* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 30th April, 2020**

\+ **RSA No.2/2012**

DELHI DEVELOPMENT AUTHORITY & ORS. **.... Appellants**

Through: Mr. Ajay Verma, Adv.

Versus

PUSHPA LATA & ORS. **...Respondents**

Through: Mr. B.S. Maan & Paritosh Tomar, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 19th January, 2011 of the Court of Additional District Judge (ADJ)-05 (Central)] of dismissal of Regular First Appeal being RCA No.28/2009/2005 under Section 96 of the CPC preferred by the appellant / defendant Delhi Development Authority (DDA) against the judgment and decree [dated 1st February, 2005 of the Court of Civil Judge, Delhi in Suit No.564/1993] allowing the suit of the predecessor of the respondents / plaintiffs against the appellant / defendant DDA and its officials as well as against the Union of India (UOI) (respondent no.9 herein), restraining the appellant / defendant DDA and its officials from forcibly or illegally demolishing the room / khoka situated in Khasra No.2931/1661/2/1 in Khewat No.178, Khatauni No.479 of village Mehrauli, New Delhi.

2. The suit, from which this Second Appeal arises, was filed by Sh. Hans Raj son of Pandit Shri Kishan, predecessor of the respondents / plaintiffs herein, against the appellant / defendant DDA, it officials and UOI, for permanent injunction to restrain the appellant / defendant DDA, its officials and UOI from demolishing the room / khoka situated in Khasra No.2931/1661/2/1 in Khewat No.178 and Khatauni No.479 situated at Mehrauli, Delhi, pleading that (i) the respondents / plaintiffs were the co-owners / co-bhumidhars in possession thereof by virtue of entries in the Khasra Girdawari; (ii) the names of the respondents / plaintiffs along with other co-owners and co-bhumidhars viz. Pandit Jagannath son of Kanhaiyalal and Sh. Prag Dutt son of Pandit Shri Kishan were entered in the Khasra Girdawari; (iii) the respondents / plaintiffs had become the owner and were in possession of the said khasra by virtue of "declared suit duly decreed" in favour of the respondents / plaintiffs; the certified copy of order / judgment of declaration in suit No.479/1969 passed by the then Court of Sh. Ravi Kumar, Sub-Judge, Delhi was being filed; (iv) the said land consisted of open cultivated land and the respondents / plaintiffs had constructed a room / khoka on the said land and the said room / khoka was duly mentioned in the earlier suit for declaration which was filed by the respondents / plaintiffs against UOI; (v) the said room / khoka measuring 15x10 was in existence prior to the institution of the suit No.479/1969 which was decreed in favour of the respondents / plaintiffs and the room / khoka was still in existence; (vi) the respondents / plaintiffs had moved an application before the competent Court of Sub-Divisional Magistrate (SDM) for demarcation

of the said khasra and the said application was pending; (vii) the said land was not notified and acquired by the government or by the local authorities and was free from all encumbrances; and, (viii) the appellant / defendant DDA, illegally and without any reason was threatening to demolish the said constructed room / khoka.

3. The appellant / defendant DDA contested the suit by filing a written statement, *inter alia* pleading that (i) Khasra No.29/2931/1661/2/1 of village Mehrauli, was a Gaon Sabha land and on urbanization of the said village, the same vested in the Central Government and was placed at the disposal of DDA for the purpose of development and maintenance, vide Notification dated 20th August, 1974; (ii) the respondents / plaintiffs or any other person had no right to the said land and the appellant / defendant DDA was within its right to protect its land from any unauthorized encroachment / construction; and, (iii) denying that the deceased respondent / plaintiff Hansraj was the co-owner or co-bhumidhar of the land.

