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

Reserved on: December 17, 2012
Pronounced on: January 04, 2013

+ (1) W.P. (C) No.1215/2000

M/S. DELHI TRANSPORT SERVICE PRIVATE LIMITED ..... Petitioner

Through: Mr.Vishwa Bhushan Arya and Mr.Vasudeva Arya, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Ravinder Aggarwal, Central Government Standing Counsel

AND

+ (2) W.P. (C) No. 1556/2000

RAJINDER NATH ..... Petitioner

Through: Mr.S.K.Chaudhary, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr.Ravinder Aggarwal, Central Government Standing Counsel

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

1. The commonality in the above captioned two writ petitions is that both the writ petitioners have suffered eviction orders and to

challenge the eviction of petitioners, they have questioned the title of respondent. It is in this context, these two writ petitions are being disposed of by this common judgment.

2. Petitioner – *Delhi Transport Service Pvt. Ltd.* (hereinafter referred to as the DTS) claims to be in authorised possession of 517 sq.yds. of land at I-Point Junction of Mandir Marg & Panchkuian Road, Delhi, (*hereinafter referred to as the subject premises*), by virtue of Lease Deeds of the year 1957 and 1961 respectively, said to be executed by one Mahant Ram Dass in its favour, whereas petitioner – *Rajinder Nath* claims to be a tenant of Mahant of *Udasin Ashram* in 26 sq.yds. of the subject premises.

3. The basic stand of petitioner – *DTS* as well as of petitioner – *Rajinder Nath* in the above captioned writ petitions is that ownership of the subject land does not vest with the first respondent as Notification of 21st December 2011, relied upon by contesting respondent, though not proved, does not include the subject land and so, the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* (*henceforth referred to as Public Premises Act)* has been illegally invoked as subject land/premises does not come within the ambit of *'Public Premises'* as defined under the *Public Premises Act*.

4. On behalf of petitioner – *DTS*, it was contended that there is no document on record to show that subject land belongs to respondent – UOI (*referred to as contesting respondent*) and the document of 9th September, 1970, to show re-entry upon the subject land by contesting respondent was never produced before

the Estate Officer and the same has been placed on record for the first time before this Court in the year 2011. According to learned counsel for petitioner – *DTS*, mere sketch plan has been relied upon in the impugned order to justify ownership of contesting respondent on the subject land, which is highly insufficient to bring the subject land within the ambit of *Public Premises Act.*

5. The grievance of petitioner – *DTS* is that the Estate Officer as well as the Appellate Forum has relied upon contesting respondent's incomplete evidence i.e., of *Mr. C.S. Shastri*, and has ignored two Lease Deeds in favour of petitioner – *DTS*. Another grievance of petitioner – *DTS* is that although numerous opportunities were granted to contesting respondent to lead evidence but still contesting respondent did not complete its evidence and in the meanwhile, petitioner – *DTS* was proceeded ex-parte and impugned eviction order was passed. According to the petitioner – *DTS*, the subject land was handed over to *Sunni – Majlis – e – Aukaf* for graveyard and the same could not be re-entered.

6. To contest the damages claimed, it was vehemently urged by learned counsel for petitioner - *DTS* that claim for damages with effect from the year 1979 till March, 1985, is beyond period of three years from the date of issuance of Notice of 21st March, 1992 under Section 7 of *Public Premises Act* and is thus barred by time. It was pointed out by learned counsel for petitioner – *DTS* that *Public Premises Act* mandates the Estate Officer to conduct an inquiry to assess the rate and quantum of damages and no such

inquiry was conducted by Estate Officer and so, the claim for damages must fail.

7. Alleging violation of *principles of natural justice*, it was emphatically urged by learned counsel for petitioner – *DTS* that even after proceeding ex-parte, if a party subsequently appears then, the said party can join the proceedings even lateron but in the instant matter, learned counsel for petitioner – *DTS* had appeared before Estate Officer on 29th November, 1999 but his presence was not marked by the Estate Officer and without affording opportunity of hearing to petitioner's counsel, impugned eviction order has been passed. In support of aforesaid submissions, reliance was placed upon Security Pass of 29th November, 1999 and affidavit of petitioner's counsel which has been allegedly ignored by the Estate Officer as well as by the Appellate Forum.

