

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

Date of decision: 17th February, 2011

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W.P.(C) No.1005/2011

% KIRORI MAL & ORS.

..... Petitioners

Through: Mr. Amar Nath Saini, Advocate

Versus

MCD

..... Respondent

Through: Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates

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 petitioners, claiming to be the owners in possession of land in Khasra No.586/282, village Malikpur, next to Alpana Cinema, Model Town-I, New Delhi, have filed this petition to restrain the respondent MCD from dispossessing them from their properties built on the said land and in pursuance to the show cause notice dated 14th January, 2011 issued

by the respondent MCD.

2. The predecessor of the petitioners along with certain other persons had in or about the year 1978 instituted a suit in the Civil Court, Delhi against DDA, UOI and MCD with respect to the said land and certain other land in the said village, for permanent injunction to restrain the said governmental agencies from dispossessing them from their properties on the land subject matter of the suit except by due process of law. The said suit was decided vide judgment and decree dated 23rd January, 1995 and the said governmental agencies including the MCD were restrained from dispossessing the plaintiffs in the suit from the land subject matter of the suit (and which included the land in Khasra No.586/282 subject matter of this petition), except by due process of law. The said judgment and decree, is stated to have attained finality. The petitioners claim that inspite of the judgment and decree, officials of the respondent MCD in pursuance to some proceedings initiated before the Lokayukta, Delhi had come to their properties to demolish the same and to remove them forcibly therefrom; that upon the petitioners showing to the said officials documents of their title being the Khasra Girdawaris in favour of their predecessor and duly mutated in their name, as well as the judgment and decree aforesaid, the show cause notice dated 14th January, 2011 aforesaid was issued.

3. In the said show cause notice it has *inter alia* been stated that the said land belongs to the respondent MCD and has been encroached upon by the petitioners; that though under the provisions of Sections 321 & 322 of the Delhi Municipal Corporation Act, 1957 there is no need to serve any notice to remove the encroachment but in compliance of the judgment and decree, the notice was being issued. The petitioners were directed to show cause as to why they should not be removed from the said land.

4. The petitioners claim to have replied to the show cause notice but still fearing forcible dispossession and claiming that no order has been passed in pursuance to the show cause notice, have filed this petition.

5. The counsel for the respondent MCD appears on advance notice and has reiterated that the land being of the MCD and the petitioners being encroachers thereupon, are liable to be removed without any notice. It is stated that the decree aforesaid restraining the respondent MCD from removing the petitioners save by due process of law would not come in the way of the respondent MCD in pursuance to the show cause notice removing the petitioners since the process of law i.e. the provisions of the DMC Act do not require any proceedings for eviction to be taken against the encroachers and encroachers on MCD land can be removed without any notice also.

6. Considering the nature of the controversy and further considering that the allegations against the petitioners are of encroachment on public land and yet further considering that the proceedings against the councillors of MCD for not taking any action for removal of encroachment are pending before the Lokayukta, formal notice is dispensed with and the counsels have been finally heard.

7. The counsel for the petitioners has argued that in view of the decree aforesaid, the respondent MCD without taking any legal proceedings cannot dispossess the petitioners as encroachers. It is stated that the petitioners are the owners, their names having been entered in the revenue records being the title records with respect to the said land.

8. A perusal of the judgment and decree aforesaid shows that issue No.5 therein was as under:

“Whether the plaintiff has any right, title or interest over the suit land? OPP

The judgment records that the respondent MCD in its written statement in the said suit had claimed that the said land vests in the MCD and the plaintiffs i.e. the predecessor in interest of the petitioners had nothing to do with it; however while the UOI had also claimed that the land belonged to the UOI and had been handed over to the DDA for development, it was the stand of the DDA that so far as land subject matter

of this petition i.e. in Khasra No.586/282 was concerned, the same had not been handed over to it by the UOI and it did not claim any title or right over the said land.

9. The Civil Court in discussion under issue No.5 aforesaid recorded that the respondent MCD had not examined any witness to prove its case and has not placed any document of title to show that it was the owner of the land. The Civil Court nevertheless did not return any finding of the title to the land subject matter of that suit including land in Khasra No.586/282 and merely recorded that since it was the admitted case of all parties including the respondent MCD that the plaintiffs were in settled possession of the land and the suit being not for declaration of title and merely for permanent injunction, granted the relief only against dispossession save by due process of law.

10. Thus, it is not as if, in the judgment and decree aforesaid, there is any finding of petitioners / their predecessor being the owner of the land or having any title thereto. Similarly, there is no finding of claim of MCD of the land vesting in it.

11. In the facts and circumstances, aforesaid and further considering that the said decree has also existed for the last over 15 years, I am of the opinion that the petitioners cannot be summarily evicted as trespassers and without any proceedings and appropriate course would be for the

respondent MCD to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for removing / evicting the petitioners from the land.

12. It also needs to be verified whether the land of which the petitioners are today in possession is land in Khasra No.586/282 which was the subject matter of suit aforesaid.

13. The writ petition is accordingly disposed of with the following directions:

- (i) That the respondent MCD if desirous of evicting the petitioners or any other person in occupation of the land in Khasra No.586/282 subject matter of suit aforesaid, to invoke the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act.
- (ii) The counsel for the petitioners undertakes that the petitioners shall cooperate in the said proceedings and shall not delay the same.
- (iii) It is deemed expedient to make the said proceedings time bound so that no delay is caused on removal of encroachment, if any, from public land.

(iv) The counsel for the petitioners states that the petitioners will appear in the Office of the Estate Officer, Land & Estate, 7th Floor, Civic Center, New Delhi on 8th March, 2011 at 1500 hours when the notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act shall be served on the petitioners. If any of the petitioners fail to turn up on the said date they shall be deemed to be served with the notice and/or on service of notice on any of the petitioners, shall be deemed to be service on all.

(v) The Estate Officer to conclude the proceedings under the PP Act on or before 31st May, 2011.

No order as to costs.

Dasti under signature of the Court Master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 17, 2011

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