4. The respondents / plaintiffs in the suit filed a replication to the written statement aforesaid, *inter alia* pleading that the question, whether the subject land vested in the Gaon Sabha, was no longer *res integra* having been decided vide judgment dated 20th March, 1975 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi in Suit No.479/1969 titled ***Pandit Jagannath Etc. Vs. Union of India*** and which judgment had attained finality; the appellant / defendant DDA was barred by principles of *res judicata* from re-agitating the said question. It was further pleaded that the decree passed in the said suit against UOI did

not entitle UOI to place the land at the disposal of respondent / defendant DDA.

5. Vide order dated 10th November, 1995, the following issues were framed in the suit:

> *"(1) Whether the judgment dated 20/03/75 by Sh. Ravi Kumar, the then Sub-Judge in suit No.479/1969 operates as res judicata for the present suit? OPD*
>
> *(2) Whether the plaintiff is entitled to the relief of injunction? OPP*
>
> *(3) Relief."*

and the parties relegated to evidence.

6. While the respondents / plaintiffs examined one of them viz. Rajiv Bhardwaj son of original plaintiff Hansraj as the only witness, the appellant / defendant DDA examined its Patwari and Kanoongo.

7. The Suit Court i.e. the Court of the Civil Judge allowed the suit, reasoning that (i) perusal of the plaint in earlier suit No.479/1969 (subsequently numbered as 98/1973) showed the same plaintiff i.e. Hansraj to have filed that suit with respect to the same property, against UOI and which suit was decreed in favour of the plaintiff Hansraj and the order dated 30th September, 1959 of the Revenue Assistant, declaring the land as bhumidhari of Gaon Sabha, was held null and void and the defendant in that suit i.e. UOI, was permanently restrained from interfering in possession of the respondents / plaintiffs

over the suit land; (ii) the order of the Revenue Assistant vesting the land in the Gaon Sabha having already been declared null and void vide decree in the earlier civil suit filed by the respondents / plaintiffs, the sole defence of the appellant / defendant DDA, that the land vested in the Gaon Sabha and on account of urbanization of the village, in the Central Government which had transferred it to the DDA, disappeared; (iii) since the order of vesting of land in Gaon Sabha did not subsist, UOI could not have transferred the land to the appellant / defendant DDA because UOI itself did not have any rights in the land; (iv) the matter was *res judicata* by operation of earlier judgment and decree dated 20th March, 1975; (v) what was held in the said judgment against UOI applies against appellant / defendant DDA also, which claimed to be an assignee of UOI; and, (vi) there was no merit in the contention of the appellant / defendant DDA that since it was not a party to the earlier suit and because the decree against UOI also was an *ex parte* decree, did not bind the appellant / defendant DDA, had no merit.

8. The First Appeal preferred by the appellant / defendant DDA was dismissed by the ADJ, affirming the reasoning of the Suit Court i.e. the Civil Judge.

9. This Regular Second Appeal came up first before this Court on 9th January, 2012 and thereafter on 9th February, 2012, when the same was dismissed, finding the same to be not raising any substantial question of law. It was reasoned that both the Courts below had rightly held that the appellant / defendant DDA could not re-agitate

the same question which had been adjudicated vide judgment dated 20th March, 1975 in suit No.479/1969 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi.

10. The appellant / defendant DDA preferred Special Leave Petition being SLP(C) No.18316/2012 to the Supreme Court against the aforesaid order of dismissal of this Second Appeal and which Special Leave Petition was disposed of vide order dated 17th July, 2012 of the Supreme Court as under:

> *"Mr. A. Sharan, learned senior counsel for the petitioners submits that the petitioners were not made a party in the earlier proceedings between the plaintiff and Union of India. The predecessor of the petitioners Delhi Improvement Trust was also not impleaded as a party. Furthermore, the land is vested in the Gaon Sabha. The Civil Court had no jurisdiction for entertaining any civil suit. Consequently, the decree dated 20th March, 1975 in Suit No.479 of 1969 is wholly without jurisdiction.*
>
> *We have pursued the order passed by the High Court. It appears that these issues have not been considered by the High Court although it is submitted by Mr. A. Sharan that the issues were raised before the High Court and are, in fact, specifically mentioned in the Memo of Appeals. If that be so, in our opinion, the appropriate course to be adopted by the petitioners is to file a review petition before the High Court.*

In view of the above, learned counsel for the petitioners seeks leave to withdraw this special leave petition. Leave, as prayed for, is granted. The special leave petition is dismissed as withdrawn with liberty to approach the High Court."

