$~

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

Reserved on: 22nd August, 2023
Date of Decision: 27th September, 2023

\+ RSA 143/2023 & CM APPLs. 39313/2023, 39315/2023, 39314/2023

SHAKINA ..... Appellant

Through: Ms. Prachi Vasist, Mr.Khowaja Siddiqui, Mr. Ashwini Kumar and Mr. Sohail Khan, Advocates

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Ms. Manika Tripathy, SC for DDA with Mr. Ashutosh Kaushik, Mr. Chirantan Saha, Mr. A. Jaiswal and Mr. Rony John, Advocates for DDA

%

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This regular second appeal filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC') impugns the judgment dated 31.07.2023 passed by ADJ, (South), Saket District Courts, Delhi ('First Appellate Court or Appellate Court'), in RCA No. 18/2018 titled as **Shakina v. DDA,** whereby the First Appellate Court has dismissed the appeal filed by the Appellant herein impugning the judgment dated 20.02.2018 passed by Senior Civil Judge acting as Rent Controller, South, Saket District Courts

('Trial Court or Civil Court'), in CS CSJ 82902/2016 (Old No. 704/2009), titled as **Shakina v. DDA,** wherein the Trial Court had dismissed the suit filed by Appellant herein for permanent and mandatory injunction filed by the Appellant against the Respondent i.e., Delhi Development Authority ('DDA').

2. For the sake of convenience, the parties are being referred to in this judgment as per their rank and status before the Trial Court. The Appellant is being referred to as the plaintiff and the Respondent is being referred to as the defendant.

Facts

3. The plaintiff filed a suit in the year 2009 for permanent and mandatory injunction against the defendant, DDA. It was averred by the plaintiff in the suit that she is the 'owner' in exclusive possession of the property bearing Khasra Nos. 108 and 110 forming part of old Khasra No. 222/68 min of Village Begumpur, New Delhi ('said property').

3.1 It was stated that plaintiff has been in possession of the said property since her birth and inherited the same from her father late Sh. Mussadi Khan. It was stated that plaintiff and her family members were using Khasra No. 108 as exclusive residence and Khasra No. 110 for private family burial and this position continued till the year 1962.

3.2 It was stated that the Khasra No. 108 forming part of Village Abadi of Begumpur was left out and Khasra No.110 consisting of 2 Bigha 8 Biswa ('**suit property**') was acquired by the Government for planned development of Delhi vide Award No. 1409 dated 31.10.1962. It is stated in the written submissions dated 23.08.2023 filed before this Court that as on the date of passing of the award there were few graves in the suit property; and the rest

of the portion was used by the plaintiff for cattle rearing. It is stated that there was kaccha construction, which was used for storing the fodder for the cattle.

3.3 It was stated in the plaint that Government never proceeded to take the physical possession of the suit property and it continues to be in possession of the plaintiff till date.

3.4 It is stated that the plaintiff-built structures in the suit property and later, Municipal Corporation of Delhi ('MCD') notified the suit property as premises no. T-2 and in this regard, reliance was placed on house tax receipts. In the written submissions dated 23.08.2023, it is stated that the plaintiff converted the kaccha construction existing in the suit property into a residential built-up structure in the year 1968-69 for her personal residence.

3.5 It was stated in the plaint that the plaintiff had built temporary shops in the suit property, which were sealed by the MCD, but on representation, later vide order dated 06.07.2009 the shops were de-sealed in compliance of National Capital Territory of Delhi Laws (Special Provision) Act, 2009.

3.6 In its written submission dated 02.08.2023 filed before this Court the plaintiff has stated that on 15.07.2009, DDA carried out demolition in the suit property wherein the boundary wall and the front structure of the property was demolished; and further demolition was stayed pursuant to the interim order passed by the Trial Court.

3.7 The cause of action pleaded for filing the present suit against DDA was that on 15.07.2009 DDA had threatened to transgress into the suit property and demolish the structure standing therein.

3.8 In the aforesaid facts and circumstances, plaintiff filed the suit seeking a permanent injunction for restraining the defendant, DDA from interfering in the possession of the plaintiff and from demolishing any part of the suit property falling in Khasra No. 110. The plaintiff also sought a relief for mandatory injunction against DDA to demolish the part of the property and to restore it to its original position.

