

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

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Reserved on: July 03, 2012
Pronounced on: July 13, 2012

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W.P.(C) 333/2012

MCD

..... Petitioner

Through: Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates

versus

HAR PRASAD AND ANR.

..... Respondents

Through: Mr. Ajay Kumar Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

Sunil Gaur, J.

1. In proceedings under *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, petitioner has lost before both the Forums on account of failure to controvert the respondent's stand that they had never carried out any unauthorised construction in Pit No. 6, Plot No. 289, Bagh Kare Khan, Delhi (*hence forth referred to as the 'subject site'*).

2. The findings returned by the Estate Officer in the order of 20th September, 2004 (Annexure P-4), are that respondents' are not in unauthorised occupation of the subject property and they had carried out necessary repairs just to maintain the subject site. Order (Annexure P-4) solely relies upon the deposition of the two witnesses of the respondents (*which had remained unchallenged*) and Patwari's Report of 27th February, 2007 to the effect that there was no superstructure on the second floor of the subject site. It stands noted in the Order (Annexure P-4) that the petitioner herein had not placed on record requisite documents despite sufficient opportunities given.

3. Aforesaid findings returned in the order (Annexure P-4) have been affirmed in appeal vide order of 31st May, 2010 (Annexure P-6). Since the impugned order (Annexure P-6) succinctly culls out the factual matrix of this case, therefore, the same is not being reproduced herein, for the reason that fervent plea made by petitioner's counsel at the hearing, is to permit the petitioner to lead the evidence afresh as due to connivance of the respondents with the officials of the petitioner, the available evidence clearly depicting unauthorised construction in the subject site, was not produced before the Estate Officer. This is of course controverted by learned counsel for the respondents who urges that the Patwari's Report of 27th February, 2007 relied upon by the authorities below clearly show that there was no unauthorised construction and so, this petition is without substance and merits rejection.

4. Upon hearing learned counsel for the parties and on perusal of the impugned judgment as well as the order of the Estate Officer (Annexure P-4) and the material on record, it transpires that solitary evidence of the petitioner's witness – Sardar Singh regarding the existence of the construction of two halls, three rooms, latrine, bathroom on the ground floor, five rooms, two latrine, bathroom, on the ground floor, five rooms, two latrine, two bathrooms, kitchen and one store on the first floor and walls on the second floor in the subject site is not disputed by the respondent in the Reply (Annexure P-2) to the *Show Cause Notice* (Annexure P-1) vide which it was conveyed to the respondent that the aforesaid construction is in violation of the terms and conditions of the *Damage Rules*, that is to say is 'unauthorised'.

5. Pertinently, the stand of the respondent in the Reply (Annexure P-2) was that the afore-noted construction was already there since

long. Strangely, the Estate Officer in its order (Annexure P-4) has ignored that the *Show Cause Notice* (Annexure P-1) which was preceded by an inspection of the subject site and without disputing existence of construction as shown in the *Show Cause Notice* (Annexure P-1), Estate Officer has relied upon a subsequent *Inspection Report* of 27th February, 2007 of the Patwari to record a finding that there was no super-structure on the second floor. It is nobody's case that there was any superstructure on the second floor of subject site. Infact, *Show Cause Notice* (Annexure P-1) discloses that there were walls on the second floor of the subject site. Another infirmity in the Estate Officer's order (Annexure P-4) is that it has proceeded merely on the basis that the respondent's evidence remained unrebutted. It is true that petitioner had led solitary evidence in the eviction proceedings but when the existence of the documents like the *Show Cause Notice* and the Reply thereto are not disputed, then where is the need to lead elaborate evidence in respect thereof ?

6. Though the impugned order is detailed one but, it is erroneous as it proceeds on the premise that the existing construction on the subject site at the time of its transfer is not known and when alleged unauthorised construction was done is also not known. Impugned order proceeds on the basis of admission of petitioner's official regarding respondent being not informed about the violation of a particular *Damage Rule*. To my mind, there is hardly any justification to negate the *Show Cause Notice* (Annexure P-1). Impugned order is rendered unsustainable as it is based upon the finding that the ground set up in the eviction petition is not substantiated, which is contrary to the record as there is deposition of petitioner's witness – Sardar Singh, which cannot be dubbed as unreliable on afore-noted irrelevant premise by the appellate forum.

7. Interestingly, when the respondents are not disputing the existence of the construction at the subject site in the Reply (Annexure P-2) to the *Show Cause Notice* (Annexure P-1), then where is the need to split the hairs to find fault in the *Show Cause Notice* which is duly based upon an inspection of the subject site and where is the justification to rely upon the subsequent Patwari's report of the year 2007, which is much later in point of time in relation to *Show Cause Notice* (Annexure P-2) of the year 1993? In any case, Patwari's report of the year 2007, relied upon by the Estate Officer as well as by the Appellate Authority is of no consequence as it is silent about the unauthorised construction on the ground and first floor of the subject site.

8. The fatal infirmity in the order impugned is that the solitary deposition of Sardar Singh on behalf of the petitioner has been discarded because he had not disclosed as to when the alleged unauthorised construction had taken place and had expressed ignorance about any inquiry being conducted by any official about the alleged unauthorised construction. The aforesaid reasoning adopted in the impugned order to discard the testimony of petitioner's witness – Sardar Singh does not commend to reason as the specious reasoning adopted in the impugned order is unacceptable because the *Show Cause Notice* (Annexure P-1) clearly spells out the extent of unauthorised construction at the subject site.

9. According to the respondents, the alleged unauthorised construction was already in existence when they had purchased the subject site. What is material is not when unauthorised construction had taken place but as to whether the unauthorised construction is compoundable or not. This material aspect has been ignored by the Estate Officer as well as by the Appellate Authority, which persuades

this Court to quash the order (Annexure P-4) of the Estate Officer as well as the impugned order and to remand this matter back to the Estate Officer to take a decision afresh, after giving one effective opportunity to the petitioner to produce the records and to lead evidence within a period of three months or so. Decision afresh be taken by the Estate Officer concerned with promptitude, that is to say, within a period of six months or so.

10. With directions as aforesaid, this petition is disposed of.

(SUNIL GAUR)
JUDGE

JULY 13, 2012
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