(2007) 11 DEL CK 0264

Delhi High Court

Case No: Regular Second Appeal No''s. 67 and 90 of 2001

Shri Fateh Singh		APPELLANT
	Vs	
Delhi Development Authority and Others		RESPONDENT

Date of Decision: Nov. 21, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, Order 6 Rule 17

Hon'ble Judges: Pradeep Nandrajog, J

Bench: Single Bench

Advocate: Chetan Sharma and B.B. Gupta, for the Appellant; Charul Sarin and Sanjay Pathak, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.
Following substantial questions of law stand formulated in the memorandum of appeal:

(A) Whether a person in settled possession of the property under a possessory title is or is not entitled to protection against dispossession without due process of Law?

(B) Whether D.D.A. admittedly having not been put in possession by Ministry of Rehabilitation and the notification of acquisition having been set aside, could still claim any right or title to property in presence to person in actual possession?

(C) Whether the setting aside of the notification of acquisition under which claim to the property of the plaintiff was laid by D.D.A. is not conclusive that the land was not of the Govt. and had not been acquired?

(D) Whether the first appellate court has any jurisdiction to call for and rely on documents permitted to be filed without allowing opportunity to the opposite party to rebut and without calling for the proof of the documents?

2. Briefly noted, relevant facts are that the appellant, Fateh Singh, filed a suit for permanent injunction impleading UOI, CPWD, PWD, MCD and DDA as defendants stating that his grand father Choudhary Kanwar Singh was in cultivatory possession of land comprised in Khasra Nos. 1285/439/195, 1283/439/195 and Khasra No. 1324/134, Village Sadhora Khurd, East Sarai Rohilla and after the death of his grand father his father Risal Singh and his cousin Ram Saran came in possession of the land. That Risal Singh died in the year 1972 and his father died in the year 1973 and since then he had been in possession of said lands. That the defendants were forcibly trying to evict him from 5 bigha of land in Khasra No. 1324/134. He Therefore prayed that a decree of permanent injunction be passed in his favor restraining the defendants from dispossessing him from 5 bigha of land comprised in Khasra No. 1324/134, Village Sadhora Khurd, East Sarai Rohilla.

3. Various defenses were raised in the written statement filed by DDA. It was stated that the land in question belonged to the Union of India and vide Package Deal notified vide letter No. 4(19)/78/55-II(Vol.II) dated 2.9.1982 physical possession of the lands detailed therein which included Site No. 4, Sarai Rohilla was transferred to DDA.

4. At the trial, appellant led evidence and so did the defendants.

5. The focus of the parties was whether Site No. 4 referred to in letter No. 4(19)/78/55-II related to the suit land and whether appellant, through his ancestors was in possession of the suit land as claimed by him.

6. At the trial appellant proved Ex.PW1/1 i.e. certified copy of judgment and decree dated 12.1.1976 passed in a suit filed by his father holding that acquisition of land pertaining to Khasra No. 1283/439/195 and 1285/439/195 Village Sadhora Khurd was struck down and vide Ex.PW1/2 RCA No. 171/79 challenging the judgment Ex. PW1/1 was dismissed. Appellant also proved Ex.PW1/9 whereunder he was paid compensation for possession in respect of lands taken over by the Government under the acquisition which was quashed. Appellant also proved Ex.PW3/1, Ex.PW3/3 and Ex.PW3/2 being the Khasra Girdawari pertaining to the land comprised in Khasra No. 1285/439/195, Khasra No. 1283/439/195 as also land comprised in Khasra No. 1324/134. DDA proved the letter/notification No. 4(19)/78/55-II(Vol.II) dated 2.9.1982 as Ex. DW1/1. It also proved a letter dated 14.2.1988 addressed by the Government to DDA evidencing that site as per lay out plan, Ex. DW1/4, was handed over to DDA. DDA also proved Ex. DW1/2 wherein Site No. 4 was referred to as encroached agricultural land.

7. Other evidences were also led but being not relevant are not being noted by me.

8. The learned Trial Judge decided the suit in favor of the plaintiff holding that Ex. DW1/2 itself recorded that the site was under encroachment. That Vide Ex. PW1/1 suit filed by father of the plaintiff was decreed and vide Ex. PW1/2 the appeal filed was dismissed. Thus, the acquisition notifications having been quashed and there

being no proof that land was subsequently acquired, stand of the defendants was not established. In respect of the Khasra Girdawari which was proved by the plaintiff, learned Trial Judge held that all 3, i.e. Ex. PW3/1, Ex. PW3/2 and Ex. PW3/3 established possession of the appellant. It was held that the defendants could not dispossess the appellant without adopting the due process of law.

