

(2006) 03 DEL CK 0260
In the Delhi High Court
Case No : CS (OS) No. 1110 of 2000

Shri V. Prabhakar and Others	Vs	APPELLANT
M.C.D. and Others		RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Constitution of India, 1950 — Article 300A
Delhi Municipal Corporation Act, 1957 — Section 304, 321, 321(1), 322, 336

Citation : (2006) 03 DEL CK 0260

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Manmohan, Jay Savla, Reena Bagga, Meenakshi and M. Naseem, for the Appellant; Vibhu Shankar, for Defendant Nos. 1 and 2 and V.K. Tandon, for Defendant No. 3, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The plaintiffs have filed a suit for permanent injunction against the defendants Municipal Corporation of Delhi (MCD) and the Commissioner of Police. The facts are brief. The plaintiffs are each owners of a plot of 500 sq. yds. located in C-Block of Inderpuri, New Delhi, which were purchased by them from time to time. The plaintiffs obtained sanction for construction on the plot and such sanction was granted in each of the cases with a stipulation that each of the plaintiffs would leave an area of 15 X 45 sq. ft. in the front portion of the plot facing the road as open area and would not construct on the same. This stipulation was apparently made because there were some proposals under consideration for widening of the road measuring 30 feet.

2. The grievance of the plaintiffs is that a demolition action took place by defendants 1 and 2 being the MCD and the Junior Engineer of the MCD on 24.5.2000 whereby the walls were demolished. The front portion was only being used as kitchen garden which was required to be kept as open space.

3. The plaintiffs approached this Court by way of the present suit and filed an application for interim relief which was granted on 23.6.2000. It may also be

noticed that though originally the suit was valued for pecuniary jurisdiction at Rs. 5,05,000/- but in terms of order dated 26.5.2000 the plaintiffs agreed to have the said valuation for the relief of injunction for each of the plaintiffs at Rs. 5,05,000/- and paid the ad valorem fee on the same. This has been so set out since an issue was raised about the pecuniary jurisdiction of this Court but in view of the total valuation being more than Rs. 20 lakh the said question does not survive.

4. An application was filed being is No. 7891/2000 by the counsel seeking discharge in respect of plaintiff No. 4 as no instructions were forthcoming and the court fee had not been filed as a consequence thereof. This application was allowed on 22.5.2001 albeit wrongly noting that plaintiff No. 3 should be deleted from the array of parties instead of plaintiff No. 4. The order was passed on the statement of the counsel that the said plaintiff was not interested in pursuing the suit. The amended Memo of Parties was thereafter filed, which is on record and be placed in part-I file. The court fee has thus been paid by six plaintiffs.

5. The MCD, defendant No. 1 filed the written statement stating that as per the lay out plan of the area in question the right of way of the land in question was involved and the plaintiffs had encroached upon 60 feet wide area by extending their houses by approximately 15 feet each and it is this encroachment which was removed with the assistance of the police force on 24.5.2000. Since there was illegal encroachment on public land no notice was required to be issued for removing the same in view of Sections 321 and 322 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the said Act).

6. On the pleadings of the parties, the following issues were framed:

1. Whether the defendants were required to issue notice prior to carrying out demolition of the boundary walls of the suit property? OPP
2. Whether the plaintiffs have encroached upon any land beyond the land specifically mentioned in their respective title deeds/sale deeds? OPD
3. Whether MCD is empowered to demolish the suit property due to alleged widening of the road in front of the plots of the plaintiffs? OPD
4. Whether the defendants act of demotion of the boundary wall of the suit property of the plaintiffs is abuse of due process of law? OPP
5. Whether the plaintiff is entitled to compensation as claimed in the suit? OPP
6. Relief?

7. On behalf of the plaintiffs testimonies of all six plaintiffs were recorded as PW-1 to PW-6. The MCD produced Shri B.B. Jaiswal, Executive Engineer (Works) as the sole witness (DW-1). I have heard the learned counsels for the parties and have been taken through the pleadings and the documents on record. The findings arrived at in respect of the issues are as under:

ISSUE No. 2

8. The principal issue is relating to the allegation of the defendant MCD that the plaintiffs had encroached upon the land beyond their plot and were thus encroachers on public land. The only testimony recorded is of Shri B.B. Jaiswal (DW-1) who has stated in the cross-examination that he had measured the right of way as per the lay out plan of the area but have given no notice of demolition to any of the plaintiffs. The said witness deposed that he had not taken any steps to check whether the boundary walls of the plaintiff were in the private land and that he had no knowledge as to when the walls were constructed by the plaintiffs. The witness acknowledge that a notice is required to be served by the corporation in case the boundary wall is in the private land though has denied the suggestion that the suit property is not public land. The witness states that the demolition was done as a routine case of encroachment removal programme.