3.9 The plaintiff has filed written submissions dated 02.08.2023 and 23.08.2023 in this appeal.

4. The defendant i.e., DDA filed reply on merits in the suit and averred that the suit property had been acquired by the Government vide Award No. 1409 and physical possession has been taken over by DDA on 23.11.1962. It also relied upon the notification dated 03.01.1968 issued under Section 22(1) of the Delhi Development Act, 1957 ('DDA Act') placing the said acquired land at the disposal of DDA.

4.1 In the written statement filed by the DDA on 09.08.2023 it was stated that a writ petition titled *Tajuddin v. DDA,* WP(C) 1407/2003 was (then) pending before the High Court and it was in pursuance to the directions issued by the High Court in the said writ petition that demolition was carried out in the suit property on 15.07.2009; and all commercial structures and unauthorized structures were demolished except one (1) residential house and one (1) old temple situated in an area of approximately 200 sq. yds.

4.2 It was stated that plaintiff has no right, title or interest in the suit property and the land belongs to the Government. The defendant thus specifically raised a dispute with respect to the title of the plaintiff in the pleadings.

4.3 In the written submissions dated 09.08.2023 filed by DDA it is further stated that the name of the father of the plaintiff i.e., late Sh. Mussadi Khan does not find any mention in Award no. 1409 with respect to Khasra No. 110 and therefore, there was no question of giving any compensation to the said person or his successors-in-interest.

4.4 The DDA has also taken a stand that the acquisition proceedings were challenged by the plaintiff in W.P.(C) No. 7589/2000; however, the said writ petition was dismissed by this Court vide judgment dated 13.11.2002 on the ground that the challenge was highly belated and without any substance. It is stated that the said judgment has attained finality and the plaintiff has no right, title or interest in the suit property.

4.5 It also referred to an earlier civil suit i.e., CS 809/1997 filed by the plaintiff on 04.10.1997 seeking a declaration that the Award No. 1409 is null and void and permanent injunction against the Respondent, which was withdrawn simplicitor on 22.01.2001 without seeking any liberty from the Court to file a fresh suit on the same cause of action. It is stated that this civil suit no. 82902/2016 was not maintainable in view of the aforesaid unconditional withdrawal under Order XXIII Rule 1 (4) CPC.

4.6 DDA in its written submissions has also relied upon the final judgments and orders passed in W.P.(C) No. 1407/2003, LPA No. 379/2008, W.P.(C) 4649/2017 and W.P.(C) 3390/2020 to contend that the High Court in those proceedings has, after perusing the record, conclusively held that the suit property belongs to DDA and it has the possession since 1962. It was stated that the demolition action was carried out after the dismissal of LPA No. 379/2008.

5. It is the stand of DDA that the suit property is a park which is meant for public and the plaintiff and her family members have encroached upon the land of the park.

6. The Trial Court vide judgment and order dated 24.09.2012 framed issues in the suit and recorded evidence of the parties. The Trial Court vide judgment dated 20.02.2018 while deciding issue nos. 4 and 5 held that the acquisition proceedings initiated by the Government leading to the Award No.1409 have attained finality; and held that the plaintiff has no right or interest in the suit property.

6.1 The Trial Court held that the plaintiff is an encroacher upon the Government land. The Trial Court relied upon the orders passed by the High Court in W.P.(C) 1407/2003 which permitted DDA to convert the suit property into a park and therefore, found no illegality in the demolition action undertaken by DDA on 15.07.2009. In view of the said findings, the Trial Court held that there is no ground for grant of relief of permanent and mandatory injunction in favour of the plaintiff and accordingly dismissed the suit.

7. The plaintiff filed a Regular First Appeal against the said judgment and order dated 20.02.2018 being RCA No. 18/2018. While filing the appeal, the plaintiff also moved an application (1st) under Order 41 Rule 27 CPC for leading additional evidence. Another application (2nd) was filed under Order 41 Rule 27 CPC on 31.03.2023 and a third application (3rd) under Order 41 Rule 27 CPC was filed on 09.05.2023.

7.1 There was initially no stay of the judgment of the Trial Court dated 20.02.2018 during the pendency of the appeal.

8. In these circumstances, during the pendency of the first appeal, the Special Task Force ('STF') set up under the directions of the Supreme Court at its 35th meeting held on 19.09.2019 directed DDA to take necessary action as per the recommendation of the Commissioner Land Management (LM), DDA.

