(2013) 07 DEL CK 0634

Delhi High Court

Case No: CS (OS) 1114 of 2009, I.A. No. 7817 of 2009, I.A. No. 7818 of 2009, I.A. No. 13653 of 2009, I.A. No. 15695 of 2012, I.A. No. 20017 of 2012 and I.A. No. 22188 of 2012

Pankaj Bajaj		APPELLANT
	Vs	
Meenakshi Sharma and Others		RESPONDENT

Date of Decision: July 1, 2013

Acts Referred:

- Land Acquisition Act, 1894 - Section 10, 16, 4, 48, 6

Citation: (2013) 07 DEL CK 0634

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Rakesh Tiku and Mr. Sunil Mittal, for the Appellant; N.K. Kaul Mr. Chetan Sharma, Subodh Kr. Pathak, Mohit Agarwal, Anif Sikandar Mir and Mr. A. Chaterji for D-1, Mr. Subrat Deb, for D-3 DDA, Mr. Ravinder Kumar, Asstt. Director (Cooperative Societies), DDA, Ms. Mridul Chawala, for D-5, Mr. Yeeshu Jain and Ms. Jyoti Tyagi, Advocates for D-6 L and DO, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The plaintiff has instituted the present suit; (i) for perpetual injunction restraining the defendant no. 1 Smt. Meenakshi Sharma and defendant no. 3 Delhi Development Authority (DDA) from forcibly dispossessing the plaintiff from property No. A-20, New Friends Colony, New Delhi; (ii) for declaration that the restoration dated 02.05.2009 by the defendant no. 2 Lieutenant Governor, Delhi of allotment of plot of land bearing No. A-20, New Friends Colony, New Delhi in favour of defendant no. 1 is illegal and unlawful; and (iii) for declaration that the Lease Deed executed by the defendant no. 3 DDA in favour of defendant no. 1 with respect to the plot No. A-20, New Friends Colony, New Delhi is illegal, unlawful and inoperative. It is the case of the plaintiff:

(i) that he is the owner in possession of property No. A-20, New Friends Colony, New Delhi ad-measuring 435 sq. yds. and has constructed one drawing-cum-dinning room, two bed rooms with attached bathroom and one kitchen thereon;

(ii) that the plaintiff acquired the plot of land underneath the property vide registered Sale Deed dated 26.03.2007 executed in his favour by the defendant no. 5 New Friends Cooperative Group House Building Society Ltd. acting through its Secretary;

(iii) that the land underneath plot No. A-20, New Friends Colony, New Delhi was comprised in Khasra No. 60/3 measuring 1 Bigha 17 Biswas of the Revenue Estate of Village Khizrabad, Delhi which was jointly owned by Sh. Bishamber Dayal, Sh. Jaswant Singh, Sh. Jagdish Singh, Sh. Narain Singh, Sh. Satpal Singh and Sh. Hatam Singh;

(iv) that the land comprised in Khasra No. 60/3 was notified under Sections 4 & 6 of the Land Acquisition Act, 1894 on 13.11.1959 and 09.01.1969 and notice under Sections 9 and 10 of the Land Acquisition Act was served on the land owners on 20.06.1971;

(v). that the acquisition pursuant to the Notifications aforesaid was for the benefit of the defendant no. 5 Society and the acquired land was to be handed over by the Delhi Administration post acquisition to the defendant no. 5 Society;

(vi). that besides land in Khasra No. 60/3, other adjoining lands were also acquired vide the aforesaid Notifications and the Delhi Administration vide Agreements dated 13.02.1963 and 15.12.1964 had given the said land to the defendant no. 5 Society for developing the same;

(vii) that the aforesaid land owners of Khasra No. 60/3 filed W.P.(C) No. 764/1971 impugning the acquisition and vide interim order dated 12.07.1971 in the said writ petition, dispossession of the said land owners was stayed and the stay order was made absolute on 09.08.1971;

(viii) that on the said land ad-measuring 1 Bigha 17 Biswas comprised in Khasra No. 60/3, four plots i.e. plots No. A-13, A-14, A-19 and A-20 of the colony of New Friends Colony were carved out but owing to the interim stay aforesaid, the land remained in possession of the land owners aforesaid;

(ix) that of the four plots aforesaid carved out on the said land, the allottees of plots No. A-13, A-14 and A-19 became parties to W.P.(C) No. 764/1971 supra and settled their disputes with the land owners and the writ petition qua part of Khasra No. 60/3 on which plots A-13, A-14 and A-19, New Friends Colony, New Delhi were carved out stood withdrawn;

