

(2013) 05 DEL CK 0420

Delhi High Court

Case No: CM (M) 1028 of 2010

Manju Rani

APPELLANT

Vs

Shiv Property Dealer and
Another

RESPONDENT

Date of Decision: May 24, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Delhi Land Reforms Act, 1954 - Section 185, 81
- Delhi Municipal Corporation Act, 1957 - Section 507, 507(a)

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Sikandar Arora, for the Appellant; P. Kumar, for R-2, for the Respondent

Final Decision: Allowed

Judgement

Indermeet Kaur, J.

The petitioner is aggrieved by the findings returned in the order dated 16.04.2008 by the Additional District Judge (as the first appellate Court) in pursuance to the findings returned by the Civil Judge dated 20.01.2005. Record shows that the present suit was filed for possession, permanent and mandatory injunction. Averments made in the plaint have been perused. The plaintiff claims himself to be the owner of plot bearing No. 48-A measuring 100 square yards out of Rect. No. 21, Killa Nos. 23 & 24 and Rect. No. 34, Killa Nos. 3, 4, 7 & 8 situated in the area of Village Dabri in Sagarpur, Delhi. He is stated to have purchased it vide a sale deed dated 24.04.1973. His contention was that the defendants had illegally trespassed upon the said land. Accordingly the suit was filed.

2. Written statement was filed. The suit was contested. After the written statement had been filed, an application was filed by the defendants u/s 9 of the CPC (hereinafter referred to as the "Code"). Submission being that the plot in question is

an agricultural land and in view of the bar contained in Section 185 of the Delhi Land Reforms Act (hereinafter referred to as the "said Act"), the present suit in the civil forum is not maintainable. Contention was that this land is vested in the Gaon Sabha by an order dated 22.06.1980 of the SDM bearing No. 994/77 passed in proceedings u/s 81 of the said Act.

3. Reply was filed refuting this contention. The petitioner/defendant had placed reliance upon a Notification dated 23.05.1963 as also another Notification No. F.33/Engg. TD (D)/11424/94 dated 24.10.1994 to substantiate his submission that in terms of Section 507(a) of the Delhi Municipal Corporation Act, the plot in question has since been urbanized and having become urbanized land, the provisions of the said Act are no longer applicable.

4. The trial Judge vide its first order dated 29.09.2004 had dismissed this application. It has noted that the land stands urbanized in the year 1963 and as such a civil suit is not barred.

5. The defendants had moved an application seeking review of this order dated 29.09.2004. This application was disposed of on 20.01.2005. In the review petition, the suit was dismissed. The Court was of the view that a civil Court has no jurisdiction to entertain the suit.

6. Orders passed on the review application was endorsed by the impugned order dated 16.04.2008. On behalf of the petitioner reliance has been placed upon a judgment of this Court in [Trikha Ram Vs. Sahib Ram](#), to support his submission that once the village abadi land stands urbanized, the provisions of the said Act would no longer be applicable. The thrust of the arguments of the learned counsel for the petitioner is based on this judgment.

7. Learned counsel for the respondents has refuted this submission. He has drawn attention of this Court to another judgment passed in later in time reported as [Narain Singh and Another Vs. Financial Commissioner](#),

8. In view of the conflict of judgments of the two single Judges of this Court, this matter was referred to a larger Bench. The larger Bench has decided this issue on 26.03.2010 in case of Smt. Indu Khorana Vs. Gram Sabha & Others in W.P.(C) No. 4143/2003. The Division Bench has held that once a rural area has been urbanized by issuance of a Notification u/s 507(a) of the DMC Act, the provisions of the said Act will cease to apply.

9. On 02.12.2010, the decision given by the larger Bench was made applicable to the facts of the said case. The order of the Financial Commissioner and of the appeal officer vesting the property of the petitioner therein in the Gaon Sabha u/s 81 of the said Act had been set aside. In view of the ratio returned by the Division Bench on this count, it is clear that the Notification u/s 507 of the DMC Act having been issued in 1963, the provisions of the said Act will cease to apply. The petition must succeed.

It is accordingly allowed and disposed of in the above terms. Parties appear before the concerned Court on 08.07.2013.