BANGALORE DEVELOPMENT AUTHORITY

v.

N. JAYAMMA

(Civil Appeal No. 2238 of 2016)

MARCH 10, 2016

[A.K. SIKRI AND R.K. AGRAWAL, JJ.]

Adverse Possession – Suit for declaration of title perfected by adverse possession – Filed by purchaser of the land which was already acquired under Land Acquisition Act – However, actual possession whereof remained with the original owner – Suit decreed – Decree affirmed by High Court – On appeal, held: Plaintiff had herself admitted that the officials of the appellant-Authority (acquisition beneficiary) came to the suit property and demolished the structure – Thus the possession was not unhindered, peaceful and continuous – Plaintiff failed to prove title by adverse possession – Suit liable to be dismissed.

Allowing the appeal, the Court

HELD: 1. The respondent-plaintiff had herself admitted that the officials of the appellant-Authority had come to the suit property and demolished the existing structure. This act of the Authority would amply demonstrate that there was no unhindered, peaceful and continuous possession of the suit land. [Para 22] [599-B-C]

2. The plea of equity that when the Authority itself is created for the purpose of formation of layouts and allotment of sites to the members of the public, the respondent should not be dispossessed when she is in continuous possession of the suit property, would not be the relevant considerations in the present case. The present appeal arises out of civil proceedings filed in the form of a suit by the respondent and once it is found that the respondent has not been able to prove title by adverse possession, no such aspects, not coming within the scope of the suit proceedings, can be looked into. [Para 23] [599-D-E]

M. Venkatesh & Ors. v. Commissioner, Bangalore Development Authority **(2015) 10 Scale 27;** *P.T. Munichikkanna Reddy & Ors. v. Revamma & Ors.* **2007 (5) SCR 491: (2007) 6 SCC 59 – relied on.**

A *John B. James & Ors. v. Bangalore Development Authority & Anr.* **ILR 2000 KAR 4134 – held inapplicable.**

U.P. Jal Nigam v. Kalra Properties Pvt. Ltd. **1996 (1) SCR 683 : (1996) 3 SCC 124**; *Ajay Kishan Singhal v.* B *Union of India* **1996 (4) Suppl. SCR 319 : (1996) 10 SCC 721**; *Mahavir & Anr. v. Rural Institute, Amravati & Anr.* **1995 (2) Suppl. SCR 421 : (1995) 5 SCC 335**; *Gian Chand v. Gopala & Ors.* **(1995) 5 SCC 528**; *Meera Sahni v. Lieutenant Governor of Delhi & Ors.* **2008 (10) SCR 1012 : (2008) 9 SCC 177**; *Tika Ram v.* C *State of Uttar Pradesh* **2009 (14) SCR 905 : (2009) 10 SCC 689**; *Tamil Nadu Housing Board v. A. Viswam (D) by Lrs.* **1996 (2) SCR 881: (1996) 2 SCC 634**; *Larsen & Toubro Ltd. v. State of Gujarat & Ors.* **1998 (2) SCR 339 : (1998) 4 SCC 387**; *Karnataka Board of Wakf v.* D *Government of India* **2004 (1) Suppl. SCR 255: (2004) 10 SCC 779**; *Rama Shankar & Anr. v. Om Prakash Likhdhari & Ors.* **(2013) 6 ADJ 119**; *Balwant Narayan Bhagde v. M.D. Bhagwat* **1975 (0) Suppl. SCR 250 : (1976) 1 SCC 700**; *NTPC Ltd. v. Mahesh Dutta* **2009 (10) SCR 1084 : (2009) 8 SCC 339**; *Raghbir Singh* E *Sehrawat v. State of Haryana* **2011 (14) SCR 1113 : (2012) 1 SCC 792 – referred to.**

Case Law Reference

(2015) 10 Scale 27	**relied on**	**Para 7**
F **1975 (0) Suppl. SCR 250**	**referred to**	**Para 13**
2009 (10) SCR 1084	**referred to**	**Para 13**
2011 (14) SCR 1113	**referred to**	**Para 13**
1996 (1) SCR 683	**referred to**	**Para 18**
G **1996 (4) Suppl. SCR 319**	**referred to**	**Para 18**
1995 (2) Suppl. SCR 421	**referred to**	**Para 18**
(1995) 5 SCC 528	**referred to**	**Para 18**
2008 (10) SCR 1012	**referred to**	**Para 18**
H **2009 (14) SCR 905**	**referred to**	**Para 18**

			A
1996 (2) SCR 881	**referred to**	**Para 18**	
1998 (2) SCR 339	**referred to**	**Para 18**	
2004 (1) Suppl. SCR 255	**referred to**	**Para 18**	
2007 (5) SCR 491	**relied on**	**Para 20**	
(2013) 6 ADJ 119	**referred to**	**Para 21**	B
ILR 2000 KAR 4134	**held inapplicable**	**Para 22**	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2238 of 2016.