11. On the basis of the aforesaid order of the Supreme Court, the appellant / defendant DDA applied to this Court for review of the order dated 9th February, 2012 of dismissal of the Second Appeal, contending that the decree dated 20th March, 1975 in Suit No.479/1969 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi was without jurisdiction and a nullity, as Civil Court had no jurisdiction in such matters, as held in ***Hatti Vs. Sunder Singh*** (1970) 2 SCC 81 and in ***Gaon Sabha Vs. Nathi*** (2004) 12 SCC 555.

12. Vide order dated 28th May, 2015, the Review Petition preferred by the appellant / defendant DDA was allowed and the order dated 9th February, 2012 of dismissal of the Second Appeal recalled and notice of the Second Appeal issued to the respondents / plaintiffs.

13. The order dated 27th February, 2015 in this appeal records that service of the notice on the respondents / plaintiffs was complete. The counsel for the respondents / plaintiffs appeared in this appeal.

14. Vide order dated 15th April, 2015 in this appeal, the appeal was found to raise following two substantial questions of law:

"i) Whether the suit as framed by the respondent was maintainable with the relief of declaration and if so, to what effect?

ii) Whether the two concurrent judgments returned by the Courts below suffer from any perversity?"

and the appeal admitted for hearing and the judgments and decrees appealed against stayed during the pendency of the appeal.

15. The appellant / defendant DDA filed CM No.38658/2016, for amendment of the written statement in the suit from which this Second Appeal arose, *inter alia* to take the plea that the order dated 30th September, 1959 of vesting of subject land in the Gaon Sabha was passed by the Revenue Assistant under the provisions of the Delhi Land Reforms Act, 1954; the respondents / plaintiffs who along with others had filed suit No.479/1969 aforesaid did not challenge the said order of vesting of land in the Gaon Sabha before the authorities before whom the same could be challenged under the Land Reforms Act and thus the said order of vesting of land in the Gaon Sabha attained finality; the Civil Suit No.479/1969 seeking quashing of the order dated 30th September, 1959 of the Revenue Assistant was not maintainable. Notice of the said application was issued.

16. However during the hearing on 22nd March, 2017 of the aforesaid application for amendment, the counsel for the respondents / plaintiffs stated that he had no objection, if without adding any new fact, the legal objection raised was heard at the time of final hearing of the appeal and therefore there was no need to amend the written statement. Permitting the said legal plea to be raised at the time of final hearing of this appeal, the application for amendment of the written statement was disposed of.

17. The respondents / plaintiffs also filed CM No.16262/2017 under Order XLI Rule 27 of the CPC, to place on record certified copies of (i) judgment dated 25th May, 1962 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi in suit No.300/1959 (new No.382/1962) titled ***Pandit Jagannath, Pandit Parag Dutt and Hansraj Vs. Gaon Sabha***; and, (ii) order dated 2nd January, 1965 of Assistant Collector, New Delhi in Suit No.273/1964 titled ***Gaon Sabha, Mehrauli Vs. Parag Dutt Etc.*** The said application came up before this Court on 5th December, 2017, when recording the no objection of the counsel for the appellant / defendant DDA to consideration of the said judgment / order, at the time of final hearing, the said application was disposed of.

18. The counsels were heard on 17th July, 2018 and this judgment, intended to be dictated in the chamber on the same date, remained to be dictated and is being pronounced now.

