

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

Date of decision: 17th February, 2012

+ **LPA No. 103/2012**

% **RAM CHANDER AGGARWAL** **....Appellant**
Through: Ms. Rekha Aggarwal with Mr. Sanjay Aggarwal, Advs.

Versus

UOI & ORS. **..... Respondents**
Through: Mr. D.S. Mehandru, Sr. Govt. Counsel for R-1&2.
Ms. Manjira Dasgupta proxy for Ms. Shyel Trehan, Adv. for MCD.
Mr. Seeraj Bagga, Adv. for R-4 to 7.

AND

+ **LPA No. 104/2012**

% **B.P. AGGARWAL** **....Appellant**
Through: Appellant in person with Mr. Rajinder Singh, Adv.

Versus

UOI & ORS. **..... Respondents**
Through: Mr. D.S. Mehandru, Sr. Govt. Counsel for R-1&2.
Ms. Manjira Dasgupta proxy for Ms. Shyel Trehan, Adv. for MCD.
Mr. Seeraj Bagga, Adv. for R-4 to 7.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAJ ENDLAW, J.

1. These Intra-Court Appeals are preferred impugning the common order dated 19th January, 2012 of the Learned Single Judge dismissing W.P.(C) No. 8065/2011 and W.P.(C) No. 8036/2011 with costs of ₹50,000/- each, for the reason of the appellants/writ petitioners having suppressed/concealed material facts therefrom. The counsel for the private respondents appeared on caveat and considering the nature of the controversy, we have with consent heard the parties finally.

2. The writ petitions were filed seeking a direction to the Land & Development Office (L&DO) and the Municipal Corporation of Delhi (MCD) to hear and decide the statutory revision petitions dated 27th July, 2005 and 18th May, 1994 preferred by the appellants/writ petitioners respectively, under Section 24 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954.

3. The aforesaid revision petitions were filed by the appellants/writ petitioners seeking cancellation/setting aside of the sale certificate dated 17th October, 1963 and other transfer documents in favour of the predecessor-in-

interest of the private respondents in respect of shop No.114, New Qutub Road Market, Delhi – 110 006.

4. Shri Bhagwan Dass, father of the appellants/writ petitioners claimed himself to be allottee w.e.f. 10th May, 1956 of the aforesaid shop paying rent for the same to the government. Shri Bhagwan Dass filed W.P.(C) No. 438-D/1958 at the Circuit Bench of the Punjab & Haryana High Court at Delhi seeking transfer of the said shop to himself instead of the same being sold in a public auction to any other person. The then Settlement Commissioner, Ministry of Rehabilitation filed counter affidavit in the said writ petition pleading that Qutub Road Market was constructed by the Ministry of Rehabilitation and the same formed part of the compensation pool within the meaning of Section 14 of the Displaced Persons Act and the said shop was to be transferred on ownership basis to displaced persons only. It was further pleaded that the said Shri Bhagwan Dass was not a displaced person and the shop had been allotted to him as a temporary measure only but could not be transferred/sold to him. The said writ petition was disposed of vide order dated 21st September, 1960 with the department agreeing that if it decided to sell the shop , by auction – whether public or private or by calling tenders, Shri Bhagwan Dass as occupier of the shop

will also be given equal opportunity to give his bid or tender and the said bid will be considered on merits along with bids of other bidders/tenderers if any.

5. An advertisement was issued on 28th December, 1960 in the newspapers inviting tenders for the sale of the aforesaid shop. The predecessor in interest of the private respondents submitted his tender and which being the highest was accepted and part of the price of the shop was adjusted against the verified claims of the said predecessor of the private respondents, as per Section 8 of the Displaced Persons Act. Shri Bhagwan Dass did not participate in the sale proceedings. Sale certificate aforesaid (impugned in the revision petitions) was issued in favour of the predecessor of the private respondents and a lease deed and a supplementary lease deed with respect to the said shop also registered in his favour on 17th October, 1963 and 28th February, 1967. As per the terms thereof the predecessor of the private respondents as purchaser became entitled to receive rent from Shri Bhagwan Dass in occupation of the said shop.

