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

Reserved on: 20.02.2013
Decided on: 19.03.2013

\+ **RFA (OS) 104/2012 & C.M. NO.18873/2012**

DCM LIMITED ..... Appellant
Through : Sh. Sanjeev Anand, Sh. Abhas Kumar and Ms. Anubha Surana, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent
Through : Sh. Harish Malhotra, Sr. Advocate with Ms. Shobhana Takiar, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA**

**MR. JUSTICE S. RAVINDRA BHAT**

**%**

1. In the present appeal, the judgment and order of 19.09.2012, dismissing CS 1085/1991, has been impugned.

2. The plaintiff – which has filed the present appeal (and is hereafter referred to as "DCM" or "the plaintiff" variously), claimed a declaration and decree for permanent injunction in respect of land situated at Baghraoji, Delhi. The DCM contended that some of its other lands were taken-over by the Delhi Improvement Trust as it was required for realignment of drain known as "Daryai Nala" and in exchange it was allotted the suit land. The plaintiff also stated that physical possession of the land allotted and made over to it was given sometime in 1942-1943 and ever since it was in

continuous, exclusive and uninterrupted possession and enjoyment as the owner. The DDA initiated the proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, [hereafter referred to as "the 1971 Act"]. The notice under the 1971 Act was issued sometime in 1990 and proceedings were commenced by the DDA, the defendant thereafter. The Estate Officer proceeded with the matter. During the pendency of those proceedings, the DCM filed CS 1085/1991 claiming declaration that it was the owner in possession and seeking a decree of declaration restraining the defendant DDA from dispossessing it. The DDA filed written statement urging various contentions. It also averred that the suit was not maintainable on the ground that notice in terms of Section 53A of the Delhi Development Authority Act had not been issued. The DDA objected to the maintainability of the suit, however, on the ground that it was barred by Section 15 of the Public Premises Act. The DDA filed an application, I.A. No. 11206/1992, in terms of the provisions of Order VII Rule 11 Code of Civil Procedure (CPC) for rejection of the suit, on the ground that notice under Section 53B had not been served. It also pleaded that DCM's argument that it was the owner and entitled to a declaration, was not made-out because of Section 15 and further that in the absence of any title document, such a plea was untenable.

3. By a judgment and order dated 08.08.1995, a learned Single Judge of this Court accepted the application for rejection of the suit only on the ground that the provisions of Section 53B had not been complied with. However, the other ground for rejection of the suit was not accepted. It was observed that:

> *"In the suit the plaintiff is seeking declaration of its title also on the basis of having acquired the same by adverse*

*possession for which prima facie, on the basis of the averments made in the plaint it cannot be said that the jurisdiction of the civil court would stand ousted. Ultimately on evidence being led, in case it is found that plaintiff had acquired no title by adverse possession, it might be held that the property falls under the definition of public premises and in that eventuality Civil Court will have no jurisdiction. The Court at this stage has to look only at the averments made in the plaint and nothing else. Defendant must be taken to admit, for the sake of arguments, the allegations as made in the plaint that are true in the manner and form in which those are made. In case allegations in the plaint are taken as a whole, it would be seen that plaintiff's claim is that it has remained in continuous possession of the suit property without any interruption, openly, peacefully and in assertion of its right as an owner for a period of more than 12 years before proceedings were commenced under the Public Premises Act. Since title has been acquired by holding adversely, its possession cannot be disturbed. This objection also is not sufficient to reject the plaint."*

4. Though DCM's argument was that the suit could not be rejected at the threshold and, therefore, required a trial, was accepted, the Court proceeded to reject the plaint on the ground of non-compliance with the provisions of Section 53B. Consequently, the DCM preferred an appeal, i.e. RFA 17/1995 which remained pending on the file of this Court for a considerable period of time. By the judgment of a Division Bench, dated 29.05.2009, that appeal was allowed and the Court held that having regard to the circumstances, what emerged was that DDA was aware of the appellant's claim consequent upon which notice under Section 53B was unnecessary. The Division Bench by its judgment directed the suit to be listed for directions before the learned

Single Judge on 15.07.2009. Consequently, the suit was listed on many dates of hearings and by order dated 12.11.2009, it was noticed that the materials and statement recorded by the Estate Officer could be treated as evidence of the parties' respective cases; the suit was listed for framing issues on 29.01.2010. Thereafter, it was again listed on subsequent dates.

