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

+ W.P.(C) Nos. 4929/2007, 4930/2007 & 5292/2007

% Decided on : 22nd January, 2010.

MAWASEE (DECD.) THR.
LR'S & ORS. Petitioners in WPC 4929/2007
RUSTAM (DECD.) THR.LRS
& ORS. Petitioners in WPC 4930/2007
SHAFIQUL HASSAN THR.
L.R'S & ORS. Petitioners in WPC 5292/2007
Through Mr.Sunil Chauhan, advocate.

versus

JAMIA MILIA ISLAMIA
UNVIERSITY & ORS. Respondents
Through Ms. Jaya Goyal, Mr.Arvind Biswal,
Ms.Warisha Farasar, advocates.

**CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA**

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 ?

ORDER

1. Admit. With the consent of the parties these Writ Petitions are taken up for final disposal.
2. The petitioners herein have challenged Order dated 6th July, 2007 passed by the learned Additional District Judge upholding the Order passed by the Estate Officer and dismissing the appeals filed

by the petitioners herein under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Act, for short).

3. The principal contention raised by the petitioners before the Estate Officer and the learned Additional District Judge was that the petitioners have become owners of the land in their occupation by adverse possession and they have constructed buildings on the said land. The said contention has been examined at length both by the Estate Officer and learned Additional District Judge. Claim for adverse possession or title by prescription is established only when the claimant is in actual physical possession, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding 12 years. Long and continuous possession by itself does not constitute adverse possession, if it is either permissive possession or possession without *possendendi*. Further it is based on title and adverse possession are mutually inconsistent and the latter does not begin to operate till the former is renounced. Unless the person in possession of the property has requisite animus to possess the property, hostile to the title of the owner, period of prescription does not commence. (Refer, ***L.N. Aswathama and another versus P. Prakash*** JT 2009 (9) SC 527 and other cases referred to in the said judgment).

4. Onus to prove that the petitioners have been in occupation of the land and their possession was open, hostile to the true owner was on the petitioners. The Estate Officer and the learned Additional District Judge have both held after examining the evidence on record that the petitioners have not been able to discharge the said onus. In fact the plea of the petitioners before the Estate Officer and the learned Additional District Judge was that they have been in possession of land under the title inherited from their forefathers and the respondent-University is not owner of the said land. Plea of adverse possession and of title are mutually inconsistent. A person claiming title and right there under should be clear about the origin of the title of the property and the claim should be elucidated. When a plea of adverse possession is projected, it is inherent in the plea itself that someone else is the owner of the property and the claimant can plead and prove his assertion of independent, hostile adverse possession to the knowledge of the actual owner during the entire period of 12 years.

5. The respondent-University has pointed out that the land in question located in Khasras 68, Village Okhla was transferred to them by way of gift deed dated 14th November, 1950. The said document is registered. The total gift was for an area of 24 bighas and 11 biswa of land. The respondent university claims title on the

basis of the said gift deed. The petitioners have failed to produce any document of title.

6. The respondent university had earlier initiated eviction proceedings against some other occupants under the Act. The eviction proceedings and the order passed by the learned Additional District Judge upholding the eviction orders were made subject matter of Writ Petition (Civil) No. 3772/2002 and other connected matters titled *Mohd. Shamim versus Jamia Milia Islamia University and others*. These writ petitions were decided on 31st August, 2004. In these writ petitions, plea with regard to the demarcation of land was raised pointing out that Khasra no. 68, Village Okhla had much larger area and the petitioners therein were in occupation of area other than 24 bighas and 11 biswas of land which was transferred to the respondent-University under the Gift Deed. The petitioners therein had also relied upon the revenue records and maps. In view of the said plea, demarcation was directed and on the basis of the demarcation report submitted by the Tehsildar, the said writ petitions were dismissed. Learned Single Judge while dismissing the writ petitions had observed that the petitioners therein were encroachers on the land and had no title deeds. It was pointed out that U.P. Government was the owner of the said Khasra and had transferred a part of the said Khasra to the respondent-University.

Learned Single Judge had further observed that it would not be proper to interfere in exercise of jurisdiction under Article 226 of the Constitution of India. Review application filed by the petitioners therein was also dismissed. The petitioners therein had filed Letters Patent Appeal which was dismissed and the matter was taken before the Supreme Court but the Special Leave Petition was dismissed. Thus the contention of the petitioners herein that the land in their occupation is not subject matter of the Gift Deed dated 14th November, 1950 and does not form part of the 24 bighas and 11 biswa of land transferred to the respondent-University is rejected. Both the Estate Officer and the learned Additional District Judge have examined the said issue in the light of the demarcation report which has been accepted in Writ Petition (Civil) No. 3772/2002 and other connected cases.

