

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 11116 OF 2017
(Arising out of SLP(C) No. 11403 of 2014)

DELHI DEVELOPMENT AUTHORITY

Appellant(s)

VERSUS

BRIJ MOHINI

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

Delhi Development Authority has come up in the appeal against the order passed by the Single Judge of the High Court of Delhi at New Delhi in LPA No. 942 of 2013 which has been affirmed by the Division Bench.

The facts indicates that way back in 1949, lease was granted for the period of 90 years to Parasi and Nanva. They thereafter alienated a specific portion of 550 sq. mtrs to the Smt. Pushpa, mother of respondent Brij Mohini through sale deed dated 20th November, 1963. It appears that certain proceedings for removal of the encroachment were initiated by Smt. Pushpa-mother of the respondent by filing a civil suit but the requisite court fee was not paid. The civil suit was ultimately dismissed in the year 1967.

Thereafter lease came to be terminated on 15th January, 1980, on the ground that it was being used contrary to the purpose and was leased out in contravention of the terms and conditions of the lease in as much as it was being used for commercial and for the religious purpose. There was an order of restoration of lease with respect to the portion of Smt. Pushpa relating to 550 sq. mtr. passed on 11.12.1984, communicated on 5.1.1985. It was claimed by the respondent that the encroachment had taken place after cancellation of the lease. However, the fact is disputed when encroachment had taken place. Be that as it may. It appears that there was certain encroachment as such the remedy of the lessee or the purchaser in such a case would be to take steps for the removal of the encroachment in accordance with law and not to pray for alternative plot. It could not be said to be due to the fault of the DDA, encroachments have been made qua the leased area. There is nothing on record indicating that the encroachments which existed in 1967 were removed by order of the competent authority. The lessee/ purchaser was not thus entitled for allotment of the alternative plot of land.

Thus, we set aside the order passed by the High Court, we leave it open to the respondent to get the land free of encroachment, if any, in accordance with law by taking appropriate steps. The impugned orders are set aside. Direction issued for allotment of alternative plot of land is hereby set aside.

The appeal is accordingly allowed to the aforesaid extent. There shall be no order as to costs.

.....J.
(ARUN MISHRA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;

AUGUST 24, 2017

ITEM NO.3

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11403/2014

(Arising out of impugned final judgment and order dated 10-12-2013 in LPA No. 942/2013 passed by the High Court Of Delhi At New Delhi)

DELHI DEVELOPMENT AUTHORITY

Petitioner(s)

VERSUS

BRIJ MOHINI

Respondent(s)

Date : 24-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s)

Mr. Amrendra Saran, Sr. Adv.
Ms. Bihu Sharma, Adv.
Mrs. Purnima Krishna, adv.
Mr. Abhinav Mukerji, AOR

For Respondent(s)

Ms. Iti Sharma, Adv.
Mr. Puneet Sharma, Adv.
Mr. Naveen Kumar, Adv.
Mr. Manglesh Tripathi, Adv.
Mr. Abhijeet Sinha, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any shall stand disposed of.

(NEELAM GULATI)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(signed order is placed on the file)