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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 100/2010

% Judgment Delivered on: 14 December 2011

HARCHAND

..... Appellant
Through : Mr. Sandeep Sethi, Sr. Adv with Mr. Uma
Shankar and Mr. Nikhil Bhalla for the
appellant

Versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through : Mr. H.S. Phoolka, Sr. Adv with Ms. Mini
Pushkarna for the respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
 2. To be referred to Reporter or not?
 3. Whether the judgment should be reported in the Digest?
- no

G.S.SISTANI, J.

- 1) Present appeal is directed against the judgment and decree dated 11th February, 2010, by virtue of which, the plaint of the appellant was rejected by the trial court on the ground that *prima facie* the plaintiff has failed to disclose the cause of action to maintain the suit.
- 2) Brief facts, to be noticed for disposal of the present appeal, are that appellant is stated to be an illiterate man, who, since the year 1970,

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has been carrying on the business of workshop for repairing cycle/rickshaws situated on the land measuring 237 sq. yds., adjacent to Hardayal Municipal Library, near Gandhi Ground, Dr. H.C. Sen Marg, Chandni Chowk, Delhi, (hereinafter referred to the "suit land"). The suit land belongs to the respondent MCD. The MCD took out a policy in the years 1975 and again in the years 1978 pursuant to which a scheme for regularization of the occupation of such persons was considered. The appellant gave a representation to the respondent MCD and the occupation of the appellant was regularized in respect of the suit land on payment of damages total amounting to Rs.56,638/- for the period ending 31.03.1993 vide an order dated 25.1.1991. Post regularization, the appellant continued to remain and enjoyed peaceful possession of the suit land. As per the plaint, the appellant deposited a sum of Rs.48,934/- for the period 1971 to 31.3.1990. He also deposited an amount of Rs.2568/- for the period 1.4.1990 to 31.3.1991. He further made payments for the period 1.4.1991 to 31.3.1992. The appellant received a notice dated 23.12.1992 by which he was directed to hand over peaceful possession of the suit property to the MCD within 48 hours as it was required for a public purpose i.e. widening of a road. Finding the action of the MCD by the notice to be malafide, illegal and arbitrary and further since as per the appellant the land was not required for any public purpose the appellant filed a suit for permanent and mandatory injunction restraining the MCD from dispossessing him from interfering in the peaceful occupation of the suit plot.

- 3) Learned counsel for the appellant submits that judgment and decree dated 11.02.2010 passed by learned Additional District Judge, in suit No.419/2004, on 11.2.2010 is patently illegal and contrary to the established proposition of law inasmuch as that basic finding of learned trial court rests on an incorrect basis that the appellant is an 'encroacher' or 'illegal occupant' on the suit land despite observing that possession of the appellant was regularized by the respondent. Counsel also submits that pursuant to payment of charges/damages due, regularization was effected by the respondent albeit with certain conditions contained in the regularization order dated 25.01.1991.
- 4) Learned counsel for the appellant has drawn the attention of the Court to show that the letter informing the appellants about the said regularization contained specific stipulations in respect of occupation of the suit land to the effect of making it conditional. The relevant portion of the letter is reproduced as under:

"...subject to the conditions that he will vacate the site as and when it is required by MCD for public purposes and he will not claim for any alternative site or any kind of compensation from MCD in lieu of vacating the site in question He will not erect any structure (Kucha/pucca) on open site also."

- 5) Learned counsel for the appellant submits that despite paying regularization charges, the appellant received a notice dated 23.12.1992 from the respondent, by virtue of which, the appellant was directed to hand over peaceful possession of suit land to the respondent within 48 hours, as the said land was purportedly required

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for widening of road, which was a '*public purpose*'. The appellant replied to the notice vide reply dated 26.12.1992, however, as there was no correspondence from the respondent nor did the respondent take any action, the appellant filed a suit for permanent and temporary injunction, seeking that the respondents be directed not to dispossess the appellant from the suit land. The dispossession of the appellant was stayed by the High Court vide order dated 13.02.1996.