(x) that the dispute qua plot No. A-20, New Friends Colony, New Delhi was also settled between the land owners and the defendant no. 5 Society;

(xi) that accordingly the challenge in W.P.(C) No. 764/1971 to acquisition of the land was withdrawn on 19.04.2005 and possession of plot No. A-20, New Friends Colony, New Delhi was delivered to the defendant no. 5 Society;

(xii) that after withdrawal of W.P.(C) No. 764/1971 the land underneath the plot No. A-20, New Friends Colony, New Delhi was mutated by the Revenue Authorities in the name of the defendant no. 5 Society and the defendant no. 5 Society thus became absolute owner in possession of the suit land and vide Sale Deed aforesaid sold the same to the plaintiff;

(xiii) that plot No. A-20, New Friends Colony, New Delhi was allotted to Sh. R.D. Sharma father of defendant no. 1 Smt. Meenakshi Sharma and a Perpetual Sub-Lease dated 27.08.1982 with respect thereto was also executed in his favour - however since on that date the land underneath plot No. A-20, New Friends Colony, New Delhi did not vest with the government and possession of the said land had also not been delivered to the Society and was under the interim order in W.P.(C) No. 764/1971 with the land owners, thus the allotment in favour of Sh. R.D. Sharma was illegal and was subsequently cancelled / withdrawn by the DDA on 09.02.2001;

(xiv) that the stay on acquisition with respect to land under plot No. A-20, New Friends Colony, New Delhi was finally removed on 19.04.2005 on withdrawal as aforesaid of the writ petition and till then DDA had no right with respect to the said land; and

(xv) that the DDA however on the basis of representation dated 10th July, 2008 of the defendant no. 1 has wrongly vide order dated 02.05.2009 restored the allotment in favour of the defendant no. 1.

The plaintiff contends that since the plot No. A-20, New Friends Colony, New Delhi prior to 02.05.2009 stood sold vide Sale Deed dated 26.03.2007 to the plaintiff, there could have been no restoration of allotment in favour of the defendant no. 1.

2. The defendant no. 1 and the defendant no. 3 DDA have contested the suit. The defendant no. 5 Society has supported the plaintiff. Need is however not felt to elaborate the defence of the defendant no. 1 and the defendant no. 3 DDA since the contention of the senior counsel for the defendant no. 1 is that the plaintiff, on the basis of undisputed documents on record, has no right to the plot and thus no right to maintain this suit. Though the senior counsel for the defendant no. 1 has also sought to justify the title of the defendant no. 1 to the said land and the senior counsel for the plaintiff has been at great pains to challenge the said title but need is not felt to pronounce on the title set up by the defendant no. 1 inasmuch as this suit is concerned with adjudication of the rights of the plaintiff qua the said land and on the basis of which rights, the plaintiff has sought the reliefs aforesaid. Though the plaintiff has also sought the reliefs of declaration qua the Lease Deed dated 27.08.1982 in favour of the father of the defendant no. 1 and the restoration of allotment made in favour of the defendant no. 1 but need is not felt to pronounce on the said aspects also inasmuch as if the plaintiff is not found to be having

rights qua the land pleading which the said reliefs are claimed, the plaintiff would have no locus to claim the declarations injurious to the defendant no. 1 qua the said land and would have no right to challenge the title if any set up by the defendant no. 1 to the said land.

3. The senior counsel for the plaintiff faced with the aforesaid situation also argued that even if this Court finds the plaintiff to be not having the ownership, the plaintiff being in possession of the land has a right to injunct the defendants no. 1 and 3 from dispossessing him from the said land. No merit is however found in the said contention. The plaintiff has approached this Court setting up a title to the land as owner thereof and not on the basis of possession and the plaintiff cannot succeed on a case not pleaded by him. Moreover, the possession asserted by the plaintiff is under the Sale Deed dated 26.03.2007 and the present suit was filed soon thereafter in the in the year 2009 and the possession of the plaintiff since the institution of the suit is under protection of the interim order of this Court. If the plaintiff is not found to be the owner of the land, the question of protecting the possession of the plaintiff does not arise. The plaintiff has not set up a case of adverse possession. The Supreme Court even otherwise in Karnataka Board of Wakf Vs. Government of India and Others, and in L.N. Aswathama and Another Vs. P. Prakash, has held that a plea of adverse possession is inconsistent to the plea of possession on the basis of lawful title. The plaintiff can thus either succeed on the basis of his lawful title and if fails in the same, cannot protect his possession of the land.

