

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

Date of decision: 7th February, 2011

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W.P.(C) No.764/2011

JAMALUDDIN

..... Petitioner

Through: Mr. Bahar U. Barqi, Advocate

Versus

MCD AND ANR

..... Respondents

Through: Ms. Shyel Trehan, Adv. for R-1.
Mr. Arun Birbal, Adv. for R-2

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 petitioner was dispossessed during the Slum Clearance Programme in April, 1976 and having been found eligible for re-location was allotted plot No.41 admeasuring 12½ sq. yds. in Block No.16 of Trilok Puri, Delhi. It is the case of the petitioner that his entitlement was for a plot of 80 sq. yds. and not of 12½ and the site offered at Trilok Puri

in any case was not suitable for him and thus he did not accept the allotment at Trilok Puri. The petitioner in or about the year 1993 filed a suit in the Civil Court against the respondent MCD for directing the respondent MCD to allot a plot admeasuring 80 sq. yds. to him. The respondent MCD contested the said suit. It was *inter alia* the plea of the respondent MCD that the possession of the plot admeasuring 12½ sq. yds. had been taken over by the petitioner and a pucca structure was constructed thereon and which was then in possession of one Mohd. Saleem. The said suit was dismissed vide judgment dated 21st February, 1998. The Civil Court *inter alia* found that the brother of the petitioner who was carrying on the business from the same site had on similar grounds filed a writ petition which was dismissed vide judgment ***Imamuddin Vs. Union of India*** reported in 65 (1997) DLT 510.

2. The petitioner preferred a first appeal against the said judgment which was dismissed holding *inter alia* that issuance of possession slip of 12½ sq. yds. of land to the petitioner was the same as delivery of physical possession of the said plot to the petitioner and if he himself had failed to take the physical possession, the respondent MCD cannot be blamed for it.

3. The petitioner preferred a second appeal to this Court and which was again dismissed vide judgment dated 28th April, 2010. In the said judgment the finding of the first appellate Court of possession of the 12½

sq. yds. of land having been delivered to the petitioner was affirmed. The contention of the respondent MCD that the petitioner after taking possession had transferred the same to some other person was also noted.

4. The petitioner preferred a Special Leave Petition (SLP) to the Supreme Court but withdrew the same to pursue his remedy for securing possession of 12½ sq. yds. of land in respect of which possession slip was granted to the petitioner on 8th July, 1976.

5. The present petition has been filed thereafter seeking the relief of directing the respondents MCD and DDA to deliver the possession of 12½ sq. yds. of land aforesaid at Trilok Puri to the petitioner.

6. The Court in the first round of litigation aforesaid have returned a categorical finding that the possession of the said 12½ sq. yds. of land was delivered to the petitioner. In view of the said finding, the present writ petition cannot be entertained. If some other person is in wrongful possession of the said plot of the petitioner and who in view of the said finding has come into possession after possession was delivered to the petitioner, the remedy of the petitioner is by way of a suit against that person and not by directing the respondents MCD & DDA to secure possession for the petitioner. It will be open to the person in possession to plead that the petitioner having for consideration transferred possession is

now not entitled to recover possession. The petitioner by ingenuity of this writ petition is seeking to deprive the person in possession of such defence.

7. Faced with the aforesaid, the counsel for the petitioner contends that the petitioner has already been litigating for 10/15 years and if required to file a suit, the same would again take a long time and thus extraordinary jurisdiction of this Court should be used for securing possession to the petitioner. The petitioner has not even chosen to implead Mohd. Saleem aforesaid or any other person who may now be in possession of the plot, as a party to this petition. This Court cannot revisit the findings in the civil suit of respondent MCD / DDA in accordance with the Scheme of relocation having delivered the possession to the petitioner. The obligations of the respondents MCD and DDA upon delivery of possession to the allottee comes to an end and if thereafter any other person forcibly or unauthorizedly dispossesses the petitioner, the remedy of the petitioner is by way of a civil suit and not by way of a writ petition. The order of the Supreme Court cannot be permitted to be used so as to mandate the respondent MCD or DDA to put the petitioner into possession. The petitioner rather instead of arguing the SLP before the Supreme Court chose to withdraw the same and the Apex Court merely recorded the statement of the counsel for the petitioner as to what he intended to do next. No liberty even was granted to the petitioner and the SLP was dismissed as withdrawn. The claim of the petitioner even as per the said

order can be only to file a suit for possession against those now in possession.

8. The counsel for the petitioner has sought to argue that a particular finding of one Court has not been disturbed in first or second appeal. On the basis thereof it is sought to be contended that the petitioner is entitled to maintain this petition. Once the appeals of the petitioner are dismissed, the findings returned are deemed to be affirmed and the petitioner cannot seek relief under Article 226 of the Constitution of India with respect to the same matter.

9. Even otherwise the plea of the respondent MCD has been that the petitioner was put into possession of the plot admeasuring 12½ sq. yds. The said contention is also recorded in the judgment in second appeal. In view of the said plea of the respondent MCD even otherwise disputed questions of fact would arise in the present case.

10. The counsel for the petitioner has also contended that the respondent MCD has not taken any action for the petitioner having parted with possession and the same is indicative of the petitioner having not been put into possession. The petitioner has not even put before this Court any terms to show that the petitioner was prohibited from so parting with possession. The said plea is taken without any basis and the counsel rather

withdraws the said contention.

11. The petitioner is therefore not found entitled to any relief as sought. The petition is dismissed with liberty to the petitioner to sue the person in unauthorized possession of the plot.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 07, 2011

‘gsr’