

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

Reserved on: September 03, 2012
Pronounced on: September 24, 2012

+ W.P.(C) No.3210/2000

**SHARMA MONTESSORI SCHOOL &
ORIENTAL COLLEGE SOCIETY** Petitioner
Through: Mr. B. Kishan, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Sachin Datta, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT

1. Petitioner seeks quashing of Estate Officer's order of 31st January, 2000 under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* directing eviction of petitioner from Government's Lodhi Road school site area of 1616 sq. yards (*henceforth referred to as subject site/premises*), which stands affirmed by the Appellate Authority vide impugned order of 8th April, 2000. Consequential relief of quashing respondent's communication of 17th May, 2000 demanding damages for unauthorized use of the subject site and restoration of the subject site is also sought by petitioner in this writ petition.

2. The first respondent vide its communication of 14th July, 1956 (*Annexure R-1 to the counter*) had made temporary allotment of the

subject site for a period of one year only with a rider that petitioner-society should apply for a permanent allotment of site immediately to the Director of Education. In this context, it would be relevant to note that respondent vide its communication of 5th July, 1963 (*Annexure R-2 to the counter*) had regularized unauthorized occupation of the Government land i.e. the subject site upto 30th June, 1963 upon payment of ground rent, charges for execution of temporary lease etc. Respondent vide its communication of 10th August, 1965 (*Annexure R-3 to the counter*) had offered to regularize the unauthorized occupation of petitioner on the Government land i.e. the subject site upto 14th July, 1965 upon terms and conditions, which were not complied with by petitioner.

3. It is the case of respondents that petitioner did not comply with the terms of allotment and had not paid the rent and so no Lease Agreement was executed and petitioner's unauthorised occupation on the Government land i.e. the subject site continued from July, 1963 till July, 1999, when proceedings under *the Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, were initiated, which resulted in passing of eviction order, wherein respondent's demand of damages to the tune of ₹28,57,208/- is also affirmed, while holding that the subject site forms part of Government Land which was acquired vide Government's Notification of 21st December, 1911 and is under the control of Ministry of Urban Development.

4. Impugned order negates the challenge to eviction order by rejecting petitioner's plea of adverse possession over the subject site while relying upon Section 116 of the Evidence Act and a decision of

this Court in *Smt. Ram Kanta Jain v. M.S.Jain and others* AIR 1999 Delhi 281.

5. The impugned order is assailed by learned counsel for petitioner on the ground of non-applicability of provisions of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* on specious plea of subject site not falling within the ambit of “public premises” as defined in the *Public Premises (Eviction of Unauthorized Occupants) Act, 1971* (hereinafter referred to as Public Premises Act). To contend so, reliance was placed upon decisions in *W.P.(C) 2204/2006 M/s. Ashoka Builders & Promoters v. UOI & ors. rendered on 9th July, 2012*; *Vikas Jain v. UOI & ors., 2006 V AD (Delhi) 479* and *Express Newspapers Pvt. Ltd. & ors. v. UOI & ors. AIR 1986 SC 872*.

6. To contend that the scheme of *Public Premises Act* mandates affording of reasonable opportunity of hearing, recording of evidence and that temporary allotment is for a period of 30 days and that lease on year to year basis has be treated as permanent, learned counsel for petitioner had relied upon decisions reported in *Sudhir Goel v. MCD & ors., 2004 (75) DRJ 195*; *M/s. Wire-Netting Stores & Anr. v. DDA & ors., 1969 (3) SCC 415*; *New India Assurance Co. v. Nusli Neville Wadia & Anr., I (2008) SLT 442*; *Minoo Farmroze Balsara v. UOI, AIR 1992 Bom 375* and *P.S. Gupta v. NDMC, 1996 RLR 431*.

7. To further contend that respondent had lost its control over the subject site by efflux of time, reliance was placed by petitioner’s counsel upon decisions in *Navrattanmal v. State of Rajasthan AIR 1961 SC 1704*; *State of UP v. Lucknow Development Authority AIR 1989 SC 997*; *NDMC v. Kalu Ram AIR 1976 SC 1637*; *Northern India*

Caterers Pvt. Ltd. v. The District Judge, Chandigarh 1983 *Punjab Law Reporter* 457; *Faqirappa v. Nangappa* AIR(30)1948 Bom 265; *Secy. of State v. Debendra Lal* AIR 1934 Privy Council 23; *Inderjeet Singh v. NDMC* 103 (2003) DLT 470.

8. On the contrary, it was asserted by respondent's counsel that mere possession of petitioner upon the subject site howsoever long does not mean that it is adverse to respondent, who is lawful owner of the subject site and to repel the plea of adverse possession, respondent's counsel had relied upon decisions in *P.T. Munichikkanna Reddy & ors. v. Revamma & ors.* AIR 2007 SC 1753 and *T. Anjanappa & ors. v. Somalingappa & Anr.* (2006) 7 SCC 570.

9. To assert that Estate Officer is not a Court and so provisions of Limitation Act would not apply to the eviction proceedings before the Estate Officer and that the Public Premises Act being a special Act would prevail upon the Limitation Act, respondent's counsel had relied upon decisions in *Nand Ram & ors. v. UOI & ors.* 87 (2000) DLT 234; *WP(C) No. 4688/1997, NDMC v. Shri Charan Singh Gupta & ors., rendered on 30.09.2004* and *L.S. Nair v. Hindustan Steel Ltd. Bhilai & ors.* AIR 1980 MP 106. Thus, rejection of the writ petition is sought by asserting that the impugned order does not suffer from any illegality or infirmity.