- 6) Learned counsel for the appellant submits that learned trial court erred in passing the impugned order as the plaint clearly disclosed the facts constituting a valid and lawful cause of action in respect of the suit land. Counsel next submits that regularization of the suit land was carried out by the respondent Corporation after levy of damages on the appellant vide order dated 25.01.1991. Counsel further submits that vide letter dated 25.01.1991, the respondent had accepted the regularization of the unauthorized occupation of the appellant in respect of the suit land on payment of monthly damages/charges at the rate of Rs.214/- . It is vehemently submitted by counsel for the appellants that the appellant is not in unauthorized occupation of the land as the respondent created contractual rights in favor of the appellant by regularizing the possession of the appellant in the suit land. It is next submitted that the respondent is acting in utter disregard of the terms of the letter dated 25.1.1991 whereby which the possession of the appellants was legalized.

- 7) Learned counsel for the appellant submits that the appellant had been regularly paying the necessary charges to the respondent corporation and therefore, undoubtedly, the appellant has all along been holding over the suit land by virtue of his continuous, uninterrupted occupation, enjoyment and settled possession of said suit land. Counsel further submits that trial court has erred in overlooking the fact that applicant has been in settled possession of the suit land and it is the only source of livelihood of not only the appellant but the workers working with the appellant.
- 8) Learned counsel for the appellant submits that respondent Corporation has illegal and malafide intention decided to oust the appellant from the suit land. Counsel further submits that respondent is acting in utter disregard to terms of the letter dated 25.01.1991 by which the respondent had stated that possession of the appellant could be disturbed '*only*' in case the suit land would be required for '*public purposes*'. Counsel next submits that the respondent has not initiated any plan administratively or financially to widen the alleged road which in fact is a mere 'Galli'. Counsel also submits that the respondent Corporation has failed to place on record, in spite of having being given various opportunities, any document or any plan or lay out on the basis of which, the claim of the respondent Corporation that the suit land is required for any '*public purpose*' can be justified.
- 9) It is submitted by counsel for the appellant that the street which was purportedly to be widened, never required any widening in view of the

fact that the road ended at the Hardayal Library through which no road could pass in view of the general status of the library. It is further submitted that the respondent's action for interfering with the possession of the appellant is malafide, arbitrary and contrary to the principles of natural justice. It is next submitted that in view of the fact that (i) contractual rights were created in favor of the appellants vide letter dated 25.01.1991; (ii) the appellants could only be ousted only if the suit land was required for public purpose; and (iii) the respondents failed to place on record a plan for widening of the road, a just and valid cause of action arose in favor of the appellant and the same was disclosed in the plaint. It is submitted that trial court erred in dismissing the plaint of the appellants. It is further submitted that the impugned order is contrary to the principles of law and is liable to be set aside.

- 10) It is also contended by counsel for the appellant that learned trial court grossly erred by misconstruing the situation relating to the existence of cause of action or otherwise and consequently misdirected its judicial mind while pronouncing the impugned judgment and decree, as also in respect of non-service of any prior notice to the appellant for seeking the dispossession of the appellant and that too, on the basis of misdirected assumption that appellant was an illegal encroacher on some public land. It is next contended that the trial court has failed to consider the fact that the appellant was in settled possession of the suit land and the shop that was being run on the suit land is his only source of livelihood. It is further contended that learned trial court has lost

track of the fact that in case the appellant is dispossessed, the fundamental right of the appellant of earning livelihood would be infringed upon.

- 11) Learned counsel for the appellant has placed reliance on ***R.B. Bhupal Prasad Vs. State of Andhra Pradesh***, reported at AIR 1996 SC 140. in support of his claim that the settled possession of the appellant could not be disturbed so easily. The relevant portion of the judgment is reproduced as under:

"In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal or lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry".

- 12) Learned counsel for the appellant has also placed reliance on ***Anamallai Club v. Govt. of T.N.***, reported at (1997) 3 SCC 169, in support of his claim that possession of a person cannot be disturbed without giving sufficient notice to the parties. The relevant portion of the judgment is quoted as under:

"Law makes a distinction between persons in juridical possession and rank trespassers. Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a court. The object thereby is to encourage compliance of the rule of law

and to deprive the person who wanted a person in lawful possession removed from possession according to proper form and to prevent him from going with a high hand and eject such person. Undoubtedly, the true owner is entitled to retain possession even though he had obtained it by force or by other unlawful means but that would not be a ground to permit the owner to take the law into his own hands and eject the person in juridical possession or settled possession without recourse to law.

