REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7773 OF 2011
(Arising out of Special Leave Petition (C) No.22126 of 2009)

Khatri Hotels Private Limited and another … Appellants

Versus

Union of India and another … Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. This is an appeal for setting aside judgment dated 21.8.2009 of the learned Single Judge of the Delhi High Court whereby he dismissed the appeal preferred by the appellants against the judgment and decree passed by Additional District Judge-13 (Central), Delhi (hereinafter described as, 'the trial Court') in a suit for declaration of title, mandatory and permanent injunction filed by them.

3. The suit land belonged to Gaon Sabha of village Kishangarh and formed part of the revenue estate of that village. By notification dated 28.5.1966 issued under Section 507(a) of the Delhi Municipal Corporation Act, 1957 (for short, 'the DMC Act'), the Municipal Corporation of Delhi (for short, 'the Corporation'), with the previous approval of the Central Government, declared that the localities mentioned in the Schedule forming part of the rural areas shall cease to be the rural areas. The area of village Kishangarh (Mehrauli) was shown at serial No.37 under the heading "South Zone Delhi". As a consequence of this and by virtue of Section 150(3) of the Delhi Land Reforms Act, 1954 (for short, 'the Land Reforms Act'), the suit land stood automatically vested in the Central Government. After 8 years, the same was transferred by the Central Government to the Delhi Development Authority (for short, 'the DDA') vide notification dated 20.8.1974 issued under Section 22(1) of the Delhi Development Act, 1957 (for short, 'the DD Act') for the purpose of development and maintenance as Green. The relevant portions of that notification are extracted below:

"MINISTRY OF WORKS & HOUSING

New Delhi, the 20th August, 1974

S.O. 2190 - - - Whereas the terms and conditions upon which nazul lands specified in the schedule annexed below will be taken over by the Delhi Development Authority

have been agreed upon between the Central Government and the Authority.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 22 of the Delhi Development Act, 1957 (61 of 1957), the Central Government hereby places with immediate effect, the lands which had vested in the Central Government on the urbanization of the villages specified in the said Schedule at the disposal of the Delhi Development Authority for the purpose of development and maintenance of the said lands as green and for taking such steps as may be required to serve the said purpose, subject to the condition that the Delhi Development Authority shall not make, or cause, or permit to be made any constructions on the said lands and shall when required by the Central Government so to do, replace the said lands or any portion thereof as may be so required, at the disposal of the Central Government.

SCHEDULE

Sr.No.	Name of the Village
17.	Mehrauli (Kishangarh)

(F.No.13021/370-II)

S. CHAUDHARY
Jt. Secy."

4. Appellant No.2-Lal Chand and his three brothers, namely, S/Shri Ran Singh, Dhannu and Surat Singh, who claim to have purchased land comprised in khasra Nos.2728/1674/2 and 2728/1674/3 total measuring 4 bighas 4 biswas from Om Prakash and Mahinder Pal (sons of Parma Nand),

Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 15.10.1963 encroached upon the suit land, raised construction and started a restaurant under the name and style "Sahara Restaurant".

5. With a view to secure judicial approval of the illegal occupation of the suit land, appellant No.2 – Lal Chand filed Suit No. 2576/1990 in the Delhi High Court for grant of permanent injunction against the Corporation and the DDA by asserting that he is the co-owner of house No.80, Ward No.IX, Kishangarh, Mehrauli, which forms part of khasra No.1674 and was purchased vide registered sale deed dated 10.10.1963; that the suit premises comprise of 3 rooms and one hall surrounded by a boundary wall; that the entire superstructure is in existence for last over 15 years; that he has been residing in the suit premises and is paying property tax since 1968-69; that the suit land has not been acquired; that the officials of the Corporation and the DDA came to the suit premises along with the Tahsildar on 10.8.1990 without serving any notice and threatened to demolish the superstructure on the ground that the same is unauthorized. According to appellant No.2, when he questioned the jurisdiction of the Corporation and the DDA to take action for demolition of the structures, the officials went away with the threat that they will come again with the police force and demolish the same.

Paragraph 10 of the plaint and prayer (a), which have bearing on the decision of this appeal are reproduced below:

> "10. That the cause of action accrued in favour of the plaintiff against the defendants on 10.8.1990 when the officials of the defendants came to the suit premises and threatened to demolish the same. The cause of action is continuing till the threat of the defendants to demolish the suit property persists."
>
> **Prayer**
> "(a) That a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining the defendants, their officers, servants, representatives and agents from dispossessing, interfering in the possession of the plaintiff and from demolishing or sealing, any part of existing structure at House No.80, Ward IX, Kishan Garh, Mehrauli New Delhi more particularly shown red in the plan annexed to the plaint."

6. In the written statement filed on behalf of the DDA, it was averred that the suit land belonged to Gaon Sabha and with the urbanization of rural areas of Kishangarh, the same automatically vested in the Central Government. It was further averred that vide notification dated 20.8.1974, the Central Government had transferred the suit land to the DDA and the plaintiff has no right, title or interest in the same. The relevant portions of the written statement are extracted below:

> "PRELIMINARY OBJECTIONS:
>
> 1. That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No.1674 of Village-

Mehrauli. This land belong to the Gram Sabha and on the urbanization of Village-Mehrauli, all the Gram Sabha land vested in the Central Govt. and the Central Govt., later transferred this land at the disposal of the defendant-D.D.A. vide notification No.S.O. 2190 dated 20.8.1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.

