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

Judgment delivered on: 09.06.2025

+ **CS(COMM) 582/2021 & I.A. 43981/2024**

**RELIANCE EMINENT TRADING AND COMMERCIAL
PRIVATE LIMITED**

.....Plaintiff

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
K.R. Sasiprabhu, Mr. Gaurav Mitra,
Mr. Vishnu Sharma, Mr. Manan
Shishodia, Ms. Riya Kumar and Mr.
Sumer Sethi, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

.....Defendant

Through: Mr.Arvind Varma, Sr. Adv. with
Mr.Sanjay Katyal, Ms. Manika
Tripathy, Standing Counsels with Mr.
Shashi Pratap Singh, Ms. Smridhi
Sharma, Mr. Saurabh Seth, Ms.
Muskaan Garg and Ms. Neelam Preet
Deol, Advs.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

**IA No. 6914/2022 (Under Order XXIII A Rule 4 CPC filed by the
plaintiff for a summary judgment)**

1. The present suit has been filed by the plaintiff/applicant seeking money decree in the sum of Rs. 4,59,73,61,098/- along with *pendente lite*



and *future* interest @ 12% per annum from the date of filing of the suit until the date of actual payment.

2. Facts in brief leading to filing of the present suit are that defendant/DDA announced a public auction for various freehold commercial plots including plot no. 13 ad-measuring about 9,556 sq. mtrs. situated at Non-Hierarchical Commercial Complex, Jasola, New Delhi [hereafter referred to as the 'plot'], for which it had fixed the reserve price of Rs.164,86,00,000/-. The plaintiff [then known as Amazon Enterprises Pvt. Ltd.] submitted its bid and deposited 25% of the reserve price i.e. Rs.42,25,00,000/- [Rupees Forty Two Crore and Twenty Five Lacs only]. The bid of Rs.164,91,00,000/- placed by plaintiff was found to be the highest and was accepted by the defendant.

3. Accordingly, plaintiff was called upon to deposit the balance sum of Rs.122,66,00,045/- including the documentation charges. On 12.07.2007, plaintiff made the balance payment as sought by the defendant. Thereafter, plaintiff *vide* treasury challan dated 03.12.2007 made further payment of Rs.9,89,46,025/- towards Stamp Duty and Transfer Duty for execution of the Conveyance Deed of the plot.

4. Upon receiving complete consideration in respect of the plot and confirmation of payment of Stamp Duty and Transfer Duty by the plaintiff, defendant *vide* letter dated 09.01.2008 called upon the plaintiff to take possession of the plot on or before 15.01.2008. Accordingly, the plaintiff duly took physical possession of the plot on 15.01.2008. Subsequently, defendant executed Conveyance Deed dated 06.02.2008 in favour of plaintiff thereby conveying all its rights, title and interest in the plot to



plaintiff on freehold basis. The said Conveyance Deed was duly registered on 07.03.2008.

5. Pursuant to the execution of the Conveyance Deed, the plaintiff made paid Rs.24,00,036/- towards property tax from financial year 2008-09 to 2017-18.

6. In the meanwhile, name of the plaintiff was changed from 'Amazon Enterprises Pvt. Ltd.' to 'Reliance Eminent Trading and Commercial Pvt. Ltd.' *vide* 'Fresh Certificate of Incorporation pursuant to Change of Name' dated 23.04.2009, issued by the Registrar of Companies, Gujarat, Dadra and Nagar Haveli.

7. The plot was originally part and parcel of a land comprised in *khassra* nos. 182(3-14), 183(4-09) and 243(4-12) ad-measuring 12 Bigha and 15 Biswas in Village-Kotla Mahigiran, Delhi [hereafter referred to as the 'land'] belonging to one Smt. Simla Devi.

