

(2013) 07 DEL CK 0528

Delhi High Court

Case No: FAO (OS) 245 of 2013

Sh Charan Singh and Others

APPELLANT

Vs

Gaon Sabha Neelwal and Others

RESPONDENT

Date of Decision: July 2, 2013

Acts Referred:

- Delhi Land Reforms Act, 1954 - Section 86A

Citation: (2013) 171 PLR 17

Hon'ble Judges: S. Ravindra Bhat, J; Najmi Waziri, J

Bench: Division Bench

Advocate: Sunil Chauhan, for the Appellant; Anuj Tyagi, Proxy for Mr. Sachin Chopra, Advocate for Resp-1 and 3 and Mr. Khalid Arshad, Advocate for Resp-2/DJB, for the Respondent

Final Decision: Allowed

Judgement

S. Ravindra Bhat, J.

Heard learned counsel for the parties. The present appeal has been filed by an aggrieved plaintiffs whose application for ad interim injunction under Order XXXIX CPC was rejected.

2. The brief facts are that the plaintiffs filed a suit-CS (OS) 522/2013 in this Court. In the suit, the plaintiffs claimed for a declaration and permanent injunction in respect of certain lands [(Khasra Nos. 32/20/2 (1-6) and 32/21 (5-15)] in revenue estate of Village Neelwal. The grievance specifically stated was that the Government of NCT of Delhi had sought to allot on lease hold basis certain lands which included the suit land to the Delhi Jal Board. A declaration was sought that such grant was illegal and void and could not affect the plaintiffs' rights. The plaintiffs also sought a consequential decree for permanent injunction to restrain the defendants-Govt. of NCT of Delhi and Delhi Jal Board from interfering with their peaceful and cultivatory possession of the suit lands.

3. The learned Single Judge, by the impugned order dated 6.5.2013 took note of the pleadings; however, he rejected the claim for interim injunction in the following terms:-

In the plaint, it is stated that plaintiffs are in actual cultivatory peaceful possession of the suit land. The plaintiff is aggrieved by the decision of the Gaon Sabha to allot the suit land to defendant No. 2 on lease hold basis for construction of a sewage treatment plant and sewage pumping station.

Admittedly, the issue of declaration of bhoomidari rights of the plaintiffs is pending consideration by the Revenue Assistant.

In the opinion of this Court, as there is no title document in favour of the plaintiffs and the impugned transfer of land is for setting up a sewage treatment plan and sewage pumping station, which is for a larger public purpose, no injunction order is called for.

However, it is clarified that in the event in the revenue proceedings plaintiffs are either declared to be owners or bhoomidars, then the defendants No. 1 and 3 shall be liable to pay them compensation in accordance with law.

4. The plaintiffs submit that there was sufficient documentary evidence on the record of the suit indicating the continued nature of their lawful possession. It is emphasized by the counsel before this Court that the documents presented along with the plaint included copies of the khataoni as well as the undeniable facts that they were entitled to stretch of land including suit lands as part of Schemee Qabiz over the lands in consolidation proceedings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The appellants also rely upon previous attempt made by the Revenue officials in the form of ejectment proceedings u/s 86A. In this respect, special reliance is placed upon orders dated 10.03.1981, 15.05.1987 and 14.08.07. Copies of those orders have been placed on record. Furthermore, the appellants' counsel relied upon a direction made by the learned Single Judge on 01.03.2007 in W.P. (C) 1241/2007 by which the Revenue Authorities were required to dispose off the pending claims for grant of bhumidari rights in respect of such lands as well as other properties. The appellants were and are the applicants in those proceedings.

5. Learned counsel for the respondents sought to urge that exception cannot be taken to the impugned order as it is in the nature of an interim arrangement and that in any event the learned Single Judge had considered the equities and sought to protect the appellants' concern by specifically recording that in the event of their succeeding, they would be paid compensation in accordance with law.

6. This Court is of the opinion that impugned order to the extent it denies interim injunction is not sustainable. The three orders relied upon by the appellants, i.e., 10.03.1981, 15.05.1987 and 14.08.2007 are part of the suit records. They clearly

reflect the Revenue's attempts to have the appellants declared as trespassers and unlawful occupants of the suit lands. In each of these efforts made in the form of proceedings u/s 86A of the Delhi Land Reforms Act presented before the Revenue Assistant, (i.e., the competent officer entitled to adjudicate and pronounce orders in such ejectment proceedings) the Revenue utterly failed. In fact on certain occasions, their applications were unconditionally withdrawn. The Revenue Assistant in each of these cases particularly in the last case of 14.08.2007 categorically recorded that the petitioners were lawful occupants of the land and their claims for bhumidari rights were pending consideration. In the same manner, the previous order of this Court, dated 01.03.2007 in W.P. (C) 1241/2007, had directed that the claims for bhumidari rights in pending proceedings should be finalized at the earliest. Besides, in the same order, learned Single Judge was of the opinion that khasra girdawari of the appellants should be duly reflected in the revenue records.

7. This Court is of the opinion that having regard to the volume of documentary evidence which clearly indicated that the appellants were lawful occupants of the suit lands and in the absence of any document to the contrary or even disclosing that public purpose sought to be achieved by grant of lease hold was supported through any legally sustainable method in the form of previously initiated acquisition proceedings, the interim protection sought in the form of injunction could not have been denied on an application of settled principle, which the Courts are bound to follow. Once the appellants disclosed that they were lawful cultivatory tenants or occupants of the suit land and further backed up such claims with orders of the Revenue officials which had resulted in failure of the Gram Sabha to secure possession of lands on specific allegations of the appellants being unlawful occupants, the learned Single Judge could not in our opinion have proceeded on a bland assumption that since the object of the lease was to serve the public purpose, the plaintiffs could be compensated later in accordance with law. There was no material indicating that the respondent/defendant were the beneficiaries of any acquisition proceedings which entitled the Govt. of NCT of Delhi to hand over the suit lands on lease hold basis. We refrain from expressing any further opinion in the matter as the suit would have to be tried on its merits.

8. In the light of the above discussion, the impugned order to the extent it refused the injunction sought for is hereby set aside. The respondents/defendants are hereby restrained from interfering with the appellants' possession of the suit lands (described in the earlier part of the judgment and more fully in the suit) during the pendency of the CS (OS) 522/2013. The appeal is allowed in the above terms. There shall be no order as to costs.

Order dasti.