7. Learned counsel for the petitioners submitted that the notice under Section 4 of the Act was void as the same referred to land in Khasra No. 68 measuring 1000 sq.ft. in village Okhla, New Delhi and no specific area was stated. This contention cannot be accepted in view of the demarcation which was already undertaken and accepted in Writ Petition (Civil) No. 3772/2002 and other connected matters. This contention was also raised before the learned Additional District Judge. It was observed that no separate or new

demarcation was carried out by the respondent-University immediately before initiating action because the question of demarcation was settled in the said writ petition. Further prior to initiation of proceedings survey was carried out on the basis of demarcation and thereafter proceedings were initiated. The petitioners have failed to produce any documents to prove title before the Estate Officer, learned Additional District Judge and this Court.

8. Learned counsel for the petitioners submits that the respondent-University had filed a civil suit in 1980 against one of the petitioners-Mr.Rustam Khan and husband of one of the petitioners-Ms. Rashidan. It is stated that the said civil suits were withdrawn on 6th February, 1985. In the Writ Petition it is stated that in the said civil suits, the respondent-University had admitted that Mr.Rustam Khan and husband of Ms. Rashidan were in possession since 1971. The said aspect was examined by learned Additional District Judge in Appeal No.83/2006 in the case of Mr.Rustam Khan and other connected matters in paras 4 and 5. It is has been held that Mr.Rustam Khan had earlier filed a suit for injunction against the respondent-University which was partly allowed by the trial Court but the decree was set aside by the appellate Court and the said decree became final. The appellate court had held that

construction of two huts and two khors would not mean that the true owner was excluded and had lost title of the land. In view of the said decree, learned Additional District Judge held that no rights could flow in favour of the petitioner-Mr.Rustam Khan. Learned Additional District Judge had thereafter referred to the oral and documentary evidence of the parties and has come to the conclusion that the respondent-University was owner of the land in question which was occupied by Mr.Rustam Khan. It is also an admitted case of the parties that the land had become subject matter of proceedings under the Land Acquisition Act and an Award dated 95/83-84 was made. It is pointed out that in these circumstances, the suit filed by the respondent-University against Mr.Rustam Khan and husband of Ms. Rashidan was withdrawn in 1985. Subsequently, on 19th November, 1999 the acquisition proceedings were dropped and the land was denotified from acquisition.

9. Reference was made to the earlier suits filed by the respondent-University and before the Estate Officer and Additional District Judge it was pleaded that the decision in the said suits would operate as res judicata and principles of Order II, Rule 2 of the Code of Civil Procedure, 1908 apply. The principles of res judicata are not applicable as there was no decision on merits. Principles under Order II, Rule 2 of the Code also will not apply as the

respondent-University became a Central University only in 1998. Thereafter provisions of the Act became applicable. Further as explained above, the land in question had become subject matter of acquisition pursuant to award published in the year 1982-83 and therefore the respondent-University had dropped the said proceedings.

10. Learned counsel for the petitioners submitted that eviction proceedings were initiated in the year 1997 and as the land was denotified under the Land Acquisition Act in 1999, it is submitted that proceedings before the Estate Officer under the Act at the time of initiation were void and without jurisdiction. It is submitted that the land in question was not “public premises” under the Act. A similar contention has been considered by a learned Single Judge of this Court in C.M.(M) Nos. 335-336/1988 titled *Shri Abdul Hannan (decd.) through L.Rs versus Shri S.N. Aggarwal & another* decided on 23rd April, 2001. Learned Single Judge referred to Sections 16 and 17 of the Land Acquisition Act, 1894 and after referring to several judgments held that till possession of the land is taken by the Government/State, the title of the land continues to vest with the original owner. After examining the facts it was held that the possession of the land always continued with the respondent-University and did not vest with the Central Government

under Sections 16 or 17(2) of the Land Acquisition Act, 1894 and accordingly the Estate Officer was competent to initiate eviction proceedings and pass eviction orders. Ratio of the said decision is equally applicable to the present case. Moreover, it is the case of the petitioners that they were in actual physical possession of the property in 1997 and even thereafter. The petitioners have not established that the Central Government as per their records had taken possession, actual or symbolic, of the property. In these circumstances it is not possible to accept the contention of the petitioners that possession of the land was taken over by the Central Government and the land was not property of the respondent-University.

11. In view of the aforesaid discussion, I do not find any merit in the present Writ Petitions. Learned counsel for the petitioners submits that due to extreme cold weather in Delhi, interim protection may be granted to the petitioners for some time. Learned counsel for the respondent-University fairly states that they shall not take any coercive steps to execute the orders passed by the Estate Officer and upheld by the learned Additional District Judge for a period of one month.

12. It may be noticed that possession of the property in occupation of Mr. Rustam Khan has already been taken over by the

respondent-University and this statement will not operate in his case.

JANUARY 22, 2010.
P/NA

SANJIV KHANNA, J.