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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 21.05.2013

Judgment pronounced on : 24.05.2013

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W.P.(C) 2516/2013

RAJINDER SAINI AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

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W.P.(C) 2517/2013

RAKESH KUMAR SAINI AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

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W.P.(C) 2518/2013

JAI CHAND AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 2519/2013

KRISHAN KUMAR SHARMA AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 2792/2013

RAMU & ANR

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. S.N. Gupta, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 2953/2013

OM PRAKASH & ANR

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. S.N. Gupta, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 2955/2013

RAJESH KUMAR & ANR

..... Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. S.N. Gupta, Adv.
versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent
Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 2965/2013
SANJAY AGGARWAL & ANR

..... Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. S.N. Gupta, Adv.
versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent
Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 3015/2013
RAM PRATAP & ANR

..... Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. S.N. Gupta, Adv.
versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent
Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 3073/2013
CHAWAL SINGH & ANR.

..... Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. S.N. Gupta, Adv.
versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 1928/2013

DHARAMBIR SINGH SAINI AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 1945/2013

HARI CHAND SAINI AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 1948/2013

SMT. JYOTI SAINI AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 1959/2013

SUNIL KUMAR AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 1969/2013
PRITAM SINGH SAINI AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 1979/2013
MOOL CHAND AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

+ W.P.(C) 2001/2013
HARI CHAND AND ANR

..... Petitioner

Through: Mr. Amit Kumar Mr. Ankit Rajgarhia
and Mr. Ashish Kumar, Advs.

versus

D.D.A.

..... Respondent

Through: Ms. Shobhna Takiar, Adv. for DDA

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. Vide letter dated 14.3.1950, the Assistant Secretary to the Government of India, Ministry of Rehabilitation conveyed, to the Chief Commissioner, Delhi, certain decisions with respect to Jhil Khuranjia Milk Producers' Colony for the displaced persons. The decision taken by the Government of India was that all the plots in Jhil Khuranjia, which were previously occupied by Muslim Ghosis and which were lying vacant or unauthorizedly occupied, would be allotted by the Delhi Improvement Trust (hereinafter referred to as "the Trust"), predecessor in interest of the respondent Delhi Development Authority, to the Jhil Khuranjia Milk Producer's Cooperative Society Ltd. (hereinafter referred to as "the Society"), for being allotted to the displaced persons who were milk producers and who had enrolled themselves as members of the Society. The said plots were to be given on lease for a period of 90 years "on the same terms as before" incorporating the modifications suggested in the said letter. A copy of the existing lease terms was attached as Appendix 'B' to the said letter.

Another decision taken by the Government was that all Nazul 'grazing land' under the Trust in and near Jhil Khuranja, including the land belonging to the U.P. Canal Department as long as its management was with the Trust should be leased to the Society for grazing and fodder

raising for the benefit of its members. The period of lease in the first instance was to be five years with the option to the society to renew the lease for further periods of ten years each. It was also decided that the said Trust shall levy the existing ground rent for the first one year and thereafter it would be subject to review after every two years, on the basis of prevailing rates in the locality. The Society was required to induce and enlist, as its members, the existing milk producers in Jhil Khuranjia and extend to them facilities for grazing and supply of fodder from this land on the same terms as to other members.

2. A proposal to allot land to the Society in terms of the above referred decision of the Government of India was approved by the Trust by way of a Resolution dated 25.5.1950. A perusal of the said Resolution would show that the land, subject matter of the Resolution, comprised (i) Plots of Nazul land measuring 77 bighas and 11 biswas in the Jhil Khuranja Abadi which were leased to Muslim Ghosis but were lying vacant or had been unauthorizedly occupied. (ii) Grazing Nazul land measuring 77 bighas and 2 biswas in Jhil Khuranja vesting in the Trust (iii) Grazing land in Shikam and Nangla Machchi measuring 1306 bighas and 10 biswas vesting in Trust; and (iv) a part of the canal land measuring 2187 bighas and 4 biswas belonging to the United Provinces Canal Department but, which at that time was under the lease of the Trust. Neither any allotment letter was issued by the Trust to the Society nor is there any document on record evidencing handing over of possession of the said land by the Trust to the Society, as far as the grazing land referred in the Government of India's letter dated 14.3.1950

is concerned. It, however, appears from a delivery and possession Memo dated 20.4.1962 that 2660 bighas 14 biswas falling in Khasra Nos.17,14,12,10,8,5,18,19,20 Min. 67, and part of Khasra No.34, 32,25,26, 20, 17, 36, 38, 40, 42, 43, 51, 60, 61 and 64 which was under the possession of Jheel Khuranja Cooperative Milk Producers' Society was delivered and handed over to U.P. Canal Department.