9. Thus, it could be seen that even after determination of the licence under the Government Grants Act, the Government is entitled to resume possession but resumption of possession does not mean unilaterally taking possession without recourse to law. The Eviction Act contemplates such a procedure. 'Premises' defined under Section 2(d) of the Act means any land or any building or a part of a building or hut or any enclosure appurtenant thereto. Section 4 prescribes procedure of issuance of a notice of show-cause before eviction giving an opportunity and thereafter taking action under Section 5 of the Act. Unfortunately, on the facts of the case on hand, the respondent has not adopted the procedure prescribed under Sections 4 and 5 of the Eviction Act after determination of the licence granted under the Government Grants Act. The High Court, therefore, was not right in its conclusion that the procedure prescribed under the PPE Act is not applicable to the grants made under the Government Grants Act since the appellants remained in settled possession since a long time pursuant to the grant. After determination of the grant, though they have no right to remain in possession, the State cannot take unilateral possession without taking recourse to the procedure provided under the Act. It is, therefore, clear that it would have been open to the respondent to have a notice issued to the appellant and give time to vacate the premises within 10 days or 15 days and, therefore, could leave resumed possession with minimal use of police force. We cannot give any direction in this case since possession was already

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resumed. We have directed not to create third party right in the property. We are not inclined to interfere with the order".

- 13) Learned counsel for the respondent has vehemently opposed the present appeal. Learned counsel for the respondent submits that present appeal is not maintainable in view of the fact that appellant has failed to disclose the cause of action to maintain his suit in respect of the relief claimed by him. Counsel further submits that since the plaint is barred under the provisions of Order 7 Rule 11(a) of the CPC there is no infirmity in the judgment passed by learned trial court.
- 14) Learned counsel for the respondent submits that appellant has been enjoying the possession of the suit land in contravention of the stipulation as contained in the letter dated 25.01.1991, wherein it has been specifically stated by the respondent that the appellant shall not erect any structure whether kuchcha/ pucca on the open site. Counsel further submits that the appellant had raised an unauthorized chappar on a part of suit land without any permission whatsoever from the respondent Corporation and the structure so erected is in blatant violation of the terms and conditions as stipulated in the letter dated 25.01.1991. Reliance has been placed on the terms of the letter dated 25.01.1991 by the counsel of the respondent.
- 15) Learned counsel for the respondent contends that appellant is not entitled to seek any equitable relief by way of injunction, as was prayed in the suit, in view of the absence of any contractual obligation on the part of respondent towards the appellant. Counsel further

contends that appellant cannot file a suit seeking injunction against the original owner of the suit land i.e. the respondent Corporation. Counsel next contends that mere regularization of the possession of the appellant does not mean that appellant has been inducted as a tenant or that any right has been created in favor of the appellant as a tenant. Counsel also contends that at best the appellant may be termed as a licensee, however, even then the appellant cannot claim relief of permanent injunction against the respondent Corporation.

- 16) Learned counsel for the respondent submits that although vide letter dated 25.01.91, the occupation of suit land by the plaintiff was regularized, the said letter contains specific stipulation in respect of regularization of occupation of the suit land by the appellant to the effect of making it *conditional* i.e. removal of appellant from the suit land will be as and when required by the respondent Corporation for public purposes and in that case the appellant shall neither be entitled to or be allowed to put forth any claim for any alternative site nor any claim for compensation shall be sought from the respondent Corporation in lieu of vacating the suit land. Counsel emulates the claim of the appellant that unless there is requirement of the suit land by the respondent Corporation, the same cannot be vacated. Counsel next submits that by way of the letter dated 25.01.1991, neither any right nor any contractual obligation was created in favor of the appellant. Counsel also submits that at best it can be said that appellant is a license holder holding the land for use and enjoyment with due permission from the respondent Corporation.

- 17) Learned counsel for the respondent has placed reliance on the case of **Delhi Tourism & Transportation Development Corporation Ltd. Vs. D.R. Mehra & Sons** reported at **61(1996)DLT837** wherein it was opined that on termination of license, a licensee becomes a trespasser and has no right to continue in the premises. The relevant portion of the said judgment, relied upon by counsel for the respondent, is reproduced below:

"I have to accept the case of the defendant that the plaintiff was only a licensee and the license was revoked and the plaintiff had no right to remain in possession of the premises. It is not the case of the plaintiff that the license is coupled with interest and Therefore, it cannot be revoked. The arguments on behalf of the plaintiff that in such transactions the nomenclature normally employed is a license agreement but in effect and substance it is only a lease, cannot at all be accepted. For, the plaintiff called for tenders from people for locating shops and in the tender notice it was not stated that the plaintiff wanted to have lease of the premises. Therefore, the intention was only to have a license so that the plaintiff could leave the premises at any time it desired".