4. Reference in this regard may also be made to Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, where it has been held that the possession of the open land goes with title. Though the plaintiff has pleaded having raised the construction of approximately 1100 sq. ft. on the said land but the said construction is non existent in the eyes of law having been carried out without obtaining any sanctions and permissions and would have been demolished but for the interim order in the present suit. The property thus has to be treated as open land only and possession whereof is to be deemed to be of the person having title thereto. (See also Navalram Laxmidas Devmurari Vs. Vijayaben Jayvantbhai Chavda,)

5. I am conscious that the aforesaid may be out of tune with certain judgments of the past where the Courts have gone at great length to protect possession. However as observed in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , the Courts today are inundated with land grabbers. Similarly in Dalip Singh Vs. State of U.P. and Others, it was held that to meet the challenge posed by the new creed of litigants who shamelessly resort to falsehood and unethical means, the courts, from time to time have to evolve new rules. Unless the Courts keep pace with the times and with the situations which they are called upon to meet today, the Courts would be failing in their duty. Bhagwati J. in Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, echoed the same sentiment by observing that in the centre of a social order changing with dynamic pace the Court needs to balance the authority of the past with the urges of the future. Judge Learned Hand''s observations in 52 HLR 361 [1939] that the judge must

discover some composition with the dominant needs of his times were quoted with approval. I have recently in Chemical Systems Technologies (India) Pvt. Ltd. Vs. Simbhaoli Sugar Mills Ltd. dealt with this aspect in detail and thus need is not felt to elaborate further on the same.

6. That brings me to locus of the plaintiff to maintain this suit and which is dependent on the title set up by the plaintiff to the said plot and which is challenged by the defendants no. 1 & 3.

7. It is the contention of the defendants no. 1 & 3 that the defendant no. 5 Society was not competent to execute the Sale Deed dated 26th March, 2007 in favour of plaintiff and the plaintiff under the said Sale Deed has not acquired any rights in the property.

8. Attention in this regard is invited to the Agreement dated 13.02.1963 between the President of India and the defendant no. 5 Society which inter alia records:

(i) that the defendant no. 5 Society had applied to the President to grant to it land belonging to the President, ad-measuring 828 Bighas and 15 Biswas situated at village Kilokri, Joga Bai and Khizrabad for the purpose of development and after development thereof has been completed, the right to have the lease in respect of residential plots carved out of the said land for sub-leasing to its members;

(ii) that the President by the said Agreement granted licence to the defendant no. 5 Society to enter upon the said land for preparing a layout plan dividing the said land into streets, open space, plots etc. and after sanction of the layout plan by the appropriate Municipal or other Authorities to enter upon the said land to carryout and complete development thereof in accordance with the layout plan;

(iii) that the defendant no. 5 Society under the said Agreement was not entitled to deviate in any manner from the layout plan;

(iv) that upon completion of development, the President of India agreed to grant to the defendant no. 5 Society lease of such of the residential plots in perpetuity and the President reserved to himself the right to dispose of the remaining parts of the land;

(v) that the defendant no. 5 Society was not entitled under any circumstances whatsoever directly or indirectly to assign, transfer or otherwise part with its rights under the Agreement;

(vi) that after the grant of lease, the defendant no. 5 Society was to sub-lease the residential plots to its members; and

(vii) that if the Society was to take back possession of any of the residential plots from its members, the Society shall forthwith surrender such residential plot to the President and the right to dispose of the said plot was of the President.

9. Attention is next invited to the order dated 19.04.2005 disposing of W.P.(C) No. 764/1971 and which records as under:

(i) that a compromise application had been filed by the land owners and the private respondents and as per which compromise, the land owners had agreed not to raise any challenge to the legality or validity of the Notifications u/s 4 and 6 of the Land Acquisition Act;

(ii) that "it is commonly conceded that possession of the land has already been taken and handed over to the New Friends Cooperative Housing Society which has already developed the land in question". The land owners withdrew the writ petition; and

(iii) that it was "made clear that the compromise is being taken on record with a clear understanding between the parties and in fact with a specific statement made at the bar by the learned counsel appearing for the parties that there is no challenge to the acquisition proceedings of the land in question.