8.1 The plaintiff filed W.P.(C) 3390/2020 seeking a restraint against DDA from taking any coercive steps in furtherance to the said directions issued by STF. The said writ petition was dismissed by the High Court on 16.07.2020. However, during the pendency of the said writ petition DDA undertook further demolition action on 08.06.2020 in the suit property. It is the stand of DDA that it demolished major portions of the suit property during this demolition carried out on 08.06.2020.

8.2 The plaintiff filed LPA No. 190/2020 against the judgment dated 16.07.2020 passed in W.P.(C) 3390/2020. The Division Bench vide interim order dated 06.08.2020 directed the parties to maintain status quo with regard to the possession and title of the suit property. The said LPA was disposed of vide judgment dated 02.11.2020 upholding the order dated 16.07.2020 passed by the Single Judge; however, reserving liberty to the plaintiff to approach the First Appellate Court for stay.

8.3 Thereafter, in accordance with the liberty reserved in LPA No. 190/2020 the plaintiff filed an application under Order 41 Rule 5 CPC before the First Appellate Court seeking a stay of the judgment of the Trial Court dated 20.02.2018. In this application, the plaintiff conceded that DDA had demolished approximately 80% of the suit property on 08.06.2020. The said application was allowed by the First Appellate Court vide order dated

09.11.2020 and the operation of the judgment dated 20.02.2018 was stayed during the pendency of the appeal.

9. The First Appellate Court vide impugned judgment dated 31.07.2023 dismissed the appeal. The said Court held that the plaintiff has failed to establish her right in the suit property and in this regards it took into consideration the dismissal of the writ petitions filed before the High Court and the unconditional withdrawal of the first civil suit filed in 2008. The said Court dismissed the three (3) applications filed by the plaintiff under Order 41 Rule 27 CPC holding that the said documents were within the knowledge of the plaintiff and the non-filing of the said documents before the Trial Court has not been justified. The Court held that the said documents are even otherwise are not relevant as they do not prove the ownership of the plaintiff. With respect to the reliance placed by the plaintiff on the revenue entries the said Court referred to the judgment of the High Court in W.P.(C) No. 1407/2003 to hold that the revenue entries were perused by the High Court and even thereafter, the claim of ownership by the plaintiff in the said petition was rejected.

10. The First Appellate Court pronounced the judgment on 31.07.2023 and vacated the stay order granted on 09.11.2020. A prayer made by the Appellant for continuing the interim order until the filing of the second appeal was not granted by the said Court. DDA commenced demolition action on 02.08.2023. In these circumstances, this appeal was filed on 02.08.2023 and taken up for hearing on the same date at 4:30 P.M.

10.1 At the beginning of the hearing, DDA stated that the demolition action has been completed and possession of the subject property has been reclaimed from the plaintiff. In this regard, a status report dated 02.08.2023

of its Deputy Director, LM was filed enclosing the possession proceedings of 02.08.2023 recorded by the other concerned officers who were present at the site was enclosed. It was stated in the possession proceedings that demolition was completed, structure has been demolished and the possession has been handed over to the Horticulture Division for development of a park. It was stated that a sign board of DDA has also been affixed at the suit property.

10.2 The plaintiff as well filed its written submission on 02.08.2023 in this regard and stated that though the demolition of the structure has been carried out by DDA, the plaintiff and her family members' belongings and material are lying under the debris.

Arguments of the Appellant

11. The learned counsel for the plaintiff states that the father of the plaintiff was the owner of the suit property and his name is duly reflected in Award No. 1409 and the Jamabandi record of the year 1949. She states that the physical possession of the suit property was never taken by DDA and the property has remained in the possession of the plaintiff ever since.

11.1 She states that though DDA claims that the physical possession of the suit property was taken on 23.11.1962, however, no document was filed before the Court in this regard. She states that no compensation has been paid to the plaintiff under the acquisition proceedings and therefore there has been no loss to the exchequer. She states that the plaintiff was residing in the suit property along with her family members. She states that the suit property admeasures 2200 sq. yds. and out of the same the residential structure along with the temple were standing on 200 sq. yds.