8. It is the pleaded case of plaintiff that the defendant had initiated acquisition proceedings in respect of the 'land' under the Land Acquisition Act, 1894 whereby an Award dated 19.09.1986 bearing no. 205/1986-87 came to be passed. It is further alleged in the plaint that the defendant admittedly, never made any payment of compensation to the original owner of the land.

9. Upon passage of time, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ['Acquisition Act of 2013', for short] came into force on 01.01.2014 and subsequently, Smt. Simla Devi, the original owner of the 'land', filed a writ petition being W.P.(C) 5688/2015 before this Court praying for a declaration that the acquisition proceedings in respect of the 'land' are deemed to have



lapsed by virtue of Section 24(2) of the Acquisition Act of 2013. This Court *vide* judgment dated 15.11.2016 allowed the said petition and declared the acquisition proceedings as having lapsed.

10. It is alleged in the plaint that the defendant/DDA contested the aforesaid writ petition, however, plaintiff was neither intimated of the cloud cast over the title of defendant in respect of the ‘plot’, which was part of the ‘land’, nor was it informed of the pendency of the aforesaid proceedings under the Acquisition Act of 2013, which had direct nexus and impact over its rights, title and interest in respect of the plot. As such, plaintiff was deprived of an opportunity of intervening in the said proceedings in order to put forth its case and secure its rights.

11. The judgment dated 15.11.2016 passed by this Court in W.P.(C) 5688/2015 was challenged by the defendant in SLP (Civil) (CC) 8526/2017 [subsequently re-numbered as Civil Appeal No. 6345/2017]. The Hon’ble Supreme Court *vide* order dated 04.05.2017 granted leave and dismissed the appeal. However, defendant/DDA was granted six months’ time to re-acquire the property. Relevant part of the decision reads thus:

“5. In the peculiar facts and circumstances of this case, the Appellant is given a period of six months to exercise its liberty granted under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for initiation of the acquisition proceedings afresh.

6. We make it clear that in case no fresh acquisition proceedings are initiated within the said period of six months from today by issuing a Notification under Section 11 of the Act, the appellant, if in possession, shall return the physical possession of the land to the owner.”

(emphasis supplied)



12. Incidentally, the defendant did not re-acquire the property in terms of the above quoted order of Hon'ble Supreme Court and lapse of acquisition attained finality. Plaintiff claims that proceedings before Hon'ble Supreme Court were also concealed from plaintiff for reasons best known to the defendant. Plaintiff was never impleaded as a party in Civil Appeal No. 6345/2017.

13. It is the case of the plaintiff that while it was unaware of the above proceedings, on 27.11.2016 it came to be illegally dispossessed from the plot when unknown persons entered the premises and forcefully took possession from the plaintiff. Consequently, plaintiff lodged a complaint on 13.12.2016 and wrote various letters to the defendant on 25.04.2017 and 16.06.2017. However, the plaintiff states that on 05.12.2017, the defendant for the first time informed plaintiff of the lapse of acquisition *vide* letter dated 20.11.2017. Upon this, plaintiff sought refund of the consideration and statutory payments made by it along with interest @ 15% *vide* Demand Letters dated 28.12.2017, 10.12.2018 and 07.08.2019 and thereafter issued a notice under Section 53(b) of DDA Act, 1957 on 20.09.2019.

14. In the meanwhile, DDA filed a Review Petition against the judgment of the Hon'ble Supreme Court dated 04.05.2017 which came to be dismissed on 17.10.2019. Curative petition filed thereafter by the defendant/DDA was also dismissed. Hence the present suit was filed by the plaintiff on 02.11.2020.

