

* **HIGH COURT OF DELHI : NEW DELHI**

+ **FAO (OS) No.27/2008**

% Reserved on : 31st July, 2008
Decided on: 28th November, 2008

Delhi Development Authority ...Appellant
Through : Mr. C. Mohan Rao, Adv.

Vs.

Mr. R.S Kathuria & Ors.Respondents
Through : Mr. O.N. Vohra, Sr. Adv. with
Ms. Shraddha Bhargawa, Adv.
for Respondent No.1
Mr. Sanjay Poddar, Adv. for
Respondent No.3

AND

+ **FAO (OS) No.313/2007**

Govt. of NCT of Delhi ...Appellant
Through : Mr. Sanjay Poddar, Adv.

Vs.

Mr. R.S Kathuria & Ors.Respondents
Through : Mr. O.N. Vohra, Sr. Adv. with
Ms. Shraddha Bhargawa, Adv.
for Respondent No.1
Mr. C. Mohan Rao, Adv. for
Respondent No.3

Coram:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

MANMOHAN SINGH, J.

1. By this common order we shall dispose of the two connected matters wherein the appeals have been filed by the appellants (defendants in the suit) against the order dated 5th June, 2007, passed by the learned Single Judge of this court whereby the preliminary issue of maintainability of suit is decided in favour of the respondent no.1 and against the appellants in CS(OS) No.927/2002.

2. The suit has been filed by the respondent no.1 seeking a declaration that he is the 'Bhumidar' of certain lands and that the appellants have no right, title or interest in the said land. He is also seeking the relief of maintenance of status quo for preservation of the suit property.

3. The Respondent no.1 purchased Bhumidari rights in certain agricultural land measuring 84 Bighas and 11 Biswas situate in Village Malik Pur Kohi also known as Rangpuri in the National Capital Territory of Delhi, from the original Bhumidars of the said lands, vide registered sale deed dated 18.4.1967.

4. Prior to such purchase, a notification no. 4(98)/64/H&H dated 23.1.1965 under Section 4 of The Land Acquisition act, 1894 ('LA Act' for short) was issued by the then Chief Commissioner of Delhi in respect of some of the land so purchased by the Respondent no.1. Thereafter a declaration vide notification no.F.4(98)/64-L&H dated 26.12.1968 was issued under Section 6 of the LA Act. Notice under

Section 9(1) of the LA Act, was issued on 15.1.1981 in respect of land of the Respondent no.1 measuring 80 Bighas and 7 Biswas. The land was placed at the disposal of the DDA vide Notification under Section 22 of the Delhi Development Act dated 19th May 1981 and 17th June 1983.

5. The respondent no.1 preferred a writ petition challenging the said acquisition proceedings by filing Civil Writ No.586/1981 before this Court on the ground of undue delay in the finalization of acquisition process wherein while issuing notice on 24.3.81, orders of status quo regarding possession was passed.

6. According to respondent no.1 the orders were communicated to the authorities on 31.3.81. On the other hand, it is the stand of the LAC that an Award was passed on 30.3.81 and the possession of the land was taken over. It happened before the orders dated 24.3.1981 of status quo were communicated to the respondent on 31.3.81.

7. This writ petition was dismissed by a Full Bench of this Court vide order dated 14th December,1985 along with a batch of W.P and the same is reported as **Roshnara Begum vs. UOI [1996(61) DLT 206]**.

8. Against this order, the appeal preferred in Supreme Court by the Respondent no. 1 was also dismissed and reported as **Murari vs. UOI 1997(1) SCC 15** wherein the validity of the acquisition proceedings was upheld.

9. While dismissing the Civil Appeal, the Supreme Court

permitted the respondent no. 1 to approach the State with request to withdraw from acquisition in case the said land was not required for any other purpose.

10. Relying upon the said order the respondent no. 1 made a representation to the Government under Section 48 of Land Acquisition Act which was rejected. Thereafter respondent No.1 filed the Writ petition being WP(C) No. 233/97 challenging the decision of the State rejecting the representation which is still pending before this Court and the interim orders have been passed in the said writ petition not to dispossess respondent No.1. The said interim orders are continued from time to time and are still in force.

11. The respondent no.1 also filed an application before the Sub Divisional Magistrate cum Revenue Assistant on 13.7.82 seeking corrections in Khasra Gidawari.

12. According to the respondent no.1 on 09.03.83 report of the Land Acquisition Collector was called for in the said proceedings, and on receiving the report it was held that since the acquisition proceedings are complete, if the respondent continues to be in possession, the same would amount to the encroachment and rejected the claim of the respondent.