11.2 She states on the other hand the application filed under Order 41 Rule 27 CPC for placing on record additional documents was to bring on record the Jamabandi record of the year 1949, Khasra records from year 1980-2016 along with house tax etc. to prove the continuous possession of the plaintiff.

11.3 She states that the suit property, prior to its demolition on 02.08.2023, was a residential built-up area situated within the boundary line of the urbanized village Begumpur. She states that in view of the regularisation policy of the Government the plaintiff was entitled to ownership rights in the built-up structure. She states that the additional documents sought to be placed on record was to show that the property stands regularised by the Central Government.

Arguments of the Respondent, DDA

12. The learned counsel for the defendant states at the outset that demolition of commercial structures and unauthorized structures on 2000 sq. yds. was carried out by DDA on 15.07.2009. She states that the residential structure standing on remaining 200 sq. yds. has also been demolished on 02.08.2023. She states that the possession of the suit property now vests with DDA.

12.1 She states that the suit property which was admittedly a private graveyard had been converted into a commercial place by raising illegal structures by the plaintiff. She states that the structures have been built during the pendency of the litigation and therefore no equities enure in favour of the plaintiff.

12.2 She states that the Trial Court and the First Appellate Court have returned a concurrent finding of fact that the plaintiff is not the owner of the suit property. She states that on the other hand the record shows that the

acquisition proceedings have attained finality and the title vests in DDA. She states that, therefore, the Courts below rightly dismissed the suit for injunction filed by the plaintiff.

12.3 She states that it is a matter of record that the W.P.(C) 7589/2000 filed challenging the acquisition proceedings i.e., Award No. 1409 was dismissed against the plaintiff. She states that the first civil suit i.e., 809/1997 filed for seeking a declaration with respect to acquisition proceedings was also withdrawn unconditionally. She states that the plaintiff has suppressed in this appeal the dismissal of W.P.(C) 12326/2018 filed by her for seeking a declaration under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013') by the Division Bench vide order dated 20.08.2019. She also relies upon the orders passed by the High Court in W.P.(C) 1407/2003, LPA No. 397/2008 and W.P.(C) 4649/2017 to contend that the plaintiff's claim of ownership has been successively rejected by the High Court in the aforesaid proceedings and therefore the Courts below rightly held that the plaintiff has no right, title or interest in the suit property. She states that the issue of ownership is therefore barred by the *doctrine of estoppel*.

12.4 She states that the suit property is outside the boundary of urbanized village Begumpur. She states that the claims of the plaintiff that the suit property falls within the boundary of urbanized village Begumpur is inconsistent with her claim that the suit land forms part of the unauthorized colony known as Village Begumpur Extended Abadi (ELD-63). She states that properties which form part of the boundary of the urbanized village Begumpur cannot form part of the unauthorized colony.

12.5 She states that since the suit property forms part of the park which is meant for public, and hence any encroachment on the park is not protected by the National Capital Territory of Delhi Laws (Special Provision) Act, 2009. She states that even otherwise the plaintiff is not entitled to any protection under the said Act as there has been multiple litigations between the parties wherein DDA has been consistently seeking to reclaim the possession of the land and to remove the encroachment.

12.6 She states that the plaintiff is not the owner of the land and, therefore, no compensation for the acquisition of the subject land can be paid to her. She states that even otherwise the said issue was not raised before the Courts below and, therefore, cannot be raised in the second appeal.

Findings and Analysis

13. This Court has considered the submissions of the counsel for the parties and perused the record.

14. The Courts below have concurrently held that the plaintiff has no right, title or interest in the suit property. In this regard, the Courts have relied upon the findings and effect of the dismissal of the W.P.(C) No. 7589/2000, W.P.(C) 1407/2003 and LPA No. 379/2008 to come to the conclusion that the plaintiff is not the owner of the suit property. The judgments in the said petitions have become final.

