construction of quarters for the employees serving in the Government of India Press, Ring Road, Mayapuri, New Delhi; that the land in question is a part of 30 acres of land for which an amount of Rs.30 lakhs was deposited with the D.D.A; that out of 30 acres, only one piece of land measuring 15.25 acres was handed over to the C.P.W.D. in February 1966 by D.D.A; that the land into which the encroachment has been made by the plaintiff is a part of the land measuring 15.25 acres and that the appropriate steps are being taken for the handing over of the remaining part of total land of 30 acres also to C.P.W.D. Defendant No.5 also filed an application being I.A.No.3121/95 under Rule 4 Order 39 CPC for the reliefs aforesaid.

(6) According to the plaintiff, the land measuring 1,20 acres at G-8 Area, Rajouri Garden, New Delhi is the land allotted and given possession of by defendant No.10 for the purpose of construction of school against the allotment of two acres of land, one acre for the purpose of construction of school building and one acre for the purpose of playground. That in the Master Plan of the D.D.A, the said land is set apart for the purpose of school and that the plaintiff has got the possession of the said land under the order dated 12th March 1989 in Civil Writ Petition No.1366/92 and that the plaintiff has been given possession of the said land by defendant No. 10 on 13th March 1995 followed by a confirmation letter dated 14th March 1995 and that the plaintiff has been making the construction of boundary wall in the land allotted to it as aforesaid. The say of the defendant, as pointed out above, is that the suit land measuring 1.20 acres forms part of 30 acres of land allotted" to defendant No.5 for the purpose of construction of residential quarters for the staff of defendant No.5 by the C.P.W.D. and that defendant No.10 could not have allotted and given possession of the suit land to the plaintiff and that plaintiff has encroached upon the land measuring 1.20 acres and Therefore is not entitled to make any construction thereon.

(7) It is suggested from the record and not disputed by the defendants that the plaintiff is the allottee of the land in question from defendant No.10. The plaintiff applied for getting the suit land for the purpose of construction of the school on 7th October 1987 and after resorting to the writ proceedings and the contempt proceedings, the plaintiff society finally got the possession of the land measuring 1.20 acres out of the two acres of land allotted to the plaintiff. Thus, pursuant to the order dated 12th March 1989 passed in Civil Writ Petition No.1366/92 the plaintiff has been given possession of the suit land measuring 1.20 acres for the purpose of construction of school building and that the plaintiff has been making construction of the boundary wall thereon. On defendant's say, the land into which the alleged encroachment has been made by the plaintiff is a part of the land measuring 15.25 acres and that out of the 30 acres, the defendant has been handed over only one piece of land measuring 15.25 acres. Thus, according to defendant, one piece of land measuring 15.25 acres was handed over to the C.P.W.D. in February 1966 out of the 30 acres land allotted to the defendants. The defendant claims entitlement to 30 acres of land.

(8) Thus, it prima facie appears from the say of the defendants that against the alleged entitlement of 30 acres of land, C.P.W.D. was given one piece of land measuring 15.25 acres and that the suit land forms part of these 15.25 acres land and the defendant having been given one piece of land measuring 15.25 acres.

(9) On behalf of defendant No.10 (D.D.A) an affidavit dated 9th October 1995 sworn in by one Smt. Asma Manzar, Director (Lands), Delhi Development Authority, I.N.A. Market, Vikas Sadan, New Delhi has been filed wherein it is testified that the inspection of the site was carried out by the Assistant Engineer Institutional Land on 25th August 1995; that the measurement of the existing boundary wall around the Press Colony Area were also taken by the Assistant Engineer; that the copy of the rough sketch with the measurements is enclosed with the affidavit as Annexure A-I; that the area of the land bounded by the boundary walls works out to be 20.48 acres approximately; that its area is more than 15.25 acres; that the land which has been allotted to the plaintiff society measures approximately 1.18 acres and the said land is outside the boundary wall of the Press Colony. The boundary wall of the Press Colony has been shown in Red colour in the plan annexed with the said affidavit and marked as Abgh whereas the land allotted to the plaintiff society is marked as I'm in the site plan.

(10) A perusal of plan, Annexure "A", annexed with the affidavit of the deponent on behalf of defendant No.10, as pointed out above, suggests that the land in red lines with defendant No.5 marked Abgh admeasures 20.48 acres whereas the land allotted to the plaintiff marked as Jink and as suggested from the plan Annexure "A", and testified in the affidavit, is outside the red line marked Abgh admeasuring 20.48 acres and the land JInk admeasures 1.18 acres.