6. Shri Bhagwan Dass, predecessor of the appellants/writ petitioners died in the year 1962. The predecessor of the private respondents on 26th July, 1973 instituted a suit for recovery of possession of the shop against the

legal heirs of Shri Bhagwan Dass including the appellants/writ petitioners herein. The legal heirs of Shri Bhawan Dass contested the said suit, also challenging the ownership/title of the predecessor of the private respondents thereto.

7. The appellant/writ petitioner B.P. Aggarwal filed an application before the Regional Settlement Commissioner for supply of documents relating to the tenancy of Shri Bhagwan Dass in respect of the said shop. On 23rd February, 1978 a petition under Section 24 of the Displaced Persons Act was filed by the appellant/writ petitioner Ram Chander Aggarwal along with other legal heirs of Shri Bhagwan Dass seeking quashing of the sale made in favour of the predecessor of the private respondents with consequent relief of sale afresh in favour of legal representatives of Shri Bhagwan Dass. It was their case that they came to know about the sale in favour of the predecessor of the private respondents for the first time on 17th February, 1978. This petition was dismissed by the Deputy Chief Settlement Commissioner on 5th July, 1978 thereby upholding the sale and transfer of the shop in favour of the predecessor of the private respondents. Aggrieved therefrom the appellant/writ petitioner Ram Chander Aggarwal filed a revision petition before the Central Government under Section 33 of the

Displaced Persons Act but which was also dismissed on 25th November, 1978. The said orders were challenged by the appellant/petitioner Ram Chander Aggarwal along with other heirs of Shri Bhagwan Dass by filing C.W.P. No. 396/1979 in this Court. The said writ petition was dismissed on 9th April, 1979. SLP(C) No. 10765/1979 was preferred to the Apex Court and which was registered as Civil Appeal No. 615/1982. The same was however dismissed as withdrawn on 13th July, 1990 and as a consequence thereof the sale made of the shop aforesaid in favour of the predecessor of private respondents and the orders of the Dy. Chief Settlement Commissioner and the Central Government and the High Court rejecting Ram Chander Aggarwal's challenge to the sale made in favour of the predecessor of the private respondents attained finality.

8. The suit for possession aforesaid filed by the predecessor of the private respondents against the legal heirs of Sh. Bhagwan Dass was also decreed in or about the year 1982. It was *inter alia* held that the predecessor of the private respondents was the owner of the shop and there was no relationship of landlord and tenant and thus the civil suit was maintainable.

9. First Appeal, being RFA No. 250/1982 was preferred by the appellant/writ petitioner Ram Chander Aggarwal to this Court against the

said decree. This Court allowed the said RFA. It was held that, as per the compromise arrived at in W.P.(C) No. 438-D/1958 (supra) the Department could sell the property only by way of public auction and not by any other mode; since the sale in favour of the predecessor of the private respondents was by inviting tenders, the same was held to be invalid. It was also held that the property was not an evacuee property and Shri Bhagwan Dass and after him his heirs were a tenant therein.

10. The predecessor of private respondents appealed to the Supreme Court and the judgment in which appeal is reported as ***Hans Raj Banga v. Ram Chander Aggarwal*** (2005) 4 SCC 572. The facts stated above have in fact been reproduced from the said judgment only.