15. The plaintiff had challenged the acquisition proceedings of the suit property which culminated in the Award No. 1409 by initially filing a suit no. 809/1997 (first civil suit) and during the pendency of the suit by filing the W.P.(C) No. 7589/2000. In the first civil suit the plaintiff had sought the following reliefs of declaration and injunction which reads as under:

*a) by **declaring** the notice/notification in respect of Kh. No. 108 Abadideh where the suit land house/premises existed (old Kh. No. 222/68 min) and Kh. No. 110 in existence of Qabristan/Qabar garaveyards (old Kh. no. 222/68 min) of the plaintiff in alleged **award no. 1409 /1962** null & void in respect of the proceedings of the acquisition taken up by the defendants No.1 & 2 without any service upon the plaintiff or upon any ancestral /predecessor or any kind of possession physically taken over or handed over to any one till date by making confusion, violation and making grave mistake not to demarcate or isolate the abadi Khasra No. 108 and Kh. No. 110 of the Qabristan of the Shamlat Thok of the plaintiff.*

b) by restraining permanently, the defendants No.1 2, & 3 as per its officials/persons to intervene disturb the physical possession with the threats as extended to dispossess the plaintiff by demolishing the structure of the house/premises situated in the abadi Kh. No. 108 old Kh. No. 222/68 min) or removing the qabars and graves of the ancestrals of the plaintiff's quabristan of Shamlat Thok pertaining to Kh. No. 110 (old Kh. No. 222/68 Min) situated within the revenue estate of Village Begumpur Delhi illegally, malafidely, forciblly and against all cannons of law.

(Emphasis supplied)

15.1 The said civil suit was unconditionally withdrawn on 22.01.2001 without seeking any leave from the said Court to file a fresh suit on the same cause of action.

15.2 The plaintiff during the pendency of the civil suit, for the same relief on 13.12.2000 filed W.P.(C) 7589/2000 challenging the acquisition proceedings which culminated in Award no. 1409. The writ petition 7589/2000 was dismissed by the Division Bench of this Court vide order 13.11.2002 after taking note of the stand of the DDA in its counter affidavit that the possession of the subject land was taken over on 23.11.1962 which was followed by another notification issued under Section 22(1) of the DDA Act on 03.01.1968 placing the said land at the disposal of DDA. The Division Bench held that the challenge to the acquisition was without any substance and highly belated. The Division Bench also took note of the

filing of the first civil suit and its withdrawal on 22.01.2001. The plaintiff did not challenge this order of the Division Bench and therefore the finding of the Division Bench that DDA is in possession since 23.11.1962 remained unchallenged.

15.3 Thus, the challenge to the acquisition proceedings by the plaintiff was unsuccessful and the said acquisition i.e., Award No. 1409 has become final.

15.4 The plaintiff filed another W.P.(C) 12326/2018 (3rd legal proceeding) for seeking a declaration that the acquisition proceedings have lapsed in terms of Section 24(2) of the Act of 2013. In the said writ, in the counter affidavit filed by Land Acquisition Collector ('LAC') and the Land and Building Department (L&B) it was again stated that the possession of the land had been taken on 23.11.1962. It was further stated that the plaintiff has not filed any document to prove the title and ownership of the subject land. The Division Bench of this Court noted that the plaintiff did not file any rejoinder to the counter affidavit of LAC and L&B. In view of the said facts the Division Bench dismissed the said writ petition vide order dated 02.08.2019.

15.5 The plaintiff in the W.P.(C) 12326/2018 did not place any reliance upon the Jamabandi to prove her title and did not dispute the stand of the respondent that the possession of the suit property had been taken over on 23.11.1962 or that she has proof of her ownership in the said property. The relevant portion of the judgment dated 02.08.2019 reads as under:

> *2. The background facts are that the land in question i.e., Khasra No. 110 ("subject land") admeasuring 2 Bighas 8 Biswas situated in Village Begumpur, New Delhi was notified under Section 4 of the Land Acquisition Act, 1894 ("LAA") on 15th December, 1961 for the public purpose of "planned development of Delhi". This was followed by a declaration under Section 6 of the LAA dated 20th June, 1962. Thereafter,*

the Land Acquisition Collector ("LAC") made an Award No. 1409 ("the Award") dated 31st October, 1962 under Section 11 of the LAA.