PARAWISE REPLY ON MERITS.

1. That the contents of para-1 are wrong and denied. It is denied that the plaintiff is a co-owner of the premises commonly known as House No.80, Ward-IX, Kishan Garh, Mehrauli, New Delhi forming part of Khasra No.1674. It is further denied that the plaintiff purchased the suit property vide sale deed dated 10.10.63. It is submitted that as per the sale deed dated 10.10.65 supplied by the plaintiff, the suit land forms a part of Khasra No.1674 of Village-Mehrauli. The Sale deed is in respect of Khasra No.2728/1674/2(3-3) and 2728/1674/3(1-1) of Village-Mehrauli. Both these Khasras are a part of the Gram Sabha land. On the urbanization of Village-Mehrauli (Kishangarh), all the Gram Sabha land vested in the Central Govt. and later on the Central Government transferred this Gram Sabha land at the disposal of DDA for maintenance as green development vide notification No.S.O. 2190 dated 20.8.1974. In this view of the matter, the plaintiff has no right or title in the land. It is further submitted that, recently the plaintiff has unauthorisedly occupied this land and constructed a boundary wall on it with 3 temporary rooms. It is submitted that the plaintiff has not annexed any site-plan to the plant, as alleged by him.

2. That the contents of para 2 are wrong and hence denied. It is submitted that the construction of the suit land is recent and unauthorized. It is denied that the superstructure over the suit land has been in existence for the last 15 years. It is further denied that the tin shed and 2 rooms over the land were constructed sometime in the year 1959-60.

> 4. That the contents of para-4 are again wrong and therefore denied. It is submitted that the suit land belongs to the DDA. It is further submitted that previously, the land formed a part of Khasra No.2728/1674/2 and 2728/1674/3, which was a part of the Gram Sabha land. At the time of urbanization of Village-Mehrauli, the Gram Sabha land vested in the Central Govt. and later, the Central Govt. transferred this Gram Sabha land at the disposal of D.D.A. vide notification No.S.O.2190 dated 20.8.1974. It is submitted that there is no requirement of any acquisition proceedings in respect of this land, the land being at the disposal of defendant-D.D.A. In this view of the matter it is submitted that, no notification for acquisition need be issued. It is further submitted that as the land does not belong to the plaintiff, he is not entitled to be given any compensation whatsoever."

7. On 20.8.1990, the High Court granted interim injunction, which was confirmed vide order dated 14.7.1998. Thereafter, the suit was transferred to District Judge, Delhi, who assigned the same to Civil Judge, Delhi for disposal. After considering the pleadings of the parties, the Civil Judge framed the following issues:

> "1. Whether the plaintiff is co-owner of H.No.80, Kishangarh, Mehrauli (part of Kh. No. 1674) as alleged in para 1 of the plaint? OPP.
>
> 2. Whether the plaintiff is in occupation of the suit premises for the last 15 years as alleged? OPP.
>
> 3. Whether the plaintiff has any legal right to file the present suit? OPP.
>
> 4. Whether the suit is barred under Sections 477/478 of the DMC Act? OPD.

5. Whether the suit is bad for mis-joinder of parties? OPD.

6. Whether this Court has jurisdiction to entertain and try the present suit? OPD.

7. Whether the plaintiff is entitled for the relief claimed? OPP.

8. Relief."

8. Appellant No.2 did not appear in the witness box. Instead, one of his sons, namely, Vinod Kumar Khatri gave evidence as PW-2 in the capacity of the power of attorney. Two other witnesses examined in favour of the suit were Prem Prakash (PW-1) from the office of Kanungo and Shri Kulwant Singh (PW-3), Assistant Zonal Inspector. On behalf of the DDA, Prem Chand (Tehsildar) was examined as DW-1, Constable Prabhu Singh of Police Station Vasant Kunj was examined as DW-2 and Khem Chand (Patwari) as DW-3.

9. After considering the pleadings of the parties and evidence produced by them, the learned Civil Judge dismissed the suit vide judgment dated 3.3.2003 by observing that the plaintiff has failed to prove that he and his brothers were owners of the suit land. The learned Civil Judge also held that the plaintiff was not entitled to relief of injunction because the suit filed

for determination of title of the disputed land was pending adjudication. The findings recorded by the learned Civil Judge on issue Nos. 3, 6 and 7 read as under:

