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C.A.No. 2648 OF 1999

ITEM No.107

Court No. 8

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 2648 of 1999

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY Appellant (s)

VERSUS

DESH RAJ & ANR.Respondent (s)

(With appln(s). for exemption from filing O.T. and office report)

Date : 28/04/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. Dinesh Dwivedi,Sr.Adv.
Mr. Vishwajit Singh,Adv.
Mr. Ritesh Agrawal,Adv.

For Respondent (s)Mr. M.N. Krishnamani,Sr.Adv.
Mr. B.S. Malik,Sr.Adv.
Mr. Parthaprati Chaudhuri,Adv.
Mr. Soumyajit Pani,Adv.
Mr. Vijaypal Singh,Adv.
Mr. K.S. Rana,Adv.

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

Heard the learned counsel for the parties from 3.05 p.m. to 3.30 p.m.

The civil appeal is dismissed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2648 OF 1999

New Okhla Industrial Development
Authority ...Appellant(s)

Versus

Desh Raj & Anr. ...Respondent(s)

O R D E R

The appellant, having been unsuccessful in all the three courts below, is before us in this appeal.

The respondents filed a suit seeking grant of decree for permanent injunction against the appellant. The trial court decreed the suit. The first appellate court affirmed it. The second appeal filed by the appellant is also dismissed, finding that no substantial question of law arose for consideration between the parties, having regard to the concurrent findings of fact recorded by both the courts below.

The learned senior counsel for the appellant contended that the trial court as well as the first appellate court misread the written statement in regard to the title and possession over the suit property. He also submitted that the suit itself was barred under Section 49 of the Uttar Pradesh Consolidation of Holdings Act, 1953; in the absence of any title over the suit property, the respondents were not at all entitled to decree.

In opposition, the learned senior counsel for the respondents made submissions in support of the impugned order. According to them, no fault can be found with the impugned order in the light of the concurrent findings of fact recorded by the trial court as well as by the first appellate court; more so, in the absence of any substantial

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question of law that arose for consideration between the parties in the second appeal.

During the course of hearing, we specifically asked the learned senior counsel for the appellant whether the disputed property was acquired by the appellant or there is any document to show that this property was granted or assigned or handed over to it by the State. The learned counsel fairly stated that there is no such material. The trial court has specifically stated, in the judgement, thus:

"It is an undisputed fact that the disputed land is situated in khasra no. 38. It is also an admitted fact that the khasra no. 38 measures 2 bigha and 6 biswa and the State had resumed only 13 biswa of khasra no. 38 as is clear from the photostat copy of gazette dated 14/5/76 and 1/6/76 - paper 17c. The defendants have admitted that the total area of khasra no. 38 is 2 bigha and 6 biswas. The defendants have averred that the khasra no. 38 measuring 2 bigha and 6 biswa is vested in Gaon Sabha of Suthari @ Nithari village. The defendants could not adduce any documentary evidence in this direction that the khasra no. 38 measuring 2 bigha and 6 biswa was ever vested in Gaon Sabha of Suthari @ Naithari village."

When the respondents were found in possession of the suit property and the appellant was not able to show its title or possession over the property, the courts were right and justified in decreeing the suit for permanent injunction.

This being the position, we do not find any good ground to interfere with the impugned order.

Consequently, the appeal is dismissed.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
April 28, 2004.