13. Against this order, respondent no.1 filed an appeal before the Addl. Collector under section 64 B of the The Delhi Land Reforms Act, 1954 ('DLR Act' for short)challenging the order of the Sub

Divisional Magistrate cum Revenue Assistant on the ground that the order was passed without affording an opportunity to him. Accepting the said contention, the Additional Collector remanded the matter back to the Sub Divisional Magistrate Cum Revenue Assistant.

14. In the meantime, there was an amendment to the Rules directing the revenue authorities not to record the name of the persons purportedly in possession of Gaon Sabha Lands. The same was challenged by the respondent no.1 in a Writ Petition before this Court and the same was allowed.

15. During the pendency of the writ petition no. 233/97, the Respondent No. 1 has filed the suit bearing C.S. (OS) No. 927/2002 seeking the following relief:-

“In the premises it is humbly prayed that this Hon’ble court may graciously be pleased to pass a decree of declaration to the effect that the plaintiff is the absolute owner/bhumidar of the land measuring 80 bighas and 7 biswas comprising in filed nos. 1726 (3-3), 1727(4-16), 1728 (2-12), 1729 (6-14), 1747(4-16), 1748(4-16), 1749(4-16), 1750(4-16), 1751(4-16), 1752(4-16), 1753(3-5), 1754(6-12), 1755(4-16), 1756(3-4), 1757 (3-4), 1875(4-16), 1876(4-16) and 1877 (4-3) in all measuring 80 bighas and 7 biswas situated at village Rangpuri @ Malikpur Kohi, New Delhi and the Appellants have no right or interest of any sort whatsoever and cannot interfere.”

It is also prayed that such further decree or orders as may be deemed just and expedient be also passed for preservation of the subject matter and to ensure status quo favouring the respondent no.1.

16. While issuing summons in the suit, interim orders were passed restraining the Appellants from dispossessing the respondent

no. 1 from the suit land.

17. In the said suit, the contention of the Respondent no. 1 is that effect of the all the above said proceedings is that he continues to be in possession and in view of Section 16 of the LA Act, since the possession has not been taken over, the land does not vest absolutely in the Government and is free from all encumbrances.

18. Upon service the Appellants filed the written statement in the suit, inter-alia, raising various objections regarding the maintainability of the suit.

It is also urged that the suit is not maintainable in respect of the acquired land and is liable to be dismissed for want of jurisdiction. The Award has been passed pertaining to the disputed land on 30th March, 1981 and the possession has been taken over on 31st March 1981. The land was placed at the disposal of the DDA vide Notification issued under Section 22 of the Delhi Development Act on 19th May 1981 and 17th June 1983.

19. On the basis of the pleadings of the parties the following preliminary issue was framed:-

“Whether this court has jurisdiction to maintain the suit?”

20. This preliminary issue has been decided against the appellants holding that the civil suit is maintainable. The learned Single Judge has held that in respect of declaration sought by the respondent no. 1 for bhumidari rights, the suit is not barred by the provisions of

DLR Act and the said Act does not provide for exclusive jurisdiction on the Revenue Courts in case of a suit seeking declaration of right as Bhumidar. The learned single Judge has also accepted the contention of Respondent no. 1 that the suit is only for seeking declaration that the respondent no.1 continues to be the 'Bhumidar' as the possession has never been legally taken by the Government and the acquisition process has not been completed. It is further held that Entry 4 in the 1st Schedule of DLR Act does not put any embargo on the same. The contention of Respondent No.1 that he had purchased the land from the original Bhumidar; that he was never dispossessed from the land; that the land acquisition proceedings were never completed by the Government cannot be adjudicated by the Revenue Assistant under the DLR Act and the said dispute can only be determined by the civil court, has been accepted.

Against this order, these two separate appeals have been preferred by the DDA as well as Govt. of NCT of Delhi.

21. Learned counsel for the appellants submitted that the proceedings for declaration is maintainable only before the Revenue Court and the jurisdiction of the civil court is barred in view of the judgment passed by the Hon'ble Supreme Court reported in the case of **Gaon Sabha vs. Nathi &Ors., 110(2004) DLT 549**. By virtue of Section 185 of DLR Act the jurisdiction of Civil Court is barred and the respondent No.1 can only seek relief, if any, from the Revenue Court

and the suit cannot be filed before the civil court.