(11) Thus, it would be appropriate facie seen from the affidavit and plan annexure "A" filed on behalf of defendant No.10 that defendant No.5 is in

possession of the land admeasuring 20.48 acres marked Abgh bounded by red line and that the land Jink of the plaintiff society measuring 1.18 acres. Thus, it is prima facie suggested from the affidavit of defendant No.10 and the plan Annexure "A" that the land of the plaintiff, Jink is outside the land Abgh which is found to be in possession of the defendant. It may be appreciated that the defendants have been allotted and given possession of the land by C.P.W.D. measuring 15.25 acres on defendants' own say which was one piece of land. Now, the defendant, according to the affidavit and the plan Annexure "A", prima facie appears to be in actual possession of 20.48 acres land approximately which is more than 15.25 acres admittedly given to the defendants in one piece of land. Whereas the land Jink given possession of by defendant No.10 to the plaintiff is 1.18 acres and that too outside the land in possession of the defendants.

(12) MR.JOSEPH, learned counsel for defendant No.5, has submitted a copy of the survey report conducted on 4th April 1996. A perusal of the said report suggests that the total land, as per linear measurements, is 20.73 acres. The land already in possession of defendant No.5 is 15.25 acres and balance is 5.48 acres. The land proposed to be given to the plaintiff educational society is 0.82 acres which leaves balance of 4.66 acres. Further, vacant land available under the possession of D.D.A. is shown to be 1.14 acres and the total land which can be handed over to Government of India Press is shown to be 5.80 acres. It may be appreciated that according to the affidavit and the plan Annexure "A" produced by defendant No. 10, the defendants are in possession of 20.48 acres of land as against 15.25 acres actually given possession of to C.P.W.D. This would prima facie suggest that it "is the defendant who is in possession of excess land than the area put to their possession.

(13) If at all defendant No.5 is entitled to the possession of 30 acres of land, as contended on behalf of defendant No.5 on the basis of allotment of 30 acres of land for the purpose of construction of residential quarters for its staff members, then the remedy for defendant No.5 would be against defendant No.10. As far as this suit is concerned, all that is prima facie required to be seen is whether the plaintiff is prima facie shown to be lawfully entitled to make construction in or upon any part of the land lawfully given to it or not. As pointed out above, the plaintiff society, for the purpose of construction of school building, has been given possession of 1.20 acres of land, as pointed out above, and the land of the plaintiff, as per the affidavit and the plan Annexure "A" filed by defendant No.10 is outside the land of the defendants and the land Jink admeasuring 1.18 acres given to the plaintiff by defendant No.10 being outside the land Abgh of the defendants, the plaintiff, in my opinion, has been able to substantiate the prima facie case for the grant of injunction against the defendants as it does not appear that the plaintiff society has encroached in any manner in or upon any part of the land in possession of defendants and it is prima facie suggested that the plaintiff has been making the construction in and upon the land lawfully given to it and in its physical possession, as aforesaid. If at all the defendants are aggrieved with any of the action of defendant No.10, in that event the defendants can have

recourse in accordance with law against defendant No. 10 but the defendants cannot in any way obstruct/prevent the plaintiff from making any construction in or upon the suit land marked as jink in plan Annexure "A" with the affidavit filed by defendant No. 10

(14) Not to restrain the defendant from causing obstruction to the construction in or upon any part of the land lawfully given by defendant No.10 and the plaintiff having been found to be in lawful physical possession thereof would cause irreparable injury to the plaintiff. The balance of convenience also requires that defendants No.1 to 9 be restrained by suitable injunction from causing any obstruction/hindrance to the plaintiff in making construction in or upon any part of the plaintiff's land.

(15) In the results, defendants No.1 to 9 are restrained in terms of prayer (a) of I.A.2572/95 and in terms of prayer of I.A.2662/95 pending the hearing and disposal of the suit whereas I.A.3121/95 under Rule 4 Order 39 CPC by defendant No.5 is dismissed .The order dated 21st March 1995 in I.A.2572/95 and order dated 23rd March 1995 in I.A.2662/95 are made absolute, whereas the order dated 6th April 1995 in I.A.No.3121 is vacated.

(16) Ordered accordingly.