XXX XXX XXX

8. In the counter affidavit filed on behalf of the LAC and the Land & Building Department ("L&B"), it is contended that the writ petition is liable to be dismissed on the ground of delay and laches. ***It is stated by the Respondents that the Petitioner has not placed any document on record to prove her title and ownership in respect of the subject land. It is submitted by the Respondents that possession of the subject land has been taken on 23rd November, 1962.***

9. Further, ***no rejoinder*** *has been filed by the Petitioner in response to the counter-affidavit of the LAC and the L&B.*

XXX XXX XXX

13. For the aforementioned reasons, the writ petition is dismissed. The application is hereby disposed of.

(Emphasis supplied)

15.6 The plaintiff did not challenge the judgment dated 02.08.2019 and the same also became final.

15.7 The issue of challenge to acquisition proceedings was also raised by the plaintiff again in W.P.(C) 1407/2003 (4th legal proceedings) and she asserted her ownership claim in the said writ proceedings. The learned Single Judge of this Court in order to determine the veracity of the claim of ownership summoned the record of W.P.(C) 7589/2000 and after perusing the record, which included the 'revenue entries' returned a finding that she is not the owner of the suit property on the basis of the revenue entries. The relevant portion of the judgment dated 26.03.2008 reads as under:

"*5. It is clear from the above findings of the Division Bench that this Court has held that Ms. Sakina should not be permitted and allowed to question and challenge Notification issued under Section 22 of the Delhi Development Act dated 3.1.1968 after lapse of 32 years in the year 2000. The Division Bench also noticed that Ms. Sakina had earlier filed civil suit but was not successful.* ***The reasoning given by the Division Bench in the aforesaid writ petition no.7589/2000 is equally applicable to the present case also****. I may note here that the present writ petition, in fact, was filed in the year 2003. The subject matter of the present writ petition is identical*

to W.P.No.7589/2000 i.e., the land is Kabristan and DDA should not develop the said land. However, one distinction may be noticed here, Ms. Sakina had stated that it was a personal graveyard and not a public Kabristan.

XXX XXX XXX

12. ***As far as revenue entries are concerned the same were also relied upon by Ms. Sakina in her Writ Petition no.7589/2000. A Division Bench of this Court did not find any merit in the same. Moreover, she had also filed a civil suit relying upon the said revenue entries but did not succeed. The Civil Judge noticed that many of the revenue entries were made in 1996.*** *The revenue entries do not establish and prove that the land is a general or a public Kabristan. Kabristan may be private or public but a private Kabristan is not a Wakf.*

XXX XXX XXX

15. ***By virtue of notification issued under Section 22(1) of the DDA Act on 3.1.1968, the land in question was handed over to the DDA and vests in the said authority.*** *Delhi Wakf Board in spite of repeated opportunities has failed to file its counter affidavit and place on record relevant documents in support of the Notification. The proceedings under Section 4(3) of the Wakf Act, 1954 have not been placed on record. In the present case there is no evidence or material to show that any notice was issued to the Government of India or the GNCTD during the course of enquiry under Section 4 of the Act. Therefore, Explanation to Section 6(1) of the Wakf Act, 1995 will also not be applicable. It is not pleaded by the petitioner that respondent no.1-UOI or the GNCTD were issued notice in the enquiry proceedings. There is no evidence of dedication to Wakf. The only allegation is of immemorial user as a public graveyard.*

(Emphasis supplied)

The learned Single Judge thereafter further held that the suit property vests in DDA. The said writ petition was dismissed and this Court allowed DDA to convert the suit property into a park. It is a matter of record that LPA 379/2008 filed against the judgment dated 26.03.2008 was also dismissed by the Division Bench on 05.08.2008.

15.8 In the proceedings initiated by Special Task Force ('STF') as well it was held that the possession of the suit land had been taken over by DDA in 1962 and it was thereafter that STF issued directions of removal of

encroachments to DDA. The plaintiff challenged the directions of the STF in W.P.(C) 3390/2020 (5th legal proceeding), which was dismissed by the learned Single Judge of this Court vide judgment dated 08.06.2020 and the said order of the learned Single Judge was upheld by the Division Bench in LPA No. 190/2020.

15.9 In view of the judgments of the High Court in the writ petitions referred to hereinabove consistently rejecting the claim of the plaintiff as regards ownership and holding that the title vests in DDA, the finding of the Courts below that the plaintiff has failed to prove her right, title and interest in the suit property does not suffer from any infirmity as no evidence was led by the plaintiff. The revenue entries on which reliance was sought to be placed by way of additional evidence before the First Appellate Court has already been considered by the High Court in W.P.(C) 1407/2003 and W.P.(C) 7589/2000; wherein after consideration of the said revenue entries the High Court concluded that the Petitioner does not have any right, title or interest. In fact, the plaintiff failed to prove her ownership once again in W.P.(C) 12326/2018 and infact, in the last writ petition the plaintiff sought to urge rights as an occupant of unauthorized construction on acquired land in an unauthorized colony.