From the Judgment and Order dated 10.08.2011 of the High Court C of Karnataka at Bangalore in Regular First Appeal No. 1279 of 2006.

S. K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Advs. for the Appellant.

P. Vishwanath Shetty, Sr. Adv., P. Venkat Reddy, Mahesh Thakur, Prashant Kr. Tyagi, Advs. for the Respondent. D

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. The instant appeal, which has travelled to this Court, had its origin in a suit filed by the respondent in the Court of City Civil Judge, Bangalore. The said suit was filed by the respondent herein for declaration of title to the suit property situated in Sy. No. 76/ E 1. It was claimed by the respondent that she had purchased the property on June 22, 1994 ad-measuring East to West – 60 ft. and North to South – 50 ft. (hereinafter referred to as the 'suit property') from its previous owner and had constructed a building thereupon. The aforesaid suit property, which was part of Sy. No. 76/1 comprising 4 acres 31 guntas F (hereinafter referred to as the 'scheduled property'), was acquired by the State Government for Bangalore Development Authority – appellant herein (for short, 'the BDA'), for which Notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on December 15, 1984 followed by a declaration under Section 6 of the Act on October 29, 1986. Purportedly, possession thereof was handed over G to the BDA on August 30, 1988 vide *Mahazar* (Exhibit D-4). However, it appears that the actual possession of the suit property remained with the original owner who then sold it to the respondent in the year 1994, as stated above. It is on this basis that the respondent filed the suit on the ground that she was in possession of the said property for more than 12 H

A years even after the acquisition thereof by the State Government and, in this manner, she had perfected her title by adverse possession. Thus, the relief claimed in the suit was for declaration that the respondent had become the owner thereof.

2. The appellant contested the said suit by raising the plea that
B since the scheduled property had been acquired by the Government for formation of the layout and with effect from the date of final notification entire land vested with the Government, the respondent was precluded from claiming the possession thereof on the ground that it was already with her. It was also contended that the Government had handed over the possession of the land in question to the BDA on August 30, 1988
C and BDA was in legal possession thereof. It was also submitted that once Notification under Section 4 of the Act was issued on December 15, 1984 and even declaration under Section 6 was issued on October 29, 1986, it was not permissible for the original owner to sell the acquired land to the respondent herein on June 22, 1994. It was also contended
D that as the land vested with the Government, in any case, the limitation under Article 112 of the Limitation Act, 1963 was 30 years and not 12 years and, therefore, the respondent could not claim adverse possession before the expiry of 30 years.

3. The trial court, on the basis of the pleadings, framed the following issues:

E "(1) Whether the plaintiff proves that she and her predecessors in title have been in continuous possession and enjoyment of the suit schedule property since more than 12 years, adverse to the interest of the defendant as pleaded in the plaint?

(2) Whether the plaintiff proves that she had perfected her title
F to the suit schedule property by way of adverse possession as pleaded in the plaint?

(3) Whether the plaintiff proves that the defendant and his officials are unlawfully interfering with her possession of the suit schedule property as alleged in the plaint?

G (4) Whether the plaintiff proves that she is entitled for the declaration of title to the suit schedule property as sought for in the suit?

(5) Whether the plaintiff proves that she is also entitled for the grant of permanent injunction against the defendant as ought for
H in the suit?"

4. Evidence was led and arguments heard, which resulted in passing of judgment and decree dated April 07, 2006 by the Additional City Civil Judge, Bangalore. All the issues were decided in favour of the respondent herein, on the basis of which suit was decreed in her favour declaring that she is the owner in possession of the suit property having perfected her title by way of adverse possession. As a consequence, decree of permanent injunction was also passed restraining the appellant – BDA, its officials and agents, etc. from alienating the suit property either by way of lease, public auction or by allotting the same in favour of any third party or from interfering with the peaceful possession and enjoyment of the said property by the respondent. This judgment and decree was appealed against by the appellant before the High Court by filing Regular First Appeal No. 1279 of 2006. The High Court has, vide impugned judgment, affirmed the decree passed by the trial court thereby dismissing the appeal of the appellant.

