

(2012) 03 DEL CK 0016

In the Delhi High Court

Case No : Regular First Appeal (OS) No. 52 of 2006

Vishal Builders P. Ltd.

APPELLANT

Vs

D.D.A. and Others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Delhi Development Act, 1957 — Section 16, 17, 18, 19, 20

Citation : (2012) 03 DEL CK 0016

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanjay Jain, Instructed by Ms. Manjula Gandhi and Ms. Prabhjyot Sahai, for the Appellant; Arun Birbal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Nazul land measuring 743.22 sq.m. bearing No. 95 District Centre, Nehru Place, was auctioned by Delhi Development Authority (DDA) for conveying a perpetual lease-hold title and appellant being declared the highest bidder at the bid held on November 28, 1972 was given possession of the plot on March 05, 1973 after he paid the premium in sum of Rs. 16,06,000/- and undertook to pay a percentage of the premium towards yearly lease rent. Obtaining sanction/permission from Delhi Development Authority, appellant constructed a building on the plot and put it to use, but refuses to pay the yearly lease rent on the ground that the appellant has acquired absolute title to the suit property due to prescription and for which right, the appellant urges that since DDA did not have the right to auction the plot, the alleged transfer of the perpetual lease-hold right by DDA in favour of appellant is a nullity and claims that a person who acquires possession under an invalid transaction acquires absolute title by prescription. Suit filed by the appellant seeking permanent injunction against DDA and its officers not to interfere with appellant's possession; declaration being granted that DDA was not competent to auction the plot and that no lease rent is payable by the appellant has been dismissed in

limine, without summons issued to DDA.

2. Contention urged before us was that the suit merited a trial and thus could not have been dismissed in limine. The points on which trial was required, as urged, were: Whether the land was nazul land? Whether DDA was authorized to auction the land? What would be the right of the appellant if it was found that the land was nazul land and DDA did not have the authority to auction the land?

3. Suffice would it be to state that while considering the maintainability of the suit, all assertions of fact made in the plaint had to be treated to be correct. It is not the law that assertions of law, wrongly made, have to be treated as correct.

4. For the purposes of a planned development of Delhi, the Delhi Development Act 1957 was promulgated and the Delhi Development Authority was created to ensure planned development of Delhi. Initially, the said authority was empowered to acquire land and deal with the same as owner thereof for the purpose of planned development of Delhi, but with the promulgation of Act No. 56 of 1963, Sections 16 to 20 of the Delhi Development Act 1957 being repealed and Section 15 being retained, it was only the Central Government which could acquire land for purposes of planned development of Delhi and by virtue of a notification issued u/s 22 of the Act, could place the land at the disposal of the Authority, to be used for the planned development of Delhi, in accordance with the rules made and directions issued by the Central Government.

5. Unfortunately, till the DDA (Disposal of Developed Nazul Land) Rules 1981 were promulgated, and the Central Government not setting out the terms and conditions under which acquired lands were placed at disposal of DDA, an anomalous situation existed, when the Authority was handed over land which was acquired by the Central Government by notifications issued from time to time u/s 22 of the Act and the Authority started dealing with the land as per the Master Plan for Delhi. Needless to state, housing sites were auctioned. Commercial and industrial sites were auctioned. But, without the terms being settled by the Central Government. It was only when the DDA (Disposal of Developed Nazul Land) Rules 1981 were promulgated that the requirement of Section 22 of the Act came to be satisfied.

6. In aforesaid legal position, when the appellant, who had defaulted in making payment of another plot of which it was the highest bidder at Kalkaji, wanted the bid money back and DDA wanted to appropriate the same, a learned Single Judge of this Court held that the auction was invalid since DDA could not dispose of nazul land without there being terms and conditions settled by the Central Government or Rules notified. DDA was thus obliged to return the bid money received.

7. The legal position therefore is not in doubt and there being no disputed question of fact, requiring trial, the only issue which came up for consideration in the instant plaint before the learned Single Judge was: Whether appellant had become the owner by adverse possession and was relieved from the obligation to

pay a yearly lease rent?

8. The terms of the auction were admitted by the appellant. That the appellant had paid premium in sum of Rs. 16,06,000/- was pleaded in the plaint. That thereafter appellant took possession of the land and after obtaining a sanction constructed a building was admitted in the plaint. That the land was nazul land was admitted by the appellant. On these admitted facts, the learned Single Judge was seized of a plaint where the averment was that DDA did not have the authority to auction the land and the basis of the averment was the legal position, as noted herein above. Thus, no trial was warranted. A legal issue arose qua the title of the appellant and if on the admitted facts the legal position would be against the appellant, we see no reason why the plaint could not be thrown out without DDA being troubled to respond.

9. In the decision reported as 1951 SCR 43 Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors. an identical issue arose. The facts were that in 1865, the Government of Bombay wanted to construct a boulevard on land belonging to the Corporation of Justices of the Peace for the City of Bombay, on which a fish and vegetable market existed. The Government sent a proposal to the Municipal Commissioner to shift the market to a parcel of land belonging to the government. The Commissioner agreed. The site of the existing market was handed over to the Government. The boulevard was constructed and on the land handed over by the Government to the Municipal Commissioner, a market was constructed, where the existing fish and vegetable vendors in the erstwhile market were relocated. But, no formal grant was executed as required by Statute 22 and 23 Vic.C.41 as per which the Government had to settle the terms of the grant, including the term of the land being assessed to revenue.

