

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

Date of decision: 26th March, 2012

+ **LPA 229/2012**

% **SH. SATISH KAPOOR & ANR. Appellants**

Through: Ms. Geeta Luthra, Sr. Adv. with Mr.
A.C. Bhasin, Adv.

Versus

KM. ISHWARI ASSUDANI & ORS. Respondents

Through: Mr. Baldev Malik & Mr. Arjun
Malik, Adv. for UOI.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the order dated 15.02.2012 of the learned Single Judge dismissing W.P.(C) No.3756/2011 preferred by the appellants. The said writ petition was filed impugning the order dated 04.05.2011 of the District Judge exercising powers as an Appellate Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 dismissing the appeal preferred by the appellants against the order dated 20.08.2009 of the Estate Officer of the respondent No.3 Municipal Corporation of Delhi (MCD), of eviction of the appellants from premises bearing NO.M-4A, Block N, Malviya Nagar, New Delhi.

2. The aforesaid premises, in the year 1961 were let out by the predecessor of the respondents No.1&2 to the respondent No.3 MCD. The respondent No.3 MCD had in turn allowed the mother of the appellants who was employed with the respondent No.3 MCD, to occupy the said premises as her residence. The respondents No.1&2 as owners of the premises, vide Agreement dated 19.01.1982 agreed to sell the same to the mother of the appellants. However, no Sale Deed was executed in pursuance to the said Agreement to Sell. The mother of the appellants died on 24.07.1989. The appellants along with their sister in or about the year 1994 instituted a suit for specific performance of the said Agreement to Sell. The said suit was however dismissed as barred by limitation, vide judgment dated 02.05.1995. The appeal being RFA No.127/1996 preferred thereagainst was also dismissed on 06.03.1996. The said judgment has attained finality. The appellants however continued in possession of the premises.

3. The respondent No.3 MCD in or about the year 2006 initiated proceedings under the PP Act for eviction of the appellants from the said premises. As aforesaid, the Estate Officer passed an order of eviction and the statutory appeal preferred by the appellants has also been dismissed.

4. The appellants already stand dispossessed from the said premises in pursuance of the eviction order and the premises are lying sealed.

5. The learned Single Judge has in the order impugned before us observed / held that even premises taken on rent by the respondent No.3 MCD are public premises within the meaning of the PP Act; that the appellants are clearly the unauthorized occupants of the premises and have been rightly ordered to be evicted therefrom.

6. The counsel for the appellants has argued that no licence fee was being paid by the mother of the appellants to the respondent No.3 MCD from the date of entering into the agreement to purchase the property on 19.01.1982 and till her demise on 24.07.1989. It is thus contended that the premises could no longer be said to be public premises. However, the Estate Officer, in this regard, has in a detailed order observed that though the mother of the appellants was due to superannuate on 30.09.1994 but expired prior thereto on 24.07.1989; that as per the rules for allotment of government accommodation, the appellants as legal heirs of their mother could retain the government accommodation only upto 24.07.1991; that the appellant Satish Kapoor in his cross examination before the Estate Officer had admitted that the house rent admissible to government employees was being regularly deducted from the salary of his mother. The learned District Judge acting as the Appellate Authority has also in the order dated 04.05.2011 (supra) noted the said fact. The appellants thus cannot now be heard to contend that since the agreement dated 19.01.1982, no licence fee was being paid to the respondent No.3 MCD.

7. The counsel for the appellants has next contended that even though the appellants have been held to be not entitled to specific performance of the agreement dated 19.01.1982 for purchase of the property but are entitled to protect their possession under Section 53A of the Transfer of Property Act, 1882. The said argument also is without any factual basis. A perusal of the Agreement to Sell dated 19.01.1982 shows that in pursuance thereto and / or in part performance thereof, possession was not delivered to the appellants / their mother. The question of invoking Section 53A of the Transfer of Property Act (supra) thus does not arise. Clause 9 of the said

Agreement to Sell is as under:

“9. That the possession of the said property is with the MCD as tenant and it is the responsibility of the vendee to get the property vacated. The proprietary possession of the said property will be delivered by the vendor at the time of registration of the sale deed”.

8. The learned District Judge also in the order dated 04.05.2011 has found that the possession of the property was never delivered to the appellants or their mother as purchasers and respondent No.3 MCD being a tenant in the property, even the proprietary / symbolic possession was agreed to be given only at the time of the registration of the Sale Deed and which was never executed and the claim of the appellants to have the same executed also stands finally dismissed.

9. We may notice that even in the judgments in the suit for specific performance filed by appellants, it was held that possession of the premises was not delivered to applicants / their mother in part performance of the Agreement to Sell. The counsel for the appellants has argued that the observations to the said effect in the judgment dismissing the suit for specific performance and which judgment was affirmed by the Division Bench of this Court in appeal are misconceived since the plea of Section 53A (supra) is by way of a defence and not a sword. It is argued that the said pleas were not to be adjudicated in the suit for specific performance.

10. The aforesaid argument is also misconceived; the said observations in a validly constituted legal proceedings between the appellants and the respondents No.1&2 are binding and were relevant in adjudication of the claim for specific performance. The appellants have allowed the said

observations to attain finality and now cannot be allowed to reopen the same. The appellants have even otherwise been unable to show as to how in the face of an express agreement providing for delivery of proprietary / symbolic possession of the premises to the appellants / their mother, only at the time of registration of the Sale Deed, can the appellants urge to be in possession as agreement purchaser.

11. A mere agreement to purchase immovable property does not create any right in the property save the right to enforce the said agreement. This Court in ***Jiwan Das Vs. Narain Das*** AIR 1981 Delhi 291 has held that no right enures to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance to such decree is executed. Thus in law, the appellants have no right to remain in occupation or retain possession merely because of the Agreement to Sell in their favour. Recently the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana*** (2012) 1 SCC 656 has held that without registered Conveyance Deed, no title in immovable property can be accepted.

12. There is nothing also to show that the respondent No.3 MCD has at any point of time surrendered its tenancy rights in the premises. Moreover, the appellants / their predecessor having entered the possession of the premises by virtue of the employment of the predecessor of the appellants with the respondent No.3 MCD and with the liability to vacate the premises on cessation of such employment, cannot be heard to claim any other right. What we find is that the appellants were rank trespassers in the premises and no blemish can be found in the orders of the Estate Officer and the Appellate Authority and the writ petition filed by the appellants against the

said orders has been rightly dismissed.

13. We find no merit in the appeal which is dismissed. We refrain from imposing any costs on the appellants.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 26, 2012

‘gsr’