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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 225/2008 & CM Nos. 14987/08, 14988/08

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Reserved on : 28.11.2008

Date of Decision: 19.12.2008

JASVINDER SINGH

.... Appellant

Through: Mr. B. L. Chawla, Advocate

Versus

DDA & OTHERS

.... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE V.K.SHALI

1. Whether reporters of Local papers may be allowed to see the judgment? ✓
2. To be referred to the reporter or not? ✓
3. Whether the judgment should be reported in the Digest? ✓

J U D G M E N T

V.K.SHALI, J.

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1. This is a Regular Second Appeal filed by the appellant against the judgment dated 5th September, 2008 passed by Shri O. P. Gupta, Additional District Judge, Tis Hazari Courts, Delhi. By virtue of the impugned judgment and decree the learned Additional District Judge has dismissed the appeal of the appellant and upheld the findings of the learned Trial Court to the effect that the Civil Court does not have the jurisdiction to entertain the suit for declaration of the ownership rights and injunction of the appellant.

2. Briefly stated the facts of the case are that the appellant had filed a suit against the defendants alleging therein that he is the owner of the Janta Flat No. 42, Pocket B-9, Sector 3, Rohini, Delhi-110085. It was alleged by the appellant that a declaration be issued that the aforesaid flat is not covered by the Public

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Premises (Eviction of Unauthorised Occupants) Act, 1971 and the proceedings which are purported to have been initiated against the flat in question are bad in law and void. The appellant had also sought an injunction prohibiting and restraining the respondent from evicting and dispossessing him from the said flat in any manner whatsoever. The appellant had also stated that the aforesaid flat was allotted to respondent no. 3 by the respondent no. 1 and the possession of the same was handed over on 15th October, 1986. The respondent No. 3 sold the said flat to a number of persons and ultimately it came to be sold to one Smt. Tarawanti wife of Shri Jetha Nand, resident of D-510, Dilshad Garden, New Delhi on 25th February, 1997 who in turn sold the same to the appellant vide power of attorney and agreement to sell etc. dated 15th February, 1997. It is further alleged that the respondent No. 2 issued notice under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 24th February, 1999 which was duly replied by the appellant and since the appellant was apprehending that he may be dispossessed, he chose to file a suit for Declaration and Injunction. The learned Civil Judge framed an issue regarding the maintainability of the suit.

“Whether the suit of plaintiff is maintainable?”

3. The learned Civil Judge referred to notice under Section 4(1) and Section 4(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 purported to have been issued to appellant on 24th February, 1999 and thereafter reproduced two Sections, namely, Section 10 and Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Both these Sections read as under:

(10) “Finality of orders- Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final & shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action

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taken or to be taken in pursuance of any power conferred by or under this Act.”

(15) “Bar of jurisdiction- No court shall have jurisdiction to entertain any suit a proceeding in respect of-

- (a) The eviction of any person who is in unauthorised occupation of any public premises, or
- (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or
- (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or
- [(cc) the sealing of any erection or work or of any public premises under section 5C, or]
- (d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or
- (e) the recovery of-
 - (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or
 - (ii) expenses of demolition under section 5B, or
 - (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or
 - (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.]”

4. The learned Civil Judge referred to the judgments in case tilted **Union of India Vs. Babu Lal Gupta & Others 1975 ALJ 373** and in **M/s Bharat Coking Coal Ltd. Vs. Estate Officers & Others AIR 1991 NOC 3(Pat)** and held that the jurisdiction of the Civil Court in respect of the premise which is governed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is barred and accordingly did not entertain the said suit. This judgment was passed on 18th January, 2002.

5. The appellant feeling aggrieved by virtue of the aforesaid judgment and decree preferred the Regular First Appeal which came to be decided by Shri O. P. Gupta, learned Additional District Judge, Tis Hazari Courts, Delhi vide judgment

dated 5th September, 2002. The ADJ while relying on the judgments given by the learned Civil Judge came to the same conclusion that as the premises are governed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, therefore, the said suit itself is not maintainable.

6. The contention of the learned counsel for the appellant that on the basis of the agreement to sell and Will and other connected documents, he became the owner of the property. In order to support this argument the learned counsel relied upon the judgments in case titled **Asha M Jain Vs. Canara Bank and Others 94(2001) DLT 841** and **Kuldeep Singh Vs. Surinder Singh 1999 Rajdhani Law Reporter 20** urging that these documents show that the title of the appellant in respect of the property in question and, therefore, as his right was being affected and threatened action being initiated against the appellant under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, therefore, suit is maintainable seeking Declaration as well as the Injunction.

7. The learned ADJ referred to the latter judgments passed in **AIR 2003 Delhi 120** and **128 (2006) DLT 407** in which it has been held that as per Section 54 of the Transfer of Property Act and Section 17(1)(b) of the Registration Act that a title of any immovable property worth more than Rs. 100/- cannot be transferred except by way of registered sale deed. Since in the instant case there was no registered sale deed, the learned ADJ has dismissed the appeal of the appellant and upheld the order of the learned Civil Judge.

