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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 15.10.2012

Judgment Delivered on: 12.12.2012

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WP(C) 8072/2011 & CM No. 18178/2011

FARID AHMED

..... Petitioner

Vs

THE CHIEF SETTLEMENT COMMISSIONER
(E.P. CELL) & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr S.H. Nizami, Advocate.

For the Respondents: Mr Arun Birbal, Advocate.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The present writ petition seeks restoration of the certain properties (the details of which are given hereinafter) and payment of rents/damage/license fee earned therefrom qua the said properties, which were acquired way back in the early part of 1950, under the provisions of Administration of Evacuee Property Ordinance No. 27 of 1949 (hereinafter referred to as 1949 Ordinance), on the ground that the said properties were evacuee properties.

1.1 The ownership qua these properties was claimed by one Munshi Inayat Ahmed. The properties were, however, acquired on the purported ground that Munshi Inayat Ahmed had transferred his properties in favour of his wife Hajra Bi.

1.2 Evidently, Hajra Bi had left for Pakistan in 1952-53, while her husband Munshi Inayat Ahmed, who was an Indian national, stayed in India.

1.3 The writ petitioner, who is the son-in-law of Munshi Inayat Ahmed, after two rounds in this court; the first one, by way of a writ petition and, the second, by way of a contempt petition – has still not been able to secure the properties, of which restoration is sought presently.

1.4 The captioned writ petition is the third round of litigation. More than half a century has passed in the resolution of the present dispute. The dispute has seen the entry of the third generation, in the litigation, pending before this court. The properties in issues are: (i) Property No. XV/10592 to 10602 and 10646 to 10652(old), 7905 to 7910(new); (ii) Property No. XV/4129-30(old), 3205-3207(new); and (iii) Property No. XV/4134-37(old) 3211 to 3214(new) at Dariba Pan, Paharganj, Ward No. XV, Delhi (hereinafter collectively referred to as the said properties).

2. Munshi Inayat Ahmed, in order to secure correction of the mistake, which resulted in the acquisition of his properties, moved an application under clause 16 of the 1949 Ordinance. The application was, however, rejected on the ground that the said properties were not owned by Munshi Inayat Ahmed. In the meanwhile, the 1949 Ordinance was codified into an Act of Parliament, which was called the Administration of Evacuees Act, 1950 (hereinafter referred to as the said Act). Clause 16 of the 1949 Ordinance was para materia with Section 16 of the said Act. The proviso to Section 16 (2)(b) of the Act, provided for a remedy to file a title suit where, an application for restoration of evacuee properties was rejected on the ground that they were not owned by the applicant.

2.1 Munshi Inayat Ahmed, having regard to the said provision of the Act, on 17.8.1964, filed a suit before the Sub-Judge, First Class, at Delhi. The

said title suit was numbered as, suit no. 258/1964 (and thereafter renumbered as suit no. 355/1973). In the said suit, the following issues were drawn up:

- “(i) Is the plaintiff the owner of the property in dispute?
- (ii) Has this court no jurisdiction to try this suit?
- (iii) Is the suit not maintainable in the present form?
- (iv) Is the suit within time?
 - (a) What is the effect of non-payment of costs of the previous suit by plaintiff?
 - (b) Whether the notification is illegal, invalid, inoperative, ineffectual, ultravires and without jurisdiction?
- (v) Relief?”

2.2 Each of these issues were decided in favour of the petitioner’s father-in-law (i.e. Munshi Inayat), more particularly, issue no. (i) and (iv)(b). Consequently, Munshi Inayat Ahmed was declared as the absolute owner of the said properties and the notification, declaring the said properties as evacuee properties, was held to be illegal and void. The suit was thus decreed on 10.02.1975, with cost in favour of Munshi Inayat Ahmed. While the suit was pending, on 04.12.1971, Munshi Inayat Ahmed had executed a Will in favour of the petitioner. The execution of the Will was followed with execution of a Codicil dated 10.12.1973.

3. The Union of India (UOI), filed an appeal against the said judgment and decree, on 29.7.1975. Pending the appeal, on 17.4.1977 Munshi Inayat Ahmed passed away. This resulted in the dismissal of the appeal of the UOI, on 25.1.1979, for failure to bring on record the legal representatives of Munshi Inayat Ahmed within the period of limitation.

4. In view of the fact that the judgment and decree dated 10.02.1975 had attained finality, the petitioner filed a probate case to obtain a Letter Of

Administration. The said probate case was numbered as: Probate (LA) 58/1980. By order dated 11.03.1981, Letters Of Administration, which were appended with the Will and the Codicil, were issued in favour of the petitioner.

5. It is the claim of the petitioner that one Sh. Chhabil Dass issued him a notice bearing no. SO/EP/XV/O/379 dated 20.04.1989, in response to which he submitted the relevant evidence. To be noted, the copy of the said notice is not on record.

5.1 The petitioner has averred that after inquiries were made in the matter, orders were reserved by the said officer. It is the case of the petitioner, since no decision was rendered in the matter, he for the first time, on 14.11.1994, approached this court by way of a writ petition being: WP(C) 4683/1994.