- 18) The counsel for the respondent corporation has also placed reliance on the case of **Chandu Lal v. Municipal Corporation of Delhi**, reported at **AIR 1978 Delhi 174** wherein the court has discussed the rights created under a license.

26. There is a catena of authorities in support of the proposition that in the case of a license there is something less than a right to enjoy the property in the licensee; it cannot be exercised by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer to a right to enjoy the property or in other words the lessee is

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entitled to enjoy the property. A bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an Interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property as he likes. This right he gets as an owner in possession of his property. He need not secure a decree of the Court to obtain this right. He is entitled to resist in defense of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser. If, however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will Infringe no right of the licensee, No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant, nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy.

It was further held in the same case that in order to grant injunction three established principles are to be proved. The relevant portion of the judgement is quoted herein under:

38. Temporary injunction sought by the petitioners could be granted, if their case was covered by the three well established principles, namely, (1) on making out a prima facie case, (2) on showing balance of convenience in their favor, in that the refusal of the injunction would cause greater inconvenience to them and (3) whether on refusal of the injunction they would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise the Court has to satisfy itself whether the petitioners have a triable case. Before invoking the jurisdiction of the Court to seek temporary injunction the petitioners were bound to show that they have a legal right and that there was an invasion of that right. They have failed to show a legal right. Facts and circumstances on the contrary, prima facie show that the petitioners on the revocation of the license are trespassers, there exists no

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justification for allowing them to continue perpetuating their unlawful act.

- 19) The counsel for the respondent submits that given that (i) the land was required for "*public purpose*"; (ii) the appellant had acted contrary to permission granted, in view of the *temporary tarpaulin structure* erected and (iii) *no contractual rights*, tenancy accrued in favor of the appellants, the appellants could not have filed a suit seeking injunction against the original owners of the suit land. The counsel for the respondent submits that given that the plaint did not disclose a cause of action, the Id. Trial Court has rightly rejected the same.
- 20) I have heard the parties and perused the judgment of the trial court. Certain undisputed facts to be noticed are that the respondent corporation is the original owner of the suit land and the appellant was in use and occupation of the suit land. It is further not in dispute that the occupation of the appellants on the suit land was regularized pursuant to payment of regularization charges by the appellants, as were levied by the respondent corporation. It is also not in dispute that the occupation of the appellant was regularized subject to certain conditions as stated in letter dated 25.01.1991. It is also not in dispute that vide notice dated 23.12.1992; the appellant was given 48 hours to vacate the suit land as the land was required for public purpose; for widening of the road. Aggrieved by the notice dated 23.12.1992 the appellant filed a suit seeking a direction against respondent corporation to restrain them from dispossessing the appellants. The trial court vide order dated 11.02.2010 rejected the plaint of the

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appellant under Order 7 Rule 11 CPC. It is against this judgment/decreed that the appellant has filed an appeal.

- 21) A perusal of the plaint, which has been placed on record, would show that plaintiff filed a suit for permanent and mandatory injunction. It has been stated in the plaint that plaintiff is an illiterate person and he has been carrying on the business of workshop for repairing cycle rickshaws in the space measuring 237 sq. yds., at Hardayal Municipal Library. It has been admitted that the suit property is a municipal land, which is in occupation of the plaintiff since the year 1970. As per policy decision in the years 1975 and 1978 the occupation of the plaintiff was regularized by the MCD and the plaintiff has paid a sum of Rs.48,934/- for the period 1971-1990 and Rs.2,568/- for the period 1.4.1990 to 31.3.1991. Plaintiff claims to be in continuous, legal possession and occupation of the suit property.
- 22) It is not the case of the appellant in the plaint that he is in occupation of the suit land as a tenant. The appellant has simply described himself to be in occupation of the land, in question, at Hardayal Municipal Library. The status of the appellant can at best be termed as a licensee. The letter dated 25.1.1991, sought to be relied upon by learned counsel for the appellant, would also show that MCD while regularizing the occupation of the appellant on the municipal land had made it abundantly clear that the appellant would vacate the site as and when required by MCD for public purpose and the appellant would not claim any right in his favour except for use of the open

space. As per the plaint, the appellant admits that he had created a kachcha structure over the part of the land, which he was not authorized to do. Further, the letter dated 25.1.1991 does not create any right in favour of the appellant either of a tenant but only granted permission to the appellant to use the land in question.