5. Attacking the judgment and decree passed by the trial court and affirmed by the High Court, learned counsel for the appellant submitted that even if it is presumed that limitation period for claiming adverse possession is 12 years, in the instant case, that ingredient has not been satisfied by the respondent even on the basis of admitted facts. In this behalf, it was argued that as per the respondent's own showing, she had purchased the area of 60 ft. x 50 ft. out of the acquired land on June 22, 1994. She, thus, came into possession in the year 1994. He further pointed out that in the plaint itself, the respondent had averred that there was some existing construction and she had applied for regularisation of the said existing construction on July 25, 1994. Further, in para 10 of the plaint, the respondent admitted that the officials of the appellant had come to the suit, properly accompanied by Police force, and demolished the existing construction. He drew our attention to the following averments in the plaint to the aforesaid effect:

> "In spite of the above stated facts, the BDA and its officials without any kind of notice and with the help of a large contingent of police force accompanied by the officials and workmen including the Commissioner, BDA and all of a sudden they have illegally trespassed over the suit schedule property on 24.04.2001 and interfered over the same and demolished the existing construction buildings as well as her business therein on 24.04.2001 with the aid of bulldozers and such other machinery, equipments...."

A 6. It was, thus, argued that after purchase of the land on June 22, 1994, the respondent remained in possession for barely 7 years when she was dispossessed, even as per the respondent's own showing and the suit filed on August 06, 2001 claiming adverse possession on the ground that she was in possession for 12 years, was incompetent. It B was further submitted that as per the aforesaid pleadings in the plaint, it was clear that on the date of filing the suit, the respondent was not in possession nor was there any structure on the suit land and the question of claiming adverse possession, thus, did not arise.

7. Learned counsel also argued that in order to lay claim of ownership on the basis of adverse possession, it has to be proved that C such adverse possession is open and uninterrupted to the enjoyment of the defendant-Authority for more than 12 years, which essential requirement had not been satisfied. For this proposition, the learned counsel placed heavy reliance upon a recent judgment of this Court in ***M. Venkatesh & Ors. v. Commissioner, Bangalore Development*** D ***Authority.***[1]

8. We may note at this stage that in arriving at a finding that the respondent was in possession of suit property for more than 12 years, the courts below have calculated the period from August 30, 1988, namely, the date on which possession was taken under a *Mahazar* (Exhibit D-4) by the State Government and handed over to the BDA. Learned E counsel for the BDA pleaded that the aforesaid approach of the courts below was wholly erroneous as the respondent, as per her own showing, came to possess the suit property only after the purchase thereof on June 22, 1994. He also submitted that, in any case, sale in favour of the respondent in the year 1994 was void *ab initio* as the title had already F been vested in the BDA and the original owner who had purportedly sold the property to the respondent was no longer owner thereof and had no right to sell the same. Learned counsel argued that even this aspect is squarely covered by the aforesaid judgment in the case of **M. Venkatesh** (supra). Learned counsel also pointed out that after the structure was demolished in the year 2001 by the BDA, as admitted by G the respondent herself, the site in question was auctioned by the appellant on August 06, 2001 and sale deed was duly executed, which was proved before the trial court as Exhibit P-26.

9. Per contra, learned counsel for the respondent submitted that the respondent had led sufficient evidence to establish that she had been

H [1] (2015) 10 Scale 27

in continuous possession, which remained uninterrupted, and on the basis of this evidence a categorical finding was arrived at by the trial court to the effect that the respondent has perfected her title in respect of the suit property by way of adverse possession. This submission was elaborated by arguing that even when the schedule property was acquired by issuing requisite notifications and passing of the award, possession of the suit property was never taken by the BDA, which continued to be in possession of the vendor, from whom the respondent purchased the property vide sale deed dated June 22, 1994, and thereafter she had been in possession of this property. It was submitted that these were findings of facts arrived at on the basis of evidence produced on record which do not warrant any interference. It was also submitted that *Mahazar* (Exhibit D-4) dated October 13, 1988 was only a paper possession and no actual possession had been taken, which also stood proved not only by the evidence led by the respondent, but even from the statements of DW-1 and DW-2, who were examined on behalf of the BDA. Learned counsel further pointed out that there was not even an iota of evidence adduced on behalf of the BDA that the possession of the suit property was taken on the date of *Mahazar* (Exhibit D-4) or subsequently thereafter.