3. Vide order dated 16.10.1967, DDA informed the Society that the term of the lease of Nazul land in Inderpat and Chirag in South, which was in its possession for agricultural purposes stood expired and required the Society to hand over possession of the aforesaid land on or before 23.10.1967.

4. Vide notice dated 31.3.1995 issued under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, to various occupants of the aforesaid grazing land, the Estate Officer required them to show cause as to why eviction order be not made against them. The aforesaid show cause notice culminated in passing of an eviction order dated 29.1.2002. The eviction order was challenged before this Court by way of CWP No.3364/2002, which was disposed of vide order dated 29.11.2004 with direction for impleadment of the Society as a party to the eviction proceedings. After impleadment of the Society, the Estate Officer passed an order dated 1.8.2007 against the Society which was challenged by way of an appeal. The order passed by the Estate Officer was set aside by the learned District Judge vide his order dated 1.9.2009, on the ground that the description of the land was not mentioned and the matter was remanded back to the Estate Officer, with direction to pass a

fresh order clearly giving description of the land in respect of which the eviction order had been passed. Thereupon, another show cause notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act was issued by the Estate Officer and that notice culminated in passing of eviction order dated 17.1.2013. The order passed by the Estate Officer was challenged before the learned District Judge by way of an appeal. The said appeal having been dismissed vide order dated 28.2.2013, the Society as well as various occupants of the said grazing land are before this Court by way of these writ petitions. The case of these individuals is that the land occupied by them was allotted to them by the Society.

5. Two contentions have been advanced by the learned counsel for the petitioners. The first contention was that in terms of the decision taken by the Government vide letter dated 14.3.1950, followed by the Resolution passed by the Trust, the Society was given an option to renew the lease for further period of ten years each and since the Society had been exercising the said option to renew the lease, it neither the lease it expired by efflux of time nor it could have been determined by the respondent. The second contention of the learned counsel for the petitioners was that even on determination of the lease, DDA was required to file a civil suit for possession of the land in question and could not have taken recourse to the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Reliance in this regard has been placed upon the decision of the Supreme Court in *Express Newspapers Pvt. Ltd. and others vs. Union of India and others* [(1986) 1 SCC 133].

The contention of the learned counsel for the respondent-DDA on the other hand was that neither any option was given to the Society to renew the lease nor was any such option actually exercised by it, and, therefore, the occupation of the petitioners is absolutely unauthorized. This is also the contention of the respondent that the decision of the Supreme Court in **Express Newspapers Pvt. Ltd and others** (supra) does not apply to a case like the present one and, therefore, they are not required to file a civil suit for recovery of possession of the land in question.

6. A perusal of record of the Estate Officer, which the learned counsel for the respondent-DDA made available to the Court during the course of hearing, would show that the occupants of the land in question, who claim to have obtained possession of the part of the land occupied by them from the Society filed reply to the show cause notice received from the Estate Officer and the only plea taken in the reply was that their occupation was not unauthorized since the land was allotted to the Society and the lease was never terminated either by DDA or by the Trust. This was not the plea taken by these individual occupants that the Society was given an option by the Trust to renew the lease for a period of ten years each or for any other period. This was also not their case that the Society had actually exercised the option from time to time, for renewal of the lease for the terms of ten years each.