10. The senior counsel for the defendant no. 1 has contended that though the writ petition aforesaid challenging the acquisition was filed by the land owners of Khasra No. 60/3 and vide interim order in which writ petition the dispossession of the said land owners was restrained but on 19.04.2005 the land owners also confirmed that possession of the land had already been taken from them and had been handed over further to the defendant no. 5 Society.

11. That thus the land underneath plot No. A-20, New Friends Colony, New Delhi was part of the acquired land possession whereof was taken by the Land Acquisition Collector and possession of which was handed over to the defendant no. 5 Society being beneficiary of the said acquisition proceedings and the layout plan of the colony developed by the Society on the said land was sanctioned over the entire land handed over to the Society and plot No. A-20, New Friends Colony, New Delhi was thus part of the acquired land and possession of which was taken over.

12. Reference in this regard is made to the Sale Deed dated 26.03.2007 on the basis of which the plaintiff claims title which also records that the Society was allotted land ad-measuring 828 Bighas 15 Biswas including land falling in Khasra No. 60/3 under the Agreement dated 13.02.1963 and the possession of the entire said land was handed over to the Society in the year 1963 itself and the Society had developed the entire land including the land falling in Khasra No. 60/3.

13. The senior counsel for the defendant no. 1 has contended that once the land in Khasra No. 60/3 and of which plot No. A-20, New Friends Colony, New Delhi is a part, is part of the land subject matter of Agreement dated 13.02.1963, then the Society could not have executed the Sale Deed of the said land in favour of the plaintiff and could have dealt with the said land only in accordance with the terms and conditions of the Agreement dated 13.02.1963.

14. On the contrary, the senior counsel for the plaintiff has contended that owing to the interim order in W.P.(C) No. 764/1971 the possession of land in Khasra No. 60/3 remained to be taken and thus the said land remained outside the acquisition and the Society acquired rights to the said land under the order dated 19.04.2005 supra and was competent to execute the Sale Deed with respect thereto in favour of the plaintiff.

15. Reliance in this regard is placed on the letter dated 19.11.2012 of the DDA to the plaintiff in response to a RTI query of the plaintiff to the effect that possession of Khasra No. 60/3 acquired vide Award Nos. 49/72-73 had not been handed over to the DDA by LAC/L&B Department filed along with the brief note of arguments on behalf of the plaintiff.

16. The compromise application filed in the writ petition supra, leading to the order dated 19.04.2005 discloses that the writ petition qua the land underneath plots No. A-13, A-14 and A-19, New Friends Colony, New Delhi stood withdrawn on 16.10.1987 and in 1994 upon settlement being arrived at between the land owners and the allottees of the said plots and was thereafter pending only qua land underneath plot No. A-20, New Friends Colony, New Delhi. The said application inter alia states as under:

The petitioners now admit that the said plot of land belongs to the respondent no. 5 to whom it has been given after acquisition under agreement for its members and the respondent No. 5 also agreed to compensate the petitioners in this regard by making payment of Rs. 48,00,000/- (Rupees Forty Eight Lacs only) without having any claim on the amount of compensation.

The aforesaid application thus contains an acknowledgment that the title of the defendant no. 5 Society qua plot No. A-20, New Friends Colony, New Delhi was under the Agreement dated 13.02.1963 and not under the order dated 19th April, 2005 as contended by the plaintiff.

17. It is even otherwise inconceivable that the defendant no. 5 Society could have different rights qua one of the plots in the colony than qua the other plots and could sell the said plot itself without involving the DDA.

18. Once it is found that plot No. A-20 vested in the defendant no. 5 Society under the agreements dated 13th February, 1963 and 15th December, 1964 entered into by the said Society with the President of India, the Society could not have executed the Sale Deed thereof in favour of plaintiff and only a perpetual sublease thereof could have been executed jointly by the defendant no. 5 Society and the defendant no. 3 DDA. The plaintiff has been unable to show as to how the Society was competent to alone execute the Sale Deed of the said plot in favour of plaintiff.

19. The senior counsel for the plaintiff has also argued that since the possession of the said land underneath plot No. A-20, New Friends Colony, New Delhi has not been taken in pursuance to the acquisition Notifications aforesaid, the plaintiff has applied for de-notification thereof u/s 48 of the Land Acquisition Act.