9. The onus of proving this issue was on the defendant and the defendant led no material evidence to show that the plaintiffs have encroached beyond their plot of 500 sq. yds. on to public land which would entitle the defendant corporation to act in pursuance to the provisions of Sections 321 and 322 of the said Act. The defendant failed to produce the lay out plan or prove the same in accordance with law to show that there was any encroachment by the plaintiffs. The defendants have thus failed to discharge the onus and the issue is answered against the defendants.

ISSUE No. 1

10. This issue has been taken up after the finding of issue No. 2 since it is the finding of issue No. 2 which would have the material bearing on the finding to be arrived at in respect of issue No. 1. This is so since the plea of the defendant was that no notice was required to be served on the plaintiffs on account of there being encroachment on the public land in view of provisions of Sections 321 and 322 of the said Act, which read as under:

321. Prohibition of deposit, etc. of things in streets. - (1) No person shall, except with the permission of the Commissioner and on payment of such fee as he in each case thinks fit, place or deposit upon any street, or upon any open channel, drain or well in any street or upon any public place any stall, chair, bench, box, ladder, bale or other thing whatsoever so as to form an obstruction thereto or encroachment thereon.

(2) Nothing in sub-section (1) applies to building materials.

322. Power to remove anything deposited or exposed for sale in contravention of this Act. - The Commissioner may, without notice, cause to be removed -

(a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act;

(b) any article whatsoever hawked or exposed for sale on any public street or in other public place in contravention of this Act and any vehicle, package, box or any other thing in or on which such article is placed.?

11. The plea of the learned counsel for the plaintiffs is that the land form a part of the plot of the plaintiffs and the defendants could have acted only in pursuance to Section 343 of the said Act. The relevant provision reads as under:

343. (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in Section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made there under, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons Therefore has been delivered to that person), as may be, specified in the order of demolition: Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demotion, if made, may be preferred under sub-section (2).

12. In view of defendants having failed to prove that the land formed a part of the public land and the plaintiffs have encroached upon the land provisions of Sections 321 and 322 would not apply in the present case and thus the provisions of Section 343 would come into play. This would have required the defendant No. 1 to have issued a notice to the plaintiffs in terms of Sub-Section 1 of Section 343 of the said Act and the proviso makes it clear that no order of demolition could have been passed unless a notice was so given. The witness of the defendants has admitted that no notice was ever given to the plaintiffs.

13. In view of the aforesaid the issue is answered in favor of the plaintiffs. ISSUE Nos. 3 and 4

14. The MCD certainly has a right to take steps for widening of a road. A specific provision has been made in the said Act itself in respect of such public streets and reference may be made to Section 304 of the said Act, which reads as under:

304. Power to acquire lands and buildings for public streets and for public

parking places. - Subject to the provisions contained in Chapter X, the Commissioner may -

(a) acquire any land required for the purpose of opening, widening, extending or otherwise improving any public street or of making any new public street, and any building standing upon such land;

(b) acquire in relation to any such land or building, all such land with buildings, if any, thereon as the Corporation may think expedient to acquire outside of the regular line, or of the intended regular line, of such street;

(c) acquire any land for the purpose of laying out or making a public parking place.

15. Thus what the defendant No. 1 was required to do was acquire the land for the public streets as no citizen can be deprived of the constitutional right of enjoyment of the property guaranteed under Article 300A of the Constitution of India. It would be trite to say that even though the said right is no more a fundamental right it remains a constitutional right and due process of law must be followed before a citizen can be deprived of his/her property.

16. In view of the aforesaid it is clear that defendant No. 1 failed to take steps in accordance with law for acquisition of the land for road widening. Though the MCD is empowered to acquire the land for the said purpose, the MCD failed to do so. The MCD could not have demolished the suit property without first acquiring the land. The issues are thus answered in favor of the plaintiffs and against the defendants.

ISSUE No. 5

17. Learned counsel for the plaintiffs does not press the claim for any compensation and thus the issue is answered in favor of the defendants and against the plaintiffs.

ISSUE No. 6

18. Relief.

19. In view of the aforesaid findings a decree is passed in favor of the plaintiffs and against the defendants for permanent injunction, restraining the defendants from demolishing or preventing the plaintiffs from using and enjoying the suit property except by due process of law. Needless to say that the plaintiffs will also comply with the terms and conditions of the sanctioned plan. Parties are left to bear their own costs.

20. Decree sheet be drawn up accordingly.