11. The Supreme Court held:-

- A. that this Court in the judgement in RFA supra, had erred in holding that as per orders passed by the High Court in W.P.(C) No. 438-D/1958 the property could be sold only by way of public auction and not by another other mode; the department had the option to sell the property either by auction, public or private, or by calling the tenders;

- B. that the department had sold the shop by inviting tenders; an advertisement was issued in the newspapers inviting tenders, in response to which the predecessor of the private respondents filed his tender which was accepted being the highest; Shri Bhagwan Dass did not file tender in response to the advertisement;
- C. that this Court had erred in holding the sale of the shop to the predecessor of private respondents to be bad in law – the sale was valid; the predecessor of the respondents had paid the entire sale consideration; the sale was confirmed in his favour and the sale certificate was issued; since the property was sold on leasehold basis, the lease deed and supplementary lease deed aforesaid were executed and registered and whereunder the predecessor of the private respondents became the owner of the shop from the date of confirmation of sale and issuance of sale certificate;
- D. that the issue of ownership stood concluded in the earlier proceedings instituted by the legal heirs of Shri Bhagwan

Dass, before the Rehabilitation Authorities, the writ petition in this Court and the appeal to the Supreme Court;

- E. that not only the question of validity of sale but also of ownership was involved in the said earlier proceedings – valid sale confirms both title and ownership rights in the purchaser – after the rejection of the challenge to the sale up to the Supreme Court, the predecessor of the private respondents became the owner of the shop;
- F. that the shop was an evacuee property and had always been treated and dealt as one; the legal heirs of Shri Bhagwan Dass also in the earlier proceedings had not taken the stand that the shop was not evacuee and had rather filed the revision petition under Sections 24 & 33 of the Displaced Persons Act by treating the shop to be an evacuee property;
- G. that the validity of the sale in favour of the predecessor of the private respondents having been decided in the earlier proceedings and the decision therein having

attained finality up to the Supreme Court, Sh. Ram Chander Aggarwal could not be permitted to canvass this issue again in the suit proceedings and was estopped from challenging the sale to and ownership of the predecessor of the private respondents.

- H. that an allottee of the custodian is not the tenant of the custodian and hence did not enjoy the protection from eviction under the Delhi Rent Control Act, 1958 particularly when Shri Bhagwan Dass was not a displaced person;
- I. the contention of Ram Chander Aggarwal that he or Shri Bhagwan Dass did not have notice or knowledge of the transfer of the property cannot be accepted;
- J. Ram Chander Aggarwal as legal heir of Shri Bhagwan Dass could not acquire any better rights than Shri Bhagwan Dass himself - as Shri Bhagwan Dass was not a tenant, Sh. Ram Chander Aggarwal could also not be considered as tenant.

Accordingly, the decree for possession in favour of the predecessor of the private respondents and against the legal heirs of Sh. Bhagwan Dass, passed by the Trial Court was restored.

12. A perusal of the revision petitions, seeking direction for disposal of which the writ petitions (against the dismissal whereof these appeals have been filed) shows:-

- a. the same to have been preferred under Section 24 of the Displaced Persons Act, claiming the relief of cancellation of sale in favour of predecessor of the private respondents on the grounds:-
 - i. of there being nothing on the government record to support public auction;
 - ii. of there being no record of deposit of earnest money by the predecessor of the private respondents;
 - iii. of there being no record of any tender having been submitted by predecessor of the private respondents;
 - iv. of there being no record of acceptance of the said tender;

- v. of the sale certificate being not registered;
- vi. of there being mistakes in the lease deed first registered and for correction whereof a supplementary lease deed was necessitated.

13. The Learned Single Judge dismissed the writ petitions with costs aforesaid holding that the appellants/writ petitioners though only claiming the relief of direction for disposal of Revision Petitions, had not made disclosure of all the earlier proceedings aforesaid. It was observed that, the averments made in the writ petitions concealed more than they disclosed; there were no clear and definite averments with regard to the earlier successive proceedings and decisions therein against the appellants/writ petitioners and the averments in the writ petitioner being vague.

14. The appellant/writ petitioner Mr. B. P. Aggarwal appearing in person has sought to canvass before us that considering the nature of the relief claimed in the writ petitions, there was sufficient disclosure. He has further argued that it is not disputed by the L&DO and MCD that the revision petitions, direction for disposal whereof was sought in the writ petitions, are still pending. It is further contended that the appellants/writ petitioners had nothing to gain from concealment/suppression for practicing which their

writ petitions have been dismissed without issuing directions for disposal of the revision petitions pending for long.