I also find that the Estate Officer recorded the statement of one Mr. Bachhatar Singh, Manager of the Society. Mr. Bachhatar Singh is the same person who had filed affidavit on behalf of the Society in these writ

petitions. In his statement Mr. Bachhatar Singh specifically stated that the land which was given on temporary lease for five years and they were aware that the Government/DDA was entitled to take this land back. This was not the stand of the Society, through Mr. Bachhatar Singh or otherwise that it was given an option to seek renewal of the lease for terms of ten years each and that it had been exercising such options from time to time. He further admitted that neither any lease was executed in favour of the Society nor was any allotment issued to it. He also admitted that after 1967, no demand from DDA for payment of license fee or lease money was made, though he claimed that the Society has been paying lease money in the account of DDA.

7. The individual occupants were also examined by the Estate Officer and they stated nothing except that they agreed with the statement of Mr. Bachhatar Singh and were allotted land by the Society, were paying rent to the Society. They also admitted that no formal allotment letter was issued by the Society in their favour. Thus, this was not the case either of the Society or of the individual occupants before the Estate Officer that the Society was given an option by the Trust for renewal of the lease for the terms of ten years on each such occasion, and such an option was actually availed.

8. I have also examined the order of the learned District Judge dated 25.2.2013 whereby he dismissed the appeal filed by the petitioners. A perusal of the judgment would show that this was not the stand of the petitioners even before the learned District Judge that the Society had

been given option to renew the lease and it had been exercising the said option from time to time.

9. Since the petitioners did not claim either before the Estate Officer or before the learned District Judge that the Society had been given option for renewal of the lease and it had actually been exercising the said option from time to time, they cannot be allowed to raise such plea for the first time in the writ petition because the question as to whether the Society had actually exercised the option for renewal of the lease or not is a question of fact which requires recording of evidence and on which no finding can be rendered by a writ Court. This is more so when it is noticed that the Manager of the Society expressly stated before the Estate Officer that the land in question was leased to the Society for five years and did not claim either grant or exercise of the option for renewal of the lease. Another issue which may arise, in case such a plea is entertained, is as to what would be the rent for the period of renewal, since as per the decision of the Government/DIT, such determination was left to DIT/DDA. Considering all this, the plea cannot be allowed to be raised for the first time during the writ petition.

10. The learned counsel for the respondent-DDA has drawn my attention to the order dated 12.8.1993 passed by this Court in **Dhan Kaur vs. DDA** [CWP3797/1991], where the writ petition filed by an occupant of land comprised in Khasra no.38/49 and 38/54 of the Village Khureji Khas was dismissed by this Court. In the aforesaid case, the plea taken by the petitioner before this Court was that the land in question was given on rent by DDA to respondent no.2 in the said petition viz. Jhil Khuranjia

Milk Producers Cooperative Society. The petitioner was seeking to claim right over that land on account of his being a member of the said Society. According to the learned counsel for the respondent-DDA, the land subject matter of the aforesaid writ petition was amongst the land referred to any Government of India's letter dated 14.3.1950 and the Resolution of DIT dated 25.5.1950 and therefore the view taken by this Court in the said case would also apply to the present writ petition. It was also submitted by the learned counsel for the respondent-DDA that the Society did not come forward in the said case to claim that it had been given an option to renew the lease for the period of ten years each and that it had actually exercised such an option from time to time. He also stated that following the decision in **Dhan Kaur (supra)**, two other writ petitions being W.P(C) No. 9973/2006 *Shri Sri Chand Saini vs. Govt. of NCT of Delhi* and W.P.(C) No.9980/2006 *Shri Hari Chand Saini vs. Govt. of NCT of Delhi* were dismissed by this Court vide order dated 12.10.2007.

11. It was contended by the learned counsel for the respondent that a decision taken by the Government or DIT, unless communicated to a person cannot be enforced at the instance of the person to whom it is not communicated and, therefore, even if the letter dated 14.3.1950 and the Resolution dated 25.5.1950 are interpreted to mean that the Society was given an option to renew the lease for ten years at a time, no benefit of the said decision accrues to the petitioners in the absence of a lease deed or allotment letter or a formal communication conveying such an option to the society. He further submitted that since there is no document evidencing even the formal handing over of possession of land in

question by the Trust to the Society, it cannot be said whether the Trust actually handed over possession of the land in question to the Society in terms of the Resolution passed by it the Society, of its own occupied the said land and started paying rent/ lease money to DIT/DDA. In this regard, he pointed out that the Resolution passed by DIT speaks of terms and conditions of allotment of each area, but in fact there are no such terms and conditions settled by DIT and conveyed to the society, which is indicative that in fact the allotment was never conveyed to the society.