5.2 The said writ petition was disposed of by this court vide order dated 16.11.2004, with a direction to the Assistant Settlement Commissioner, or any other competent officer, to take a decision on the application filed by the petitioner pursuant to a decree passed by the civil court (to which I have already made a reference above) with regard to the petitioner's prayer for restoration of the said properties. I may only note that the learned Single Judge, while disposing of the aforementioned writ petition, has observed in paragraph 17 of his judgment that UOI had not filed any reply to the pleadings of the petitioner.

6. It is averred by the petitioner that he approached the concerned officials of the Land & Building Department/ the Custodian of Evacuee Properties, post the judgment of this court dated 16.11.2004. A reference is also made to the fact that, a notice was served upon the concerned authority, to which the petitioner received no reply. The petitioner claims that, in view of the aforesaid situation obtaining, the petitioner filed a contempt

petition being: Cont.Case No. 377/2006.

6.1 The said contempt petition was disposed of by this court vide order dated 15.11.2010, with a direction to the petitioner to make a representation to the Assistant Settlement Commissioner, Land & Building Department within a period of three (3) weeks. The Assistant Settlement Commissioner was directed to give a personal hearing to the petitioner herein and dispose of the representation by a speaking order, within three months of the representation being filed by the petitioner.

6.2 It is in this background that a representation was made which was disposed of by the Assistant Settlement Commissioner by order dated 3.06.2011, which is impugned in the present writ petition.

7. It is in the context of the aforesaid facts, that the learned counsel for the petitioner submitted that the impugned order deserved to be set aside and the relief prayed for, be granted for the reason: that despite a judgment and decree obtained by the petitioner's predecessor-in-interest, way back on 10.02.1975, the respondents have failed to restore the properties to the rightful person, i.e., the petitioner herein.

7.1 The learned counsel submitted that there is no dispute with regard to the genuineness of the decree and the order of this court dated 11.03.1981, whereby the Letter Of Administration was issued to the petitioner. It was submitted that, if that be so, then merely because the respondents are not able to locate their official record, cannot be the basis of denying, to the petitioner, the fruits of the judgment and decree.

8. On the other hand, learned counsel for the respondent, Mr Arun Birbal, largely relied upon the observations made in the impugned order to defend the stand taken by the respondents. It was submitted that the respondents were unable to find in their records, in particular, the notice

dated 20.04.1989 purportedly issued to the petitioner, by Sh. Chhabil Dass, Assistant Settlement Officer (EP).

8.1 In any event, since the petitioner is neither able to place on record the application filed by the said officer nor able to explain the delay of eight (8) years between the date of obtaining the Letter Of Administration in March, 1981, and the date when he approached the said officer in 1989 or, the further delay of five (5) years in moving this court by way of a writ petition in 1984; should by itself be a good enough ground to reject the writ petition, as held in the impugned order, on the ground of gross delay and laches.

8.2 Mr Birbal submitted that several opportunities were given to the petitioner, as is evident on reading of the impugned order, to place on record the said letter. In this regard particular emphasis was placed on the proceedings held on 08.03.2011 before the Assistant Settlement Commissioner (who passed the impugned order) when the petitioner was directed to produce the following documents:

- (i) application filed by the petitioner before the departmental authority, after the order of probate;
- (ii) application filed by the petitioner in the year 1989, as alleged, and a copy of letter dated 20.04.1989; and
- (iii) a copy of sale deed executed in favour of the predecessor-in-interest of the applicant.

8.3 Mr. Birbal submitted that in the absence of the aforementioned documents, no relief can be granted to the petitioner.

9. I have heard the learned counsels for the parties. What is not disputed by the respondents in the present case; a fact which is evident even on reading of the impugned order, is the following:

9.1 Munshi Inayat Ahmed had obtained a judgment and decree on

10.02.1975 declaring him to be the absolute owner of said properties, as also a declaration that the notification issued qua the said properties, declaring them as evacuee properties, was illegal and void.

9.2 The appeal of the UOI was, admittedly, dismissed on 25.1.1979. There is no dispute nor has there been any challenge laid to the issuance of Letter Of Administration in favour of the petitioner, on 11.3.1981. This fact is brought out in the following observations made in the impugned order: ***"however, the departmental representative has not laid any challenge to the events leading up to grant of letters of administration dated 11.03.1981"***.

9.3 What has thereafter persuaded the Assistant Settlement Commissioner, in passing the impugned order, are the following aspects of the matter:

- (i) That there is, with the respondents, no record available of the notice bearing no. SO/EP/XV/O/379.
- (ii) The petitioner has not been able to bring on record the application that he apparently filed with the respondents in 1989. The legal notice dated 08.08.1985, which was brought on record at the stage of hearing before him, was not adverted to in the writ petition no. 4683/1994 and the contempt case 377/2006.
- (iii) Not only the facts stated in the legal notice were at variance with what was stated in the writ petition and the contempt petition, but also the originals of the said documents were not produced. The copies of the AD cards filed, did not bear any postal stamps.
- (iv) There was a delay of more than thirteen (13) years, which included a delay of eight (8) years between the time the petitioner obtained the Letter Of Administration and filed an application before the Assistant Settlement

Commissioner and thereafter delay of another five (5) years in moving the court. In effect, the delay to which reference was made by the respondents, is between March, 1981 and 1994 when, the petitioner first approached this court.