> "12. Issue No.3,6 and 7:- All these issues being connected together are discussed together. PW1 has proved the khasra girdawari but it may be mentioned that khasra girdawari is not the document of title. Even these khasra girdawari are for the year 1957-59, which are prior to the urbanization of vill. Kishan Garh and same also shows that the land is shamlat land. DW1 deposed that vill. Kishan Garh was urbanized vide notification ExDW1/2 and land was placed at the disposal of DDA vide notification ExDW1/1. Nothing material has come out of the cross examination of DW1. DW3 is another Patwari from Halka Mehrauli who also deposed that as per khasrra paimaish it is the document of title the land belongs to gaon sabha and same has been transferred to DDA. He proved the certified copy of record as ExDW3/1 which also shows that the land belongs to the gaon sabha and has been placed at the disposal of DDA. PW2 who is the attorney of plaintiff himself has admitted that in the correction of revenue record they have also filed suit in the Hon'ble High Court of Delhi. Thus, there is admission on the part of plaintiff himself that at present in the revenue record the plaintiff or his predecessor interest have no right title and the land belongs to the gaon sabha which has been transferred to DDA. Nothing material has come out of the cross examination of DW3 and merely because the user of the land has been shown as gair mumkin pahar and gair mumkin abadi does not make much difference as the main controversy is regarding the ownership that the land belongs to the gaon sabha and as such plaintiff has failed to prove his right, title over the same. There is also a judgment of the Hon'ble High Court in Rajender Kakkar v. DDA CW No. 3355/93 it is also for the village Kishan Garh in the revenue estate of Mehrauli in that judgment also the Hon'ble High Court has held that whole of vill. Kishan Garh was urbanized and after urbanization as per sec. 150 of DLR Act the land whole of gaon sabha ceases to be the rural area and the land belongs to gaon sabha in vill. Kishan

Garh vested with the Central Govt. and the Central govt. vide notification dt. 20.8.74 placed same at the disposal of DDA. In this authoritative pronouncement also the Hon'ble High Court held that petitioners have no right title over the land and it was further held that :

> `Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect of law. The wheels of justice grind slowly and the violators of law are seeking to the advantage of the laws delays. That is why they insist on the letter of the law being complied with by the respondents while at the same time showing their complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased in recent years viz., large scale encroachment on public land and unauthorized construction thereon, most of which could not have taken place without such encroachers getting blessing or tacit approval from the powers that be including the municipal or the local employees. Should the courts give protection to violators of the law? The answer in our opinion must be in negative. Time has come when the courts have to be satisfied, before they interfere with the action taken or proposed to be taken by the governmental authorities qua removal of encroachment or sealing or demolishing unauthorized construction specially when such construction like the present, is commercial in nature.'

13. In the present case also the plaintiffs have failed to show their right, title or interest over the land in dispute. In such circumstances as the plaintiff has failed to show his legal right over the land in dispute therefore, plaintiff is mere encroacher upon the Govt. land. It seems that under the garb of present suit the plaintiffs are indirectly challenging the notification by which the village Kishan Garh was urbanized or land was placed at the disposal of DDA. But it may be mentioned that this court has no jurisdiction to try cases challenging Govt. notification to place the land at the disposal of DDA.

> 14. Furthermore, the plaintiff has already filed suit in the Hon'ble High Court challenging the entries in the revenue records and therefore there is an admission on the part of the plaintiff themselves that at present land is not shown in their ownership. Question of suffering an irreparable loss or injury does not arise as plaintiff is already pursuing legal remedy available to them by challenging the revenue record. It is well settled principle of law that no injunction can be grand against a true owner. In the present case as the plaintiffs are mere encroacher upon the DDA land as on todays date therefore they are not entitled for any relief as prayed by them. As such, all these issues are decided against the plaintiff and in favour of defendant."

10. RFA No.651 of 2003 filed by appellant No.2 was disposed of by the Division Bench of the High Court vide order dated 24.11.2008, the operative portion of which reads as under:

> "In that view of the matter, we are of the opinion that no interference is called for as far as the impugned judgment and decree is concerned, save and except to record that nothing stated in the impugned judgment and decree dated 3.3.2003 pertaining to the issues of title would be construed as binding between the parties; needless to state the title dispute would be adjudicated in the suit filed by the appellant by the learned Judge who is seized of the suit as per evidence before the learned Judge and law applicable."

11. In the meanwhile, Surat Singh, one of the brothers of appellant No.2, filed another suit for injunction against the Corporation and the DDA. He claimed that he is the co-owner of land measuring 1200 square yards

forming part of khasra No. 1674, village Kishangarh. He pleaded that the premises were surrounded by a boundary wall and till January 1991 the same were being used for tethering cattle by one Ved Prakash. He alleged that on 29.2.1992, the officials of the defendants came to the suit land with large police force and illegally demolished number of premises including the boundary wall of his property and on the next date, i.e., 1.3.1992, the officials of the defendants again came and threatened to take forcible possession of the property.

12. The suit of Shri Shri Surat Singh was dismissed by the Civil Judge vide judgment dated 1.5.2004 with the findings that the suit land belonged to Gaon Sabha and with the urbanization of the rural area of the village the same automatically vested in the Central Government and that the plaintiff encroached the same. The appeal filed by Surat Singh was dismissed by Additional District Judge, Delhi vide judgment dated 5.8.2004. The lower appellate Court held that as per Khatoni Paimaish Exhibit DW1/2, the suit land was a waste land being Gairmumkin Pahar and the same belonged to Gaon Sabha and that after vesting of the land in it, the Central Government had transferred the same to the DDA. Paragraph 6 of that judgment is reproduced below:

“6. the Appellant claims himself the coowner of the land, forming part of the khasra no.1674, Village Kishangar on the basis of the Sale Deed dated 10.10.1963. A photocopy of the Sale Deed was placed on the record by the Appellant through which the Appellant along with the others claims to have purchased 4 bighas and 4 biswas of land bearing Khasra No.2728/167/4 and 2728/167/3. As per the scheme of the Delhi Land Reforms Act, 1954 (for short the DLR Act) on coming into the force of the DLR Act the proprietor of the agricultural land seized to exist. If any land was the part of the holding of a proprietor, he became the Bhumidar of it, if it was the part of the holding of some other person, such as a tenant or sub-tenant etc. he became either a Bhumidar or an Asami whereupon the rights of the proprietor in that land ceased. The land which was not holding of either of the proprietor or any other person vested in Gaon Sabha. A perusal of Kahatoni Paimaish, Ex.DW1/2 would show that the suit land was a waste land that is Gairmumkin Pahar in Union of India v. Sher Singh & Ors. II (1997) CLT 58, it was held by the Hon'ble Supreme Court of India that except the land which for the time being comprised the holding or a grove whether cultivable or otherwise, vests in Gaon Sabha from the date of commencement of the Act. The onus was on the appellant to show that the suit land was a part of the holding or a grove and the predecessors of the appellant had become a ‘Bhumidar’ in respect of the suit land on coming into force of the DLR Act. A notification dated 3.6.1977 was issued by the government under Section 507 of the DMC Act whereby, the area of Kishan Garh in the revenue estate of Mehrauli was urbanized, consequently in accordance with the provisions of Section 150(3) of DLR Act, the land which had vested in Gaon Sabha came to vest in the Central Government on urbanization of the village. The Central Government, vide notification under Section 22(1) of the DD Act Dated 20.8.1974 (Ex DW1/1) had placed the entire land which had vested in the Central Government, on the urbanization of the village specified in the schedule, at the disposal of the DDA for the purpose of development and maintenance of the said land. Therefore, all land, including the suit land which had vested in Gaon Sabha, came to vest in the Central Government and was ultimately placed at the disposal of the DDA.”

13. During the pendency of the aforementioned two suits, appellant No.1 which is said to have been incorporated under the Companies Act, 1956 in 1994-95 with Harbir Singh Khatri another son of Lal Chand as its Managing Director and appellant No.2-Lal Chand filed third suit being Suit No.313 of 2000 (renumbered as Suit No.473 of 2004) for grant of a declaration that the entries made in the revenue records in respect of land comprised in khasra Nos.2728/1674/2 and 2728/1674/3 situated in the revenue estate of Mehrauli, village Mehrauli Kishangarh, Tehsil Mehrauli are wrong and illegal. The appellants further prayed for grant of a decree of mandatory injunction directing the respondents to correct the revenue record and enter their names in the columns of ownership and possession. Another prayer made by the appellants was for restraining the respondents, their servants and agents from demolishing the superstructures and sealing or interfering with their possession of the suit property or running of the restaurant.

14. In the written statement filed on behalf of the DDA, several objections were taken to the maintainability of the suit including the following:

(i) The plaintiffs have not challenged notification dated 20.8.1974 vide which the Central Government transferred the suit land to the DDA.

(ii) The suit was barred by limitation because the same has been filed after 16 years of the accrual of cause of action.

(iii) The suit is barred by the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908.

(iv) The plaintiffs not only made encroachment on the suit land, but also abused the process of Court by filing different suits.

On merits, it was pleaded that the suit land belonged to Gaon Sabha and with the urbanization of village Kishangarh, the same automatically vested in the Central Government. It was further pleaded that the appellants do not have any right, title or interest in the suit land and they do not have the locus to question the revenue entries. Another plea raised on behalf of the DDA was that the suit was barred by limitation.

15. On the pleadings of the parties, the trial Court framed the following issues:

"1. Whether the plaintiff no.2 along with his brother is the owner and in possession of suit land?

2. Whether the suit land is a government land as alleged in para no.1 of the preliminary objections? If so, whether the suit is liable to be dismissed on this ground?

3. Whether the suit is within limitation?

4. Whether the suit is barred under Order 2 Rule 2 CPC?

5. Whether the plaintiffs have not come to the court with clean hands and are not entitled to the equitable relief of injunction as stated in para VI of the preliminary objections?

6. Whether the suit land is a government land was placed at the disposal of the DDA under Section 22(1) of the DDA vide notification dated 20.08.1974?

7. Relief."

16. On a comprehensive analysis of the pleadings and evidence of the parties, the trial Court held that the plaintiffs (appellants herein) have succeeded in showing that appellant No.2 and his brothers had purchased land comprised in khasra Nos. 2728/1674/2 and 2728/1674/3, but they could not prove that the land on which appellant No.1 was running `Sahara Restaurant' is a part of those khasra numbers or that they were otherwise in lawful possession of the suit land. The trial Court then held that the suit was barred by time because cause of action had accrued 16 years ago when the suit land was transferred to the DDA. The trial Court also held that the appellants had not approached the Court with clean hands inasmuch as they suppressed material facts relating to the vesting of the suit land in the Central Government and transfer thereof to the DDA and the documents like Aks Sijra, site plan and demarcation report as also the facts relating to the

acquisition of an area of 1512 square yards forming part of khasra No.2728/1674/3 and receipt of compensation at the rate of Rs.50/- per square yard. The trial Court returned affirmative finding on issue No.4 and held that the suit was barred by the provisions of Order II Rule 2 CPC.