- 23) I am in agreement with the view expressed by trial court that there accrued no right in favor of the appellant subsequent to the regularization of the suit land, the appellant's plaint did not disclose a cause of action to support the plea of the appellant's for grant of injunction. The trial court has held as below:

"...careful reading of letter dated 25.01.1991 makes it clear that only the unauthorized occupation of the plaintiff was regularized on payment of certain damages/charges. The regularization of unauthorized occupation of plaintiff does not mean that he has been inducted as a tenant or any lease rights has been created in his favor. If the legal analogy is stretched to a maximum level at best it can be said that only a license has been created in favor of the plaintiff though in letter dated 25.01.1991 plaintiff has also not been termed as a licensee of the MCD".

- 24) The phrase "*cause of action*" comprises of a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. It is settled position of law that a plaint which upon reading does not disclose a cause of action is required to be rejected at the outset. The Apex Court in ***Popat and Kotecha Property v. State Bank of India Staff Assn*** reported at 2005 (5) SCC 510, has culled

out the legal ambit of Order 7 Rule 11 of the Civil Procedure Code.

The relevant portion of the case law is quoted hereunder:

19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

From the aforesaid, it is apparent that the plaint cannot be rejected by the court rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint".

- 25) It would be useful to refer to the observations of the Apex Court in the case of **Y. Abraham Ajith v. Inspector of Police, reported at (2004) 8 SCC 100:**

"It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

16. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.), the

meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

18. In Halsbury's Laws of England (4th Edn.) it has been stated as follows:

" 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the ¹⁰⁶ court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

26) The aim and object of Order VII Rule 11 CPC is to save a party from being harassed unnecessarily and put to trial in a matter which prima facie does not disclose cause of action. The provision ensures that where on the face of it the plaint does not disclose a genesis of a right that is purported to be infringed upon, the plaint should not be entertained and the other party must be saved from meaningless exercise and not be unnecessarily dragged into time consuming litigation. However, it is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit.

27) The controversy in the present matter revolves around the right, if any, that emanates out of the action of the respondents to regularize the possession of the appellant. It is contended by the counsel for the appellant, that contractual rights were created by the respondents in

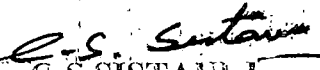
favor of the appellants vide letter dated 25.01.1991 and accordingly the order of learned Trial court is incorrect, patently illegal and liable to be set aside. The averments made in the plaint and in the communication dated 25.1.1991 leaves no room for doubt that the letter which authorizes that the occupation of the plaintiff did not create any right in favour of the plaintiff as a tenant. The terms of the letter does not permit the appellant to raise any structure – kuchcha or pucca. The appellant was also informed that in case he is asked to vacate the land, in question, he would not be entitled to an alternative site or any compensation in lieu thereof. Assuming that the status of the appellant is at best of a licensee, the plaintiff/appellant cannot seek an injunction against the respondent, who is admittedly the original owner of the land, in question.

- 28) The suit was instituted in the year 1997. Although initially 48 hours was given to the appellant to vacate the land, in question, but, in reality, the suit has been pending in the Trial Court for thirteen years and this by itself is more than sufficient notice to the appellant to vacate the land, in question, and, thus, it cannot be said that no proper notice is issued to the appellant. I find no force in the submission made by learned counsel for the appellant that appellant can only be dispossessed by following due process of law and after the respondent Corporation institutes a suit for possession against the appellant as the relationship between the parties is not in dispute. The appellant is not a tenant. The status of the appellant is at best that of a licensee. The case of **R.B. Bhupal Prasad** (supra), sought to be relied upon by learned

counsel for the plaintiff, would not be applicable to the facts of the present case as the appellant in the said matter was a tenant at sufferance whereas in the present matter the appellant has not even pleaded that he is a tenant. The plaint does not disclose any cause of action in view of the fact that there cannot be an injunction against the true owner. Accordingly, present appeal is dismissed.

DECEMBER /4, 2011

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G.S. Sistani, J.