15. The counsels for L&DO and MCD state that owing to the transfer of the market where the shop is situated from L&DO to MCD, the revision petitions could not be disposed of.

16. We have however without entering into the controversy of suppression/concealment, enquired from Mr. B.P. Aggarwal, Adv. as to whether in the light of the judgment aforesaid of the Supreme Court, the revision petitions (for disposal whereof direction is sought) do not amount to 're-litigation' and as to whether the challenge made in the revision petitions is not barred on the principles of *res judicata* and constructive *res judicata*.

17. Mr. B.P. Aggarwal contends that the necessity for filing the revision petitions aforesaid arose when the entire records of the government relating to the shop in question were produced before this Court in RFA 250/1982 supra and from which it became clear that the sale certificate had been obtained by the predecessor of the private respondents by fraud, manipulation as no public auction was ever held as incorporated in the said sale certificate and no tender had been submitted. It is further

contended that the question of fraud, manipulation and fabrication of documents has neither been adjudicated nor decided in any proceedings even by the Supreme Court till date. It is yet further contended that the principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes engine of fraud in the hands of dishonest litigants. Reliance is sought to be placed on the judgment of this Court in RFA 250/1982 but which was set aside by the Supreme Court by contending that the findings of fraud therein have not been set aside by the Supreme Court. Mr. B.P. Aggarwal has also argued that the judgment aforesaid of the Supreme Court is a nullity having been obtained by fraud and misrepresentation of facts and a suit challenging the said decree has already been filed and is pending before the Civil Judge. It is also contended that the question of *res judicata* and constructive *res judicata* cannot be decided in a summary way without detailed examination of pleadings, issues, documents and judgments of previous and subsequent suits. Reliance is placed on ***Alka Gupta v. Narender Kumar Gupta*** AIR 2011 SC 9 and on ***Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*** (2008) 9 SCC 54 and on ***A.V. Papayya Sastry v. Government of A.P.*** AIR 2007 SC 1546.

18. Per contra, the private respondent no. 5 who is also an Advocate relies on *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra* (1990) 2 SCC 715 on principle of finality of litigation, on *Ramchandra Dagdu Sonavane v. Vithu Hira Mahar* (2009) 10 SCC 273 on *res judicata*, on *K.K. Modi v. K. N. Modi* (1998) 3 SCC 573 on re-litigation and on *M. Nagabhushana v. State of Karnataka* (2011) 3 SCC 408 again on finality of litigation.

19. We have on going through of the judgment aforesaid of the Supreme Court, between the same parties with respect to the same shop and entailing the same issue, no hesitation whatsoever in holding the revision petitions, directions for disposal whereof are sought in the present proceedings, to be a case of re-litigation, perhaps of the worst kind. The appellants/writ petitioners in the first round of litigation challenged the transfer of ownership of the shop by the department in favour of the predecessor of the private respondents, without any success. Though in the second round of litigation in which the private respondents were seeking to eject the appellants/writ petitioners from the property, the appellants/writ petitioners again challenged the title of the predecessor of the private respondents, and again without any success. Rather the Supreme Court held that the question

of title and ownership stood settled in the first round itself. This (i.e. the revision petitions seeking direction for disposal whereof these proceedings have been filed) is the third round on the same aspect. Even though we are in these appeals not concerned with the merits of the revision petitions preferred by the appellants/writ petitioners and direction for disposal whereof is sought but if we were to mechanically issue direction for disposal thereof, would encourage re-litigation in as much as an order of dismissal of the revision petitions would lead to a fresh round of litigation before the hierarchy of Courts.