15. Defendant/DDA has filed its written statement. In the written statement, defendant has taken a stand that the 'land', of which the 'plot' is a part, was acquired by the Government *vide* Award No. 205/1986-87 and physical possession of the same was handed over by the LAC/L&B



Department to the defendant on 05.03.1997 for the purposes of planned development of the area. The acquisition *qua* the subject land was challenged by the original owner before this Court. The said case came to be decided by a common judgment dated 01.08.2001 passed in case titled ***Parshadi v. Union of India***, bearing ***W.P.(C) 923/1997***. Against the said decision, Union of India had preferred an appeal titled as ***Union of India v. Parshadi*** by way of ***LPA NO. 519/2001*** and the Division Bench of this Court *vide* order/judgment dated 26.09.2002 held that the land so acquired by the Government vested in the State absolutely free from all encumbrances. Thus, the stand of the defendant/DDA is that it was the absolute owner of the subject land and plaintiff had acquired a clean title of the plot with the execution of the registered Conveyance Deed in its favour.

16. However, defendant/DDA has not disputed the litigation *qua* the subject land that commenced in the year 2015 with the filing of ***W.P.(C) 5688/2015*** by the original owner Smt. Simla Devi. It is also not in dispute that the acquisition was quashed by this Court *vide* judgment dated 15.11.2016 passed in ***W.P.(C) 5688/2015*** and that the Hon'ble Supreme Court while disposing of the Civil Appeal No. 6345/2017 had granted liberty to the defendant to re-acquire the land within a period of six months, but the same was never done. The defendant/DDA has asserted that the plaintiff was well aware of ***W.P.(C) 5618/2015***, as well as, the proceedings before the Hon'ble Supreme Court in Civil Appeal No. 6345/2017.

17. It is further asserted by the defendant/DDA that the plaintiff was in active collusion and connivance with Mr. Sachin Bidhuri, who allegedly dispossessed the plaintiff. It is alleged that after handing over the possession of the land to the plaintiff and upon execution of the registered Conveyance



Deed in favour of the plaintiff, defendant/DDA had absolutely no role to play thereafter and protection of possession of the plot was the exclusive duty of the plaintiff. It is further alleged that the plaintiff is still in physical control and possession of the plot.

18. It is pleaded in the written statement that the suit warrants outright rejection as the plaintiff has admittedly chosen to not even offer the possession of the subject land against refund of the sale consideration.

19. That apart, it is also the stand of the defendant that the present suit is barred by limitation. Plaintiff also filed its replication denying allegations in the written statement and reiterating its case set up in the plaint.

20. After completion of pleadings, plaintiff has filed the present application praying for summary judgment against the defendant for decreeing the suit filed against the defendant *inter alia* on the ground that defendant does not have any defence or justification whatsoever to retain the amount paid by plaintiff and the defendant/DDA has no real prospect of successfully defending against the claim of plaintiff. Additionally, in view of the clear and unimpeachable documentary evidence placed on record by plaintiff in support of its claim, which is neither denied nor disputed by DDA, and further the defence put forth by the defendant in its written statement being baseless and illusory, there is no other compelling reason why claim of the plaintiff should not be disposed of before recording of oral evidence.

21. Mr. Sandeep Sethi, learned Senior Counsel appearing on behalf of plaintiff submits that once the acquisition has been set aside, the auction and transfer of land by way of conveyance deed in favour of the plaintiff, has become void. He submits that since the DDA has retrospectively lost its title



over the land, the title of the plot it conveyed subsequently to the plaintiff is no longer valid as well.

22. Elaborating on his submission, he submits that by virtue of judgment of this Court dated 15.11.2016 passed in W.P.(C) 5688/2015, whereby acquisition of 'land' was quashed, the 'land' including the 'plot' in question now vest in the original owner, therefore, there is no need to separately cancel the conveyance, as such conveyance has been rendered void and *non est*.

23. He submits that objection of the defendant that suit is barred by limitation cannot be sustained, inasmuch as cause of action for filing the suit first arose on 05.12.2017, when the defendant/DDA for the first time informed plaintiff about the lapse of acquisition *vide* its letter dated 20.11.2017.

