

* **HIGH COURT OF DELHI: NEW DELHI**

CM (M) No. 546/2010 & CM No. 7428/2010

% Judgment reserved on: 13th September, 2010

Judgment delivered on: 17th September, 2010

Sh. Ganpat Ram,
S/o late Sh. Gurdayal,
R/o 1175, DDA flat,
Gali No. 35, Madangir,
New Delhi

....Petitioner.

Through: Mr. H.R.Verma, Advocate.

Versus

1. Union of India
Through its Chief Engineer
Central Public Works Department
Vikas Marg, ITO, New Delhi

2. The Estate Officer,
Central Public Works Department
Office of the Estate Officer & Executive Engineer
J Division, CPWD, East Block-II, Level-III,
R.K.Puram,
New Delhi

....Respondents

Through: Mr. Sewa Ram with
Mr. R.K.Bachchan, Advocates

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported | |

in the Digest?

Yes

V.B.Gupta, J.

Petitioner has filed this petition under Article 227 of the Constitution of India, challenging judgment dated 6.10.2009 passed by District Judge, New Delhi. Vide impugned judgment, appeal of petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short as 'Act') against order dated 7.6.2004 passed by Estate Officer, was dismissed.

2. Case of petitioner is that he has been running a Dhaba at site in question i.e. near D-157, Sarojini Nagar, New Delhi for last more than 30 years. The said Dhaba is registered under Delhi Shops and Establishments Act and it comes under the jurisdiction of NDMC and the same has been assessed for the purpose of house tax also. It is stated that CPWD has no concern whatsoever, either as owner or lessee of the site in question, therefore, the Estate Officer has no jurisdiction to pass any order. NDMC has also allotted an alternative Tandoor site to the petitioner at Golf Links but the same could not be allotted to him since letter of allotment was received after the expiry of date of intimation. Thus, this fact corroborates that CPWD, does not have any hold on the premises in question and CPWD is meant

only for Government quarters and they have no possessory or title over the property in question.

3. A Show cause notice as per provision of Section 4 of the Act was issued by the Estate Officer. Petitioner filed his response to the show cause notice. Thereafter, Estate Officer, vide order dated 7.6.2004, passed an eviction order. Petitioner filed appeal before District Judge, challenging the order of Estate Officer.

4. It is contended by learned counsel for petitioner that Dhaba of petitioner is registered as per provisions of Delhi Shops and Establishments Act and NDMC has also assessed the same for house tax. NDMC also sent notice for enhancement of the rateable value of premises in question. CPWD has no legal right on the property in question.

5. It is also contended that petitioner has been allotted alternative site by NDMC and as such, impugned judgment is liable to be set aside.

6. On the other hand, it is contended by learned counsel for respondents that, petitioner has no right, title or interest over the suit land since, it is a Government land and petitioner is an encroacher of

this land. Petitioner earlier filed a suit against respondent seeking decree for mandatory and permanent injunction. That suit was dismissed by Civil Judge, who vide order dated 11.2.2004, held that petitioner is an encroacher upon the Government land and is having no right, title or interest in the suit land. Hence, present petition is not maintainable. In support of its contentions, learned counsel for respondents cited following judgments;

- a) Satsang Committee Nizamuddin (Regd).vs.Lt. Governor & others,
2002 III AD (Delhi) 364;*
- (b) Okhla Factory Owners's Association (Regd.)& Anr. vs. The Govt. of National Capital Territory of Delhi & Ors.;*
108(2003) DLT 517 (DB)
- c) Wazirpur Bartan Nirmata Singh vs. Union of India,
2003(103)DLT 654 and;*
- d) Shehzadi Begum vs. Municipal Corporation of Delhi.
R.S.A.No. 132/2007, decided on 26-11-2007.*

7. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

8. In *Waryam Singh and another vs. Amarnath and another*, *AIR 1954, SC 215*, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

9. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

10. Petitioner has not placed any document on record to show as to what legal right or title he has got in the suit land. Petitioner’s own case is that, he is running a Dhaba on the suit land for last more than 30 years which is registered under Delhi Shops and Establishments Act and same has been assessed for house tax by NDMC. Petitioner nowhere claims that he is owner or lessee of the suit land.

11. Thus, as per petitioner’s own case, he is an encroacher on public land. Being encroacher on the public land, he was served with notice under Section 4 of the Act. After hearing the petitioner, Estate Officer passed the eviction order. Trial court, rightly dismissed the

appeal of petitioner holding that petitioner is occupying public land and notice under Section 4 of the Act issued by the Estate Officer, does not lack any material particulars.

12. In *Satsang Committee's* case (*supra*) it has been held;

“We cannot but express out deep sense of anguish at such conduct on behalf of the Satsang Committee. The acts of using public land without permission must be put down with a heavy hand. The fact that any representation has again been made or that the DDA may be reconsidering the issue is of no relevance. The authorities are liable to act within the parameters of law and if they take any decision in this behalf they would be entitled to do so in accordance with law. In the absence of any legal right we find that there is no merit or substance in CW 4113/99 filed by the Satsang Committee and we dismiss this petition with costs of Rs.10,000/-.”

13. In *Okhla Factory (supra)* decision of Supreme Court in *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan (1997) 11 SCC 121* was relied upon in which Court held that;

“No one has a right to make use of public property for private purpose and that it is the duty of the competent authorities to remove encroachments which are a constant source of unhygienic conditions, ecological problems, traffic hazard and a risk even to pedestrians.

The Supreme Court in the aforesaid judgment held that there cannot be any right for alternative accommodation to the encroacher before his/her rejectment and that successors in interest of

encroachers cannot be entitled to any benefit since directions in this behalf would only encourage the people to abuse the judicial process to avail of remedy by encroaching on public property.”

14. Trial court in this regard observed:-

“The aforesaid Civil Suit filed by the appellant herein after service of notice u/s 4 of the Act was dismissed by Id. Civil Judge vide orders dated 01.05.2004 and had held the appellant herein to be an encroacher on government land adjoining Quarter No. D-157, Sarojini Nagar, New Delhi. The said order passed by the Id. Civil Judge was not challenged in any Court by appellant and, therefore, has attained finality and is binding upon the appellant herein. In view of this, it cannot be said that the notice u/s 4 of the Act lacks any material particulars of the public premises or that it is not legal or valid.”

15. Thus, petitioner has got no legal right, title or interest in the suit land. He is an encroacher on the Government land as held by the Civil Court. These findings of the Civil Court were never challenged by the petitioner and, therefore, the same has attained finality and is binding upon the petitioner.

16. Accordingly, there is no infirmity, illegality or error in the impugned order passed by the District Judge.

17. Present petition under Article 227 of Constitution of India under these circumstances is not maintainable and same is hereby dismissed with cost of Rs.10,000/- (Ten thousand only).

18. Petitioner is directed to deposit the costs with Registrar General of this court by way of cross cheque, within four weeks from today.

CM No. 7428/2010 (stay)

19. Dismissed.

20. List for compliance on 26th October, 2010.

17th September, 2010

V.B.GUPTA, J.

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