17. The appeal preferred by the appellants was dismissed by the learned Single Judge of the High Court, who relied upon the judgment of the Division Bench in **Rajinder Kakkar v. Delhi Development Authority** 54 (1994) DLT 484 and held that with the issuance of notification under Section 507, Gaon Sabha land of Kishangarh automatically vested in the Central Government and transfer thereof to the DDA was valid. The learned Single Judge also agreed with the trial Court that the suit was barred by limitation and that the appellants had not approached the Court with clean hands.

18. Shri Mukul Rohtagi, learned senior counsel appearing for the appellants extensively referred to the evidence produced by the parties to show that the land in question was Shamlat Thok and argued that such land does not vest in Gaon Sabha. Learned senior counsel further argued that the notification issued under Section 507 of the DMC Act and the provision

contained in Section 150(3) of the Land Reforms Act have no bearing on the appellants' case because the suit land did not belong to Gaon Sabha and the trial Court and the High Court committed serious error by recording a finding that the suit land automatically vested in the Central Government and that the same was validly transferred to the DDA. Shri Rohtagi pointed out that the suit land was owned by Smt. Kasturi widow of Jhuman Singh and Rattan Lal son of Trikha Ram, who sold it to S/Shri Parma Nand, Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 7.10.1959 and legal heirs of Parma Nand and other vendees sold the same to appellant No.2 and his brothers vide sale deed dated 10.10.1963. Learned senior counsel assailed the concurrent finding recorded by the trial Court and the High Court on the issue of limitation and submitted that the suit filed in the year 2000 was within time because the cause of action accrued to the appellants for the first time in 1998 when they came to know about the entries made in the revenue records in favour of the DDA. In support of this argument, Shri Rohtagi relied upon the judgment of this Court in **Rukhmabai v. Lala Laxminarayan** (1960) 2 SCR 253.

19. Shri Harin P. Raval, learned Additional Solicitor General and Shri Amarendra Sharan, learned senior counsel appearing for the DDA argued

that the concurrent finding recorded by the trial Court and the High Court that land on which the appellants were running a restaurant does not form part of khasra Nos. 2728/1674/2 and 2728/1674/3 is a pure finding of fact based on correct analysis of the pleadings of the parties and evidence produced by them and the same does not call for interference under Article 136 of the Constitution. Shri Sharan submitted that the suit filed by the appellants for declaration of title and injunction was rightly dismissed by the trial Court because they had not produced any evidence to prove that the suit land forms part of land purchased by appellant No.2 and his brothers. Shri Sharan then argued that the suit filed in the year 2000 was barred by limitation because the cause of action had accrued to the appellants on 10.8.1990 when the officials of the Corporation and the DDA are said to have visited the suit premises and threatened to demolish the superstructure and, in any case, the cause of action accrued to them in December 1990 when the written statement was filed on behalf of the DDA with a categorical assertion that with the urbanisation of the rural areas of village Kishangarh, the suit land automatically vested in the Central Government, which transferred it to the DDA vide notification dated 20.8.1974. Learned senior counsel lastly submitted that the appellants are not entitled to any relief because they had not approached the Court with clean hands and

suppressed material facts and documents.

20. We shall first consider the question whether the suit filed by the appellants on 14.2.2000 was within limitation and the contrary concurrent finding recorded by the trial Court and the High Court is legally unsustainable.

21. The Limitation Act, 1963 (for short, 'the 1963 Act') prescribes time limit for all conceivable suits, appeals etc. Section 2(j) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.

22. Article 58 of the 1963 Act, which has bearing on the decision of this appeal, reads as under:

"*THE SCHEDULE*
PERIODS OF LIMITATION
[*See* sections 2(j) and 3]

FIRST DIVISION – SUITS

Description of suit	Period of limitation	Time from which period begins to run
PART III – SUITS RELATING TO DECLARATIONS		
58. To obtain any other declaration.	Three years	When the right to sue first accrues."

23. Article 120 of the Indian Limitation Act, 1908 (for short, 'the 1908 Act') which was interpreted in the judgment relied upon by Shri Rohtagi reads as under:

"Description of suit	Period of limitation	Time from which period begins to run
120. Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years	When the right to sue accrues."

24. The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

25. Article 120 of the 1908 Act was interpreted by the Judicial Committee in **Mt. Bolo v. Mt. Koklan** AIR 1930 PC 270 and it was held:

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least, a clear or unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

26. The same view was reiterated in **Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar** (1930) I.L.R. 8 Rang. 645 and **Gobinda Narayan Singh v. Sham Lal Singh** (1930-31) L.R. 58 I.A. 125. In **Rukhmabai v. Laxminarayan** (supra), the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words:

> "The right to sue under Article 120 of the 1908 Act accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every

> threat by a party to such a right, however ineffective or innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

27. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words `sue' and `accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

28. In the light of the above, it is to be seen as to when the right to sue first accrued to the appellants. They have not controverted the fact that in the written statement filed on behalf of the DDA in Suit No.2576 of 1990-Lal Chand v. MCD and another, it was clearly averred that the suit land belonged to Gaon Sabha and with the urbanisation of the rural areas of village Kishangarh vide notification dated 28.5.1966 issued under Section

507 of the DMC Act, the same automatically vested in the Central Government and that vide notification dated 20.8.1974 issued under Section 22(1) of the DD Act, the Central Government transferred the suit land to the DDA for development and maintaining as Green. This shows that that the right, if any, of the appellants over the suit land stood violated with the issue of notification under Section 507 of the DMC Act and, in any case, with the issue of notification under Section 22(1) of the DD Act. Even if the appellants were to plead ignorance about the two notifications, it is impossible to believe that they did not know about the violation of their so-called right over the suit land despite the receipt of copy of the written statement filed on behalf of the DDA in December, 1990. Therefore, the cause of action will be deemed to have accrued to the appellants in December, 1990 and the suit filed on 14.2.2000 was clearly barred by time.