15.10 In view of the successive findings of the High Court in the writ petitions filed by and against the plaintiff recording that the possession of the suit land was taken over by DDA on 23.11.1962, the **question of law no. I** proposed by the plaintiff with respect to Section 16 of the Land Acquisition Act, 1894 does not arise for consideration. The finding of the Trial Court that the plaintiff is an encroacher in the suit property is, therefore, correct in the facts of this case.

16. In view of the judgment dated 20.08.2019 passed by the Division Bench of this Court dismissing W.P.(C) 12326/2018 filed by the plaintiff herein seeking a declaration that the acquisition proceeding had lapsed under the Act of 2013, the **question of law no. II** proposed by the plaintiff does not arise for consideration and the said issue has been conclusively decided against the plaintiff. In fact, neither the filing of the said writ nor the judgment dated 20.08.2019 has been disclosed in this appeal and, therefore, the plaintiff is guilty of suppression of material facts.

17. The findings of the High Court in orders dated 13.11.2002 and 26.03.2008 have attained finality. In the said orders, this Court after perusing the documentary evidence (including the revenue entries) placed on record by the plaintiff did not find merit in the contention of the plaintiff that she is the owner of the suit property and upheld the acquisition proceedings in favour of DDA. This Court in the facts of the case did not opine that the issue of title could not be decided by it in the writ proceedings. The finding of this Court holding that the plaintiff failed to prove her ownership was conclusive. No liberty was either reserved or sought by the plaintiff to agitate the issue of title by filing a civil suit. In fact, the first civil suit i.e., 809/1997 was withdrawn unconditionally during the pendency of W.P.(C) 7589/2000. Further, no issue of title was in fact, framed in the present suit from which the appeal arises.

17.1 In fact, the Supreme Court in the judgment of ***Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs & Ors, (2008) 4 SCC 594,*** has categorically held that where the plaintiff is in possession but his/her title is in dispute the plaintiff will have to sue for declaration of title and the consequential relief of injunction. In the present suit under consideration, however, the plaintiff

did not seek any declaration of title even though DDA had specifically asserted its own title to the suit property in the written statement.

17.2 Thus, the **question of law no. IV** proposed by the plaintiff does not arise for consideration.

18. The plaintiff admittedly failed to lead any evidence before the Trial Court to show that the suit property has since been regularised by the Central Government. Neither the pleadings were amended nor any issue was raised in this regard before the Trial Court. In these circumstances, there was no occasion before the Trial Court to examine the said issue. Pertinently, the defendant has vehemently disputed the said fact of regularisation as well as the entitlement of the plaintiff to seek regularisation. Thus, the issue of regularisation was an issue of fact which ought to have been specifically raised and substantiated with evidence for seeking any relief.

18.1. The plaintiff has contended that the documents evidencing regularisation should have been considered by the First Appellate Court by taking judicial notice of the said fact. The said contention of the plaintiff is untenable in view of the law laid down by the Supreme Court in ***Bachhaj Nahar v. Nilima Mandal & Anr., (2008) 17 SCC 491.*** In the said judgment Supreme Court has categorically held that a civil court cannot be permitted to look into any evidence upon a plea which was never put forward in the pleadings and was, therefore, not the subject matter of an issue. The Supreme Court categorically held that the Court cannot make out a case not pleaded by the parties. In this regard, it is instructive to refer to the following paragraphs of the judgment:

> *"**10.** The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of*

litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

11. *The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay.* ***But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure****. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.*

12. *The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.*

13. *The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief.* ***Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief****. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted.* ***When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a***

relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

14. *The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in Nedunuri Kameswaramma v. Sampati Subba Rao [AIR 1963 SC 884]: (AIR p. 886, para 6)*

> *"6. ... No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."*

But the said observations were made in the context of absence of an issue, and not absence of pleadings.