22. They further argued that suit simplicitor seeking relief of declaration of Bhumidar rights cannot be granted by the civil court which clearly falls within the ambit of Entry 4 of First Schedule of DLR Act and as per the decision of the Supreme Court the jurisdiction lies exclusively with the Revenue Court. The acquisition proceedings have already been sustained by the Supreme Court, in the present matter and no declaration in this behalf can be sought by the respondent no.1 from the civil court particularly after disposing of the writ petition filed by the respondent No.1.

23. It is also argued that the respondent No.1 was the subsequent purchaser of land after Section 4 Notification. No relief can be granted even if the same is on the question of possession and no right, title or interest can be conferred in favour of the respondent No.1. The said sale being void ab initio does not entitle for any discretionary relief although there was a dispute about the taking over of possession of the land in question. The land always vests in the Government free from all encumbrances and the same cannot be divested from the Government.

24. The counsel have relied upon the judgment of the Supreme Court in **Hatti vs. Sunder Singh AIR 1971 2 SCC 841**, wherein the court has held that the jurisdiction of the civil court is clearly barred in appeal for the declaration of bhumidari rights under Section 185 of the DLR Act

read with 1st Schedule Entry 4. The bhumidari rights cannot be granted by the civil court under the DLR Act. They have also relied upon the decision of the Apex Court reported in AIR 1995 SC 55 and **S.D. Subramaniam and ors. vs. Karnataka State Road Transport Corporation, 1997 (11) SCC 250** where it was laid down by the Apex Court that the validity of the acquisition proceedings under Section 16 of the L.A. Act cannot be questioned before the civil court.

25. The learned Senior Counsel for respondent No.1 has argued that the respondent No.1 purchased bhumidari rights in the land from bhumidar based on unquestioned rights in the year 1967 and possession of the land was not taken over in accordance with the provisions of Section 16 and, therefore, the suit of the respondent no.1 squarely falls under Section 9 of Code of Civil Procedure, 1908 being a suit of civil nature.

26. It has been further argued that the respondent No.1 is in physical possession of the land and orders in CCP No.357/1999 and WP (C) No.4094/2002 are in favour of respondent No.1.

27. It is the submission of the learned counsel for the respondent No.1 that the land does not vest in the Central Government free from all encumbrances under Section 16 of the L.A. Act. None of the judgments cited by the learned counsel for the appellants is applicable to the facts and circumstances of the present case and the present appeal under the said circumstances is liable to be dismissed.

28. We have given our thoughtful consideration to the arguments of the counsel on either side and have also gone through the pleadings and documents in the matter. In our opinion, the main question involved in the matter is whether a person can seek a declaration not to interfere with the possession of the land under the DLR Act once the land has been acquired under the L.A. Act and whether the DLR Act is applicable to the lands acquired under the LA Act.

29. In the present case, it is undisputed that the challenge to the notifications issued under Section 4 and Section 6 under LA Act was dismissed by the Supreme Court and the validity of acquisition proceedings were upheld.

30. In **Sneh Prabha vs. State of Uttar Pradesh, 1996 AIR (SC)**

540 it was held that:-

“Any person who purchases a land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings points out an impediment to anyone to encumber the land acquired thereunder. It authorizes the designated officer to enter upon the land to do preliminaries etc. therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 6 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder. If any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land.”

31. Same position is reiterated in **Yadu Nandan Garg vs. State of Rajasthan 1996 AIR (SC) 520** that case long after the notification under Section 4 of the Rajasthan Land Acquisition Act, 1953, the appellant purchased the property from the erstwhile owner and built a house thereon. But as against the State such purchase was not valid and State Government had no obligation to recognize such transfer from the owner after the notification under Section 4(1) is published. When the acquisition was finalized and possession taken, the State Government is entitled to have the possession and to acquire the title therein free from all encumbrances. The transferee acquires no valid title in the property.

32. It is apparent that the property vest in the Government after the acquisition proceedings attained finality and the respondent no.1 remain in illegal and unlawful possession after SLP is dismissed by the Supreme Court. The interim order relied upon by the respondent no.1 to maintain status quo stands vacated when the writ petition itself was dismissed. In **Sarup vs. State of Haryana AIR 1975 P& H 26** it was held that even if the Government on taking possession allowed the tenants to remove the crops standing on the land acquired on the date of taking possession after the possession had been taken, this does not mean that the Government has not acquired the land validly free from all encumbrances. When the acquisition has been made by making a declaration and publishing it and on making the Award, possession is

taken, the land vest in the Government.

33. In ***Rampat Vs. Union of India and Others (2005 (122) DLT 643)*** this Court held that possession having been taken, as per Section 16 of the Land Acquisition Act, land vests in the authorities free from all encumbrances.