8. The next grievance of petitioner – *DTS* is that on 29th October, 1998 an application was filed before the Estate Officer for supplying copies of documents on which contesting respondent was relying and the said application was allowed but not a single document was supplied to petitioner – *DTS* and this blatant violation of *principles of natural justice* has been totally ignored by the Estate Officer as well as by the Appellate Forum. Thus, it was contended on behalf of petitioner – *DTS* that eviction order as well as order imposing damages and the impugned order are unsustainable and is thus liable to be quashed.

9. According to learned counsel for contesting respondent, the entire emphasis of petitioner – *DTS* of failure to prove ownership

in respect of subject land, apart from being factually incorrect, is based upon incorrect interpretation of Section 4 (2)(b)(ii) of *Public Premises Act* which places onus of leading evidence solely upon the occupant. To assert so, reliance was placed by learned counsel for contesting respondent, upon a Division Bench decision of this Court in *Union of India vs. S.M. Aggarwal and ors,* 1995 II AD (Delhi) 293. It is pointed out by respondent's counsel that despite opportunity given, no evidence was led by petitioner – *DTS* and so, it cannot allege violation of principle of natural justice.

10. Reliance was placed by learned counsel for contesting respondent upon decision in CW No.591/1992 titled as *Harjit Singh vs. Estate Officer,* rendered on 1st May, 2003 to assert that unless there is some glaring impropriety or a grave error in the decision making process, a writ court does not interfere with the findings recorded by the authorities below and more so, in the instant case where it was never urged on behalf of petitioners that contesting respondent was not the owner of the subject land and so, this contention cannot be raised for the first time before this Court to dislodge concurrent findings of fact against the petitioners. Attention of this Court was drawn by respondent's counsel to Estate Officer's order of 4th January, 1982 under Section 7 of *Public Premises Act* to point out that it contains admission by petitioner – *DTS* that subject land was Government land, which was re-entered in September, 1970 due to breaches and the testimony of respondent's witness *Mr. Shastri* remains unrebutted. It was also pointed out by respondent's counsel that according to

petitioners, subject land was leased out to *Sunni – Majlis – e – Aukaf,* who in turn had sublet it to Mahant of *Udasin Ashram,* who had inducted both the petitioners as tenant, which is implicit admission of subject land being Government land.

11. Much emphasis was laid by respondent's counsel upon petitioner – *DTS* paying damages in respect of subject land during the period from September, 1970 till March, 1979 which implies that petitioner – *DTS* was occupying the Government land and so, petitioner – *DTS* cannot now turn around to allege that the subject land is not Government land. In this regard, reliance was placed by respondent's counsel upon the decision in *Smt.Aisha Jalal vs. Lt. Governor and others,* 104 (2003) DLT 398 to repel petitioners' stand of subject land being not Government land. Contesting respondent's counsel had painstakingly pointed out that the very fact of petitioners seeking regularisation of subject premises amounts to unequivocal admission of ownership of subject land being that of the contesting respondent.

12. During the course of hearing, it was refuted by contesting respondent's counsel that the subject land under occupation of petitioner – *DTS* is 1240 sq. yds. However, as per Estate Officer's *Inspection Report*, it is 1507 sq.yds. It was also repelled by contesting respondent's counsel that the impugned eviction is based upon *show cause notice* of 26th March, 1979 and it was pointed out that basis of the eviction order against petitioner – *DTS* is the *show cause notice* of March, 1986. Regarding quashing of eviction proceedings against Mahant of *Udasin Ashram,* the stand

of contesting respondent is that it was not quashed on merits. Asserting that petitioner – *DTS* is a rank trespasser, reliance was placed upon the decision in *Shri Jafar Saddique and others, Vakil Ahamad and Liaqat Ali vs. Delhi Development Authority and another,* 105 (2003) DLT 263 by respondent's counsel to contend that petitioner – *DTS* or the like, has no locus to challenge the re-entry order and so it is not entitled to any protection under the *Public Premises Act*.

13. Maintaining that there is no violation of *principles of natural justice*, it was pointed out by learned counsel for contesting respondent that in any event, inspection of documents sought by petitioner – *DTS* was allowed and the said inspection was carried out in November, 1999 and so, petitioner – *DTS* suffers no prejudice. Reliance was placed upon the decision in *Band Box Pvt. Ltd. Vs. Estate Officer and another,* 190 (2012) DLT 81 by contesting respondent's counsel to contend that it is settled propostion of law that prejudice must be proved and not presumed. It was asserted by contesting respondent's counsel that petitioner – *DTS* had suffered no prejudice as due opportunity to cross-examine respondent's witness was afforded and non-supply of documents had caused no prejudice to petitioners. Regarding claim for damages being not time barred, learned counsel for contesting respondent had placed reliance upon the decisions in *Nandram and others vs. Union of India and others,* 87 (2000) DLT 234 and *Inderjeet Singh vs. NDMC,* 103 (2003) DLT 470 to assert that the

law of limitation does not apply to special statutes like the *Public Premises Act*.

