

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

+ **CS(OS) NO. 1430/2009 & IA NO. 3301/2010**

Reserved on : 31.05.2010
Date of Decision : 05.07.2010

Smt. Tara Devi

..... Plaintiff

Through: Mr. Arjun Singh Bawa,
Advocate.

Versus

**White House Flat Owner's
Association & Ors.**

..... Defendants

Through: Mr. S. P. Singh, Advocate.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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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 |

V.K. SHALI, J.

IA No. 3301/2010 (u/O VII Rule 11 CPC)

1. This order shall dispose of IA No.3301/2010 under Order VII Rule 11 read with section 151 CPC filed by the defendants.
2. Briefly stated the facts of the case which are not in dispute are that the plaintiff is purported to have purchased a flat no. 8D situated on the Eight Floor of the building commonly and widely known as White House at 10 Bhagwandas Road, New Delhi – 110001. According to the plaintiff the said flat had been demolished by the NDMC long back but the demolition was only symbolic and not a

complete demolition as only a puncture in the ceiling was made. It is alleged that the builder namely M/s Taj World Fame Builders of which one Mr.Sunder Das Madan was the main person running the show had raised 8th to 12th floor on the said premises without appropriate sanction from the local body as a consequence of which orders for demolition of the said floors were passed after protracted litigation right upto the Supreme Court by the NDMC. Thereafter an actual demolition was also carried out and some of the upper floors were completely demolished while as it is alleged that the remnants of the flat of the plaintiff on the eighth floor is still in existence, and therefore, he has filed the present suit seeking a decree of permanent prohibitory injunction against the White House Flat Owners Association Floor Association, a registered society under Societies Registration Act and its various office bearers. It has also been prayed that a mandatory injunction against the defendant no.1 be passed to command them to facilitate and give full cooperation for obtaining sanction and the requisite permission from the appropriate authorities like NDMC and Fire Department etc. for re-erection of the flat no. 8D, White House at 10 Bhagwandas Road, New Delhi – 110001. This prayer was made ostensibly on account of the changed circumstances because according to the new Master Plan 2021 the FAR is purported to have been increased and accordingly it is

stated that in case the flat on the eighth floor is raised that will be well within the permissible limits and hence the present case.

3. The defendants were served and they have put in their appearance. They filed an application under Order VII Rule 11 read with section 151 CPC for rejection of the plaint on the ground of lack of cause of action as well as on the ground that the building or rebuilding of the flat in question by the plaintiff would not arise as the rights and liabilities of the plaintiff have been finally adjudicated and set at rest by the Apex Court by a direction that the plaintiff's who are the owners of the flats on 8th to 12th floor be granted a compensation of Rs.60,00,000/- on account of the principal amount having been paid towards the price of their respective flats and the interest at specified rate.
4. I have heard the learned counsel for the parties and perused the record including the orders passed by the various forums including the Apex Court in the previous round of litigation between the different flat owners and the builder or the flat owners association. The first contention which has been raised by the defendant is that the present suit of the plaintiff is without any cause of action. In order to canvass this argument the learned counsel of the plaintiff has drawn the attention of the Court to the orders of the Regular First Appeal bearing no. 86/2009 titled **S. M. Mathur & Anr. Vs. White House Flat Owners**

Association & Ors. filed under Section 96 CPC against the judgment dated 24.08.2009 by the learned Single Judge of this Court dismissing the suit of appellants in the said case on the ground of adjudication of the rights and the liabilities of the parties by the Supreme Court in civil appeal no. 3694/1997 where the question of liability and validity of the demolition order qua the unauthorizedly constructed flats on the 8th to 12th floor of the suit property were determined finally. The Apex Court although upheld the legality and validity of the demolition order but it directed the builder to pay to each of the flat owners within six months a sum of Rs.60,00,000/- on account of amount having been paid by each flat owner in purchasing the unauthorized flat which has been declared as unauthorized, failing which the builder was liable to pay an interest @ 21% per annum.

