

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

+ CM(M) 1272/2018 & CM.No.43674/2018

Judgment reserved on :14.01.2019

Date of decision :30.12.2019

P.L. BHASIN & ORS.

..... Petitioners

Through: Mr. Wasim Ashraf, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

**Through: Mr. Ajay Arora, Advocate for
R-1.**

**Mr.Roshan Lal Goel, Advocate
for DDA.**

**Mr. Parvinder Chauhan,
Advocate for R-3.**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners vide the present petition seek the setting aside of the impugned orders dated 22.03.2017 and 11.09.2018 of the Court of the learned ADJ-02, Central in relation to CC No.240/2016. The petitioners herein are the plaintiffs of the said suit previously instituted in the High Court of Delhi then bearing No. CS(OS)1031/2010, which was instituted by the plaintiffs i.e. the petitioners herein against the defendant nos. 1 to 3 i.e. Municipal Corporation of Delhi (MCD),

Delhi Development Authority (DDA) and erstwhile Slum and JJ Department now substituted by the Delhi Urban Shelter Improvement Board (DUSIB) vide which suit for declaration and permanent injunction, the plaintiffs i.e. the petitioners herein had sought the grant of a decree of declaration that the property bearing House No.58, Amba Bagh, Azad Marg, Kishan Ganj, Delhi is a private property belonging to the plaintiffs and also sought the grant of a decree of permanent injunction against the defendants jointly and severally, their agents, assigns, representatives,- seeking that they be enjoined from interfering in the peaceful possession of the plaintiffs i.e. the petitioners herein in the suit property.

2. The avowed contention through the plaint is indicated to be that the father of the plaintiffs late Sh.Sagli Ram had purchased plot No. 24, Amba Bagh, Azad Marg, Kishan Ganj, Delhi ad-measuring about 139 square yards vide a receipt No. 18 dated 22.4.1939 from one Shri Sagar Chand Jain in April, 1939 and thereafter constructed a house on the said plot after the erstwhile Delhi Improvement Trust had sanctioned the plan for construction of the building in the said property which was also approved by the Chairman of the said Trust, Shri Om Prakash ECS, Land Officer vide letter No.BG 16/39, whereafter Shri Sagli Ram started residing in the said property alongwith his family. Through the plaint, it is stated that late Shri Sagli Ram misplaced the sanctioned plans of the building and vide his letter dated 9.9.1959 requested the Secretary, DDA to issue a copy of the sanctioned plan and his request was reiterated vide letters dated

2.11.1959 and 2.1.196 and that on 8.6.1960 the defendant No.2, the Delhi Development Authority submitted a copy of the sanctioned plan duly approved by the erstwhile Delhi Improvement Trust to late Shri Sagli Ram.

3. The plaintiffs i.e. the petitioners herein submitted further through the plaint that late Shri Sagli Ram was assessed to house tax with respect to the suit property and that the house tax receipts prior to 1948 are not available with the plaintiffs, though a letter dated 14.09.48 is available with the plaintiffs wherein it was written by Shri A.R. Malhotra, Secretary, West Delhi Notified Area Committee to late Shri Sagli Ram that his request for payment of house tax in two instalments could not be agreed to, as the matter had already been reported to the Collector of the District for recovery, whereafter, late Shri Sagli Ram deposited the house tax demands made upon him. As per the averments made in the plaint, the house tax receipts however from the year 1954 are available with the plaintiffs and the plaintiffs have been paying house tax qua the said property. As per the averments made in the plaint, Sachin Kumar Jain who had sold 139 sq. yards of the suit land to late Shri Sagli Ram who is the father of the plaintiffs had exchanged the remaining land in his occupation in Amba Bagh with Delhi Development Trust Authorities some time in the year 1940-41 which remarks were recorded in the DIT Minute Book of 1940-41. It has further been stated through the plaint that vide letter dated 17.06.1960, late Shri Sagli Ram had requested the DDA to provide a main road to his house as per the layout plan and had also

requested the defendant no.2 i.e. the DDA for grant of a No Objection Certificate for alignment for an electric line for the building on plot No.24, Amba Bagh, Delhi. The DDA i.e. the defendant no.2 to the said suit vide letter dated 16.09.1960 to Shri Sagli Ram apprised him of the alignment of the electric line and pointed out that the plot through which the proposed electric wires would pass, in the event of a connection being granted, had since been transferred to the Municipal Corporation of Delhi.