12. **Sethi Auto Service Station v. DDA** (2009) 1 SCC 180, Supreme Court, inter alia, observed that notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned. Referring to **Sethi Auto Service Station** (supra), Supreme Court in **Shanti Sports Club and Anr. Vs. Union of India (UOI) and Ors** 2009 (15) SCC 705, *inter alia* observed that a noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.

The contention on behalf of the respondents was that even if the trust had decided to grant option to the society to renew the lease, in the absence of communication of such a term to it neither the society nor the occupants of the land can seek enforcement of the said decision. Since I am not allowing this plea to be raised by the petitioners for the first time

in these writ petitions, I need not delve further into this aspect of the matter.

13. As regards decision of the Supreme Court in **Express Newspapers Pvt. Ltd. and others** (supra), the said decision, in my view, does not apply to the case before this Court. In the case of **Express Newspapers Pvt. Ltd. and others** (supra), the land in question had been duly leased to the appellant company by way of an agreement for lease executed on 26.5.1954 between the Lessee company and the Secretary, LSG, to the Chief Commissioner, Delhi by the orders and directions of the President of India. A building was duly constructed by the Lessee on the aforesaid land after obtaining requisite approvals. After construction of building, a registered indenture of lease dated 17.3.1958 was executed between the President of India and the Lessee. Thereafter, the Lessee applied for grant of sanction to construct new building with higher FAR. A decision was taken by the Vice-Chairman of DDA to amalgamate the two plots which had been leased on behalf of the President of India and permitting higher FAR. He also gave instructions for giving No Objection for construction on the residual area and made a reference to the Government seeking *ex post facto* sanction. A No Objection was accordingly issued by the Joint Director (Buildings), Delhi Development Authority on 4.11.1978 and on 24.11.1978 the Government of India, Ministry of Works & Housing granted ex post fact approval. A new building was thereafter constructed pursuant to the said approvals. It was subsequent to construction of the building that Municipal Corporation served a notice seeking demolition of the building, followed by a notice from the Lessor alleging

Constitution without its permission and without sanction of the plans. The petitioners filed a writ petition under Article 32 of the Constitution alleging that the impugned notice had re-entered upon forfeiture of the lease and thereupon demolition were malafide, politically motivated and violative of Article 14, 19(1)(a) and (g) of the Constitution. It was under these circumstances that the Supreme Court was of the view that in the facts and circumstances of the case, the Lessor could not have taken recourse to the summary procedure under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and due process of law in a case like the case before the Apex Court, necessarily implied filing of a suit by the Lessor for enforcement of the land right of re-enter, if any, upon forfeiture of the lease upon breach of the terms of the lease. The Apex Court added in paragraph 87 of the judgment that where admittedly there is unauthorized construction by a lessee or by any other person on Government land which is public premises within the meaning of Section 2(c) and such person is in unauthorized occupation thereof, it was permissible to take recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971

14. In the case before this Court, this was the petitioners' own case before the Estate Officer that the lease was granted to the Society only for a period of five years. The said period of five years would have expired sometime in the year 1955 assuming that the lease commenced sometime in the year 1950, though there is no document on record to indicate as to when the lease actually commenced. After expiry of the said period of five years, the Trust and thereafter DDA could at any time have asked the

petitioners to vacate the aforesaid land and this was actually done vide letter dated 16.10.1967 written by Additional Collector of DDA to the Society. There is no communication from DDA on or after 16.10.1967 requiring the Society to pay the ground rent or lease money in respect of the land in question. Therefore, it cannot be said that there was any implied extension of lease after 16.10.1967. Consequently, the possession of the petitioners after 16.10.1967 was that of unauthorized occupants within the meaning of Section 2 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Estate Officer was fully justified in directing their eviction from the said land.

For the reasons stated hereinabove, I find no merit in these petitions. The petitions are hereby dismissed. There shall be no orders as to costs.

V.K.JAIN, J

MAY 24, 2013
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