

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

+ **RFA No. 203/2006**

% **18th April, 2012**

M/S ANANT RAJ AGENCIES PVT. LTD. Appellant
Through : Mr. Neeraj Malhotra and Mr. Shourjyo
Mukherjee, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS. Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 23.5.2005 dismissing the suit on a preliminary issue that the jurisdiction of the Civil Court was barred under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (P.P. Act).

2. The facts of the case are that the appellant/plaintiff claims to have purchased the suit property No. 2-E, Jhandewalan Extension, New Delhi from

the erstwhile owner Sh. Balraj Virmani under a compromise decree in suit No. 601/1984. In para 13 of the plaint it was pleaded that defendant No.1/Delhi Development Authority (DDA) initiated proceedings before the Estate Officer under the provisions of the P.P. Act and defendant No.2/Estate Officer issued a show cause notice on 9.7.1991 calling upon the plaintiff as to why it should not be evicted from the suit premises.

3. Trial Court has held that the Civil Court does not have jurisdiction by making the observations as contained in paras 9 to 11 of the impugned judgment, and which read as under:-

“9. For the benefit of this case, I would like to refer to the relevant provisions of Section 10 and 15 of the P.P. Act which read as under :-

SECTION 10- FINALITY OF ORDERS-
Save as otherwise expressly provided in this Act every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

SECTION 15- BAR OF JURISDICTION –
No court shall have jurisdiction to entertain any suit or proceeding in respect of –

(a) the eviction of any person who in unauthorized occupation of any public premises, or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or

(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

(d) the arrears of rent payable under sub-section (1) of Section 7 of damages payable under sub-section (2), or interest payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of-

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

(ii) expenses of demolition under section 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.”

10. From perusal of provisions of Section 10 of the P.P. Act it is clear that the jurisdiction of civil courts is

barred from entertaining any suit filed against any order of the Estate Officer. The notice issued by the Estate Officer under the provisions of Section 4 of the P.P. Act is also an order of taking cognizance of the matter, whereby the defendant is required to show cause as to why an eviction order should not be passed by the Estate Officer in respect of the public premises. Once the unauthorized occupant of any public premises is issued notice under Section 4 of the P.P. Act for showing the cause and leading the evidence before the Estate Officer, he is required to show his cause and defence to the Estate Officer, but he can not come to the civil court for restraining the Estate Officer from proceeding against the unauthorized occupant in accordance with power conferred on him under the P.P. Act. The occupant in such cases has to appear before the Estate Officer and show cause before him that he is not an unauthorized occupant of the public premises. The plea that the subject property is not a public premises can also be agitated before the Estate Officer. The plaintiff being occupant of the public premises could satisfy the Estate Officer that he is not unauthorized occupant or that the subject property is not a public premises. He could avail opportunity to lead evidence in this respect but he was not entitled to come to the civil courts for restraining the Estate Officer from passing an order under his lawful authority as per the provisions of P.P. Act. P.P. Act itself provides for a remedy against an order passed by the Estate Officer and accordingly any aggrieved person can approach the Appellate Authority for assailing the orders passed by the Estate Officer as per the provisions contained in Sec. 9 of the P.P. Act.

11. Similarly, Section 15 of the PP Act provides that no court shall have the jurisdiction to entertain any suit or proceedings in respect of the eviction of any person who is unauthorized occupant of any property. Whether the suit property was a public premises or not, could have been agitated before the Estate Officer and the Estate

Officer was empowered to adjudicate upon the said question and even after passing of any eviction order by the Estate Officer, the plaintiff had liberty to approach the Appellant Authority by filing appeal as per the provisions of Sec. 9 of the P.P. Act. But the plaintiff had no right to approach the civil court against the show cause notice issued by the Estate Officer. The plaintiff had replied the notice given by the Estate officer but perhaps apprehending quick action on the part of the Estate officer, he rushed to the court by way of filing suit in order to remain in occupation of the premises without liability. In my considered opinion the plaintiff has abused the process of law by filing the present suit.”

4. The issue in the present case is now covered by a Division Bench judgment of this Court in the case of *Escorts Heart Institute & Research Centre Ltd. v. D.D.A & Anr.*, AIR 2008 Delhi 70. The Division Bench of this Court in the said judgment of *Escorts Heart Institute* (supra) has held that in view of the provisions of the P.P. Act, the Estate Officer, has the necessary jurisdiction and Civil Courts have no jurisdiction. The relevant observations in the case of *Escorts Heart Institute* (supra) are contained in paras 6 to 10 of the said judgment and which read as under:-

“6. The limited and the short question raised before us is whether eviction proceedings can be initiated by the respondent No. 1 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or in view of the decision in the Express Newspapers case (supra), the respondent No. 1 must file a civil suit for recovery of

possession. In *Express Newspapers case* (supra), the Supreme Court had observed as under:

“87. Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 where admittedly there is unauthorised construction by a lessee or by any other person on Government land which is public premises within the meaning of Section 2(e) and such person is in unauthorised occupation thereof.

The constitutional position of the Lieutenant-Governor : whether the Lieutenant Governor is the successor of the Chief Commissioner of Delhi.