4. As per the averments made in the plaint, a notice under Section 7(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 was issued erroneously demanding damages from 01.01.1952 to 31.03.1961 for the alleged unauthorized occupation of the House No.58, Sarai Rohilla, Delhi measuring 139 Sq. Yards to late Shri Sagli Ram despite the factum that the same was a private property belonging to late Shri Sagli Ram and that in response thereto, late Shri Sagli Ram had apprised the defendant no.2 that the premises in question had been purchased by him, and Mr. Sagar Chand Jain had also appeared before the Executive Officer of the defendant no.2 and satisfied the defendant no.2 that the land on which the suit property was constructed had been purchased by late Shri Sagli Ram in April 1939 and that the minutes in relation thereto were recorded in the Delhi Improvement Trust's Minute Book of 1940-41 showing that the suit land had never been acquired by the Delhi Improvement Trust. The said case is stated to have been closed as the defendant no.2 i.e. the DDA could not produce any notification to show that the land including plot No.24 (late known as House No.58, Bagh Amba, Azad

Marg, Kishan Ganj, Delhi) had been acquired by the Government. Late Shri Sagli Ram is stated to have written a letter dated 22.05.1969 to the Special Engineer (Slum), Municipal Corporation of Delhi, for the grant of new water connection for the suit property which was also granted by the MCD i.e. the defendant No.1 and that Late Shri Sagli Ram continued to enjoy the suit property uninterruptedly from 1939.

5. As per the plaint filed by the plaintiffs i.e. the petitioners herein, the defendant no.1 i.e. the MCD had made attempts to demolish the suit property for which the plaintiffs had filed a suit for permanent injunction in the Court of the Civil Judge, Delhi, i.e. Suit No. 1088/83, which suit was disposed off on the statement of the counsel for the MCD on 14.11.1985, that the defendant Corporation shall not demolish the premises in dispute otherwise than by due process of law and thereafter no action was taken by the MCD. As per the averments made in the plaint, the Estate Officer (Slum)-II, Delhi Development Authority i.e. the defendant no.2 again issued a notice dated 16.12.1991 under Section 4(1) of the Public Premises Act to Mr.P.L.Bhasin arrayed as the petitioner no.1 herein on 10.01.1992 as to why an order of eviction be not made against him.

6. Mr.P.L.Bhasin i.e. the petitioner no.1 herein and the plaintiff no.2 of the said suit filed a reply to the notice issued by the Estate Officer to him under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 apprising that the notices had been wrongly issued and that the previous notice issued by the defendant no.2 i.e. the DDA had also been withdrawn, whereby the

DDA had admitted that the suit property did not belong to it and that the proceedings of the Estate Officer are also stated to have been dropped against the plaintiff no.2 by the defendant no.2. The plaintiffs however, submitted that their neighbour namely Sh.Roshan Lal in order to grab public land, made encroachments on the public land and street and had been blocking the air, light and passage of the plaintiffs to the said premises and thus, the plaintiffs had filed a suit in the Court of the Civil Judge, Delhi i.e. Suit No. 289/83 which was renumbered as 228/89 in which the Delhi Development Authority was impleaded as defendant no. 3, wherein the DDA made a statement that the property of the plaintiffs was a private property and that the DDA had no concern with the same and the said suit is stated to have been decreed in favour of the plaintiff No.2 i.e. the petitioner no.1 herein.

7. It has further been averred in the plaint that Sh.Roshan Lal developed a personal vendetta against the plaintiffs and filed a writ petition i.e. Civil Writ No. 1116/1996 before this Court titled as Roshan Lai Vs. MCD & Ors. stating that the plaintiffs had encroached upon public land, which writ petition was admitted and the counsel for the respondent chose not to be present and the writ petition was disposed off with the directions to MCD to see if there was any encroachment on the public land and in case there was an encroachment, the same be removed. The respondent objector is indicated to have filed an appeal against the said order vide LPA 471/2004, which appeal was disposed off with a direction to the respondent objector to submit all documents to the Zonal Engineer (Building), Karol Bagh and that thereafter the plaintiffs i.e. the

petitioners herein would be given an opportunity of hearing and a final order would be passed by the MCD.