29. The issue deserves to be considered from another angle. Although, paragraph 19 of Suit No. 303/2000 was cleverly drafted to convey an impression that the right to sue accrued to the appellants in November/December, 1998 when they learnt about the wrong recording of entries in Khasra Girdawris/Revenue Records, but if the averments contained in that paragraph are read in conjunction with the pleadings of the

earlier suits, falsity of the appellants' claim that the cause of action accrued to them in November/December, 1998 is established beyond any doubt. In the first suit filed by him, appellant No.2-Lal Chand had pleaded that the cause of action accrued on 10.8.1990 when the officials of the respondents came to the suit premises and threatened to demolish the same. In the second suit filed by Surat Singh (brother of appellant No.2-Lal Chand), it was claimed that the cause of action accrued on 29.2.1992 when the officials of the respondents demolished the boundary wall of the property on the ground that the same was Gaon Sabha land. The appellants have not explained starking contradictions in the averments contained in three suits on the issue of cause of action and in the absence of cogent explanation, it must be held that the statement contained in paragraph 19 of Suit No.313 of 2000 was *per se* false and, as a matter of fact, the cause of action had first accrued to the appellants on 10.8.1990 when their so called right over the suit land was unequivocally threatened by the respondents. Therefore, the suit filed by the appellants on 14.2.2000 was clearly beyond the period of limitation of 3 years prescribed under Article 58 of the 1963 Act and was barred by time.

30. While considering the question whether the suit was barred by time, the trial Court noticed the averments contained in paragraphs 9 and 10 of the

plaint that during the course of preparation of the trial of Suit No. 2576/1990 – Lal Chand v. MCD and another, the appellants applied for a copy of Khasra Girdawaris of the suit land and they were shocked to learn that the revenue records have been incorrectly maintained and they were neither shown as owners/bhumidars nor in possession of the suit land, referred to the pleadings of the suit filed by appellant No.2 – Lal Chand in 1990 and observed:

> "Therefore, as per the pleadings that the cause of action accrued when according to plaintiff he applied for the copies of the Khasra Nos which was in Nov.-Dec, 1998 during the course of trial in the earlier suit.
>
> This claim of the plaintiff however does not appear to be factually correct. It is evident from the judgment dated 03.03.2003 that the detailed written statement had been filed by the DDA before the Ld. Civil Judge when the suit filed by Lal Chand Plaintiff No.2 on 18.08.1990 wherein the DDA had specifically pleaded that the land form part of Khasra No.2728/1674/2 & 2728/1674/3 situated in the revenue estate of village Kishangarh, Teh Mehrauli, New Delhi and the urbanization of village Mehrauli, all the Gaon Sabha land vested in the central govt, but later on transferred this land at the disposal of the defendant DDA for development and maintenance as green, vide notification dated 20.08.1974 and the plaintiff has no right, title or interest over the suit land. It was further pleaded that the plaintiff had wrongly and unauthorizedly occupied the land and constructed the boundary wall alongwith three temporary room which construction was unauthorized and it was denied that the suit property existed for the last 16 years. It is further evident from the said judgment that after the plaintiff filed the replication continuing the aforesaid issue were framed by the Ld. Civil Judge on 11.03.1997. <u>This being so, it is unbelievable that the date of</u>

> knowledge by the plaintiff was of Nov-Dec, 1998. Rather the plaintiffs were fully aware of the land being at the disposal of the DDA from the proceeding in suit No.211/02/90 when the DDA filed its written statement when the limitation started to run more so as the plaintiff No.2 had also filed replication continuing the aforesaid and therefore as per the provisions of the limitation act, Article 58 of the schedule, challenging to the same should have been made within the period of limitation which is within 3 years from the date of knowledge and limitation which has started running, it is not extended by the plaintiff by obtaining certified copy or by giving notice to the defendants. This suit which has been filed only on 11.02.2000 is clearly not within the period of limitation of 3 years from the date when the DDA filed its written statement in suit No.211/02/90 and the plaintiff No,2 is first assumed to have acquired knowledge and in attempt to cover up this delay the plaintiff is trying to falsely create the cause of action in Nov-Dec, 1998 attributing the advantage as during the trial when he applied for the copies of the revenue record despite the fact that the period of limitation started to run when the written statement was filed by DDA to which the plaintiff No.2 filed replication pursuant to which the issue framed was, whether the plaintiff has any legal rights to file the present suit. This being the case, I hereby held that the present suit is clearly beyond the period of limitation and I decide the issue No.3 against the plaintiff."
>
> (emphasis supplied)

31. The High Court agreed with the trial Court and held that the suit was barred by time. The reasons assigned by the High Court for coming to this conclusion are contained in paragraphs 38 to 45, which are extracted below:

> "38. First suit filed by Lal Chand (Appellant no.2 in the present proceedings), being suit (no. 2576 of 1990), was suit for Injunction simplicitor. That suit was dismissed by judgment/ order dated 3.3.2001. As per findings given in that suit, the

Plaintiff was never the owner; the land was Government land; the land vested in Central Government after issuance of notification under Section 507 of DMC Act and thereafter, the land was transferred to DDA.