9. The judgment and decree is dated 20.5.2000.

10. Two appeals were preferred against the judgment and decree dated 20.5.2000. DDA as well as UOI filed the appeals. Appeal filed by DDA was registered as RCA No. 105/2000 and appeal filed by UOI was registered as RCA No. 130/2000. Since 2 defendants had filed separate appeals but subject matter of the 2 appeals was the same, both appeals were clubbed for disposal.

11. In appeal filed by DDA an application under Order 6 Rule 17 CPC accompanied by an application under Order 41 Rule 27 CPC for filing additional documents was filed. Prayer made was to permit DDA to amend the written statement and taken on record the additional documents. Amendment prayed was that issue pertaining to land comprised in Khasra No. 1324/134 need not be decided with reference to acquisition notifications which were quashed vide Ex. PW1/1 for the reason title in the suit land always vested in the Government and that the appellant managed to procure false entries in the Khasra Girdawari for the first time in the year 1993 showing his possession and immediately filed the suit on 11.10.1993. Prayer made was to permit DDA to raise, by way of preliminary objection No. 4, a plea as under:

That plaintiff has not locus standi to grab the public land in which he has no right, title or interest of any kind. Khasra No. 1324/134 is admittedly is Govt. land since time immemorial and continues to be so till today, Therefore the plaintiff is not entitled to discretionary relief of injunction of any kind in respect of public land.

12. Along with the amendment application certified copies of Khasra Girdawari for the period 1980-94; mutation record pursuant to the settlement effected in the year 1908-09 were filed.

13. Vide order dated 20.2.2001 subject to payment of cost in sum of Rs. 300/- the amendment application was allowed. Application moved under Order 41 Rule 27 CPC for placing on record certified copies of the Khasra Girdawari and mutation effected in the settlement of the year 1908 was allowed and the documents were taken on record.

14. Costs were accepted by counsel for the appellant. Matter was argued. Learned Appellate Judge reversed the finding of the learned Trial Judge principally placing reliance upon Khasra Girdawari filed along with the application under Order 41 Rule 27 and the settlement record.

15. In the backdrop facts afore-noted the 4 substantial questions of law framed and as noted above need to be answered.

16. As regards the fourth (D) substantial question of law framed, suffice would it be to state that having accepted the cost when amendment was allowed at the appellate stage and simultaneously additional documents were taken on record, appellant would be estopped from questioning the amendment to the written statement at the appellate stage as also the consequential order taking on record the documents which were filed.

17. I note that the appellant did not challenge the order dated 20.2.2001 allowing application of DDA to amend the written statement as also to take on record the additional documents. Even in the instant appeals said order has not been challenged.

18. Pertaining to the third (C) question of law suffice would it be to state that acquisition notifications which were set aside vide Ex. PW1/1 being the judgment and decree dated 12.1.1976 did not pertain to the suit land. They pertained to land comprised in Khasra Nos. 1285/439/195, 1283/439/195, Village Sadhora Khurd, East Sarai Rohilla. Thus, nothing turns on said decision affirmed in appeal vide Ex. PW1/2 being the certified copy of the order dated 11.9.1979 passed in RCA No. 171/79.

19. The questions of law (A) and (B) need to be decided together.

20. Suffice would it be to state that appellant could have succeeded had he established settled possession.

21. In this connection I propose to discuss the evidence with respect to the documents which were proved at the trial independent of the documents which were taken on record at the appellate stage. I also propose to discuss the effect of the documents taken on record at the appellate stage.

22. In respect of the documents proved at the trial, neither party led any evidence to establish, with reference to the original settlement record, as to who was recorded as the owner of land comprised in Khasra No. 1324/134. But, as noted here-in-above appellant himself proved khasra Girdawari pertaining to the suit land being Ex. PW3/2. Under the column ''Name of owner as per Jamabandi'' it records that the Government of India was the owner of the said land.

23. Thus, EX. PW3/2 i.e. the document relied upon by the appellant to show his possession itself recorded owner of the Government.