24. He submits that the judgment dated 15.11.2016 of this Court quashing the acquisition of land attained finality when the Hon'ble Supreme Court dismissed the civil appeal preferred by the defendant/DDA on 04.05.2017. He submits that *vide* order dated 04.05.2017 the Hon'ble Supreme Court had given six months' time to defendant/DDA to re-acquire the 'land', which period expired on 04.11.2017.

25. Thereafter, the defendant/DDA despite repeated reminders of the plaintiff on 28.12.2017, 02.02.2018, 07.08.2018 and 20.09.2019, did not refund the money to plaintiff. Mr. Sethi, thus, submits that the suit is within limitation.

26. As regards the stand of the defendant that plaintiff continues to be in possession of the land and has not returned the same, he submits that the complaint to the SHO, PS Sarita Vihar and the representations made to the



defendant since 2017 clearly show that the plaintiff was dispossessed and this fact was put to the knowledge of the defendant. The said fact has not been denied by the defendant until filing of written statement.

27. Inviting attention of the Court to the affidavit dated 06.11.2023 filed by defendant/DDA, Mr. Sethi contends that this Court had specifically sought response of defendant as to whether the original owner has asked for the return of land, after the orders of this Court and the Hon'ble Supreme Court declaring the acquisition invalid. The defendant in its said affidavit has categorically admitted that no such grievance has been raised by Smt. Simla Devi. He submits that this itself shows the fact that the plaintiff is not in possession of the land, has not been disputed. Therefore, defendant's current stand is only an afterthought.

28. Mr. Sethi submits that this Court appreciating the facts of the case and finding no plausible defence, as an interim measure, directed the defendant to secure the principal by depositing the same with this Court under Order XIII-A Rule 6 and 7 CPC *vide* order dated 01.02.2024.

29. The aforesaid interim order was challenged by the defendant by preferring SLP (C) Diary No. 14735/2024 and the same was also dismissed by the Hon'ble Supreme Court on 27.05.2024, which further confirms the finding that defence of the defendant is improbable.

30. He further submits that the defence set up by the defendant is completely illusory and there is no denial to the fact that DDA has lost title of the land, of which the subject plot is a part. Accordingly, the defendant/DDA has no real prospect of successfully defending the claim since no plausible defence has been raised and no triable issues arise requiring oral evidence.



31. In support of his submission Mr. Sethi places reliance on the decision of this Court in *Su-Kam Power Systems Ltd. vs Mr. Kunwer Sachdev & Anr.*, 2019 SCC OnLine Del 10764, as well as, the decision of Bombay High Court in *M/s Jayant Industries vs Indian Tobacco Company*, 2022 SCC OnLine Bom 64.

32. *Per contra*, Mr. Arvind Varma, the learned Senior Counsel appearing on behalf of the defendant/DDA submits that the present application is misconceived inasmuch as the written statement filed by the defendant in the present suit has brought on record a cogent defence which not only warrants a proper trial on merits, but also warrants dismissal of the suit as well.

33. He submits that the pleas raised by the plaintiff in the suit have been controverted by the defendant/DDA, as a result of which triable issues have arisen. He points out the reasons to show why claim of the plaintiff should not be disposed of before recording of oral evidence, which are enumerated herein below:

- a. The case of the plaintiff is that it has lost possession over the plot in question to some alleged miscreants, whereas, the specific case of the defendant/DDA is that the plaintiff is very much in possession of the subject land. In any case, to maintain the present suit for refund of the consideration amount, the plaintiff is bound to firstly hand over or offer to hand over the vacant and peaceful possession of the subject land.
- b. It is the specific objection of defendant/DDA in its written statement that the suit of the plaintiff is barred by limitation and in the light of the rival pleadings of the parties, it is a mixed question of fact and law. There is a factual dispute as to from which date the period of



limitation will start to run. The dispute is also as to when the defendant made plaintiff aware as regards the litigation in which the original owner of the land had sought quashing of the acquisition proceedings.

c. The plaintiff has not made the person or persons as parties to the suit to whom it claims to have lost possession of the subject land.

