

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

Date of decision: 22nd November, 2010.

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W.P.(C) No.19182-83/2006

DAYA CHAND & ANR.

..... PETITIONERS

Through: Mr. Pankaj Vivek, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... RESPONDENTS

Through: Ms. Bandana Shukla, Advocate for Ms.
Ruchi Sindhwani, Advocate for R-1.
Mr. Anshum Jain, Advocate for Ms.
Suparna Srivastava, Advocate for R-6.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The two petitioners claiming to be in possession of houses built upon Khasra Nos.1659 (1-0) & 1660 (2-2) situated in the Revenue Estate of Aya Nagar, Tehsil Mehrauli, New Delhi, claim the relief of directions to the respondents to correct the revenue records by recording the petitioners as proprietor of the said land and also seek to restrain the respondents from demolishing or in any other manner dispossessing the petitioners from the said properties. Notice of the petition was issued and vide order dated 20th December, 2006, the respondents restrained from dispossessing the petitioners and which order continues to be in force.

2. The case of the petitioners is that the aforesaid properties were built by their father and his brothers and were recorded as Shamlat Deh of villagers of village of Aya Nagar; that however the aforesaid land was

recorded as belonging to the Gaon Sabha and proceedings under Section 86A of the Delhi Land Reforms Act, 1954 for ejectment instituted against the father of the petitioners; that the said proceedings were however dismissed vide order dated 15th April, 1972 and which attained finality and whereafter the petitioners / their father continued to be in possession; however, in August, 2000, the petitioners apprehending dispossession filed a civil suit for declaration of their rights in the land and for restraint against their dispossession. Though the petitioners in the petition neither disclosed the fate of the said suit nor filed a copy of any judgment therein but subsequently filed a copy of the judgment and decree dated 4th December, 2006 in the said suit. It was held in the said judgment that the suit for the relief of declaration of rights was not maintainable and the petitioners were not entitled to any injunction against dispossession, being trespassers on the said land.

3. A perusal of the order dated 15th April, 1972 of the Revenue Assistant dismissing the proceedings of the Gaon Sabha under Section 86A of the Act (supra) against the father of the petitioners shows that the Gaon Sabha had not been able to establish that the possession of the father of the petitioners occurred after the vesting of the land in the Gaon Sabha; convincing evidence was found to prove that the possession of the father of the petitioners was of a long standing duration since before the time when the land was supposed to have vested in the Gaon Sabha. It was thus held that the father of the petitioners could not be evicted under Section 86A of the Act.

4. The Civil Court with respect to the said order of the Revenue Assistant held that that since as per the revenue record, the land belongs to the Gaon Sabha and the petitioners / their predecessors had not taken any steps for having declared themselves as bhoomidar of the said land, notwithstanding the said order, the petitioners have no right over the land.

5. The question which arises in the present case is whether, in view of the findings of the Civil Court, the petitioners are entitled to any relief or for that matter to even approach this Court, having opted to first approach the Civil Court and having failed.

6. The petitioners in the petition itself have relied upon orders in several other writ petitions filed by the other residents of Aya Nagar. The counsel for the petitioners at the time of hearing has handed over the orders dated 22nd April, 2009 & 23rd July, 2009 disposing of WP(C) No.12562-63/2006 titled *Surajmal Vs. Govt. of NCT of Delhi* and WP(C) No.7844/2001 titled *Atree Vs. Gaon Sabha Aya Nagar* respectively wherein forcible dispossession was stayed. However, admittedly in neither of those cases, a suit had been filed and dismissed as in the present case.

7. A finding of a Civil Court prevails over the finding of the Revenue Court. In the present case notwithstanding the finding of the Revenue Court in favour of the predecessor of the petitioners, the Civil Court after considering the finding of the Revenue Court has held the petitioners to be not entitled to the land and to be trespassers thereon and notwithstanding the settled possession of the petitioners for long refused injunction against forcible dispossession of the petitioners. The petitioners having failed in the Civil Court have approached this Court. The petitioners cannot be permitted to indulge in such forum shopping and if the same is permitted, the same will displace faith in law and in judgments and orders. If the petitioners were aggrieved by the finding of the Civil Court, they ought to have appealed thereagainst. The petitioners allowed the said finding to attain finality and cannot change the position by moving to a different Court. There is no new fact or development even since the dismissal of the civil suit for this Court to take a different view.

8. The counsel for the petitioners has contended that the petitioners are entitled to the relief at least against forcible dispossession owing to the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2007. The same was in force even at the time of decision of the civil suit. The present writ petition was filed barely within a fortnight of the dismissal of the civil suit.

9. The counsel for the petitioners has also argued that the cause of action for the present writ petition is separate and distinct from that for the suit. I am unable to find any plea in this regard. The pleading is of a fresh threat in July, 2006. However, then the Civil Suit was still pending and was ultimately dismissed on 4th December, 2006 as aforesaid. Even otherwise, once the Civil Court had returned a positive finding of the petitioners being trespassers not entitled to any injunction, a plea of fresh threat would not entitle the petitioners to a re-hearing.

10. The petitioners are also not found entitled to any relief for the reasons of having suppressed the judgment of the Civil Court while filing the writ petition. The petitioners are not entitled to the discretionary relief on this ground alone.

11. There is no merit in this petition. The same is dismissed. I refrain from imposing any costs on the petitioners.

**RAJIV SAHAI ENDLAW
(JUDGE)**

22nd November, 2010

‘gsr’

(corrected and released on 8th December, 2010)