10. Insofar as claim of continuous, uninterrupted and peaceful possession for a period of more than 12 years is concerned, it was the submission of the learned counsel for the respondent that possession of the respondent shall not be counted from the date of the sale deed, i.e. June 22, 1994, in her favour, but the earlier period during which the vendor was in possession also needs to be counted and the courts below were right in computing the period of 12 years from the date of *Mahazar* (Exhibit D-4) dated October 13, 1988. A fervent plea was made that if the impugned judgment is reversed, the respondent and the members of her family will be deprived of their only shelter, which would amount to taking away their right to property guaranteed to them under Article 300A of the Constitution of India. It is stated that there was a fully developed structure (house) (Exhibits P-22 to P-25) on the suit property and the building was constructed after obtaining permission and licence from Agara Gram Panchayat and regularly taxes were paid with respect to the suit property and *Khatha* also stands in favour of the respondent. It was submitted that at no point of time the BDA took possession of the property in question from the vendor or the respondent. It was also argued that the BDA being a statutory authority created for the purpose

A of formation of layouts and allotment of sites to the members of the pubic, even in equity it was not proper, just or fair to deprive the respondent of her only source of shelter. The very objective of the BDA is to provide shelter to the members of public. The counsel, thus, pleaded that this Court should not exercise its extraordinary power under Article 136 of the Constitution even if the judgment impugned suffers from any error if the said judgment will not bring about any unjust result.

11. Another submission of the learned counsel for the respondent was that the very purpose for which the land was acquired was to prepare a scheme for allotment of the houses to the members of the public. As per Section 27 of the Bangalore Development Authority Act, 1976, such a scheme had to be prepared within five years from the passage of the award, but the BDA had failed to do so resulting in the lapsing of the scheme. This was yet another reason, according to the respondent, for not interfering with the decree passed in favour of the respondent.

12. Tracing the history of the present litigation, learned counsel for the respondent referred to the judgment of the Karnataka High Court in ***John B. James & Ors.*** v. ***Bangalore Development Authority & Anr.***[2] Delivering the judgment in that case, in a batch of writ petitions which were filed by the respondent and several others, the High Court, after elaborately considering the rival contentions of the parties, had directed the writ petitioners, including the respondent herein to approach the civil court to establish their claim that they had perfected their title to the suit property by adverse possession, as is clear from the following passage therefrom:

> "85. Where the petitioners claim that they are in settled possession for more than 12 years after the land had vested in BDA, it is open to them to approach the Civil Court for a declaration of title by establishing adverse possession for more than 12 years."

13. Learned counsel for the respondent joined issue *qua* the arguments of the appellant predicated on the judgment of this Court in ***M. Venkatesh*** case with the submission that the said judgment had absolutely no application to the facts of the present case as the said case relates to the vacant house site and construction of building after dispossession, which was not the position in the instant case. On the other hand, he referred to the following judgments of this Court wherein symbolic/paper possession is held to be no possession in the eyes of law

[2] ILR 2000 KAR 4134

and it is the actual possession under relevant rules which matters: A

(i) ***Balwant Narayan Bhagde*** v. ***M.D. Bhagwat***[3]

(ii) ***NTPC Ltd.*** v. ***Mahesh Dutta***[4]

(iii) ***Raghbir Singh Sehrawat*** v. ***State of Haryana***[5]

14. Learned counsel for the respondent even referred to the B provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, and in particular sub-section (2) of Section 24 which lays down specific period within which the possession is to be taken of the property after acquisition and when no such possession was taken, the acquisition lapses. C

15. In the first blush, argument of the learned counsel for the respondent, viz., there is a finding of fact that respondent and her predecessors-in-title have been in continuous possession and enjoyment of the suit property for more than 12 years and, therefore, the respondent has perfected her title by adverse possession, appears to be attractive. D It may appear to be a finding of fact simplicitor. However, an indepth analysis of the issue would manifest that the matter cannot be brushed aside with such a simplisitic overtone. In fact, the detailed discussion that follows would amply demonstrates that the manner in which the issue has been approached by the courts below is itself erroneous and legally unsustainable. For this, we are not even required to discuss various E nuances of the issue as the judgment of this Court in ***M. Venkatesh*** has done this exercise whereby same issue has been directly and squarely dealt with which arose in almost similar circumstances. Therefore, it would be apt to discuss the facts of that case as well as law laid down therein which would provide answers to many arguments raised by the F parties before us.