5. On the basis of this order of the Apex Court, it was contended that the said order has conclusively decided the rights and the liabilities of the plaintiff qua the flat in question and since he has been directed to be paid a sum of Rs.60,00,000/-, therefore, he is not left with any right qua the flat and accordingly there is absolutely no cause of action available with him to file the present suit.
6. The contention was sought to be met by the learned counsel for the plaintiff, by urging that he was not a party before the Apex Court, and therefore, that order would not

be applicable to him. Apart from this, it was contended that as the plaintiff has not been paid a sum of Rs.60,00,000/- by the builder, therefore, it did not preclude him from filing the present suit.

7. I have carefully considered these submissions of the respective sides. I feel that there is no merit in the contention of the learned counsel for the plaintiff. There is no dispute about the fact that the builder of the property in question had received sanction of NDMC only to build two levels basement stilt and seven floors. The construction of 8th to 12th floors by the said building was unauthorized in respect of which the NDMC has passed an order of demolition which was the subject matter of highly contested litigation between the aggrieved parties and the NDMC in many forums like the appellate tribunal NDMC, Writ Petition in the High Court and finally resulted into an order being passed by the Apex Court where it upheld the validity of the order of demolition but after evaluating the situation it directed that each of the flat owner who was impleaded as a party be paid by the builder a sum of Rs.60,00,000/- within a period of six months failing which he was directed to pay a sum of Rs. 60,00,000/- and interest @21% per annum on the said sum. This order of the Court was not assailed by the present plaintiff, and therefore, notwithstanding the fact that it was not a party to the said proceedings, the order will bind him. I feel that

the order of Apex Court would apply to the plaintiff as the said decision was in the nature of a proceedings which though initiated as individual proceedings by an individual flat owner or a group of flat owners but ultimately became a representative appeal before the Apex Court where the rights and liabilities of all the parties whose flats were on the 8th to 12th floor of the said structure were decided by the Apex Court. After having passed an order that the plaintiff and the other flat owners are entitled to recover a sum of Rs.60,00,000/- without or with interest after a specified period of time. The present plaintiff is not left with any right whatsoever qua the flat even though remnants of the said flat may be in existence at the property in question. It will be pertinent here to mention that even the existence of the remnants at the site by the defendants is disputed.

8. The contention of the learned counsel for the plaintiff that the plaintiff was not given a sum of Rs.60,00,000/- or that he would not be able to recover the said amount along with the interest as directed by the Supreme Court on account of the fact that the builder namely M/s Taj World Fame Builders of which one Mr. Sunder Das Madan was the main person who has fled from the country and hardly gives rise to the cause of action to the plaintiff to institute the present suit in respect of a flat purported to have been owned by him at some

point of time. The proper course of remedy would be to initiate appropriate proceedings before the appropriate forum by the plaintiff. Therefore, the defendants are perfectly right in contending that the present suit is liable to be rejected as there is no cause of action accruing in favour of the plaintiff to institute the present suit.

9. The second ground which is subsidiary to the first one is that the rights and liabilities of the parties have been adjudicated by the Apex Court in Civil Appeal No. 3694/1997 in a representative matter instituted by one of the flat owner or a group of flat owners which conclusively decided the rights qua the respective flats. Hence the present suit is barred by res judicata is also a very convincing argument which would be applicable to the facts of the present case.
10. Order VII Rule 11 (d) CPC specifically lays down that the plaint is liable to be rejected if it is otherwise barred by law. The principle of res judicata is a principle of public policy which brings finality to the lis between the parties by prohibiting them from taking up the same issue again and again in different forums or through different parties provided the ingredients mentioned in Section 11 CPC are satisfied. As observed by this Court that the earlier round of litigation was representative in character and the issue

involved in the said issue being directly and substantially related to the issue involved in the present suit and the said issue having been finally adjudicated by the Apex Court by directing the plaintiff and other flat owners to be paid a sum of Rs.60,00,000/- stands conclusively adjudicated between the parties, and therefore, the said issue also stands adjudicated and the present suit is barred by principle of res judicata under Order VII Rule 11(d) CPC.

11. The third ground which has been raised by the plaintiff is regarding the privity of contract and suit being liable to be rejected on the ground of gross abuse of the process of law. In my considered opinion the suit as framed by the plaintiff is liable to be rejected under Order VII Rule 11 (a) being without any cause of action and under clause (d) being barred by principle of res judicata.
12. For the aforementioned reasons, the plaint of the plaintiff is rejected.

V.K. SHALI, J.

JULY 05, 2010
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