XXX XXX XXX

17. *It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and* ***that the parties being conscious of the issue, had led evidence on such issue****.* ***But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise.*** *The principles laid down in Bhagwati Prasad [AIR 1966 SC 735] and Ram Sarup Gupta [(1987) 2 SCC 555: AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had*

led evidence on that case. ***Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu****."*

(Emphasis supplied)

18.2. In fact, in ***Santosh Hazari v. Purushottam Tiwari (Through LRs), (2001) 3 SCC 179***, the Supreme Court held that for a question of law to substantial the question should arise from established facts, laid in pleadings and supported by findings. However, in the facts of this case, admittedly, the facts which the plaintiff seeks to urge on the basis of the additional documents and the plea of regularization finds no mention in the evidence or the pleadings. The relevant portion of the judgment reads as under:

*"14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned****. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case.*** *An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."*

(Emphasis supplied)

18.3. The defendant has vehemently disputed that the suit property is liable to be regularized and it has specifically disputed that the suit property forms part of the boundary of the now regularised colony of Village Begumpur Extended Abadi (ELD-63) as alleged by the plaintiff. The defendant has contended that since the suit property is intended to be used as a park there

can be no regularisation of the encroachment on the said land under the extant Rules; all these pleas give rise to disputed facts which the plaintiff ought to have raised before the Trial Court. The defendant has stated that when the plaintiff approached the High Court in W.P.(C) 7589/2000 there was no whisper of any existing construction and the assertion was made on the plea that it is the private graveyard.

18.4. In the facts of this case, as rightly noted by the Courts below, the defendant has been taking steps to remove the encroachment by the plaintiff at least since 1997. However, the plaintiff has succeeded in retaining the possession only on account of the pendency of the litigation before the Courts since 1997 on account of interim orders of protection; and, therefore, the plaintiff cannot put premium on its continuing illegal possession on account of any subsequent change of policy, which in any event has not been proven on record.

18.5. It is the contention of the plaintiff that the suit property regularised in the year 1987 by DDA. The present suit was filed in the year 2009. In these facts, the failure of the plaintiff to plead the said regularisation, seek an appropriate relief of declaration and to lead evidence in support thereof is unexplained. The attempt made by the plaintiff to file the said documents at the First Appellate stage was therefore rightly dismissed on account of lack of due diligence.

18.6. In this matter, in any event, as noted hereinabove, this plaintiff has been in litigation against the defendant since the year 1997 and therefore, the plaintiff has failed to explain its negligence in placing on record pleadings and documents before the Trial Court itself in the year 2009. Therefore, bringing the said documents on record, belatedly in the year 2018 during the

pendency of the First Appeal is without any merits. Therefore, in these facts, the **question of law no. III and V** as proposed by plaintiff do not give rise to a substantial question of law.

19. The arguments raised by the Appellant do not raise any question of law much less a substantial question of law and the grounds merely challenge the finding of facts.

19.1. In this regard, it would be appropriate to refer to the case of ***Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57*** wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-appreciate the evidence in a second appeal. The operative portion to this aspect reads as under:

> *"22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal.* ***It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.***
>
> *23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 CPC..*
>
> *xxx xxx xxx*
>
> *28. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.*
>
> *29.* ***To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case."***

(Emphasis supplied)

20. This second appeal is accordingly dismissed and the order of the First Appellate Court and the Trial Court is upheld. No order as to costs.

21. Before parting, this Court would like to take note of the plaintiff's conduct with respect to the number of multifarious litigations undertaken by her to reagitate the same pleas repeatedly, which is nothing but an abuse of process of law and harassment to the other party involved. In this regard, it would be pertinent to refer to the findings of the First Appellate Court, which reads as under:

> "As far as appeal is concerned, as already discussed and detailed above, the appellant has already (*sic*) asserted her right in several forums and it is clear that she has failed to establish her right in respect of the land in question. **She has availed of several remedies including challenge to the acquisition which had already attained finality, two civil suits and a writ petitions. However, she has not been granted relief in any forum**."
>
> (Emphasis supplied)

22. The status report and possession proceedings both dated 02.08.2023 filed by the defendant have been taken on record. It has come on record that the possession of the suit property has been recovered by the DDA and structures standing thereon demolished in three (3) separate actions 15.07.2009, 08.06.2020 and lastly on 02.08.2023.

23. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

SEPTEMBER 27, 2023/msh/sk