16) In ***M. Venkatesh*** (supra) as well, land was acquired by the State Government of Karnataka and given at the disposal of the BDA. Preliminary Notification was issued on July 17, 1984 and final Notification dated November 28, 1986 was published on December 25, 1986. G Determination of amount of compensation payable to the landowners having been approved by the competent authority on August 21, 1986, the BDA claimed that possession of the land was taken over from the

[3] (1976) 1 SCC 700
[4] (2009) 8 SCC 339
[5] (2012) 1 SCC 792 H

A landowners and handed over to the engineering section of the BDA by drawing a possession *Mahazar* on November 06, 1987. A Notification under Section 16(2) of the Act was also published in the Karnataka Gazette dated July 04, 1991 which, according to the BDA, signified that the land in question stood vested with the BDA free from all encumbrances whatsoever. Here also, after taking of the aforesaid steps by the BDA, the original land owners of the acquired land sold the said land to different persons after carving out the sites/plots. When the actual possession was sought to be taken, the said subsequent purchasers (like the respondent in the instant appeal) filed writ petitions in the High Court. Their writ petitions, along with the writ petition of the respondent herein and some others, were the subject matter of the judgment of the Division Bench of the High Court in ***John B. James's*** case (supra). Like the respondent herein, the individuals/subsequent purchasers in the case of ***M. Venkatesh*** (supra) were also relegated to the civil court giving them permission to file the suit if they were claiming adverse possession. Five such suits were the subject matter of the judgment in ***M. Venkatesh*** (supra). The trial court had, in fact, clubbed these suits which were decided together and decreed. The issues framed in those suits were almost the same to the ones framed in the civil suit filed by the respondent herein, as is clear from the issues which were settled by the trial court in those cases:

> "(1) Whether the Plaintiffs prove that, they have acquired and perfected their alleged title to the suit schedule properties by virtue of the alleged law on adverse possession, as claimed?
>
> (2) Whether the Plaintiffs prove their alleged lawful possession and enjoyment of the suit schedule properties, as on the date of the suit?
>
> (3) Whether the Plaintiffs further prove the alleged illegal interferences and obstructions by the defendant?
>
> (4) Whether the defendant proves that, the suit schedule properties is duly acquired by the defendant, in accordance with law and as such, the same have stood vested with the defendant, free from all the encumbrances?
>
> (5) Whether the Plaintiffs are entitled to the suit relief of declaration and injunction, against the defendant?
>
> (6) What Order or Decree?"

17. In that case also the trial court had recorded the findings that those plaintiffs were in lawful possession on the date of the suit, such possession was for more than 12 years and, thus, the plaintiffs had perfected their title to the schedule properties by way of adverse possession. The BDA filed appeals against the decree passed by the trial court. Four appeals were allowed wherein the High Court held that the trial court was wrong in recording the finding that those four plaintiffs had established their possession. It was noticed that the plaintiffs in those appeals were claiming settled possession of vacant piece of land, which was clearly impermissible. The High Court found that there was no dispute that all the structures on the suit properties, relevant to those suits, had been demolished and that the land was a vacant piece of land all along and at all material times, including on the date of filing the suit as well as on the date of judgment. These four plaintiffs had filed appeals which were dismissed by this Court in ***M. Venkatesh*** (supra) approving the view taken by the High Court in the said four appeals. Insofar as decision in those four cases is concerned, it may not be very relevant as in the instant case it is not the vacant land with which we are concerned. However, what is relevant for us is the discussion in the fifth appeal which was filed by the BDA in the High Court wherein the High Court had affirmed the decree passed in favour of the plaintiff. The High Court noticed that in the said case the plaintiffs were running a saw mill which was in operation long prior to the filing of the suit and which continued to be in existence even on the date of the suit as well as on the date of the judgment of the High Court. Keeping in view the aforesaid position, the High Court relied upon its Division Bench judgment in ***John B. James's*** case (supra) and held that the plaintiff therein was entitled to protection against attempted eviction by the BDA. On this basis, decree passed by the trial court was affirmed. This judgment of the High Court was also appealed against, which also became the subject matter of discussion in ***M. Venkatesh*** (supra). Pertinently, this Court allowed the appeal of the BDA and set aside the aforesaid judgment of the High Court and reversed the decree passed by the trial court, thereby holding that even in this case the plaintiff was not entitled to any protection.