10. Having considered the submissions advanced, impugned order, the material on record and decisions cited, I find that there is no limitation provided in the *Public Premises Act* for initiation of eviction proceedings or for recovery of damages. This Court in *Nand Ram & others Vs. Union of India & others*, 87 (2000) DLT 234, has

categorically held that *Public Premises Act* being a special Act would prevail upon the *Limitation Act*. So, petitioner's reliance upon decision in *Inderjeet Singh* (*supra*) is of no avail as the same has been considered by this Court in a later decision in W.P.(C) No. 4688/1997, titled as *New Delhi Municipal Council vs. Charan Singh Gupta & others*, rendered on 30th September, 2004, wherein it has been noted that even if the provisions of *Limitation Act, 1963* do not apply to proceedings under *Public Premises Act*, but still, an authority must act expeditiously in taking out proceedings for the recovery of damages.

11. It would be pertinent to take note of the fact that the decision in *Inderjeet* (*supra*) has been considered in a later decision of this Court in *NDMC vs. Charan Singh* (*supra*), acknowledging the legal position of non applicability of the *Limitation Act* to proceedings under the *Public Premises Act* but in view of the fact that the unauthorized occupant was no more alive and was survived by the legal heirs only, the recovery of quantum of damages was restricted to a period of three years prior to the initiation of the eviction proceedings. Therefore, the precedential value of decision in *Nand Ram* (*supra*) is not watered down and holds the field. Thus, applying the ratio of decision in *Nand Ram* (*supra*), I repel petitioner's plea of the proceedings under the *Public Premises Act* being barred by limitation.

12. As regards petitioner's plea of adverse possession over the subject site is concerned, it has to be considered in the light of the law pertaining to adverse possession which has been succinctly reiterated by the Apex Court in *P.T. Munichikkanna Reddy & ors. v. Revamma & ors.* AIR 2007 SC 1753. It is otherwise well recognised proposition

of law that adverse possession really means hostile possession which is expressedly or impliedly, in denial of title of the true owner and in order to constitute adverse possession, the possession proved must be adequate in continuity, in publicity i.e., it must be open and hostile enough to be capable of being known by the parties interested in the property.

13. How can a lessee or a licensee plead adverse possession after the temporary allotment in its favour has lapsed? In the instant case, there was a temporary allotment of the subject site in favour of petitioner which was last offered to be extended till July, 1965 but since petitioner did not fulfill the terms and conditions and had not paid the rent, therefore, petitioner's possession on the subject site remained authorized till the year 1963 only and thereafter, the said possession was unauthorized. So petitioner has no locus to dispute the title of first respondent in the subject site. The decisions relied upon by petitioner's counsel to buttress his plea of adverse possession are of no avail as petitioner has no locus to raise the plea of adverse possession, because petitioner was in possession of the subject site as a lessee and upon non-renewal of the temporary lease, petitioner cannot assert adverse possession. Thus, the plea of adverse possession is outrightly rejected.

14. Regarding plea of non-applicability of *Public Premises Act*, reliance placed upon decisions in *W.P.(C) 2204/2006 M/s. Ashoka Builders & Promoters v. UOI & ors. rendered on 9th July, 2012*; *Vikas Jain v. UOI & ors., 2006 V AD (Delhi) 479* and *Express Newspapers*

Pvt. Ltd. & ors. v. UOI & ors. AIR 1986 SC 872 is misplaced because the definition of “public premises” in the *Public Premises Act*, makes it clear that as per Section 2(c) of *Public Premises Act*, the public premises includes Government Land as well as the building raised thereon.

15. A bare perusal of the afore-referred definition of ‘premises’ in *Public Premises Act*, makes it abundantly clear that respondent’s leased out land with superstructure thereon comes within definition of ‘premises’ in the *Public Premises Act*, to which there cannot be any challenge and so the decision of this Court in *M/s. Ashoka Builders (supra)* which relies upon another single bench decision of this Court in *Vikas Jain (supra)* following the Apex Court decision in *Express Newspapers (supra)* is rendered *per incurium* in view of the Division Bench decision of this Court in *Ambitious Gold Nib (supra)* followed by a later Division Bench of this Court in *Escorts Heart Institute & Research Centre Ltd. Vs. DDA & Anr reported in AIR 2008 Delhi 70*, which also takes into consideration the Apex Court decision in *Express Newspapers (supra)*.

16. As regards non-recording of evidence, denial of fair hearing and nature of temporary allotment, reliance upon decisions in *Sudhir Goel v. MCD & ors., 2004 (75) DRJ 195*; *M/s. Wire-Netting Stores & Anr. v. DDA & ors., 1969 (3) SCC 415*; *New India Assurance Co. v. Nusli Neville Wadia & Anr., I (2008) SLT 442*; *Minoo Farmroze Balsara v. UOI, AIR 1992 Bom 375* and *P.S. Gupta v. NDMC, 1996 RLR 431* is of no help as it is not shown as to what prejudice petitioner suffers on

this account. Moreover, petitioner cannot claim legitimate possession over subject site after the temporary lease had lapsed in July, 1963, particularly when no steps to get it extended or to obtain regular allotment of the subject site were taken by the petitioner.

17. Resultantly, finding no palpable error in the impugned order, I dismiss this petition with no orders as to costs.

(SUNIL GAUR)
Judge

September 24, 2012
mm/pkb