14. Regarding claim of petitioner – *DTS* to seek benefit under *Gadgil Assurance Scheme,* it is pointed out by learned counsel for contesting respondent that the benefit under *Gadgil Assurance Scheme* cannot be availed of, by commercial squatters in view of the dictum of Division Bench of this Court in *Randhir Kumar Sharma vs. Union of India,* 158 (2009) DLT 225 and *Hardas Singh and another vs. Union of India,* 180 (2011*) DLT 68.*

15. Petitioner – *Rajinder Nath,* claiming to be in possession of 26 sq.yds. of land at *I-Point, Junction of Mandir Marg and Panchkuian Road, New Delhi,* since th*e year 1962 as tenant of* Mahant Ram Dass of *Udasin Temple* seeks benefit under *Gadgil Assurance Scheme* as a refugee from West Pakistan. It is case of petitioner – *Rajinder Nath* that he is selling tea from the afore-noted subject land/premises and he had never received any notice under Section 4 of *Public Premises Act*, although he had received notices under Section 7 of the *Public Premises Act* claiming damages for the year 1975 – 1976, again in the year 1978 and the said damages were paid by petitioner – *Rajinder Nath* under the impression that the amount claimed is rent. When in the year 1985 petitioner-*Rajinder Nath* had received a notice to pay damages at the enhanced rate, he had sought legal advise and had purportedly come to know that the subject land/premises was a graveyard and contesting respondent was not its owner. In March, 2000 when

petitioner – *Rajinder Nath* had allegedly learnt that contesting respondent had come to demolish the adjoining premises of petitioner – DTS, then the instant writ petition was filed.

16. On behalf of petitioner-*Rajinder Nath*, it was asserted by learned counsel that the subject land being part of the graveyard cannot be re-entered and the re-entry order was unilaterally passed in the year 1971 without notice. It was maintained on behalf of petitioner – *Rajinder Nath* that the subject land was not in possession of *Wakf* and petitioner – *Rajinder Nath* had perfected his title against the *Wakf* by adverse possession and so, the *Wakf* could not have removed him from the subject land. Thus, quashing of impugned eviction order as well as order imposing damages is sought by learned counsel for petitioner – *Rajinder Nath* while relying upon decisions in *Surinder Singh vs. Delhi Development Authority,* 31 (1987) DLT 402; *Gulam Ali Saha and others vs. Sultan Khan and another,* AIR 1967 Orissa 55; *Union of India vs. M/s. I.S. Goel & Co. & others,* 45(1991) DLT 277; *Motishah and others vs. Abdul Gaffar Khan,* AIR 1956 Nagpur 38; *Abdul Ghafoor vs. Rahmat Ali and others,* AIR 1930 Oudh 245; *Beli Ram & Brothers and others vs. Chaudri Mohammad Afzal and others,* AIR (35) 1948 Privy Council 168; *Asna Bibi and others vs. Jaigunnissa Bibi,* (1917) Indian Cases 887; *Anamallai Club vs. Government of T.N. and others,* (1997) 3 SCC 169; *State of Kerala and others vs. V.R.Kalliyanikutty and another,* AIR 1999 SC 1305; *Shangrila Food Products Ltd. and another vs. Life Insurance Corporation of India and another,* AIR 1996 SC 2410.

17. Counsel for contesting respondent resists the writ petition by Petitioner – *Rajinder Nath* while adopting its stand as taken in petitioner – *DTS's* writ petition, which already stands noted hereinabove. It was refuted by contesting respondent's counsel that petitioner – *Rajinder Nath* was unaware of the eviction order passed more than two decades ago as the record reveals that petitioner – *Rajinder Nath* had appeared in the eviction proceedings and had admitted his occupation on the subject land. In this regard, attention of this Court was drawn by learned counsel for contesting respondent to Estate Officer's order of 22nd August, 1978 in proceedings under Section 7 of *Public Premises Act* and it was asserted that petitioner – *Rajinder Nath* had already paid damages on account of his unauthorised possession and since possession of Mahant of *Udasin Ashram* was unauthorised, so, petitioner – *Rajinder Nath* cannot be on a better footing.