18. Following reasons can be culled out in taking the aforesaid view by this Court:

(a) The plaintiff therein had purchased the property from the

A original owners in terms of sale deed dated August 22, 1980, which was long after the issuance of the preliminary notification published in July 1984. Such a sale was clearly void and non est in the eyes of law, opined the Court. In arriving at this conclusion, it referred to earlier decisions of this Court in ***U.P. Jal Nigam*** v. ***Kalra Properties Pvt. Ltd.***[6]; ***Ajay Kishan Singhal*** v. ***Union of India***[7]; ***Mahavir & Anr. v. Rural Institute, Amravati & Anr.***[8]; ***Gian Chand v. Gopala & Ors.***[9]; ***Meera Sahni*** v. ***Lieutenant Governor of Delhi & Ors.***[10]; and ***Tika Ram*** v. ***State of Uttar Pradesh***[11].

(b) As on the date of suit, the plaintiffs had not completed 12 years in possession of the suit property so as to entitle them to claim adverse possession against the BDA, the true owner. This finding was given on the basis that the plaintiffs could count the period of the so-called adverse possession only from the date they purchased the property and the period for which the original vendor held the property, or for that matter the date of *Mahazar*, could not be counted.

(c) The Court also rejected the argument of the plaintiffs that possession of the land was never taken. In this behalf, the Court took the view that one of the settled mode of taking possession is by drawing a *panchnama*, which part had been done to perfection according to the evidence led by the BDA. For this, the Court referred to the judgments in ***Tamil Nadu Housing Board*** v. ***A. Viswam (D) by Lrs.***[12] and ***Larsen & Toubro Ltd.*** v. ***State of Gujarat & Ors.***[13]

(d) Most pertinently, the Court also held that the plaintiffs could not claim adverse possession as, on the facts of that case, it could not be said that possession of the plaintiffs was peaceful, open, continuous and non-hostile. On this aspect, the Court took note of essentials of adverse possession, which are required to be proved, from the judgment in the case of ***Karnataka Board of Wakf*** v. ***Government of India***[14] and some other judgments. Discussion in this behalf is contained in

[6] (1996) 3 SCC 124
[7] (1996) 10 SCC 721
[8] (1995) 5 SCC 335
[9] (1995) 5 SCC 528
[10] (2008) 9 SCC 177
[11] (2009) 10 SCC 689
[12] (1996) 2 SCC 634
[13] (1998) 4 SCC 387
[14] (2004) 10 SCC 779

paras 15 to 18, which read as under: A

"15. Coming then to the question whether the plaintiffs-respondents could claim adverse possession, we need to hardly mention the well known and oft quoted maxim *nec vi, nec clam, nec precario* meaning thereby that adverse possession is proved only when possession is peaceful, open, continuous and hostile. B The essentials of adverse possession were succinctly summed-up by this Court in *Karnataka Board of Wakf* v. *Govt. of India* (2004) 10 SCC 779 in the following words:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina (AIR 1964 SC 1254), Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since

C D E F G

H

A he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma (1996) 8 SCC 128)."

16. Reference may also be made to the decision of this Court in B *Saroop Singh* v. *Banto* (2005) 8 SCC 330, where this Court emphasised the importance of animus possidendi and observed:

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's C possession becomes adverse. (See Vasantiben Prahladji Nayak v. Somnath Muljibhai Nayak (2004) 3 SCC 376).

30. "Animus possidendi" is one of the ingredients of adverse possession. Unless the person possessing the land has the requisite animus the period for prescription does not commence. D As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita (2004) 1 SCC 371, SCC para 21.)"

E 17. Also noteworthy is the decision of this Court in *Mohan Lal* v. *Mirza Abdul Gaffar* (1996) 1 SCC 639, where this Court held that claim of title to the property and adverse possession are in terms contradictory. This Court observed:

"4. As regards the first plea, it is inconsistent with the second F plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of G his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant." H

18. To the same effect is the decision of this Court in *Annasaheb Bapusaheb Patil* v. *Balwant* (1995) 2 SCC 543, where this Court elaborated the significance of a claim to title viz.-a-viz. the claim to adverse possession over the same property. The Court said: A

> "15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all." B C

19. After taking note of the principle of law relating to adverse possession in the aforesaid manner, this Court commented about the erroneous approach of the High Court in the following manner: D