34. In ***Nagin Chand Godha vs. Union of India and Others (2003 (70) DRJ 721 (DB))***, it was observed by this Court that after symbolic possession is taken, if the petitioner is enjoying the possession, he is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be considered to be a ground to contend that possession is not taken. He cannot subsequently come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.

35. In view of our above discussion, it is clear that when possession of land is taken on the basis of an Award, it vests in the Government free from all encumbrances.

Maintainability of the suit in Civil Court

36. It will be clear from the judgments referred below that the jurisdiction of Civil Court is clearly barred under Section 185 of the LA Act. We feel that in the facts and circumstances of the present case the civil suit filed by the respondent is not maintainable. In **Hatti Vs. Sunder singh AIR 1971 SC 2320**, it was observed by the Apex Court in para 7 and 8:-

“7.....The jurisdiction of the Civil Court is clearly barred by Section [185](#) of the Act read with the various items of the First Schedule mentioned above. If a Bhumidar seeks a declaration of his right, he has to approach the Revenue Assistant by an application under item 4, while, if a Gaon sabha wants a clarification in respect of any person claiming to be entitled to any right in any land, it can institute a suit for a declaration under item 28, and the Revenue Assistant can make a declaration of the right of such person. So far as suits for possession are concerned, we have already held earlier that Section [84](#) read with item 19 of the First Schedule gives the jurisdiction to the Revenue Assistant to grant decree for possession, and that the suit for possession in respect of agricultural land, after the commencement of the Act, can only be instituted either by a Bhumidar or an Asami or the Gaon Sabha. There can be no suit by any person claiming to be a proprietor, because the Act does not envisage a proprietor as such continuing to have rights after the commencement of the Act. The First Schedule and Section [84](#) of the Act provide full remedy for suit for possession to persons who can hold rights in agricultural land under the Act.

8. The High Court, in this connection, referred to Section [186](#) of the Act under which any question raised regarding the title of any party to the land, which is the subject-matter of a suit or proceeding under the First Schedule, has to be referred by the Revenue Court to the competent Civil Court for decision after framing an issue on that question. Inference was sought to be drawn from this provision that questions of title could be competently agitated by a suit in the Civil Court, as the jurisdiction of the Civil Court was not barred. It appears to us that there is no justification for drawing such an inference. On the contrary, Section [186](#) envisages that questions of title will arise before the Revenue Courts in suits or proceedings under the First Schedule and, only if such a question arises in a competent proceeding pending in a revenue Court, an issue will be framed and referred to the Civil Court, Such a provision does not give jurisdiction to the Civil Court to entertain the suit itself on a question of title. The jurisdiction of the Civil Court is limited to deciding the issue of title referred to it by the Revenue Court. This clearly implies that, if a question of title is raised in an application for declaration of Bhumidari rights under item. 4 of Schedule I of the Act, that question will then be referred by the Revenue Assistant to the Civil Court; but a party wanting to raise such a question of title in order to claim Bhumidari right cannot directly approach the Civil Court. The Act is a complete Code under which it is clear that any one, wanting a declaration of his

right as a Bhumidar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under Section 84 read with item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil Court had no jurisdiction to entertain the suit."

37. In **State of Bihar Vs. Dhirendra Kumar and others AIR 1995**

SC 1955, following observations are made :-

"3. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under Section 9 of the Act and delivered to the beneficiary..... We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction."

38. In **Gaon Sabha and Anr.Vs. Nathi and Ors. 110 (2004) DLT 549**

(SC), it was held at para 15:-

"15. The legal position is therefore absolutely clear and there cannot be even a slightest doubt that the civil court had no jurisdiction to entertain the suit which was filed Seeking a declaration that the order of vesting of land in Gaon Sabha is illegal. It is indeed surprising that in spite of the aforesaid Division

Bench decision of the Delhi High Court which was rendered in 1973 which had settled the legal position and was a binding precedent and the decision of this Court in *Hatti v. Sundar Singh* (supra) which was also brought to the notice of the learned Single Judge hearing the second appeal (RSA No. 73 of 1972), he chose to by-pass the same by some queer logic and went on to hold that the civil suit was maintainable. Once we come to the legal position that the civil court had no jurisdiction to entertain the suit, the inevitable consequence is that the decree passed in the aforesaid suit including that of the High Court is wholly without jurisdiction. In such circumstances the principle laid down in *Kiran Singh v. Chaman Paswan* [MANU/SC/0116/1954](#) would come into play that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and further a defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. Therefore, the finding that the order passed under Section [7\(2\)](#) of the Act vesting the property in the Gaon Sabha is illegal recorded in the civil suit (including that by the High Court in second appeal) has to be completely ignored.”

