

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

% *Date of Judgment: 19.12.2011*

+ **CM(M) No.2166/2006**

LAL CHAND PUBLIC CHARITABLE TRUST Petitioner
Through: Mr.Arvind Nigam Sr. Advocate
with Ms.Mandeep Kaur,
Advocate.

Versus

DELHI WAKF BOARD & ORS. Respondents
Through: Mr.Sanjeev Sindhvani,
Advocate for R-1.
Mr.Arjun Harkauli, Advocate
for R-2.
Mr.Umesh Aggarwal, Advocate
for R-6.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned is the order dated 18.8.2006 which is the order of the appellate court endorsing the finding of the trial court dated 23.9.2004 wherein the application filed by the applicant namely Lal Chand Public Charitable Trust under Order XXII Rule 10 read with Section 151 of the Code of Civil Procedure had been dismissed. These are two concurrent findings by the two courts below.

2. At the outset, it is submitted by the learned counsel for the respondent that this court is sitting in its power of superintendence under Article 227 of the Constitution of India and unless and until there is a manifest illegality or gross error which has led to a miscarriage of justice no interference is called for. It is in this background that the arguments advanced by the learned counsel of for the parties have been appreciated.

3. The record shows that the present suit has been filed by the plaintiff M/s DLF Universal Ltd. against five defendants i.e. Delhi Wakf Board who had been arrayed as defendant no.1 and defendants no.2 to 5 who are private parties. This is a suit for possession. Contention of the plaintiff is that colony namely Greater Kailash was developed by the predecessor interest of the plaintiff. A piece of land measuring 1410 sq. yards forming part of the land of the plaintiff has been encroached upon by defendants no.2 and 5 through defendant no.1. A decree for possession of the aforementioned suit property has been prayed for. Written statement was filed by the defendants. The contention of defendant no.1 is that he has already got a decree dated 29.01.1983 in his favour qua the suit land; this decree has remained unchallenged and this land now falls to his share. Defendants no.2 to 5 have supported the stand of defendant no.1.

4. Present application under Order XXII Rule 10 of the Code has been filed by the applicant namely Lal Chand Public Charitable Trust. This application has been filed on 13.9.1996. Suit has been filed on 18.11.1982. By virtue of this application, it has been contended that a settlement deed dated 24.7.1989 had been arrived at between the MCD and the DLF Universal Ltd; in terms of this settlement the MCD has become the owner of this suit land where the applicant i.e. Lal Chand Public Charitable Trust is a lessee; in this scenario the applicant Lal Chand Public Charitable Trust has sought prayer for substitution as plaintiff in place of the present plaintiff; alternate prayer is that Lal Chand Public Charitable Trust be made a co-plaintiff and the MCD be also arrayed as a defendant.

5. This contention was hotly contested and has suffered two adverse orders as noted supra i.e. order dated 23.9.2004 which was the first order passed by the Civil Judge and subsequent order of the appellate court dated 18.8.2006 vide which the appellate court had endorsed the finding of the trial judge dismissing the application. The vehement argument of the learned counsel for the applicant is that in terms of this settlement of 24.7.1989 (which was between the DLF Universal Ltd and the MCD) the right of the applicant has been recognized as a lessee (Clause-I
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internal page 3 of the aforementioned settlement); contention being that this document is an undisputed document; undisputed fact thus being that Lal Chand Public Charitable Trust is a lessee in the suit property and as such his interest being in jeopardy; he has right to be heard in the present case; he has accordingly made the prayer as noted supra. To support his submission learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court reported in 2006(1) SCC 148 Amiteshwar Anand Vs. Virender Mohan Singh as also another judgment of the Apex Court reported in (2001) 6 SCC 534 Dhurandhar Prasad Singh Vs. Jai Prakash University & Ors. that plain language of Rule 10 of Order 22 does not suggest that leave can be sought by that person alone upon whom the interest is devolved; contention being that not only the assigner or the assignee but other persons whose interest has been effected can file an application under Order 22 Rule 10 of the Code to continue the suit; submission being that the MCD is not contesting the suit as in another litigation between the parties it had allowed the case to be dismissed in default; if this case is not contested and it also suffers the same fate; the interest of the present petitioner who has been recognized as a lessee of the MCD will be hazardously effected; even otherwise to save multiplicity of litigation it would be appropriate that the

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present petitioner is permitted to join the proceedings.

6. These contentions have been refuted. Learned counsel for the respondent has pointed out that the application has been filed under Order XXII Rule 10 of the Code which necessarily postulates that there must be an assignment, creation or devolution of interest during the pendency of the suit pursuant to which the applicant can seek a prayer under the aforementioned provision of law. Contention being that even as per the settlement agreement dated 24.7.1989 the MCD is the successor in interest of the plaintiff and not the applicant, the applicant i.e. Lal Chand Public Charitable Trust is only a lessee and in fact this status of the applicant as a lessee has been recognized right from 1963 i.e. even before the filing of the present suit; status of the applicant i.e. Lal Chand Public Charitable Trust has since not changed. Thus this provision does not come to his aid.

7. This submission of the learned counsel for the respondent has considerable force. It is an admitted fact that the applicant Lal Chand Public Charitable Trust was a lessee in the suit premises, the earlier lessor being the plaintiff M/s DLF Universal Ltd. which had leased out these premises to the applicant on 31.8.1963. By virtue of the agreement dated 24.7.1989 entered

between the MCD and M/s DLF Universal Ltd the status of the

lessee i.e. the applicant Lal Chand Public Charitable Trust still remains the same; he continues to be a lessee; the status of the owner had changed hands; earlier owner was the plaintiff M/s DLF Universal; now in terms of the settlement dated 24.7.1989 the MCD has become the new owner. Provisions of Order XXII Rule 10 of the Code in this scenario cannot come to the aid of the present applicant as Order XXII Rule 10 of the Code specifically postulates that the suit can be continued by the person upon whom the plaintiff's interest has devolved which in this case is the MCD and not the present applicant. There is admittedly no devolution of interest in favour of the applicant who continues to be a lessee which status has been given to him since 1963.

8. Even presuming that the second argument of the learned counsel for the applicant is accepted and the present application under Order XXII Rule 10 of the Code be treated as an application under Order 1 Rule 10 of the Code, the prayer made cannot be granted to the applicant. Admittedly the applicant is relying upon a settlement dated 24.7.1989 pursuant to which the status of ownership has been accorded to the MCD. The present application has been filed on 13.9.1996 i.e. after a lapse of almost seven years. The contention of the applicant is the reason for

delay is that in this intervening an appeal had been filed which

had reached the Apex Court and was finally disposed of on 06.02.1991. Even as per his own contention this appeal had been dismissed by the Apex Court on 06.2.1991. At the cost of repetition this application has been filed on 13.9.1996 i.e. after a lapse of almost five years even after 06.2.1991. The Apex Court in JT 2000 (4) SC 391 State of Kerala Vs. Sridevi had observed that although there is no specified period of limitation for making an application under Order 1 Rule 10 of the Code, if at all any application is necessary the same should be filed within three years as is the limitation prescribed under Article 137 of the Limitation Act. Applying the aforementioned ratio this application is hopelessly bared by time.

9. Applicant on no count deserves any relief. Dismissed.

INDERMEET KAUR, J

DECEMBER 19, 2011
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