> "19. The Courts below have not seen the plaintiff- respondent's claim from the above perspectives. The High Court has, in particular, remained oblivious of the principle enunciated in the decisions to which we have referred herein above. All that the High Court has found in favour of the plaintiffs is that their possession is established. That, however, does not conclude the controversy. The question is not just whether the plaintiffs were in possession, but whether they had by being in adverse possession for the statutory period of 12 years perfected their title. That question has neither been adverted to nor answered in the judgment impugned in this appeal. Such being the case the High Court, in our opinion, erred in dismissing the appeal filed by the appellant-BDA. The fact that the plaintiffs had not and could not possibly establish their adverse possession over the suit property should have resulted in dismissal of the suit for an unauthorised occupant had no right to claim relief that would perpetuate his illegal and unauthorised occupation of property that stood vested in the BDA." E F G

20. In addition to the discussion contained in M. Venkatesh case noted above, we may also add what was held in ***P.T. Munichikkanna Reddy & Ors.*** v. ***Revamma & Ors.***[15]:

[15] (2007) 6 SCC 59 H

A "5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. (See *Downing* v. *Bird; Arkansas Commemorative Commission* v. *City of Little Rock; Monnot* v. *Murphy*; and *City of Rock Springs* v. *Sturm*)."

21. In ***Rama Shankar & Anr.*** v. ***Om Prakash Likhdhari & Ors.***[16], the Allahabad High Court has observed as under:

C "21. The principle of adverse possession and its consequences wherever attracted has been recognized in the statute dealing with limitation. The first codified statute dealing with limitation came to be enacted in 1840. The Act 14 of 1840 in fact was an enactment applicable in England but it was extended to the territory of Indian continent which was under the reign of East India D Company, by an authority of Privy Council in the *East India Company* v. *Oditchurn Paul*, 1849 (Cases in the Privy Council on Appeal from the East Indies) 43.

xx xx xx

E 23. The law of Prescription prescribes the period at the expiry of which not only the judicial remedy is barred but a substantive right is acquired or extinguished. A prescription, by which a right is acquired, is called an *'acquisitive prescription'*. A prescription by which a right is extinguished is called 'extinctive prescription'. The distinction between the two is not of much practical importance F or substance. The extinction of right of one party is often the mode of acquiring it by another. The right extinguished is virtually transferred to the person who claims it by prescription. Prescription implies with the thing prescribed for is the property of another and that it is enjoyed adversely to that other. In this respect it must be distinguished from acquisition by mere G occupation as in the case of res *nullius*. The acquisition in such cases does not depend upon occupation for any particular length of time."

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[16] (2013) 6 ADJ 119

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22. The aforesaid analysis of the judgment in ***M. Venkatesh*** (supra) amply shows that it is squarely and directly applicable to the facts and circumstances of the present case. In the first instance, it shows that reliance of the respondent herein on the judgment of ***John B. James*** (supra) is of no avail. It would further demonstrate that the findings of the court below that only paper possession was taken and actual possession was not taken also becomes meaningless as the manner of taking possession in the instant case was also identical. In addition, it is pertinent that the respondent herein, in para 10 of the plaint, had herself admitted that the officials of the BDA had come to the suit property on April 24, 2001 and demolished the existing structure. This act of the BDA would amply demonstrate that there was no unhindered, peaceful and continuous possession of the suit land.

23. Learned counsel for the respondent had raised the plea of equity. He has also submitted that when the BDA itself is created for the purpose of formation of layouts and allotment of sites to the members of the public, the respondent should not be dispossessed when she is in continuous possession of the suit property. However, these would not be the relevant considerations in the present case as we cannot forget that the present appeal arises out of civil proceedings filed in the form of a suit by the respondent and once it is found that the respondent has not been able to prove title by adverse possession, no such aspects, not coming within the scope of the suit proceedings, can be looked into. Insofar as the argument predicated on Section 27 of the Bangalore Development Authority Act or Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 are concerned, again these issues were neither raised nor arise in the instant case. If the respondent, if at all, has any right to make claim on the aforesaid grounds, in any appropriate proceedings, she can do so, if permissible in law. We may clarify that this Court has not gone into these issues and, therefore, has not made any comments on the merits of such pleas raised by the respondent.

24) As a result, the appeal stands allowed resulting in dismissal of the suit filed by the respondent in the trial court. In the facts and circumstances of this case, there shall be no order as to costs.

Kalpana K. Tripathy Appeal allowed.