39. The Supreme Court in ***S.P. Subramaniya Shetty and Others v. Karnataka State Road Transport Corporation & Others, (1997) 11***

SCC 250 held that:

“4. In view of the settled legal position that the notification had become final and the proceedings had attained finality, the civil suit was not maintainable. This court has repeatedly held that a civil suit relating to acquisition proceedings is not maintainable and by implication, cognizance under Section 9, CPC, is barred.....”

40. In ***Smt. Kasturi (Dead) by Lrs Vs. Gaon Sabha (1989) 4SCC***

55; it was observed in para 3 that:

“3.....The decision of this Court in the case of *Hatti v. Sunder Singh* [MANU/SC/0410/1970](#) settled the legal position that a claim

under Section 11 of the Act for declaration of bhumidari right was not maintainable in the Civil Court in view of Section 185 of the Act read with Schedule I and exclusive jurisdiction for adjudication of such claims vested in the appropriate Revenue Court. This position of law is not disputed before us. In regard to the relief of bhumidari rights the High Court had, therefore, rightly held that the plaintiff's suit was not maintainable.”

41. In the present case, the Award was passed on 30st March, 1981 and the possession was taken on 31st March, 1981 before the interim orders were communicated to the appellant. The continued possession of the respondent no. 1 pursuant to the said orders of the court cannot be treated as possession for the purpose of section 16 of the LA Act and on the dismissal of challenge of respondent No.1 to the acquisition proceedings; the said respondent no.1 has no longer any claim in respect of the same.

42. In the suit filed by the respondent no.1, relief sought is not only a decree of declaration as Bhumidar but it was also sought that the Appellants have no right whatsoever and cannot interfere.

43. The legal position, is therefore, absolutely clear that when the acquisition proceedings are upheld, there is no embargo on the Appellants on taking over the land. However, before the physical/actual possession can be taken, the respondent started another round of litigation by filing of the writ petition and the present suit. It is not disputed in law that the LA Act is a complete code in itself relating to the acquisition of land and once provision of LA Act are invoked and the land acquired, no right in respect of said land can be claimed under

some other act.

44. In view of the facts of the present case, we feel that the Ld. Single Judge was not right in observing that the respondent No. 1 is in possession as the said possession is pursuant to the interim orders of this court. It is a matter of fact that the said interim order stands vacated on the dismissal of the SLP by the Supreme Court. The Ld. Single Judge wrongly observed that the appellants have not taken the actual physical possession or symbolic possession and therefore the suit is maintainable for determination of the same. The said finding of the Ld. Single Judge was contrary to the facts of the present case as the Award having been passed on 30th March, 1981, the question of the appellants not taking the symbolic and physical possession does not arise as the authorities are free to take the actual possession on the vacation of the interim orders passed in the writ petition filed by respondent No.1. It appears from the impugned order that the Ld. Single Judge has overlooked the fact that the respondent No.1, apart from seeking Bhumidar rights, also sought orders restraining authorities/appellants from interfering with his possession and also obtained order in the suit in his favour. It was wrongly observed that the suit for declaration of bhumidar right u/s 34 of the Specific Relief Act is maintainable and can be determined by a Civil Court in a civil suit.

45. The finding of the learned Single Judge was not correct in holding that if the plaint is rejected for want of jurisdiction, the

respondent would be left remedy less. What is argued is that in the present case, the respondent had challenged acquisition proceedings before this court as well as the Supreme Court and after having failed, he has filed the suit in respect of the very same land claiming ownership and restricting interference with possession by the appellants. In fact it is another round of litigation in respect of the same land which is not maintainable under the law.

46. We are also of the opinion that in the instant case, since the respondent no.1 bought the land after Section 4 notification, it does not confer any title or interest upon him. The suit of the respondent no.1 for declaring him as Bhumidar is not maintainable and the symbolic possession vests in the Government after Supreme Court dismissed the appeal.

47. In the result, Appeal Nos.- FAO(OS) No. 313/2007 and FAO(OS) No.27/2008 succeeds and are hereby allowed. Suit filed by the respondent no. 1 is dismissed. Interim order stands vacated. No costs.

MANMOHAN SINGH, J.

NOVEMBER 28, 2008
sa/j

A.K. SIKRI, J.