24. It is settled law that unless challenged, entries in the revenue record are prima facie evidence of title. I clarify that a mutation entry does not create a title but certainly is evidence relating to the fact that in the revenue records the person so recorded as owner is the owner of the land for purposes of payment of land revenue.

25. Thus, de hors the settlement record pertaining to the year 1908 which was brought on record at the appellate stage, sufficient evidence existed before the

learned Trial Judge to show that the suit land belonged to the Union of India.

26. Thus, even ignoring the amendment incorporated in the written statement at the appellate stage and additional documents filed at the appellate stage, finding returned by the learned Trial Judge that since acquisition notification was quashed vide Ex. PW1/1 appellant was the owner of the suit land cannot be sustained.

27. Learned Trial Judge lost sight of the fact that the judgment and decree Ex. PW1/1 did not pertain to the suit land. It pertained to land comprised in Khasra Nos. 1285/439/195 and 1283/439/195, Village Sadhora Khurd, East Sarai Rohilla.

28. Ex. PW3/2 gets reinforced with reference to the certified copies of the revenue record pertaining to the settlement of land revenue in the year 1908. The same shows that the Government of India is recorded as the owner of the suit land.

29. On the issue of possession it would be interesting to note that the appellant only proved Ex. PW3/2 as proof of possession. The same is the Khasra Girdawrai issued to the appellant recording that Government of India is the owner of the land but appellant''s possession is shown therein. However, the Khasra Girdawari relates to the Kharif and Rabi period for the year 1995, 1996, 1997 and 1998. In other words appellant showed the possession recorded in the revenue records only after the suit was filed.

30. No evidence was brought on record that the appellant was in possession of the suit land save and except self serving oral statement of the appellant when he appeared as his witness.

31. The revenue record produced at the appellate stage evidences that appellant managed to procure an entry in the Khasra Girdawari for the Kharif period of the year 1993. Prior thereto the land was shown as being in possession of the Government of India and DDA.

32. As noted above DDA claims transfer of the land to it from Government of India vide notification, Ex. DW1/1 dated 2.9.1982.

33. I need not discuss the effect of Ex. DW1/3 and the site plan Ex. DW1/4 for the reason nothing turns thereon.

34. The inevitable conclusion is that the finding recorded by the learned Appellate Judge that there was no evidence to show that the appellant was in continuous settled possession of the suit land and hence was not entitled to any injunction is correct. Thus the questions of law ''A'' and ''B'' which were framed in the appeal stand answered holding that the appellant has failed to establish settled possession. That the revenue entries establish possession of DDA. That the notifications which were set aside vide judgment dated Ex.PW1/1 did not relate to the suit land. The view taken by the learned Trial Judge has rightly been reversed by the Appellate Judge. The learned Trial Judge has misdirected the inquiry. The Appellate Court has

correctly referred to and appreciated the relevant evidence

35. Before concluding I may note that the learned Trial Judge got thoroughly confused by the pleadings of the plaintiff. As noted above, the suit related only to land comprised in Khasra No. 1324/134, Village Sadhora Khurd. Unnecessary reference was made to land comprised in Khasra No. 1285/439/195, and Khasra No. 1283/439/195, Village Sadhora Khurd, East Sarai Rohilla. Evidence was led that notification No. F-15(67)53-MT issued in December 1953 was quashed vide Ex. PW1/1. The learned Trial Judge got misled into going into the issue whether due to quashing of the notification the Government of India could or could not claim title to the land. Unnecessary evidence has been permitted to be brought on record.

36. With a little care and clarity, scope of evidence could be restricted. Evidence pertaining to the suit land alone and no more should have been allowed to be brought on record. Land comprised in Khasra No. 1285/439/195 and Khasra No. 1283/439/195, Village Sadhora Khurd, East Sarai Rohilla was not the subject matter of the suit. Unnecessary evidence pertaining to the said lands could have been avoided from being brought on record.

37. I may note that DDA is in possession of the suit land. After obtaining orders of status quo from this Court on 4.5.2001 appellant attempted to repossess the land by taking gunmen at the site. On 17.7.2001 the status quo order granted to the appellant on 4.5.2001 was modified. It was noted by the court that photographs show that the appellant accompanied by 3 gunmen went to the site to resume possession. Orders were passed that the appellants would be entitled to arrest any person who attempts to trespass on the land in question.

38. The appeals are dismissed.

39. LCR be returned.