10. In my view, none of these reasons ought to have come in the way of the petitioner being denied the fruits of the judgment and decree passed in favour of his predecessor-in-interest on 10.02.1975, if there is no dispute with regard to the genuineness of the said judgment and decree, and thereafter, in the petitioner obtaining the Letter Of Administration qua the very same properties.

10.1 The fact that the petitioner avers that he made an application, on which notice was issued by the Assistant Settlement Commissioner, in one sense, should shift the onus on to the respondents for the reason that the respondents, while denying the non-availability of record, have not denied that there was no officer by the name of Sh. Chhabil Dass, who was dealing with matters concerning the evacuee properties. If the record is old for the respondents, it is so for the petitioner as well.

10.2 In my opinion, the filing of an application with Assistant Settlement Commissioner is inconsequential, in view of the fact that ordinarily once a court of competent jurisdiction has declared the notification (whereby the properties in issue were declared evacuee properties) as illegal and void, the respondents have no right in law to retain possession of the said properties. The State cannot behave like a common adversary, by retaining possession of properties which, pursuant to the judgment and decree of a competent court, ought to have been automatically restored, if not to the petitioner's predecessor-in-interest, Munshi Inayat Ahmed, but certainly to the petitioner. This is specially so, in the circumstances that there is no cavil

raised even qua the genuineness of the Letter Of Administration obtained by the petitioner.

11. The respondents' stand that the petitioner has been negligent in not approaching the court for a period of thirteen (13) years and hence his representation for restoration of the properties was barred on the ground of delay and laches, is also untenable for the reasons that, no provision has been referred to in the impugned order which could interdict the right of petitioner in securing the benefits of the judgment and decree of 10.02.1975.

11.1 As a matter of fact, this aspect was not even raised by the respondents, when writ petition no. 4683/1994 was disposed of by this court, on 16.11.2004. As noticed by me above, the respondents evidently did not file a response to the said writ petition. The averments made in the said writ petition, with regard to filing of an application and the issue of notice by the respondents on 20.04.1989, in that sense, stood admitted by virtue of the fact that, there was no rebuttal made of the averments made, on the record of the court. Even in the response filed to the contempt petition, no such ground of unavailability of record or the non-filing of application and notice dated 20.04.1989, is taken by the respondents. This stand, for the first time, is reflected, in the impugned order.

11.2 I am of the view that, the fact that the records are stolen from the custody of the respondents, as contended in paragraph 11 of their affidavit, cannot prejudice the case of the petitioner. Obviously, if the records have been stolen, it is quite possible that a copy of the notice dated 20.04.1989, issued by Chhabil Dass, the then Assistant Settlement Officer, formed part of the said stolen record.

12. In so far as observations are made in the impugned order qua the absence of reference to legal notice dated 8.8.1985, and that the stand taken

therein by the petitioner, was at variance to the stand in the writ petition and the contempt, is not, quite correct.

12.1 I have perused the legal notice dated 8.8.1985. The notice is broadly on the same pattern as the case set up by the petitioner in the writ petition filed in this court in the first round, i.e., WP(C) 4683/1994. The fact that, the petitioner has only produced photocopies of the legal notice and not the original cannot be held against him, as in any event, if the legal notice was issued by the petitioner the original would be available in the record. I find, alongwith the rejoinder, the petitioner has appended a copy of the legal notice dated 8.8.1985 alongwith copies of several “visitors passes” as well as, the AD cards, with an attempt to show dispatch of various correspondence. Contrary to what is held in the impugned order, on the photocopies, I do find the marks pertaining to the seal of the postal department. There is no sur-rejoinder filed by the respondents.

12.2 It is quite evident, on reading of the counter affidavit of the respondents, that the record of the case is not available with them. This aspect is, however, not adverted to in the impugned order; quite cleverly though. The manner in which it has been portrayed though is: that the notice dated 20.4.1989, to which a reference has been made, is not available in the record, because it was never filed, and not that, its record is stolen. The FIR, as per the respondents own affidavit, with regard to the record being stolen, was filed in 2003. One would have expected that the impugned order, which was passed on 03.06.2011, would have at least referred to this aspect of the matter. The attempt has been to lay the blame on the door of the petitioner, and thereby, create suspicion and prejudice qua the petitioner.

12.3 For the foregoing reasons, I am unimpressed by the objection taken by

the respondents on the ground of delay and laches, as the records which they themselves admit, is lost.

13. Having regard to the discussions above, I am of the view that the properties in issue will have to be restored to the petitioner. It is ordered accordingly.

14. In so far as relief for rent/damage/licence fee is concerned, I am of the opinion that, it cannot be granted in these proceedings as it would involve both an element of accounting and evidence to establish the said claim. The petitioner will, however, be free to take recourse to an appropriate remedy in accordance with law.

15. Therefore, as directed, the needful will be done within eight weeks from today. The writ petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

DECEMBER 12, 2012
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