18. It is maintained by learned counsel for contesting respondent that petitioner – *Rajinder Nath* having suffered eviction order, cannot claim to be in adverse possession of subject land and since eviction order of 23rd September, 1976, had attained finality and so, there is no bar to enforce it, as law of limitation does not apply to special statutes like *Public Premises Act*.

19. After in-depth analysis of the submissions advanced by both the sides, impugned order, the record and the decisions cited, it becomes quite evident that the decisions in *Abdul Ghafoor vs. Rahmat Ali and others,* AIR 1930 Oudh 245; *Beli Ram & Brothers and others vs. Chaudri Mohammad Afzal and others,* AIR (35)

1948 Privy Council 168; *Motishah and others vs. Abdul Gaffar Khan,* AIR 1956 Nagpur 38; *Gulam Ali Saha and others vs. Sultan Khan and another,* AIR 1967 Orissa 55; *Union of India vs. M/s. I.S. Goel & Co. & others,* 45(1991) DLT 277; relied upon by learned counsel for petitioners to question the title of respondent to the subject premises are of no avail because petitioners are the sub-lessee of Mahant, who was Lessee in the subject premises and the lease in favour of said Mahant stood determined by the first respondent way back in the year 1970. Such a view is being taken in view of the dictum of a Division Bench of this Court in LPA No.965/2011, *Vijay Rehal vs. Delhi Development Authority,* rendered on 21st November, 2011, which is as under:-

> *"We entertain serious doubts as to the locus of the appellant, as a tenant of the perpetual lessee and with whom the superior lessor does not have any privity, to challenge the order of eviction."*

20. It is a matter of record that possession of Mahant of *Udasin Ashram* over the area of 2264.35 sq. meters in the subject land has been regularised on 18th October, 2000. But this by itself does not give any right to the sub-lessee to challenge the title of the Lessor in the subject land. It is so said because not only petitioner – *DTS* has paid damages in respect of subject land to the contesting respondent from September, 1970 till March, 1979 but even petitioner – *Rajinder Nath* has paid damages for the year 1975-76 and 1978 to first respondent. Meaning thereby, impliedly the title

of first respondent in the subject premises was recognized by the petitioners. So, petitioners have no locus as a sub-lessee to challenge first respondent's re-entry in the subject premises in the year 1970.

21. Plea of petitioner – *Rajinder Nath* of having paid the damages under the mistaken impression of being the rent cannot be accepted on the face of it as stand of petitioner – *Rajinder Nath* is that he had been paying rent to Mahant of *Udasin Ashram*. In such a situation, there is no question of petitioner – *Rajinder Nath* paying damages by mistaking it to be the payment of rent.

22. In view of the aforesaid, plea of petitioner – *Rajinder Nath* of being in adverse possession of the subject land does not cut any ice and is outrightly rejected. Petitioners cannot even claim benefit under the *Gadgil Assurance Scheme* as the said scheme is not for the benefit of commercial squatters like petitioners. It has been so ruled by two different Division Benches of this Court in *Randhir Kumar Sharma vs. Union of India,* 158 (2009) DLT 225 and *Hardas Singh and another vs. Union of India,* 180 (2011) DLT 68.

23. In the aforesaid view of this matter, petitioners cannot assail their impugned eviction from the subject land by questioning the title of respondent in the subject land.

24. In *Band Box Pvt. Ltd. Vs. Estate Officer and another,* 190 (2012) DLT 81, it has been declared that prejudice must be proved and it cannot be presumed even in cases where procedural requirements are not being complied with.

25. Regarding alleged violation of *principles of natural justice,* all that is required to be said in case of petitioner - *DTS* is that respondent's witness was cross-examined in detail on behalf of petitioner - *DTS* on four occasions and when petitioner –*DTS* had not appeared for further cross-examination of respondent's witness, there was no option except to proceed ex-parte against petitioner - *DTS* and the deposition of respondent's witness stood automatically concluded. So, there is no question of relying upon incomplete evidence of respondent's witness. Application of petitioner - *DTS* for recalling of ex-parte order is silent about non-marking of presence of counsel by Estate Officer when said petitioner was set ex-parte. A bare perusal of this application reveals that it does not give any ground for recalling of ex-parte order. Thus, plea of counsel for petitioner - *DTS* of having appeared before the Estate Officer on 29th November, 1999 and reliance placed by him upon his own affidavit and the security gate pass is of no avail because on this ground, recalling of ex-parte order was not sought by him. It is so evident from application of petitioner - *DTS* seeking recall of ex-parte order of 29th November, 1999. Moreover, it is not shown as to what prejudice has been caused to petitioner and on what further aspect, respondent's witness was to further cross-examined.