19. The counsel for the appellant / defendant DDA, besides taking me through the record, contended that both the Courts below have decided in favour of the respondents / plaintiffs merely on the basis of judgment dated 20th March, 1975 in Suit No.479/1969 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi in a suit earlier filed by the respondents / plaintiffs along with others against the UOI, for declaring the order of vesting of the subject land in the Gaon Sabha as bad, and the two Courts below have axiomatically held that the respondents / plaintiffs continued to be the owners of the land and entitled to permanent injunction claimed. Reliance is however placed

on ***Gaon Sabha Vs. Nathi*** supra holding in the facts of that case, that (i) 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 the Gaon Sabha was illegal; (ii) once the legal position is that the Civil Court had no jurisdiction to entertain the suit, the inevitable consequence is that the decree passed by the Civil Court in the earlier suit in that case, was wholly without jurisdiction; (iii) in such circumstances, the principle would come into play, that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be setup whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and that a defect of jurisdiction strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties; and, (iv) therefore the finding that the order passed (in that case) under Section 7(2) of the Land Reforms Act vesting the property in the Gaon Sabha was illegal, recorded in the earlier Civil Suit, had to be completely ignored. The counsel for the appellant / defendant DDA contended that applying the said law, the judgment dated 20th March, 1975 in Suit No.479/1969 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi, relying solely whereon the two Courts below had found in favour of the respondents / plaintiffs, has to be ignored and resultantly, the judgments of the Courts below liable to be set aside and the suit of the respondents / plaintiffs dismissed.

20. Per contra, the counsel for the respondents / plaintiffs drew attention to (i) the judgment dated 25th May, 1962 in Suit No.300/1959 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi; and, (ii) to the order dated 2nd January, 1965 in Suit No.273/1964 of the Court of Assistant Collector, filed along with the application aforesaid for additional evidence and permitted to be taken on record. A perusal of the judgment dated 25th May, 1962 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi shows that the suit No.300/1959 was also filed by the respondents / plaintiffs along with other co-owners / co-bhumidhars, on 27th November, 1959, for declaration that the order of the Revenue Assistant terminating their interest with respect to Field No.2931/1661/2/1 was wrong, illegal and *ultra vires* and for declaration that the respondents / plaintiffs along with others were bhumidhar of the said land and for permanent injunction to restrain the Gaon Sabha from interfering with their possession of the land. Vide judgment dated 25th May, 1962 of Sh. Hukum Chand Gupta, Sub-Judge, Delhi, the order of the Revenue Assistant was held to be wrong, illegal and *ultra vires* and the respondents / plaintiffs along with other co-owners / co-bhumidhars declared to be bhumidhars with respect to the subject land and the Gaon Sabha restrained from interfering with the possession of the respondents / plaintiffs along with others. A perusal of the order dated 2nd January, 1965 in Suit No.273/1964 of the Court of the Assistant Collector shows that the said suit was filed by Gaon Sabha, Mehrauli, against the respondents / plaintiffs and other co-owners / co-bhumidhars, averring that respondents / plaintiffs and others had encroached upon plot

measuring 8 Bighas and 13 Biswas bearing Khasra No.2931/1661/2. Vide judgment dated 2nd January, 1965 of the Assistant Collector, the said suit of the Gaon Sabha was dismissed in view of judgment dated 25th May, 1962 of Sh. Hukum Chand Gupta, Sub-Judge, Delhi holding the subject land to be belonging to the respondents / plaintiffs and others and having not vested in the Gaon Sabha. The counsel for the respondents / plaintiffs, in addition also referred to the judgment dated 20th March, 1975 in suit No.479/1969 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi. The counsel for the respondents / plaintiffs however, not controverting the law laid down in the ***Gaon Sabha Vs. Nathi*** supra, contended that, (a) though applying the said law, the judgments of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi and judgment of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi have to be ignored; (b) but the order dated 2nd January, 1965 of the Additional Collector, Delhi, of dismissal of suit filed by the Gaon Sabha under Rule 169/170 of the Delhi Land Reforms Rules, 1954, is of the appropriate authority / fora and the consequence of dismissal of the said action brought by the Gaon Sabha for ejectment of the respondents / plaintiffs, would be, as provided in Section 67(d) of the Land Reforms Act i.e. of the respondents / plaintiffs continuing to be bhumidhar of the land. It is thus contended that Gaon Sabha had no rights in the land and the respondents / plaintiffs continue to be the bhumidhar and the appellant / defendant DDA has been rightly injuncted by the two courts below.