88. One of the most crucial issues on which long and erudite arguments were advanced by learned Counsel for the parties, turned on the question as to whether the Lt. Governor was a successor of the Chief Commissioner of Delhi. Learned Counsel appearing for the petitioners contended that the Lt. Governor cannot usurp the functions of the Lesser i.e. the Union of India or the Chief Commissioner of Delhi in relation to the lease in question. It is urged that the Union Territory of Delhi which first became a Part 'C' State under the Constitution, was an entirely new constitutional entity and Therefore the office of the Chief Commissioner of Delhi ceased to exist. It is further urged that the Lt. Governor appointed by the President under Article 239(1) of the Constitution is an Administrator and he discharges such functions as are entrusted to him by the President of India and in the absence of a notification under

Article 239(1), the Lt. Governor cannot usurp the functions of the Union of India in relation to the properties of the Union. It is pointed out that there was no notification issued by the President of India in terms of Article 239(1) of the Constitution empowering the Lt. Governor to administer the properties of the Union in the Union Territory of Delhi.

7. Subsequently a five Judges Bench of the Supreme Court in *Ashoka Marketing Limited (supra)* examined the provisions of Public Premises Act, 1971 and held that the expression unauthorized occupation as used in the said Act includes a person who had occupied any public premises without lawful authority as well as those whose occupation was permissive at the inception but subsequently ceased to be so. The second part of the definition clause is inclusive in nature and also covers continuance of occupation by any person of the public premises after the grant or transfer made by any mode has expired or determined for any reasoning whatsoever. In paragraph 30, accordingly it was observed as under:

“.....The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2(g) of the Public Premises Act would, Therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law.”

8. Reference of the Supreme Court in Ashoka Marketing case (supra) was drawn to Express Newspapers case (supra) and it was clarified as under:

“32. Shri Ganguli has placed reliance on the decision of A.P. Sen, J. in Express Newspapers Pvt. Ltd. v. Union of India and has submitted that in that case the learned Judge has held that cases involving relationship between the Lesser and lessee fall outside the purview of the Public Premises Act. We have carefully perused the said decision and we are unable to agree with Shri Ganguli. In that case A.P. Sen, J. has observed that the new building had been constructed by the Express Newspapers Pvt. Ltd. after the grant of permission by the Lesser, and, Therefore, the Express Newspapers Pvt. Ltd. was not in unauthorised occupation of the same within the meaning of Section 2(g) of the Public Premises Act. It was also held by the learned Judge that the Express Building constructed by the Express Newspapers Ltd. with the sanction of Lesser on plots Nos. 9 and 10 demised on perpetual lease can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e) of the Public Premises Act, and Therefore, there was no question of the Lesser applying for eviction of the Express Newspapers Pvt. Ltd. under the provisions of the Public Premises Act. The aforesaid observations indicate that the learned Judge did not proceed on the basis tht cases involving relationship of Lesser and lessee fall outside the purview of the Public Premises Act. On the other hand the said observations show that the learned Judge has held that the provisions of the Public Premises Act could not be invoked in the facts of that case.”

9. A Division Bench of this Court in *Ambitious Gold Nib Manufacturing (P) Limited (supra)* after examining judgments in the cases of *Express Newspapers and Ashoka Marketing Limited (supra)* has held that proceedings before the Estate Officer are maintainable and cases like the present one would fall in the second part of the definition of the expression unauthorized occupation as defined in Section 2(g) of the Public Premises Act. The said decision being a judgment of a Coordinate Bench of two Judges is binding on us. We respectfully agree with the reasoning given and follow the said judgment to the extent it has been held that second part of Section 2(g) defining the expression unauthorized occupation for the purpose of Public Premises Act is applicable and recourse to civil proceedings for recovery of possession is not required. The said judgment cannot be ignored merely because a particular argument was not raised or addressed. We may, however, clarify that the question of jurisdiction of the Estate Officer to decide whether there was any breach of the grant/lease, whether there was valid and justified determination was not raised before us during the course of arguments and is not being determined and decided. We have specifically mentioned this aspect in the judgment as we find that the appellant in the grounds of appeal has referred to the decision of the Supreme Court in *Annamalai Club v. Government of Tamil Nadu*, (1997) 3 SCC 169 : AIR1997SC3650 .

10. Another contention raised by the appellant was that the building constructed on the land is not public premises under Section 2(c) of the Public Premises (Eviction for Unauthorised Occupants) Act, 1971 because building was never given on lease and has been constructed by the lessee. In this connection, learned Counsel for the respondent No. 1 had drawn our attention to Clause 15 in the perpetual lease deed, which stipulates that the lessee on determination of the

lease shall peacefully yield up the said land and the buildings thereon to the Lesser. In view of the said Clause, it cannot be said that the building constructed on the land cannot be regarded as the public premises.”

5. In view of the ratio of the Division Bench judgment of this Court in the case of *Escorts Heart Institute* (supra), and which I am bound to follow, I do not find any error in the judgment of the trial Court holding that the Civil Courts do not have jurisdiction. All issues which were raised in the suit with regard to disentitlement to evict the appellant from the suit premises will have to be raised before the Estate Officer in accordance with law.

6. The present appeal is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

APRIL 18, 2012

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