

Chanchal Devi vs Delhi Development Authority on 14 February, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

\$~R.P. -1 & 2
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RSA 121/2018
CHANCHAL DEVI Appellant
Through: Mr. Ashok Joshi & Mr. R.K.Sonkiya,
Advs.
Versus
DELHI DEVELOPMENT AUTHORITY Respondent
Through: None.
AND
+ RSA 122/2018
PHOOL SINGH YADAV Appellant
Through: Mr. Ashok Joshi & Mr. R.K.Sonkiya,
Advs.
Versus
DELHI DEVELOPMNET AUTHORITY Respondent
Through: None.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER

% 14.02.2019 R.P.No.442/2018 & CM No.52030/2018(for condonation of delay of 44 days in applying thereof) in RSA 121/2018 & R.P.No.427/2018 & CM No.50155/2018(for condonation of delay of 44 days in applying thereof)

1. Review, along with condonation of delay of 44 days in applying therefor, is sought of the common judgment dated 28th August, 2018 dismissing in limine the second appeals preferred by each of the review applicants, holding the same to be not raising any substantial question of law.

2. Counsel for the Review Petitioners has referred to Rame Gowda Vs. M. Varadappa Naidu (2004) 1 SCC 769, a judgment of a three Judge Bench of the Supreme Court, holding inter alia, that a trespasser in settled possession cannot be dispossessed by use of excessive force, and contends that Anathula Sudhakar Vs. P. Buchi Reddy 2008 (4) SCC 594 referred to in the judgment of which review is sought, is a judgment of a two Judge Bench and contends that it is the settled position in law that a judgment of a three Judge Bench will prevail over the judgment of a two Judge Bench.

3. Admittedly Rame Gowda supra was not referred to by counsel for the Review Petitioners during the hearing on 28th August, 2018. In fact, review is sought, not by the same Advocate who had appeared on 28th August, 2018, but by engaging a new Advocate.

4. The power of review cannot be invoked as an opportunity to re-argue, after the Advocate earlier engaged is found to have failed to deliver. If the same were to be permitted, with no dearth of Advocates, successive review petitions will be filed, with each successive Advocate claiming to make out an argument better than the earlier one.

5. For this purpose alone review cannot be entertained.

6. Be that as it may, the judgment of dismissal of which review is sought, is a judgment in a Regular Second Appeal, governed by the provisions of Section 100 of the CPC and as per which, the same is not to be entertained unless entailing a substantial question of law. What prevailed for dismissal of the second appeals was, that the appeals did not raise any substantial question of law. Merely because of Rame Gowda supra, it cannot be said that any substantial question of law arises. To be fair to the counsel for the Review Petitioners, he has also not argued so.

7. Moreover, Rame Gowda supra was a case between two private parties and the injunction sought in the suits from which the subject second appeals arose, was against a public authority entrusted with development of the city of Delhi. Any encroachment over land belonging to such public authority as the DDA, is in interference in the developmental projects/works of the DDA and which again are for public benefit. A few individuals cannot hold up the said projects at the cost of thousands of others. Thus, the parameters on which the lis has to be decided are also entirely different from Rame Gowda supra.

8. No ground for review is made out. Dismissed.

RAJIV SAHAI ENDLAW, J FEBRUARY 14, 2019 ak