8. As per the averments made in the plaint, the defendant no.1 gave a report dated 30.09.2005 stating that the property No. 58, Amba Bagh does not belong to the MCD and that a notice dated 12.09.2006 is stated to have further been issued by the DDA under Section 4 of the Public Premises Act stating that the said land was a public land and that the plaintiffs immediately filed a Writ Petition before this High Court i.e. W.P.(C) 17716-18/06 against the show cause notice issued under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, which was withdrawn by the plaintiffs with liberty to contest the proceedings before the Estate Officer and to file their replies pursuant to which the plaintiffs filed their replies and brought it to the notice of the defendant No.2 that the notice under Section 4 of the Public Premises Act was unjustified and that the suit property was a private property and therefore no notice could be issued under the Public Premises (Eviction of Unauthorised Occupants) Act and the defendant No.2 i.e. the DDA after considering the reply filed by the plaintiff withdrew the notice issued under Section 4 of the Public Premises Act.

9. Through their plaint, the plaintiffs have stated that though they have been residing on private property, threats have been extended by the defendants stating that the suit property belongs to them though it has been settled in a number of proceedings that the said property was a private property but the officials of the defendants are repeatedly

harassing the plaintiffs and threatened them with demolishing the suit property.

10. The issues in the matter were indicated to have been framed by this Court on 18.07.2012 and the petitioners herein stated that they led their evidence except for witnesses who were to be summoned and that on 01.10.2015, the petitioners herein filed an application i.e. I.A.No.21073/2015 for summoning the witnesses from the office of the MCD, DDA and DUSIB for proving the documents of the respective department. The petitioners herein submit that the learned Joint Registrar (Judicial) of this Court was on leave on 06.10.2015 and thus, the matter was re-notified for 15.01.2016 and on 15.01.2016, the proceedings of the matter were transferred to the District Judge, Tis Hazari Courts, Delhi for the date 09.05.2016 due to enhancement in the pecuniary jurisdiction and on 09.05.2016, the matter was assigned by the District Judge, Tis Hazari Courts, Delhi to the learned ADJ concerned for the date 27.05.2016 on which date the matter was adjourned to 22.03.2017.

11. The petitioners submit that their counsel was under the *bona fide* impression that the case was listed for disposal of applications namely the application for summoning witnesses and for amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 filed by the petitioners in October, 2015 on the date 22.03.2017 but that the case was actually listed in the category of plaintiff's evidence on 22.03.2017 on which date, the learned ADJ closed the evidence of the plaintiffs and posted the matter for the recording of the defendant's

evidence. The petitioners further submit that they immediately moved an application for the recalling of the order dated 22.03.2017 and a reply thereto was filed by the defendant no.3 and vide order dated 11.09.2018, the learned ADJ dismissed the application of the petitioners herein seeking the recalling of the order dated 22.03.2017 subject to payment of costs of Rs.5,000/-.

12. The petitioners vide the present petition, have *inter alia* submitted that though vide order dated 22.03.2017, the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 seeking the change of the name of the Slum and JJ Department to the Delhi Urban Shelter Improvement Board was allowed, the application under Section 151 of the Code of Civil Procedure, 1908 to summon the witnesses was not considered and that the learned Trial Court erroneously observed that several opportunities and adjournments had been sought by the plaintiffs to lead evidence. The copy of the proceedings sheet dated 09.04.2015 of the Joint Registrar (Judicial) of this Court in CS(OS)1031/2010 as the suit bore its number as pending before this Court indicates that it had been stated on behalf of the plaintiffs by the learned counsel for the plaintiffs that he intended to summon the witnesses and sought an adjournment and the plaintiff was given an opportunity to take appropriate steps to summon the witnesses and the matter was re-notified for recording of the evidence of the plaintiff for the date 06.10.2015 at 12:00 noon. The learned Trial Court vide order dated 22.03.2017 had observed to the effect:-

