

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

Reserved on : December 10, 2012

Pronounced on : January 02, 2013

+ (i) W.P. (C) No.3108/2011
**ASSOCIATED TRADERS &
ENGINEERS PVT. LTD.** ... Petitioner
Through: Mr.Sunil Magon, Advocate

Versus

**LIFE INSURANCE CORPORATION
OF INDIA** ... Respondent
Through: Mr.Mohinder Singh and Mr.
Ankur Goel, Advocates

+ (ii) W.P. (C) No.3109/2011
**ASSOCIATED TRADERS &
ENGINEERS PVT. LTD.** ... Petitioner
Through: Mr.Sunil Magon, Advocate

Versus

**LIFE INSURANCE CORPORATION
OF INDIA** ... Respondent
Through: Mr.Mohinder Singh and Mr.
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**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

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JUDGMENT

1. In pursuance to *Show Cause Notice* of 18th October, 2008 under Section 5 and 7 of the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, proceedings to evict petitioner from 15,568 sq.

ft. in property bearing Municipal No.483/49A and 49B, situated at Jhilmil, Tahirpur, G.T.Road, Shahdara, Delhi (*henceforth referred to as the subject premises*) and to recover damages for unauthorized occupation, was issued to petitioner who in its reply had asserted that petitioner is owner of 350 sq.yds. of the subject premises and had constructed building thereon. Petitioner had claimed that 350 sq.yds. out of the subject premises was sold by *Mr. M.M.Tuli* to one *Mr.R.S. Bisht* vide Sale Deed of 15th May, 1968 and the said *Mr.R.S. Bisht* had sold 350 sq.yds. out of subject premises to petitioner vide Sale Deed of 5th December, 1990 and petitioner had pleaded ignorance in aforesaid reply about the order passed in partition proceedings by this High Court, wherein *Mr. M.M.Tuli* had surrendered all his rights in respect of subject premises in favour of the respondent.

2. The eviction proceedings as well as the proceedings to recover damages for unauthorized occupation of the premises in question had ended in passing of the Eviction Order of 16th December, 2010 by the Estate Officer who had also passed on the same day, an order imposing damages of ₹72,77,151/-. Petitioner had preferred a statutory appeal before the Appellate Forum who vide common order of 31st March, 2011 had upheld the Eviction Order as well as the order of Estate Officer imposing damages for unauthorized use of subject premises.

3. Against the Eviction Order, W.P.(C) No. 3108/2011 and against order imposing damages, W.P.(C) No. 3109/2011 has been preferred by the petitioner, which were heard together with the consent of learned counsel for parties and by this common judgment, the above captioned two petitions are being disposed of.

4. The main contention of learned counsel for petitioner is that question of title in respect of 350 sq.yds. out of subject premises cannot be decided in proceedings under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971*, as the same is required to be dealt with by the Civil Court. While relying upon decisions in *Govt. Of Andhra Pradesh vs. Thummala Krishna Rao and anr.*, AIR 1982 SC 1081; *Madhya Pradesh Electricity Board, Rampur, Jabalpur, vs. Badri Prasad and others etc.*, AIR 2003 MP 256; and *M/s. Shree Bajrang Hard Coke Manufacturing Corporation vs. Ramesh Prasad and others*, AIR 2003 Jharkhand 17, it was contended by learned counsel for petitioner that impugned Eviction Order is without jurisdiction and the eviction proceedings against petitioner ought to be quashed while relegating the respondent to avail of civil remedy to establish its title in respect of 350 sq.yds. in the subject premises, as Estate Officer, while exercising its power under the *Public Premises (Eviction of Unauthorised Occupants) Act, 1971* has no jurisdiction to decide the question of title. To assail the order imposing damages, reliance was placed upon decision in RFA No.295/2003, *Chander Bhan Dass vs. Shri Ram Nath Sharma*, rendered on 20th December, 2011 and it was contended that there is no evidence to prove the rate of rent in the area and so the damages imposed are unsustainable which ought to be set aside.

5. Learned counsel for respondent vehemently disputes the aforesaid stand taken on behalf of petitioner and had placed reliance upon order of 3rd August, 2004 of Division Bench of this Court in RSA (OS) No.3/1973, wherein aforesaid *Mr.M.M. Tuli*, had surrendered all

his rights in respect of subject premises in favour of respondent. Reliance was also placed upon decision in *Md.Nooman & Ors vs. Md.Jabed Alam*, 2010 RLR 543 (SC), to assert that if question of title to property is raised in an eviction suit then ordinarily, the question of title decided is not binding in a subsequent suit raising title dispute but if the matter has been thoroughly gone into in the eviction suit and parties had given entire evidence in the matter, then finding as to title would be binding on the parties. Thus, it is maintained by learned counsel for respondent that in the light of the order of Division Bench of this Court in RSA (OS) No.3/1973, respondent is absolute owner of the subject premises and there is no illegality or infirmity in the impugned order and so, these two writ petitions deserve dismissal.