26. As regards non supply of copy of documents to counsel for petitioner - *DTS* is concerned, it is not shown as to how this petitioner had suffered any prejudice, especially when counsel for

petitioner - *DTS* was permitted to inspect the record and infact inspection of record was done by counsel for petitioner - *DTS*.

27. A vain attempt was made by learned by counsel for petitioner - *DTS* to dispute the area of subject land under its occupation. A perusal of contesting respondent's additional affidavit of 4th November, 2011 reveals that upon inspection of the subject land, it was found that petitioner - *DTS* was in possession of area of 1240 sq. yards of subject land and the area in possession of petitioner – *Rajinder Nath* was found to be 9.5 sq.yds. Aforesaid Inspection Report remains unimpeachable.

28. It is thus quite evident that petitioner - *DTS* cannot complain of violation of *principles of natural justice* especially when it is not pointed out as to what evidence was to be led by petitioner - *DTS* and what prejudice petitioner - *DTS* has suffered and as to why the deposition of respondent's witness should be excluded from consideration. Thus, in the considered opinion of this Court, there is no valid justification for petitioner - *DTS* to challenge its eviction from the subject land.

29. Even petitioner – *Rajinder Nath* cannot be heard to say that he was blissfully unaware of eviction order because petitioner – *Rajinder Nath* had at one time appeared in the eviction proceedings and has even paid damages for the occupation of the subject land in the year 1978 i.e. after passing of eviction order in the year 1976. Simply because the eviction order passed against petitioner – *Rajinder Nath* could not be implemented, this by itself does not give any right to petitioner –*Rajinder Nath* to perfect his title in the

subject land on the plea of adverse possession. Moreover, petitioners by filing separate writ petitions in the year 2001 have sought a mandamus to first respondent to regularise their possession over the subject land by claiming parity with Udasin Ashram.

30. In the aforesaid view of this matter, this Court finds no palpable error in the impugned eviction of petitioners from the subject premises. Since the determination of damages was not preceded by an inquiry, therefore on account of this material lacunae, the claim of contesting respondent to the damages claimed is rendered unsustainable. It is the mandate of Rule 8 of *The Public Premises (Eviction of Unauthorised Occupants) Rules, 1971* that the determination of damages in proceedings under the *Public Premises Act* has to be done by conducting an inquiry. Such a view is being taken because assessment of damages has not been made by respondent in terms of Rule 8 of *The Public Premises (Eviction of Unauthorised Occupants) Rules, 1971.*

31. The plea of limitation to recover the damages is left open to be considered by Estate Officer in re-determining the damages in the light of the decisions in *State of Kerala and others vs. V.R.Kalliyanikutty and another,* AIR 1999 SC 1305 and *Nandram and others vs. Union of India and others,* 87 (2000) DLT 234; *Inderjeet Singh vs. NDMC,* 103 (2003) DLT 470, after affording of an opportunity of hearing to petitioners in proceedings under Section 7 of the *Public Premises Act.* Re-determination of the damages has to be done by Estate Officer with promptitude and

strictly in terms of Rule 8 of *The Public Premises (Eviction of Unauthorised Occupants) Rules, 1971* by passing a well reasoned order.

32. While maintaining the eviction order passed against petitioners, order imposing damages is hereby quashed.

33. It is made clear that claim of petitioners for regularisation of their possession on the subject land is not being examined in these writ petitions challenging the eviction order passed under the *Public Premises Act* and the claim for regularisation would be examined in the subsequent writ petitions preferred by them. However, in the peculiar facts and circumstances of this case, though the eviction of petitioners is being affirmed but execution of eviction order be kept in abeyance till petitioners' claim to regularisation is finally determined in the subsequent writ petitions preferred by them.

34. With aforesaid observations, both the writ petitions are disposed of with no orders as to costs.

(SUNIL GAUR)
Judge

January 04, 2013
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