“In so far as the evidence of the plaintiff is concerned, PW-1 and PW2 have already been examined. No witness has been

summoned or present despite the fact that list of witnesses has already been filed. Adjournments more than three had been sought by the plaintiff and granted as evident from the proceeding sheets dated 25.1.2011, 7.4.2011, 9.5.2012, 3.8.2012, 21.11.2012, 2.5.2013, 21.11.2013, 28.11.2014 and 9.4.2015. I also note that the Ld. Counsel for the plaintiff had on 9.4.2015 informed the Joint Registrar (Judicial), Delhi High Court that he intended to summon the witnesses and sought an adjournment on this ground pursuant to which he was granted an opportunity to take appropriate steps in this regard. Despite the same, no witness has been summoned. I am not inclined to grant further indulgence. Evidence of the plaintiff is hereby closed. Be listed for defendant's evidence on 11.01.2018. Affidavits of evidence be filed by the defendant by 15.12.2017 with advance copy to the plaintiff. List of witnesses be filed within one month from today."

13. An application under Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiffs i.e. the petitioners herein seeking recalling of the order dated 22.03.2017 was declined vide order dated 11.09.2018 observing to the effect:-

"Perusal of record reveals that on 18.07.2012 issues were framed in the present matter was fixed for evidence and already sufficient opportunities have been granted to the plaintiff for leading evidence. On 27.05.2016 the matter was fixed for 22.03.2017 for entire PE with direction to the plaintiff to file the affidavits of witnesses by 01.02.2017 with advance copy to the opposite party. On 22.03.2017, in its order Ld. Predecessor has observed that on 25.01.2011, 07.04.2011, 09.05.2012, 03.08.2012, 21.11.2012, 02.05.2013, 21.11.2013, 28.11.2014 and 09.04.2015 plaintiff was granted opportunity for leading evidence. Plaintiff was also granted an opportunity for summoning the witness, however, no steps were taken by the plaintiff. Hence, the evidence of the plaintiff was closed. Keeping in view the facts, and circumstances of the present case, I am

of the considered view that already sufficient opportunities have been granted to the plaintiff for leading PE and by moving this, application the plaintiff has sought another adjournment, hence, the application is dismissed with costs of Rs. 5000/-(to be deposited by the plaintiff in bharatkeveer.com) for wasting the time of the Court.”

14. Notice of the present petition was issued to the respondents who have put in appearance and vehemently opposed the prayer made by the petitioners seeking further opportunity to lead evidence submitting to the effect that dilatory tactics were deployed by the petitioners herein who despite ample opportunities granted to lead evidence had failed to do so and that no further opportunity for the same can now be granted and had rightly not been granted by the learned Trial Court vide the impugned orders.

15. On behalf of the petitioners, reliance was placed on the verdict of this Court in ***“Pritam Singh Vs. Satish” 2011 SCC OnLine Del 1114*** to contend that the prayer made by the petitioners ought to have been granted in the interest of justice, in as much as the prayer was made seeking invocation of the inherent powers of the Court under Section 151 of the Code of Civil Procedure, 1908.

16. Undoubtedly, as rightly observed by the learned Court vide the impugned order dated 22.03.2017, more than three opportunities had been granted to the plaintiffs to lead plaintiff's evidence before the date 22.03.2017 and as rightly observed by the learned Trial Court vide order dated 09.04.2015, the Joint Registrar (Judicial) had directed that the matter be re-notified for recording of the plaintiff's evidence on 06.10.2015 at 12:00 noon for which date, in as much as, the

plaintiffs had submitted that they wanted to summon the witnesses, appropriate steps were directed to be taken for summoning the witnesses which it has been observed by the learned Trial Court were not taken for the date 06.10.2015. ***I.A.No.21073/2015 in suit bearing no. CS(OS)1031/2010 as was pending before this Court*** before transfer of the matter to the District Courts, Delhi, indicates that the plaintiffs had sought the summoning of the clerks of the office of the MCD, DDA and DUSIB with the relevant records, detailed to the effect:-

(i) The official from MCD having knowledge about the facts relating to acquisition of land in Sadhaura Khurd for Sarai Rohilla Town Expansion Scheme from Sagar Chand Jain by DDA and its subsequent transfer to MCD and then to DSUIB along with official records of following documents:-

A. House Tax Receipts dated 01.03.1956; 02.12.1955; 05.11.1956; 23.06.2009(receipt no. 174061&174062).

B. Certificate dated 30.09.2005 given by MCD in compliance of order dated 19.07,2004 passed by Hon'ble High Court of Delhi in W.A. No. 471 of 2004.