39. Against dismissal of that Suit for Injunction, an appeal bearing (No. RFA 651/2003) was filed and this Court disposed of the Appeal, vide order dated 24th November 2008.

40. In that suit, it was alleged in plaint that;

> "It was sometime in March 1990 that Tehsildar along with officers of DDA came to the site of Plaintiff with dispossession and demolition."

41. Now after 10 years, appellant being a co-owner, cannot seek relief against alleged threat of demolition or dispossession and present suit is clearly barred by limitation.

42. In that suit in written Statement, a specific plea was taken by answering respondent herein, that land in question by virtue of issuance of notification under Section 507 of DMC Act, on urbanization, came to be vested with Union of India and thereafter, transferred to answering respondent. Relevant preliminary objection taken therein the written statement is as under;

> "That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra no. 1674 of Village- Mehrauli. This land belong to the Gram Sabha and on the urbanization of village Mehrauli, all the Gram Sabha land vested in the Central Government, later transferred this land at the disposal of the defendant DDA vide notification No. S.O. 2190 dated 208-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed. "

43. It is also contended that second suit was filed by Surat Singh, one of the co-owners. That was again a Suit for

> Injunction, which was dismissed and against this, an appeal (No. RCA No. 29/2004) was preferred before Additional District Judge on 5th August 2004 and same was also dismissed.
>
> 44. The appellate court, while dismissing the suit of Surat Singh, referred to the pleadings made in the plaint,
>
> > "That on 29-2-1992, police officials along with the officials of DDA visited the site and proceeded to demolish inter alia the boundary wall of the disputed land. Clearly, therefore, the cause of action had matured and limitation, which necessarily commenced from the date of the demolition of the premises."
>
> 45. That suit was filed in 1992 and surely, a subsequent suit by another co-owner, cannot be maintained after a lapse of 8 years."

32. What is most surprising is that even though appellant No.2 – Lal Chand was cited as the first witness in Suit No.303/2000 (renumbered as 473/2004), he did not step into the witness box. This appears to be a part of calculated strategy. He knew that if he was to appear as a witness, it will not be possible for him to explain the apparent contradictions in the pleadings of the three suits on the issue of cause of action and falsity of the averments contained in paragraph 19 in Suit No.303/2000 will be exposed. This is an additional reason for holding that the trial Court and the High Court did not commit any error by recording a conclusion that the suit was barred by limitation.

33. The next question which requires consideration is whether the finding recorded by the trial Court on issue Nos.1 and 2 is legally correct and the High Court rightly declined to interfere with the same. The trial Court adverted to the pleadings of the parties and evidence produced by them and observed:

> "…. The plaintiff has not placed on record any document nor has examined any witness to prove the location and boundaries of the said land. It is unbelievable that sale of the immoveable properties could have taken place without identification of the property with regard to its location. As per existing practice all such transactions of immoveable properties either bear the complete details of the boundaries to assist location of the property sold alongwith the site plan or is accompanied by aks-shijra. However, in the present case this has not been done and the plaintiff has not adduced in evidence to prove boundary of the suit land. Therefore, on the basis of the aforesaid, I hold that the plaintiff No.2 had purchased the land falling in Khasra No. 2728/1674/2 & 2728/1674/3 but he has not been able to prove the location of the said land comprising of Khasra No. 2728/1674/2 & 2728/1674/3. The plaintiff has further not been able to connect the land over which the plaintiff No.1 is running Sahara Restaurant to the land comprise in Khasra No. 2728/1674/2 & 2728/1674/3 of which the plaintiff No.2 and his brother are stated to be the owners.
>
> That the DDA has placed on record the complete area location plan Ex.D2W1/4 to which there is no rebuttal. Only simply suggestion has been given to the witness of the defendant that the aforesaid plan is incorrect but the plaintiff has not placed on record any other alternative plan which according to him, is according to plan, therefore, in these circumstances I find no reason to discard the aforesaid documents which shows that Sahara Restaurant has been constructed in front of the

community centre No.1, Nursery School No.2 and Group Housing Janta Flats – 952 on the road and is shown to be away from abadi of village Kishangarh, Mehrauli, New Delhi.

Annexure-A of the award Ex.PW4/1 shows that Khasra No.2728/1674 falls in old abadi of village Kishangarh and in these circumstances it is not possible to believe that the aforesaid khasra No.2728/1674 would be located away from the main village abadi. There it appears that the plaintiff has deliberately tried to create confusion with regard to the khasra No.2728/1674 and as admitted, to show that the land on which the Sahara Restaurant is constructed is bearing khasra No. 2728/1674/2 and 2728/1674/3 which is no the case and apparently it was for this reason that he has deliberately no placed on record any site plan, aks-shijra, demarcation report made in plan document to prove the khasra numbers.