34. Mr. Varma submits that the aforesaid issues would require evidence to be led by each side as the issues, which are highly contentious and have huge financial implications for the public exchequer.

35. Accordingly, Mr. Varma submits that the present case does not warrant grant of summary judgment in favour of the plaintiff and against the defendant.

36. He places reliance on the decisions of this Court in *Rockwool International A/S & Anr. v. Thermocare Rockwool (India) Pvt. Ltd.*, (2018) 254 DLT 90; *Bright Enterprise Private Limited v. MJ Bizraft*, 2017 SCC OnLine Del 6394; and *Su-Kam Power Systems Ltd.* (supra).

37. I have heard the learned counsel for the parties and gone through the documents on record. However, before proceeding to examine the merits of the case, it would be apposite to advert to the legal position on the aspect of passing of summary judgment.

38. The Division Bench of this Court in *Bright Enterprise Private Limited* (supra) referring to Rule 4 of Order XIII A CPC, enumerated the procedural stipulations to be followed in an application seeking summary judgment and reply thereto. The Court emphasized that the provisions relating to summary judgment which enable courts to decide claims pertaining to commercial disputes without recording oral evidence are



exceptional in nature and out of the ordinary course which a normal suit has to follow, therefore, such stipulations must be scrupulously followed. The relevant considerations to be kept in mind by the court deciding an application such as the present one, have been highlighted by the Division Bench. The Court also held that the window for passing of summary judgment is only after service of summons on the defendant and prior to the Court framing issues in the suit. The relevant part of the judgment reads thus:

“22. The provisions relating to summary judgment which enables courts to decide claims pertaining to commercial disputes without recording oral evidence are exceptional in nature and out of the ordinary course which a normal suit has to follow. In such an eventuality, it is essential that the stipulations are followed scrupulously otherwise it may result in gross injustice. As pointed out above, a specific period of time has been provided during which an application for summary judgment can be made. That period begins upon the service of summons on the defendant and ends upon the court framing issues in the suit. Even if we were to accept, which we do not, the argument of the respondents that the Court had suo moto powers to deliver summary judgment without there being any application, those powers also would have to be exercised during this window, that is, after service of summons on the defendant and prior to framing of issues. In addition to this, we also reiterate that, in our view, a summary judgment under Order XIII A CPC is not permissible without there being an appropriate application for summary judgment. The contents of an application for summary judgment are also stipulated in Rule 4 of Order XIII A. The application is required to precisely disclose all material facts and identify the point of law, if any. In the event, the applicant seeks to rely on any documentary evidence, the applicant must include such documentary evidence in its application and identify the relevant content of such documentary evidence on which the applicant relies. The



application must also state the reason why there are no real prospects of succeeding or defending the claim, as the case may be.

23. Rule 4(2) of Order XIII A also requires that where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of the date fixed for the hearing and the claim that is proposed to be decided by the Court at such hearing. Rule 4(3) of Order XIII A makes provision which enables the respondents to file a reply within the stipulated time addressing the matters set forth in clauses (a) to (f) of the said sub-rule. In particular, the reply of the respondent ought to precisely disclose all the material facts and identify the point of law, if any, and the reasons why the relief sought by the applicant for summary judgment should not be granted. Just as in the case of the applicant, the respondent is also given the opportunity to rely upon documentary evidence in its reply which must be included in the reply and the relevant content identified. The respondent's reply is also required to give reason as to why there are real prospects of succeeding on the claim or defending the claim, as the case may be. Importantly, the reply must also concisely state the issues that should be framed for trial and that it must identify what further evidence would be brought on record at trial that could not be brought on record at the stage of summary judgment. The reply should also state as to why in the light of the evidence or material on record, if any, the Court should not proceed to summary judgment.