21. I have considered the rival contentions.

22. What emerges is, that (i) the Revenue Assistant, in exercise of powers under the Land Reforms Act, vide order impugned by the respondents / plaintiffs in suit No.300/1959 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi (and date of which order of Revenue Assistant is not available) terminated the interest of the respondents / plaintiffs in land ad-measuring 8 Bighas 13 Biswas situated in Khasra No.2931/1661/2/1, also the subject matter of the suit from which this appeal arises; (ii) the challenge by the respondents / plaintiffs to the said order of the Revenue Assistant by way of suit No.300/1959 was successful and vide judgment dated 25th May, 1962 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi the said order of the Revenue Assistant was set aside; (iii) the Revenue Assistant vide order dated 30th September, 1959 declared Gaon Sabha as bhumidhar of the subject land; (iv) the respondents / plaintiffs though having been left with no rights in the subject land, encroached upon the same and against which action of encroachment, the Gaon Sabha, in which the land vested, took proceedings under Rules 169/170 of the Delhi Land Reforms Rules before Assistant Collector authorized to entertain such challenge but which proceedings did not meet with any success and were dismissed on 2nd January, 1965 in view of the earlier judgment dated 25th May, 1962 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi; and, (v) the respondents / plaintiffs, after more than ten years of the order dated 30th September, 1959 of the Revenue Assistant declaring Gaon Sabha to be the bhumidhar of the subject land and after the village in which the land was situated had been urbanized in the year 1966 and whereupon the land had vested in the

UOI, in or about 1969 challenged the order dated 30th September, 1959 of the Revenue Assistant by way of suit No.479/1969, impleading UOI as a defendant thereto; the said suit was also successful and vide judgment dated 20th March, 1975 of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi, the said order dated 30th September, 1959 of the Revenue Assistant was also set aside.

23. However the judgments of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi and of the Court of Sh. Ravi Kumar, Sub-Judge, Delhi, being of the Courts which did have subject jurisdiction over the orders / actions of the office of the Revenue Assistant in exercise of powers under the Land Reforms Act, the said judgments are null and void and are to be ignored.

24. Once the said judgments are to be ignored, it follows that the land, pursuant to the order dated 30th September, 1959 of the Revenue Assistant, continued to remain vested in the Gaon Sabha and the rights even if any of the respondents / plaintiffs therein stood extinguished, as far back as in 1959.

25. The counsel for the respondents / plaintiffs however relies on the order dated 2nd January, 1965 of the Assistant Collector dismissing the suit filed by the Gaon Sabha against the respondents / plaintiffs claiming respondents / plaintiffs to have encroached upon the land and contends that since vide the said order the suit of the Gaon Sabha was dismissed, the respondents / plaintiffs, even though divested of bhumidari rights vide order dated 30th September, 1959 of the

Revenue Assistant, could not be dispossessed from the said land. Section 67(d) of the Land Reforms Act is invoked.

26. Section 67 is titled "Extinction of the interest of a Bhumidhar" and Clause (d) thereof provides that the interest of a bhumidhar in his holding or any part thereof is extinguished when he has been deprived of possession and his right to recover possession is barred by limitation.