In view of the above I hereby hold that the plaintiff has proved that he has purchased the land falling in Khasra No. 2728/1674/2 and 2728/1674/3 but has not been able to prove that the land on which the plaintiff No.1 is running Sahara Restaurant is comprise of Khasra No. 2728/1674/2 and 2728/1674/3 or that he is in legal possession of the suit land over which the Sahara Restaurant is constructed."

(emphasis supplied)

The trial Court then proceeded to observe:

"Vide my above findings with regard to issue No.1, I have already held that the plaintiff has not been able to prove hat the land on which a large restaurant is made falls in Khasra No. 2728/1674/2 and 2728/1674/3 and that in fact Khasra No. 2728/1674/2 and 2728/1674/3 is a part of old abadi which is situated at distance and away from the place where the Sahara Restaurant is constructed. The notification u/s. 22(1) of the DDA dated 20.8.1974 which is Ex.DWW1/2 is not disputed by both the parties. Firstly the plaintiff has not produced any

document in the form of demarcation report or aks-shijra which show that the land on which Sahara Restaurant is situated false in Khasra No. 2728/1674/2 and 2728/1674/3 and is same land which has been purchased by the plaintiff No.2. The sale deed so relied upon by the plaintiff is Ex.PW3/4 does not show the boundaries and identification of the land initially sold by Ratan Singh and Kasturi Devi so purchased by the plaintiff No.2 later vide Ex.PW3/3. Secondly no explanation is forthcoming with regard to the acquisition award/proceedings placed before this court which are Ex.PW4/1, showing that Khasra No.1673 min(0-12) and Khasra No. 2728/1674/3 min plus 2(14-14) then the area of 1512 sq. yards has been acquired with the rte of claim as Rs.50/- per sq. yard and the compensation is awarded at Rs.1,55,600/- in all which is in respect of acquisition of land of Ran Singh, Dhan Singh, Lal Chand, Suraj Singh all sons of Mam Raj as shown in sl. No.66……..Annexure-A to the award Ex.PW4/1 shows Khasra No. 2728/1674 to be falling in old village abadi and no explanation is forthcoming as to how the land on which Sahara Restaurant has been constructed is situated away from the Abadi which according to Dx.D2W1/4 is constructed on the road in front of the Group Housing Janta Flats-952, Nursery School-II and community center-I. It is unbelievable that khasra No.2728/1674 which falls in old village abadi can be situated away from the said award. Fourthly, in the earlier suit filed by the plaintiff No.2 in the year 1990 before Ld. Civil Judge the plaintiff No.2 had claimed that he is in possession of two rooms and tin shed which he is using for residential purpose and no explanation is forthcoming as to how this huge construction of a big restaurant was made which is being used by the plaintiff No.1 for commercial purposes. It is evident from the order dated 24.11.2008 in RFA No.651/03 that the High Court was apprised of the earlier report of the local commissioner in suit No.211/02/90 and the large scale construction raised by the plaintiff over the said land despite the status quo order without the sanction of the municipal authority. Even otherwise no permission can be granted by the DDA for any been uncontroverted by the plaintiff, has constructed restaurant by encroaching upon the govt. land meant for road. Under the garb of the present suit the plaintiff are indirectly challenging notification by which village Kishangarh was

> urbanized and the land was placed at the disposal of the DDA without specifically challenging the same as the entries made in the revenue record are only pursuant to the said notification. Therefore, in view of the aforesaid, I hereby decide this issue No.2 against the plaintiff and in favour of the defendants."
>
> (emphasis supplied)

34. Though, the High Court did not examine the issue in detail as was done by the trial Court, the learned Single Judge did make a note of the two notifications, the judgment in **Rajinder Kakkar's** case and held that by virtue of Section 150(3) of the Land Reforms Act, the suit land automatically vested in the Central Government and the same was transferred to the DDA under Section 22(1) of the DD Act. In our view, the conclusion recorded by the trial Court that the appellants have failed to prove that the suit land formed part of khasra Nos. 2728/1674/2 and 2728/1674/3 does not suffer from any error because they did not adduce any evidence to establish that the land on which restaurant was being run formed part of those khasra numbers.

35. We also approve the findings and conclusions recorded by the trial Court that the appellants had not approached the Court with clean hands inasmuch as they withheld Aks Sijra, site plan and the demarcation report and award Exhibit PW4/1. Not only this, they raised illegal construction

despite the injunction order passed by the High Court and that too without obtaining permission from the competent authority.

36. In view of the above discussion, we do not consider it necessary to deal with the question whether the suit filed by the appellants was barred by Order II Rule 2 CPC.

37. In the result, the appeal is dismissed. The appellants, who have not only made encroachment on the public land, but also abused the process of the Court are saddled with cost, which is quantified at Rs.5 lacs. Of this, Rs.2.5 lacs be deposited with the Supreme Court Legal Services Committee within two months from today. The balance amount of Rs.2.5 lacs be deposited with the Delhi State Legal Services Committee within the same period. If the appellants fail to deposit the cost, the Secretaries of the two Legal Services Committees shall be entitled to recover the same as arrears of land revenue.

….……J.
[G.S. Singhvi]

…..…..……..J.
[H.L. Dattu]

New Delhi
September 09, 2011.