(emphasis supplied)

39. Likewise in ***Su-Kam Power Systems Ltd.*** (supra), Coordinate Bench of this Court dealt with the procedural requirements for passing summary judgment under Order XIII-A CPC. It was held that Rule 3 of Order XIII-A CPC, as applicable to commercial disputes, empowers the Court to grant summary judgment against the defendant where the Court considers that the defendant has no real prospects for successfully defending against the claim



and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The Court explained that the expression “real” obligates the Court to examine whether there is “realistic” as opposed to “fanciful prospects of success”. The Court, thereafter, went on to observe that unlike ordinary suits, the Court need not hold trial in commercial suits, even if there are disputed questions of fact, in the event the Court comes to the conclusion that the defendant lacks real prospect of successfully defending the claim. In other words, notwithstanding the existence of disputed questions of facts, the Court can pass a summary judgment if it is of the opinion that the defendant lacks real prospect of successfully defending the claim. The relevant excerpts of the decision read thus:

“49. Consequently, this Court is of the view that when a summary judgment application allows the Court to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. It bears reiteration that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the Court the confidence that it can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

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91. Rule 3 of Order XIII A, CPC, as applicable to commercial disputes, empowers the Court to grant a summary judgement against the defendant where the Court considers that the defendant has no real prospects of successfully defending the claim and there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. The expression “real” directs the Court to examine whether there is a “realistic” as opposed to “fanciful” prospects of success. This Court is of the view that the expression “no genuine issue requiring a trial” in Ontario Rules of Civil Procedure and “no other compelling reason....for trial” in



Commercial Courts Act can be read mutatis mutandis. Consequently, Order XIII A, CPC would be attracted if the Court, while hearing such an application, can make the necessary finding of fact, apply the law to the facts and the same is a proportionate, more expeditious and less expensive means of achieving a fair and just result.”

(emphasis supplied)

40. In light of the test laid down in the above decisions, the case set up by the parties to the present suit need to be analyzed in order to determine whether the defendant has set up a probable defense and if the rival contentions demand leading of evidence to settle the controversy.

41. Indisputably, one Smt. Simla Devi, the original owner of the ‘land’, of which the ‘plot’ is a part, had challenged the acquisition proceedings on the strength of which the defendant acquired rights in the ‘land’, by filing W.P.(C) 5688/2015. This Court *vide* judgment dated 15.11.2016 allowed the said petition and declared the acquisition proceedings as having been lapsed. The judgment of this Court was upheld by the Hon’ble Supreme Court *vide* order dated 04.05.2017 passed in Civil Appeal No. 6345/2017 and has since attained finality. Thus, the defendant/DDA has undoubtedly lost title over the land, and concomitantly the title in the plot passed on to the plaintiff by the DDA was also lost and became invalid.

42. The backdrop of aforesaid facts, at first blush, gives an impression that the DDA is obliged to forthwith refund to the plaintiff the consideration amount *apropos* the ‘plot’ once acquisition proceedings *qua* the ‘land’ have been declared to have lapsed, but a closer scrutiny of the facts indicates that it is not so.

43. The case of the plaintiff is that on 27.11.2016, some unknown persons led by one Mr. Sachin Bidhuri, claiming to be the rightful owner of the plot



and referring to some purported decision of this Court without giving any particulars thereof, forcibly trespassed into the subject plot and took possession of the same. Essentially, the case of the plaintiff is that the possession of the 'plot' has been taken by the original owners, which position has been disputed by the DDA. The relevant extract from the plaint setting out the case of the plaintiff in that behalf reads thus:

“(x) In the year 2015 , Smt. Simla Devi, the original owner of the said land filed a writ petition - WP(C) No. 5688 of 2015 before this Hon’ble Court, praying for a declaration that the acquisition proceedings in respect of the Said Land, are deemed to have lapsed by virtue of Section 24(2) of the Acquisition Act, 2013 . This Hon’ble Court, vide its judgment dated 15.11.2016, allowed the said petition, and granted the aforesaid declaration sought for by Smt. Simla Devi, the Plaintiff therein. Notably, the Defendant herein appeared in, and contested the said writ petition. However, for reasons best known to the concerned officials of Defendant, the Plaintiff was neither intimated of the cloud over the title of the Defendant with regard to the Subject Plot, nor was it informed of the pendency of the aforesaid proceedings, which had a direct nexus and impact to its right, title and interest in respect of the Subject Plot. As such, the Plaintiff was deprived of the opportunity of intervening in the said proceedings in order to put forth its case and secure its rights.