10. On January 31, 1940 the Collector, exercising power u/s 8 of the Bombay Act II of 1876, assessed the land to revenue and required the Corporation to pay the same. The Corporation challenged the levy and the learned Revenue Judge dismissed the suit. In appeal, the High Court held that in view of the law pertaining to equity stated in the decision reported as 1866 LR 1 HL 129 Ramsden v. Dyson, since it was held out to the Corporation that the land was in lieu of land and based thereon the Corporation acted, it not being indicated to the Corporation that the land would be assessed to revenue, notwithstanding statute requiring the terms of the allotment to be settled and the land being subjected to assessment of revenue, estoppel would apply. The High Court held that an expectation was created, on encouraged by the Government, in the mind of the Municipality that it would get possession of the land free from any obligation to pay money and the Municipality took possession of the land upon said expectation and constructed the market and thus equity enunciated in Ramsden's case (supra) would be attracted.

11. The Supreme Court noted that before it, considerable arguments on the subject of equity conflicting with a statute were urged, but held that it would be deciding the question on a narrower and shorter ground and posing the question

and answering the same in an interwoven paragraph held as under:

The sole question for our consideration is whether, on the facts of this case, the respondent Corporation has succeeded in establishing in itself a right in limitation of the right of the Government to assess the land in consequence of a specific limit to assessment having been established and preserved. There is no dispute that by reason of non-compliance with the statutory formalities the Government Resolution of 1865 is not an effectual grant passing title in the land to the respondent Corporation and is not also an enforceable contract. On the other hand, there is no doubt as to the existence of an intention on the part of the Government to make and on the part of Corporation to take a grant of the land in terms of the Resolution of 1865 including an undertaking by the Government not to charge any rent. Both parties acted on the basis of that Resolution and the predecessor in title of the respondent Corporation went into possession of the land in question pursuant to the Government Resolution of 1865 and, acting upon the said Resolution and the terms contained therein, the respondent Corporation and its predecessor in title spent considerable sums of money in levelling the site and erecting and maintaining the market buildings and have been in possession of the land for over 70 years. What, in the circumstances was the legal position of the respondent Corporation and its predecessor in title in relation to the land in question? They were in possession of the land to which they had no legal title at all. Therefore, the position of the respondent Corporation and its predecessor, in title was that of a person having no legal title but nevertheless holding possession of the land under colour of an invalid grant of the land in perpetuity and free from rent for the purpose of a market. Such possession not being referable to any legal title it was prima facie adverse to the legal title of the Government as owner of the land from the very moment the predecessor in title of the respondent Corporation took possession of the land under the invalid grant. This possession has continued openly, as of right and uninterruptedly for over 70 years and the respondent Corporation has acquired the limited title it and its predecessor in title had been prescribing for during all this period, that is to say, the right to hold the land in perpetuity free from rent but only for the purposes of a market in terms of the Government Resolution of 1865. The immunity from the liability to pay rent is just as much an integral part or an inseverable incident of the title so acquired as is the obligation to hold the land for the purposes of a market and for no other purpose. There is no question of acquisition by adverse possession of the Government's prerogative right to levy assessment. What the respondent Corporation has acquired is the legal right to hold the land in perpetuity free of rent for the specific purpose of erecting and maintaining a market upon the terms of the Government Resolution as if a legal grant had been made to it. The right thus acquired includes, as part of it, an immunity from payment of rent which must necessarily constitute a right in limitation of the Government's right to assess in excess of the specific limit established and preserved by the Government Resolution within the meaning of Section 8 of the Bombay Act II of 1876. It is true, as pointed out by the Privy

Council in *Kamalavahooji Maharaj v. Collector of Bombay* (supra) that the words of the section would appear to apply rather to the case of a limitation on the right to assess than to the case of a complete exemption from assessment but such a construction would not protect the cases of total exemption which, as conceded in that very case did in fact exist and were recognized and protected by virtue of the words of Section 8 of the Bombay Act II of 1875. It has not been suggested before us that there are no cases of total exemption or that those cases are protected by any provision of law other than that of this very section. There is, therefore, no escape from the conclusion arrived at by the High Court, with which we concur, that the words of Section 8 would apply to a case where total exemption from assessment was granted. In other words, specific limit may be nil for the purpose of section 8 of the Act.

12. That answers it all. The law is clear. A person acquiring possession under an invalid grant can perfect the title only as per the grant and no more.

13. Thus, for all times to come, appellant's title would be that of a perpetual lessor i.e. what was to be granted and upon the term as per the invalid grant.

14. The appellant has therefore to pay the lease rent because it was a term of the grant, notwithstanding the grant being invalid. The appeal is accordingly dismissed with costs in favour of the respondent and against the appellant.