6. Upon hearing, it transpires that a dispute about question of title was sought to be raised by petitioner's counsel by asserting that petitioner is a lawful owner of 350 sq.yds. out of subject premises by virtue of Sale Deed of 5th December, 1990 from one *Mr. R.S. Bisht*, who had derived title to subject premises from one *Mr.M.M. Tuli*. Attention of this Court was drawn to Sale Deed of 5th December, 1990 by petitioner's counsel to point out that it specifically mentions that the building together with the land underneath and all connections and amenities etc. have been sold to petitioner. On the other hand, learned counsel for respondent had drawn attention to a Chart disclosing chain of title, which is incorporated in the counter affidavit of the respondent to point out that what *Mr.M.M. Tuli* had sold to *Mr. R.S. Bisht* vide Sale Deed of 15th May, 1968 was super structure only on the land in question and so, title of petitioner in respect of 350 sq.yds. out of

subject premises, is defective as the land underneath super structure sold by *Mr. R.S. Bisht* to petitioner was excluded. It is pointed out by learned counsel for respondent that the question of title has been meticulously gone into by the Estate Officer in the Eviction Order of 16th December, 2010 and so, in view of Apex Court decision in *Md.Nooman* (Supra), respondent cannot be legitimately relegated to avail of civil remedy as respondent already has the order of this Court in its favour establishing respondent's title to entire subject premises including disputed 350 sq.yds. therein.

7. Afore-noted rival stand taken by learned counsel for the parties and the ratio of decisions in *Thummala Krishna Rao* (Supra), *M/s. Shree Bajrang Hard Coke Manufacturing Corporation* (Supra), and *Badri Prasad* (Supra), would be of no avail as it would be pertinent to take note of the fact that respondent had acquired title in respect of entire subject premises including disputed 350 sq.yds. by virtue of order of 3rd August, 2004 of Division Bench of this Court in RSA (OS) No.3/1973, as aforesaid *Mr.M.M. Tuli* had surrendered all his rights in respect of subject premises in favour of respondent herein, much after civil proceedings were initiated against aforesaid *Mr.M.M. Tuli* by the respondent. So, if question of title was to be raised then, it was to be raised by petitioner and not by the respondent because order of 3rd August, 2004 in RSA (OS) No.3/1973 conferring title in respect of subject premises is already in favour of respondent.

8. In the aforesaid view of this matter, the rival submissions advanced by both the sides on question of title are not required to be gone into in these writ petitions, as the title dispute sought to be

agitated stands concluded in this Court's order of 3rd August, 2004 in RSA (OS) No.3/1973 to which there is no challenge.

9. It is quite evident that petitioner was aware of the order of 3rd August, 2004 in RSA (OS) No.3/1973 right from the beginning. Though petitioner was not a party to the said order, but it was always open to the petitioner to assert its title over 350 sq.yds. in the subject premises by availing of the civil remedy. Had the petitioner availed of civil remedy to assert its title to land in question, after responding to *Show Cause Notice*, then perhaps the fate of these eviction proceedings could have been different. Having not done so, petitioner now in the eviction proceedings cannot challenge the title of respondent in respect of subject premises especially when there is an order of Division Bench of 3rd August, 2004 in RSA (OS) No.3/1973, which gives clear title to subject premises to respondent and thus justifies eviction of petitioner from the subject premises. Therefore, the Estate Officer as well as Appellate Forum were right in concluding that the subject premises belongs to respondent and so, this Court finds no palpable error in the impugned order upholding eviction of petitioner from the subject premises.

10. So far as imposition of damages is concerned, it appears from the impugned order as well as from the order of 16th December, 2010 of Estate Officer that the damages claimed have been awarded by putting the blame upon petitioner herein for having not led any evidence regarding the market rate of rent in the area. Infact, there is hardly any worthwhile evidence to support the impugned damages imposed. To say the least, the burden to establish the market rate of

interest in the area was upon the respondent and not on the petitioner and so, order of 16th December, 2010 imposing damages of ₹72,77,151/- is rendered unsustainable and is set aside with a rider that respondent would be entitled to user charges in respect of 350 sq.yds. of subject premises at the rate of erstwhile rent of ₹2,310/- per month for the period in question and till 350 sq.yds. of subject premises is vacated by the petitioner.

11. With modification to the limited extent as hereinabove, while upholding the Eviction Order, both the writ petitions are disposed of, while leaving the parties to bear their own costs.

(SUNIL GAUR)
Judge

January 02, 2013
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