(xi) The Plaintiff, as aforesaid, was completely unaware about the cloud over the title of Defendant title in respect of the Subject Plot, and the pendency of the proceedings before this Hon’ble Court, as also the aforesaid judgment dated 15.11.2016. In the midnight of 27.11.2016, some unknown persons reached the Subject Plot and demolished the rear boundary wall thereof, and damaged some construction structures of the Plaintiff at the site. The said persons, led by one Sachin Bidhuri,



claimed to be the rightful owner of the Subject Plot, referring to some purported decision of the 'High Court' without giving any particulars, and forcibly trespassed into the Subject Plot, and took possession thereof. The said persons also posted their own guards at the Subject Plot in order to forcibly prevent the entry of the officials of the Plaintiff therein. The Plaintiff was, as such, constrained to file a police complaint dated 13.12.2016 under Diary No. 54-B with Police Station Sarita Vihar, Delhi, complaining of the aforesaid offences. However, despite persistent follow-up by the Plaintiff, the police authorities failed to take any action in this regard.”

(emphasis supplied)

44. On the other hand, case set out by defendant/DDA in the written statement is that the plaintiff/applicant continues to be in possession of the ‘plot’ and it cannot claim refund of the monies paid by it without offering possession of the land back. Another objection taken in the written statement is that the suit is bad for non-joinder of necessary parties, inasmuch as the persons who allegedly dispossessed the plaintiff claiming themselves to be the rightful owners of the land, have not been impleaded as party. The relevant excerpts from the written statement read thus:

“5. That the suit is also not maintainable as the plaintiff is seeking refund of sale consideration qua the subject land without offering to return the subject land to the defendant. The plaintiff continues to retain and enjoy the exclusive control and possession of the subject land till date and thus it cannot be permitted to continue with the suit without surrendering / offering to surrender the vacant peaceful possession of the subject land to the defendant.

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7. That the suit also warrants rejection for non-joinder of necessary parties. The plaintiff has allegedly claimed to have been illegally disposed from the subject land at the hands of



some persons claiming to be the original owners of the subject land and has failed to array them as a necessary and proper party in the present suit.”

45. This Court endeavoured to resolve the controversy as regard possession of ‘plot’ and directed defendant/DDA to file an affidavit setting out, whether the original owner Smt. Simla Devi has ever approached the defendant to claim the suit land or raised any grievance that possession of the suit land is presently not with her or her assignees. In deference, the defendant/DDA filed an affidavit dated 06.11.2023 stating that Smt. Simla Devi never approached the DDA with any grievance or otherwise at the time of auction of the subject land, at the time of execution of conveyance, and handing over of possession of the ‘plot’ to the plaintiff. Relevant excerpt from the aforesaid affidavit of the DDA reads as under:

“3. It is also pertinent to state that Smt. Simla Devi never approached DDA with any grievance or otherwise even at the time of auction of the subject matter land, and the subsequent conveyance in favour of and handing over of the possession of the land to the Plaintiff herein.”