27. No merit is found in the aforesaid contention. Section 67 provides for extinction of right of bhumidhar. However Gaon Sabha is not included in the definition of 'bhumidhar' in Section 5 of the Land Reforms Act and Gaon Sabha is defined in Section 3(10) of the Act as the Gaon Sabha established under Sections 150 and 151 of the Act. Section 150 of the Act, besides providing for establishment of Gaon Sabha, also provides for vesting of all movable and immovable properties in the Gaon Sabha and does not provide for Gaon Sabha to be a bhumidhar. Moreover the proceedings culminating in the order dated 2nd January, 1965 of the Assistant Collector were not under Section 67 of the Land Reforms Act but under Rules 169/170 of the Land Reforms Rules. Rule 169 titled "Duties of Gaon Panchayat relating to properties vested in Gaon Sabha" provides that it shall be the duty of the Gaon Panchayat to manage, maintain, preserve and protect all property vested in the Gaon Sabha including land over which it is entitled to take possession under Section 72 and vacant land and to protect it from injury or interference. It further provides for the Gaon Panchayat to report all cases of interference with the

property, to the Deputy Commissioner, requesting him to get the encroachment removed or to take such other action as may be necessary. Rule 170 is titled "Summary Proceeding for ejectment of persons occupying land without title (Section 86A)" and provides for Pradhan or any member of the Gaon Panchayat to approach the Revenue Assistant for removal of any person liable for ejectment on suit of Gaon Sabha under Section 87 and provides for Gaon Sabha to be a party to such a proceeding. The said Rules do not contain any provision, as in Section 67(d), of failure of Gaon Sabha to take action resulting in person in unauthorized occupation acquiring any rights. Even otherwise under the Land Reforms Act a person can be either a bhumidhar or an asami of an agricultural land in a village and all other kinds of lands and property vest in the Gaon Sabha. Reference if any in this context may be made to ***Hatti Vs. Sunder Singh*** (1970) 2 SCC 841, ***Gaon Sabha Vs. Nathi*** supra and ***Ram Niwas Vs. Financial Commissioner, Delhi*** 2011 SCC OnLine Del 1338. The counsel for respondents / plaintiffs is thus wrong in invoking Section 67(d) of the Land Reforms Act. Thus, the order dated 2nd January, 1965 of the Collector could not have created or vested any bhumidhari rights in the appellants / plaintiffs, when the appellants / plaintiffs vide order dated 30th September, 1959 of the Revenue Assistant and which order had attained finality, had been divested of any rights in the subject land.

28. Even otherwise, a perusal of the order dated 2nd January, 1965 of the Assistant Collector shows the Assistant Collector to have dismissed as not maintainable the action brought by the Gaon Sabha against the respondents / plaintiffs of encroachment over the subject land merely on the basis of the earlier judgment of the Court of Sh. Hukum Chand Gupta, Sub-Judge and which judgment being of a Court not competent to adjudicate the lis was *coram non judice*. Thus, the respondents / plaintiffs cannot claim any rights to have accrued to them under the said order of the Additional Corrector. The dismissal of the action so brought about did not create any new right in favour of the respondents / plaintiffs.

29. Faced therewith, the counsel for the respondents / plaintiffs also contended that the order dated 2nd January, 1965 in any case shows the respondents / plaintiffs to have been in possession since then. However on enquiry, whether any plea of limitation had been raised, the answer was in the negative.

30. The question of the respondents / plaintiffs claiming such possession to be adverse to the appellant / defendant DDA or its predecessor, also does not arise since the respondents / plaintiffs have been claiming lawful title to the land and it is the settled position in law (see ***Annasaheb Bapusaheb Patil Vs. Balwant*** (1995) 2 SCC 543, ***Mohan Lal Vs. Mirza Abdul Gaffar*** (1996) 1 SCC 639, ***Karnataka Board of Wakf Vs. Government of India*** (2004) 10 SCC 779, ***T. Anjanappa Vs. Somalingappa*** (2006) 7 SCC 570, ***P.T. Munichikkanna Reddy Vs. Revamma*** (2007) 6 SCC 59 and ***L.N.***

Aswathama Vs. P. Prakash (2009) 13 SCC 229) that the plea of lawful possession is antithetical to the plea of adverse possession.