C. Original Letter dated 22.05.1969 written by Sagli Ram to MCD.

(ii) An officer of DDA having knowledge about the facts relating to acquisition of land in Sadhaura Khurd for Sarai Rohilla Town Expansion Scheme from Sagar Chand Jain along with official records of following documents.

A. Building Site Plan dated 22.04.1939 approved by file no. BG 16(6)39

B. Original Letter dated 10.09.1963 and October 1963 written by DDA to Late Sagar Chand Jain regarding the

sale of land to Sh. Sagli Ram in Sarai Rohilla Town Expansion Scheme (Sadhora Khurd).

C. Sikni Girdawari for the year 1960 (List of unauthorised occupants of Nazul Land)

D. Original Letter dated April 30, 1942.

E. Original Resolution dated July 31, 1942

F. Original Agreement dated August 19, 1942.

G., Original Property Register of Sarai Rohiila Soheme.

(iii) The clerk, Delhi Urban Shelter Improvement Board with official records of documents relating to transfer of land from DDA to MGD in Sadhora Khurd (Sarai Rohilla Town Expansion Scheme).”,

submitting to the effect that these documents were required to prove the possession and ownership of the plaintiffs over the suit property and to also prove that the suit property had never been exchanged by Sh. Sagar Chand Jain with the Delhi Improvement Trust.

17. The petitioners have submitted that this application was listed before the Joint Registrar (Judicial) on 06.10.2015 but on 06.10.2015, the learned Joint Registrar (Judicial) was on leave and the matter was posted for hearing on 15.01.2016 on which date, the case was transferred to the District Judge, Tis Hazari Courts, Delhi for 09.05.2016.

18. The proceedings of the date 27.05.2016 before the learned Trial Court as per the copy of the proceedings submitted on record by the petitioners, read to the effect:-

“Case has been received from Delhi High Court by way of transfer vide order of the Ld. District and Sessions Judge (Central) dated 09.05.2016. It be checked and registered as per rules.

Present: None for plaintiff.

***Sh. Naresh Sharma, Adv. for DDA
Perminder Kaur, Adv. for DUSIB***

List of witnesses and original documents be filed by the parties within one month from today with advance copy of each other. Be listed for entire evidence of plaintiff on 22.03.2017. Affidavit of evidence be filed by the plaintiff by 01.02.2017 with advance copy to the defendant.”

19. Apparently thus, the proceedings dated 27.05.2016 of the learned Trial Court do not take into account the factum of the already instituted I.A.No.21073/2015 vide which the plaintiffs of the said suit i.e. the petitioners herein had sought the summoning of the witnesses from the Office of the MCD, DDA and DUSIB for proving the documents of the respective department filed by the petitioners herein in the case and thus, it is apparent that the impugned orders dated 22.03.2017 and 11.09.2018 of the learned ADJ-02, Central, Delhi in CS No.240/2016 (which as per the computerized record available in relation to the registration number i.e. CS DJ No.12196/2016 is now pending before the learned ADJ-06, Central, Delhi for the date 20.01.2020) have essentially to be set aside, in as much as the said application I.A.No.21073/2015 has undoubtedly been overlooked by the learned Trial Court.

20. In view thereof, the impugned orders dated 22.03.2017 and 11.09.2018 are set aside to the extent of the closure of the plaintiff's evidence and the petitioners herein are granted only two opportunities for taking steps for examination of the witnesses and summoning of the record as detailed in I.A.No.21073/2015 from the MCD, DDA and

DUSIB on the dates to be fixed by the learned Trial Court. The defendants would be entitled to submit evidence in response to the fresh evidence led by the petitioners.

21. The petition is disposed of accordingly.

ANU MALHOTRA, J.

DECEMBER 30, 2019/NC