20. Re-litigation is an abuse of the process of the Court and a party cannot be permitted to re-litigate the issue which has been tried and decided earlier against him. Re-litigation has, in ***K.K. Modi*** (supra), been held to be contrary to justice and public policy. The Supreme Court in ***T. Arindam v. T.V. Satyapal*** AIR 1977 SC 2421 and in ***Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I*** (2004) 9 SCC 512 has held that proceedings of which there is no possibility of success and/or which are deadwood and are doomed should be shot down at the earliest stage and ought not to be permitted to clog the resources of the Court and at the cost of other deserving matters requiring the attention of the Courts and should

not be allowed to be used as a device to harass. Similarly in ***Sardar Estates v. Atma Ram Properties Pvt. Ltd.*** (2009) 6 SCC 609 it was held that starting a second round of litigation on frivolous grounds is a flagrant abuse of the process of the Court and this process has become widespread and which the Courts cannot approve of, otherwise no judgment would ever attain finality.

21. A Coordinate Bench of this Court speaking through one of us (Acting Chief Justice) in ***A.K. Bhattacharya v. Govt. of NCT of Delhi*** MANU/DE/9115/2007 has held that even where re-agitation may or may not be barred as *res judicata* but if the same issue is sought to be re-agitated it also amounts to abuse of the process of the Court and the Court has the power to stop such proceedings summarily. We are thus not inclined to issue direction for disposal of revision petitions which are found to be by way of re-litigation and deem it appropriate to nip such abuse of process of the Court in the bud, at the threshold only.

22. The reason for the appellants/writ petitioners' endeavour to keep the challenge to the title of the private respondents to the shop alive is not difficult to fathom. The appellants/writ petitioners are in possession of the shop, unauthorizedly for the last nearly half a century. The shop is today a prime piece of real estate situated in the heart of Delhi. The appellants/writ

petitioners by so keeping the challenge alive intend to perpetuate their said unauthorized possession of the shop and for eviction wherefrom they have already suffered a decree.

23. The aforesaid facts would show that the grounds on which the revision petitions aforesaid (direction for disposal whereof is sought) have been preferred are the same as which have already been adjudicated up to the Supreme Court. The appellants/writ petitioners claim to have come to know of the complete facts upon production of the records in this Court during the pendency of RFA No. 250/1982 supra. It was for the appellants/writ petitioners to before the Supreme Court take such plea and to obtain leave from the Supreme Court to agitate the same. The same has not been done. The Supreme Court, upsetting the judgment of this Court in RFA 250/1982 has returned a categorical finding as to the title of the private respondents to the shop. The challenge thereto is now sought to be made by contending non-availability of records of submission of the tender by the predecessor of the private respondents and the processing thereof. The non-availability/disappearance of records from the government record cannot be a ground for this third round of litigation particularly when the Supreme Court in the judgement supra has unequivocally held the predecessor of

private respondents to be the owner of the shop property and the sale in his favour to be valid. The appellants/writ petitioners cannot be permitted to fight the first round contending the sale without notice to them as bad, the second round by contending the private respondents to have failed to have established their title and now the third round by contending that the records of the tender leading to the title do not exist.

24. Mr. B.P. Aggarwal at one time also faintly suggested that he was not party in the judgement supra of the Supreme Court. We however find that he appeared in the Supreme Court. Considering his relationship with Sh. Ram Chander Aggarwal and their interest being common, such pleas cannot be allowed.

25. We also concur with the reasons given by the learned Single Judge. The suppression/concealment has to be seen in the light of over fifty dockets before each Bench everyday. The reading thereof, before hearing, cannot be minute. It is the duty of litigants and Advocates to highlight the relevant aspects so as to be gauged easily; they cannot when confronted with the charge of suppression/concealment be heard to defend by showing reference to facts, of concealment of which they are charged, buried deep in the docket. In the facts of the present case it was incumbent on the

appellants/writ petitioners to highlight as to how their revision petitions challenging the title of predecessor of private respondents were maintainable inspite of the judgement supra of the Supreme Court holding him to be the owner. The same was not done.

26. The appeals as well as the writ petitions are thus found to be a case of abuse of process of this Court by re-litigation and are hereby dismissed. The learned Single Judge having already imposed costs, we refrain ourselves from imposing further costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

FEBRUARY 17, 2012

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