

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

+ **W.P.(C.) No.11569/2009**

% **Date of Decision: 22.09.2009**

Devender Singh Petitioner
Through Mr. N. Prabhakar, Advocate.

Versus

Delhi Development Authority & Anr. Respondents
Through Mr. Ajay Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner seeks a direction to the respondent No.1 not to dispossess or demolish the residential property of the petitioner built on a plot No.659 forming part of the registered Resident Welfare Association, Block K-II, Mahipalpur Extn., Part II.

The plea of the petitioner is that the respondent No.1 in contravention of Section 3 of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2009 cannot demolish the residential premises of the petitioner situated in a colony which has already been

issued a provisional certificate of regularization in terms of Clause 4 of the notification dated 24th March, 2008.

The petitioner has also contended that the mother of the petitioner, Smt.Barfo Devi was granted leasehold rights with respect of two bighas of land in Khasra No.843/05 in revenue estate of Village Mahipalpur by the Goan Sabha and a residential property measuring 500 sq.yards (B-34A) called Swaroop Singh Bhawan and now forming part of the resident welfare association Block K-II, Mahipalpur Extn was built.

According to the petitioner an ejectment order against the petitioner's mother in terms of Section 86 of Delhi Land Reforms Act was passed on 6th October, 1997. In the said proceedings after remand another ejectment order dated 11th April, 2007 was again passed and the respondent No.1, according to the petitioner, was not a party to said proceedings.

The petitioner also disclosed that the mother of the petitioner had filed a suit for injunction being CS(OS) No.1589/2007 on the ground that the mother of the petitioner had been in continuous possession for 30 years. The said suit was dismissed by a single Judge and an appeal

filed against the said judgment and decree dated 8th May, 2008 was also dismissed in RFA(OS) No.72/2008 by order dated 31st July, 2009.

This cannot be disputed by the petitioner that her mother was held not in possession of the land in view of the order passed by the Revenue Assistant dated 11th April, 2007. The said order was not challenged by the mother of the petitioner. The learned Single Judge in suit No.1589/2007 filed by the mother of the petitioner had held that the suit for injunction was a proxy litigation filed by the mother of the petitioner, as others who were allegedly in occupation had failed to establish their rights before the Court of competent jurisdiction. The suit for injunction was held to be frivolous and was dismissed with a cost of Rs.40,000/- payable to the defendant.

Against the judgment and decree dated 8th May, 2008 in CS(OS) No.1589/2007 dismissing the suit of the mother of the plaintiff with a cost of Rs.40,000/- and holding that she was not in possession of the property, a regular first appeal being RFA (OS) No.72/2008 was filed. During the pendency of the appeal the mother of the petitioner had died and her legal representatives including the petitioner were substituted.

The first appeal filed against the judgment holding that the suit filed by the mother of the petitioner was vexatious and on account of proxy litigation as she was not in possession, was also dismissed holding that the mother of the petitioner had also concealed the material facts and she had not disclosed the order passed by the Financial Commissioner on 24th August, 2007. It was held that the petitioner's mother had concealed the fact regarding adjudication of her revision petition by order dated 24th August, 2007 and, therefore, it was held that the mother of the petitioner had not come to the Court with clean hands. While dismissing the appeal, the finding given by the learned Single Judge that the mother of the petitioner was not in possession of the property and it was a proxy litigation on behalf of those who had failed to establish their right, was not set aside. The order dismissing the appeal of the petitioner has not been challenged by the petitioner.

The learned counsel for the petitioner after considerable argument has contended that the mother of the petitioner was in possession of the property on the basis of the alleged bills of Delhi Vidyut Board and the notice issued by Municipal Corporation of Delhi and an inspection report dated 30th March, 2001.

In a writ petition the petitioner cannot challenge the judgment and decree dated 8th May, 2008 in suit No.1589/2007 and judgment and decree dated 31st July, 2009 passed in RFA(OS) No.72/2008 on the ground that the documents now sought to be produced were not produced before the single judge and in appeal. Since the finding that the mother of the petitioner was not in possession and she had initiated proxy litigation on behalf of others who had failed to establish their right has become final, the petitioner cannot contend in the present writ petition that her mother was in possession and after her demise he has come in possession and he is not liable to be dispossessed and dislocated on account of the provisions of National Capital Territory of Delhi Laws (Special Provisions) Act, 2009.

After protracted argument learned counsel for the petitioner sought to withdraw the writ petition which has been declined by this Court in the facts and circumstances.

In the facts and circumstances, the petitioner cannot contend that he is in possession of the property and his property cannot be demolished and that he cannot be dispossessed. The mother of the petitioner was held not to be in possession of the property and litigation initiated by her was held to be proxy litigation and was dismissed with

costs. If the mother of the petitioner was not in possession, then the petitioner cannot claim that he is in possession of the property. This is not the case of the petitioner that he has come in possession of the property independently. The petitioner has rather disclosed about the litigation initiated by his mother. In the circumstances, the petitioner has no right to get his possession protected as he is not in possession of the said property. The writ petition in the facts and circumstances is an abuse of process of law and is liable to be dismissed.. The petitioner is not entitled for any relief. The writ petition is, therefore, dismissed with a cost of Rs.10,000/-.

September 22nd, 2009
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ANIL KUMAR, J.