31. I may also notice that it remains unexplained by the respondents / plaintiffs, why inspite of judgment dated 25th May, 1962 of the Court of Sh. Hukum Chand Gupta, Sub-Judge, Delhi, need was felt by the respondents / plaintiffs in the year 1969 to again institute the suit against the UOI, if UOI being a successor of Gaon Sabha was bound by the earlier judgment and decree dated 25th May, 1962 against the Gaon Sabha. I have minutely perused the judgment dated 20th March, 1975 in the said subsequent suit and do not find any reference therein to the earlier judgment dated 25th May, 1962. The filing of the subsequent suit culminating in the judgment dated 20th March, 1975 shows that even the respondents / plaintiffs themselves did not consider themselves to be bound by the earlier judgment dated 25th May, 1962.

32. The counsel for the respondents / plaintiffs during the hearing also made a contention that after the urbanization of the year 1966, the appellant / defendant DDA could not have challenged the order dated 30th September, 1959 of the Revenue Assistant before the authorities under the Land Reforms Act and were justified in approaching the Civil Court. However on being reminded that the authorities before whom the order dated 30th September, 1959 of the Revenue Assistant could have been challenged under the Land Reforms Act, continue to exist even now in as much as it is not as if the Act has been repealed, the said argument was not pressed any further.

33. Thus, no merit is found in the contentions of the counsel for the respondents / plaintiffs and axiomatically the judgments of the Courts below are liable to be set aside and the appeal entitled to be allowed.

34. During the hearing, attention of the counsels was also drawn to ***Anathula Sudhakar Vs. P. Buchi Reddy*** (2008) 4 SCC 594 and ***Bachhaj Nahar Vs. Nilima Mandal*** (2008) 17 SCC 491 laying down that in a suit for permanent injunction simpliciter, restraining dispossession, title is not to be adjudicated. The decree passed by the Courts below also is of permanent injunction restraining the appellant / defendant DDA, only from forcibly and illegally dispossessing the respondents / plaintiffs from the subject land and not of restraining the appellant / defendant DDA from resorting to legal process for recovering possession from the respondents / plaintiffs. No issue of title even was framed in the suit. It was during the hearing put to the counsel for the appellant / defendant DDA, whether not the conduct of the appellant / defendant DDA of contesting such suits for permanent injunction for decades, as in this case, and during which contest the plaintiff invariably remains in possession, delays the positive action of the DDA of recovering possession. It was felt that DDA, when faced with such a suit, if the plaintiff therein is in settled possession and even if DDA claims the possession of the plaintiff to be unauthorized, should have such suit disposed of immediately by making a statement that it will not dispossess the plaintiff forcibly and will resort to legal process within its power to recover possession. It was felt that in this way, rather than perpetuating the unauthorized possession of the

plaintiff, DDA would be able to immediately reclaim its property. Though an attempt was made to make general provisions in this regard but remained unsuccessful.

35. I have also considered, that since the respondents / plaintiffs are admittedly in possession since long, whether it would be appropriate to maintain the decree for permanent injunction against the forceful dispossession, permitting appellant / defendant DDA to take legal recourse. However on deeper consideration, I have decided against this course of action. The reason therefor is, that the respondents / plaintiffs, whose rights in the subject land stood extinguished more than half a century back on 30th September, 1959, have, by resorting to successive legal proceedings, continued in possession. Else it is abundantly borne out from above that the respondents / plaintiffs are rank trespassers over public property. It is thus not deemed appropriate to, by continuing the decree for permanent injunction against forceful dispossession, perpetuate the said illegal possession of the respondents / plaintiffs any further.

36. The appeal is thus allowed.

37. The judgments and decrees of the courts below are set aside and the suit filed by the respondents / plaintiffs is dismissed.

38. The respondents / plaintiffs having continued in illegal possession of the land for more than half a century and having engaged the appellant / defendant DDA in litigation, are also burdened with costs of Rs.1,00,000/-.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

APRIL 30, 2020
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