46. The affidavit filed by the DDA does not solve the conundrum *apropos* possession of the plot, inasmuch as it is not clear as to who is in actual physical possession of the ‘plot’. It is an admitted case of the parties that Smt. Simla Devi was the original owner of the ‘land’, of which the ‘plot’ is a part, before commencement of acquisition proceedings. The case of the plaintiff, however, is that possession was taken by some miscreants led by one Sachin Bidhuri claiming himself to be the rightful owner of the property. The plaintiff has claimed so on the strength of the letters apprising the DDA in that behalf and also a complaint made to the police, but neither there is a pleading nor any evidence to establish that Sachin Bidhuri is the



successor-in-interest of original owner Smt. Simla Devi. Further, there is no undisputed or unimpeachable material on record to suggest that Sachin Bidhuri is in physical possession of the plot being its rightful owner.

47. Undisputedly, the 'plot' is part of the 'land' which was acquired by LAC and physical possession of the same was handed over by the LAC/L&B Department to the DDA on 05.03.1997 for the purpose of the planned development of the area. It is also an admitted position that DDA handed over possession of the 'plot' to the plaintiff. Now, after declaration that the acquisition proceedings have lapsed *qua* the 'land', it is obligatory on part of the defendant/DDA to return physical possession of the land to its original owner. Even the Hon'ble Apex Court *vide* its order dated 04.05.2017, while dismissing the Civil Appeal No. 6345/2017, directed the defendant/DDA to return the physical possession of the land to the original owner, in case it is in possession of the same.

48. Merely because the rightful owner has not claimed possession of the 'plot' from DDA or that it has been stated by the DDA in its affidavit that '*Smt. Simla Devi never approached DDA with any grievance or otherwise even at the time of auction of the subject matter land, and the subsequent conveyance in favour of and handing over of the possession of the land to the Plaintiff herein*', will not absolve the DDA from its obligation to hand over physical possession of the plot to its rightful owner. That could happen only when plaintiff would hand over possession of the said 'plot' to the DDA.

49. Since the DDA had handed over the possession of the 'plot' to the plaintiff upon receiving total consideration of the 'plot', the plaintiff is obliged to return the physical possession of the said plot to the DDA, or at



least it will have to establish by leading evidence that the possession is already with the original owner namely, Smt. Simla Devi or her successor-in-interest, in order to claim refund of the monies paid by it towards the consideration of 'plot'.

50. Since the plaintiff was in possession of 'plot' as owner thereof, the plaintiff ought to have protected its possession, or taken steps to recover the possession when it was dispossessed. No reason for plaintiff's inaction to take such steps is forthcoming. The only justification given is that the plaintiff had written to the DDA and made police complaint as well.

51. Be that as it may, the fact remains that as on date, per the case of the plaintiff, neither it nor the DDA is in possession of the 'plot'. If at any time in the future, original owner or her successor-in-interest claims possession of the 'plot' from the DDA, it will not be in a position to hand over the same to them.

52. The Court is, therefore, of the considered opinion that without offering possession of 'plot' back to the DDA, or at least establishing that the rightful owner is already in possession of the 'plot', the plaintiff cannot claim refund of consideration amount paid by it.

53. Ergo, the defence put forth by the defendant cannot be said to be baseless and illusory. The summary procedure as prescribed in Order XIII-A CPC is to be resorted to by the Courts for passing of judgment in commercial disputes, where it could be disposed of without recording of oral evidence, which is not possible in the present case. Recording of oral evidence appears to be imperative as regards the issue of possession, which this Court finds to be contentious and triable.



54. Thus, the suit cannot be determined in a summary manner. The plaintiff in the present application has failed to meet the twin tests that – (a) the defendant has no real prospect of successfully defending the claim and; (b) there is no such compelling reason why the claim should not be disposed of before recording of oral evidence.

55. As this Court has opined that recording of oral evidence is necessary and summary judgment cannot be passed, all other issues are left open for the parties to be raised at the appropriate stage.

56. In the overall conspectus of facts noted above, the present application deserves to be dismissed. Ordered accordingly.

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57. List for directions before the Roster Bench on 28.08.2025.

VIKAS MAHAJAN, J

JUNE 09, 2025

jg