20. There is no merit in the aforesaid contention. It stands abundantly admitted by the predecessor-in-interest of the plaintiff i.e. the defendant no. 5 Society and by which admissions the plaintiff is bound that the possession of the said land was taken in pursuance to the acquisition proceedings and it is now not open to the plaintiff to contend to the contrary. Even in the Sale Deed executed by the defendant no. 5 Society in favour of plaintiff it is recorded that the entire land ad-measuring 828 bighas 15 biswas including land falling in Khasra No. 60/3 measuring 1 bigha 17 biswas was allotted to the Society by DDA for allotment to its members under the Agreement dated 13th February, 1963 with the President of India and the possession of the entire land was handed over to the Society in the year 1963.

21. The senior counsel for the plaintiff has argued that the matter needs to be put to trial to determine whether the Central Government had taken possession of the land pursuant to the acquisition Notifications and placed the same at the disposal of the DDA for onward delivery to the defendant no. 5 Society.

22. I fail to see as to how the plaintiff can seek a trial on the said aspect when the predecessor in title of the plaintiff being the defendant no. 5 Society has unequivocally in the order dated 19.04.2005 as well as the Sale Deed supra admitted that possession of the said land was taken in pursuance to the acquisition and delivered to the defendant no. 5 Society.

23. The senior counsel for the plaintiff has also argued that acquisition becomes complete only upon possession being taken u/s 16 of the Land Acquisition Act. It is stated that Central Government is not a party to the present suit and it has to be determined whether possession was taken or not.

24. Reference in this regard may be made to the judgment of the Division Bench of this Court in Nagin Chand Godha Vs. Union of India (UOI) and Others, and Dr. Rajbir Solanki and Others Vs. Union of India (UOI) and Others, laying down that the Land Acquisition Collector is not required to prove the actual taking over of the possession and upon taking over of the possession on record on acquisition award being made; the possession is deemed to have been taken over.

25. The senior counsel for the plaintiff has relied on The Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, to this effect but which in the facts of this case is not applicable.

26. The senior counsel for the plaintiff has next argued that the plaintiff is in possession and there is no challenge to his possession and to the Sale Deed under which he claims title and in the absence thereof his title and possession cannot be declared to be bad.

27. I am unable to agree. The plaintiff having approached this Court claiming title and possession to the land on the basis of the Sale Deed dated 26th March, 2007 necessarily has to face an adjudication of his rights under the said Sale Deed and cannot claim that

such finding cannot be returned.

28. I may mention that it is not in dispute that plot no. A-20, New Friends Colony, New Delhi is part of the sanctioned layout plan of the New Friends Colony. The said layout plan has been sanctioned only qua the land possession whereof was delivered to the defendant no. 5 Society pursuant to acquisition under the Agreement dated 13.02.1963. If it were to be held that the title of the Society to plot No. A-20, New Friends Colony, New Delhi is otherwise than under the said Agreement, then the said land would fall outside the layout plan of the colony and can in any case not be a part of the colony and the title thereof would be of the land owners and not of the Society.

29. The senior counsel for the plaintiff in the face of the aforesaid has admitted that the Society could not be said to have absolute title to the land and the title of the Society is imperfect.

30. I am unable to agree.

31. It is not in dispute that vide Perpetual Sub-Lease dated 27.08.1982, the lease hold rights to the said land were granted to the predecessor of the defendant no. 1. The Society thus ceased to have any leasehold rights also to the said land. Even if it were to be believed that the said Sub-Lease was cancelled, under the Agreement dated 13.02.1963 the land would go back to the President i.e. the DDA and could not have been dealt with by the Society itself.

32. The senior counsel for the plaintiff has also sought to set up title of the Society to the said land on the basis of mutation entries in the revenue record. The said mutation entries of the year 2005 are of no avail since by that time the village in which the said land was situated stood urbanized and as per the dicta of this Court in Smt. Indu Khorana Vs. Gram Sabha and Others the provisions of the Delhi Land Reforms Act would cease to apply thereto and the entries in the revenue record are of no avail.

33. Thus whichsoever way we look at, the Sale Deed executed by the defendant no. 5 Society of the land in favour of the plaintiff cannot be held to be vesting any title in the plaintiff.

34. No purpose thus would be served in keeping this suit pending and putting it to trial, as has been suggested by the plaintiff. If this Court on the basis of uncontroverted documents is unable to find the plaintiff having any rights to the land with respect to which the suit is filed, the plaintiff cannot be said to be having any locus or cause of action to challenge the rights and title claimed by the defendant no. 1 to the said land and, I fail to see any reason for still putting the suit to trial. The suit thus fails and is dismissed; however, in the circumstances no costs.

Decree sheet be drawn up.