8. The appellant feeling aggrieved by virtue of the aforesaid judgment of the learned appellate court has chosen to file the present appeal challenging the order of the appellate court dated 5th September, 2005. The learned counsel for the appellant has also in his appeal formulated six questions of law purported to arise in the instant appeal, which are reproduced as under:

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- “(i) Whether the suit in the given facts is barred by the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, and Civil Court has no jurisdiction to entertain and try the same.
 - (ii) Whether the question that the premises are not public premises and whether the appellant is not its owner and in occupation of the same can be determined without trial of the suit.
 - (iii) Whether the appellant is not bonafide purchaser of the flat for consideration without notice, and whether it can be decided on the basis of framing an issue with regard to maintainability of the suit and without trial.
 - (iv) Whether the premises in question remain public premises after its sale by D.D.A and subsequent transfers by the allottee, and the purchasers are unauthorized occupants of the same.
 - (v) Whether the Civil Court is debarred from entertaining the suit and deciding the question of title to the premises and nature of the premises, simply on the ground that a notice was issued to the appellant in 1999 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
 - (vi) What is the effect of acceptance of conversion charges from the appellant by the D. D.A as back as in 2004”.

9. It was on the basis of the aforesaid questions, the learned counsel for the appellant contended that these questions are substantial questions of law and therefore the present appeal needs to be entertained by issuing show cause notice.

I have gone through the questions which have been formulated by the counsel for the appellant as well as the other documents placed on record. I have thoughtfully considered the submissions made by the learned counsel for the appellant also.

10. A perusal of the questions formulated by the counsel for the appellant shows that the same are only questions of fact and not questions of law much less questions of substantial questions of law.

11. The issue which was involved in the instant matter was that the appellant is claiming himself to be an owner of a property which is a Janta Flat which was allotted originally to defendant No.3 who had sold it to different persons and the said flat has kept on changing hands on number of occasions which the learned

counsel for the appellant contends that it happened almost six/seven times till the present appellant became the owner. It seems that as the allotment of the aforesaid flat was obtained by fraud or misrepresentation. The respondent No.1, namely, DDA has initiated the action to cancel the said flat and take appropriate action for retrieval of the possession under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 because once the allotment of the flat is cancelled, it becomes a 'public premises' within the definition of Public Premises Act and accordingly the possession of the said premises is to be taken only in accordance with law. If this has been done by respondent No.1 it cannot be found fault with. Nobody's can pass on title better than what he has. If the original allottee's title itself was defective on account of defective submissions of documents or on account of having procured the allotment of flat by cheating, fraud or misrepresentation, the respondent No.1/DDA is well within its rights to cancel this flat and take possession. It has been precisely done in the instant case by issuing notice to the allottee in whose name the flat stands allotted in the record of the DDA and a copy thereof is pasted at the conspicuous place at his residence or office. This is what he is done by the respondent No.1. The appellant being in possession of the flat has chosen to file reply to the notice also and since he had an inclination that he may not get relief he preferred to the Civil Court.

12. The judgment relied upon by the appellant in **M/s Bharat Coking Coal Ltd. Vs. Estate Officers & Others AIR 1991 NOC 3(Pat)** no doubt lays down that the question whether a premises is a 'public premises' or not, if it raises considerable difficulties then such complicated question of title could be decided by the Civil Court is not of any help to the appellant for the two simple reasons. First the facts of the said case are not given and secondly, there is no such complicated question of title or the question of the premises being allotted by the DDA as not being a public premises under the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 being involved in the instant case, therefore, ratio of the second case cannot be applied to the present case.

13. Wherever properties, be that flats or the plots which are allotted by the DDA under the Nazul Land Rules or the Regulations framed by the DDA in exercise of its power to pass subordinate legislation become public premises in case the allotment of the case is cancelled for whatever reason and the only method prescribed in such a contingency to take possession is to resort to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

14. Therefore, after having taken the steps to cancel the flat, the same becomes the public premises within the definition of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the retrieval of the possession has to be done in accordance with law under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 itself. It is not open to the appellant to contend that he is the purchaser of the flat, therefore, he can file the suit for Declaration and Injunction in respect of the said flat and the Civil Court has no jurisdiction.

15. The two judgments in Asha M Jain and Kuldeep Singh (Supra) which are cited by the learned counsel for the appellant in order to support his submission that he has become the owner of the property on the basis of the Will, Power of Attorney etc. are not applicable to the facts of the present case because in both these cases the question of premises being public premises was not involved. Therefore, these cases are distinguishable from the facts of the present case.

16. The learned Courts below have rightly passed the concurrent findings in view of Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 that the jurisdiction of the Civil Court is totally barred and accordingly the present appeal is not maintainable. In addition to this the present appeal also does not raise any question of law much less a substantial question of law which would warrant any interference. The questions which have been stated

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hereinabove are only questions of fact or questions of mixed fact and law but certainly not substantial question of law.

17. Accordingly, the appeal is dismissed. Since the appeal itself is dismissed, no order on the CM is called for. No order as to costs.

December 19th, 2008
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V.K. SHALI, J.