

(2014) 08 DEL CK 0179

Delhi High Court

Case No: CM(M) No. 746/2014 and CM No. 13070/2014 (stay)

Ramesh Jain

APPELLANT

Vs

NDMC

RESPONDENT

Date of Decision: Aug. 12, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 227

Hon'ble Judges: Valmiki J. Mehta, J**Bench:** Single Bench**Advocate:** Shiv Kumar Sharma, Advocate for the Appellant; Kapil Dutta, Advocate and Sanjeev Sabharwal, standing counsel, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.

This petition under Article 227 of the Constitution of India impugns the concurrent order and judgment passed by the courts below; of the trial court dated 4.6.2013 and the first appellate court dated 28.4.2014 respectively; by which the injunction application of the petitioners/plaintiffs has been dismissed. The case of the petitioners/plaintiffs was that they had purchased the suit property being no. HR-12C, Anand Parbat Industrial Area, New Delhi admeasuring 170 sq. yds. from one Smt. Meera Kanwaria through usual documentation of Agreement to sell, General Power of Attorney etc dated 3.11.1998. It was further the case of the petitioners/plaintiffs that the possession of the suit property was given to the petitioners by Smt. Meera under the said documentation. It is further argued that government had taken "paper possession" only and consequently, the petitioners/plaintiffs being in possession of the suit property, the action of the respondents i.e. North Delhi Municipal Corporation and Delhi Development Authority in demolishing the boundary wall around the subject plot is illegal.

2. Before this Court, it is argued that possession of the petitioners/plaintiffs be protected, and the respondents cannot demolish a boundary wall which is in fact not permissible by the Municipal bye-laws.

3. In my opinion, there is no merit in the present petition inasmuch as, relief of injunction is a discretionary relief, and to get such a relief petitioners/plaintiffs must show basis with respect to title and possession of the suit land. So far as the possession is concerned, and which aspect in the present case is also related to title, it is the case of the petitioners/plaintiffs itself that "paper possession" was taken. Once therefore, possession was taken of the suit land by the governmental authorities under the Land Acquisition Act, 1894 no title remained either of the predecessor of the petitioners/plaintiffs or of the plaintiffs. A reference to the pleadings in the suit also shows that the wall of the petitioner stood demolished and, therefore, actually, the petitioners/plaintiffs were not in possession of the suit property on the date of the filing of the suit, and even if such a possession was there it would have been of an encroachment of a person on government land.

4. The first appellate court has in this regard made correct observations in para 8 of the impugned judgment and which para 8 reads as under:-

"8. The appellants claim their right over the suit property on the basis of certain documents like General Power of Attorney, Possession Letter, Affidavit, Will, Receipt for a sum of Rs. 5 lacs as executed by one Smt. Meera in favour of the appellants/plaintiffs. The appellants also claim that in an earlier suit as filed by Smt. Meera against the appellants a compromise took place and the said Smt. Meera handed over the suit property to the appellants after receiving a consideration of Rs. 5 lacs. The record shows that the appellants have failed to show clear title of Smt. Meera in the suit property and when the title of the person from whom the appellants got the suit property was itself not clear, the appellants cannot claim any ownership in it. The appellants themselves admit in the plaint that the whole of the land on which the suit property is situated was owned by Ramjas Foundation. The appellants have failed to show that the suit property was duly transferred by Ramjas Foundation in favour of Smt. Meera. The appellants also admit in para no. 16 of the plaint that the government got the possession of the whole of the land on 13.09.2001 and then it was handed over by the government to the DDA i.e. the defendant no. 2. The only objection of the appellant is that the said possession was only a paper possession and the appellants have infact holding the possession of the suit property till date. The respondent no. 2 placed on record a notification to show that after acquisition, the land on which the suit property situates, has already been handed over to it. When according to the appellants themselves, after acquisition the whole of the land on which the suit property situates has been handed over by the government to the DDA, the objection of the appellants that the possession was merely a paper possession is not tenable at all. When land on which the suit property situates has already been acquired and its possession has been handed over to DDA, the appellants cannot claim any right, specially when they have no clear title over it."

5. Counsel of the petitioners wanted to cite judgments which hold that unless land acquisition proceedings are complete, "paper possession" taken cannot confer any right upon the governmental authorities, however, there is no dispute to the legal proposition that unless land is acquired the governmental authorities cannot have title to the land, however, in the present case, it is only a mere assertion of the petitioners/plaintiffs that the possession taken was "paper possession", and consequently, I refuse to agree with the arguments urged on behalf of the petitioners/plaintiffs that only "paper possession" was taken and not actual possession. Also, the aspect of actual physical possession of the governmental authorities/respondents is clear, and as stated above, from the fact that the endeavour of the petitioners/plaintiffs to encroach upon the suit land by constructing boundary walls was defeated and the boundary walls with respect to the suit property were demolished by the respondents/governmental authorities.

6. Powers under Article 227 of the Constitution of India are discretionary and are meant to further ends of justice. Powers under Article 227 of the Constitution of India cannot be exercised in favour of a person who is endeavouring to encroach upon government land or is an encroacher of government land. Dismissed.