5. In the meanwhile, during the pendency of the suit, the Estate Officer had proceeded to adjudicate upon the DCM's objections with regard to maintainability of proceedings under the 1971 Act and by order dated 30.03.2001, directed its eviction from the suit properties. By virtue of order of the Division Bench in RFA 17/1995, dated 25.08.1999, the Estate Officer (who had been restrained from issuing a final order in the eviction proceedings) was permitted to pass an order but also directed to send it to the Court in a sealed cover. In these circumstances, the matter was listed before the Single Judge on 21.08.2012. He was of the opinion that the order of the Estate Officer in favour of the defendant/DDA, directing the plaintiff's eviction would operate as *res judicata* and also operate as *estoppel* against the plaintiff DCM. In these circumstances, the matter was further listed for hearing on 19.09.2012. By the impugned judgment, the learned Single Judge dismissed the suit in terms of the decision of larger Constitution Bench of the Supreme Court in *Ashoka Marketing Limited & Anr. v. Punjab National Bank and Ors* 1990 (4) SCC 406. The learned Single Judge relied upon paras 33 to 35 of the said judgment in *Ashoka Marketing (supra)* to say that the contention with regard to maintainability of a suit that raises *bona fide* disputes or

issues of fact relating to title of premises claimed to be public premises, has to be rejected. Learned Single Judge was of the opinion that since the Constitution Bench rejected that contention, the suits by which the lessees claim to be owners are not maintainable once the premises fall within the definition "public premises". He also relied exclusively upon paras 10 to 16 of the Estate Officer's order dated 30.03.2001. Thereafter, in the impugned judgment, the learned Single Judge proceeded to reject other contentions of the plaintiff/DCM in the following terms:

> *"12. Learned counsel for the plaintiff very vehemently sought to argue that the subject suit has to be decided inasmuch as Section 9 of CPC mandates this Court to decide all civil suits. I cannot agree. Section 9 CPC itself states that a civil Court will decide a suit unless cognizance of the same is expressly or impliedly barred. Once there is a specific bar of jurisdiction of the civil Court with respect to matters which can be decided by the Estate Officer, and Section 15(a) of the Public Premises Act, 1971 clearly requires the issue with regard to the nature of occupation of a person i.e whether authorized or unauthorized, and all aspects thereto, to be decided by the Estate Officer, the civil Court jurisdiction's is barred.*
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> *13. I may note that in the earlier Public Premises Act of 1958, the Supreme Court had held the same to be constitutionally invalid because the Governmental authorities could pick and choose/discriminate between two sets of persons, by initiating civil proceedings against one set of person and approaching the Estate Officer for the other set of persons; and therefore the 1958 Act was struck down. In the present 1971 Act, the discrimination which existed in old law was removed and every proceeding which fell in the jurisdiction of the*

*Estate Officer had necessarily and only to be tried in terms of Section 15 by the Estate Officer and not by the civil Court. I have therefore to act in furtherance of the intendment of the legislature in bringing in the Section 15 of the Public Premises Act, 1971.*

*14. In view of the above, the present suit is barred by principles of res judicata. Also, the present suit cannot be tried under Section 9 CPC inasmuch as there is a bar to the jurisdiction of the civil Court under Section 15(a) of the Public Premises Act, 1971. I therefore dismiss the suit as the civil Court has no jurisdiction in terms of Section 15(a) of the Public Premises Act, 1971 and also on the ground of general principles of res judicata, of course subject to any decision in appeal against the judgment dated 30.3.2001 of the Estate Officer."*

6. Counsel for DCM argued that once the application for rejection of plaint on ground of maintainability had been rejected – as in this case, (on the ground of issue of title not being ad judicable by reason of provisions of the Public Premises Act), the learned Single Judge should not have dismissed the suit, having regard to the fact that the Division Bench had restored the suit, after being appraised of the eviction order. Its direction to decide the suit was made in 2009, after the eviction order had been brought to its notice. In these circumstances, after more than two decades, the Single Judge could not have summarily rejected the suit, holding that it was not maintainable by virtue of Section 15 of the Public Premises Act.

7. The appellant's counsel also relied on some of the documents, filed before the competent authority under the Public Premises Act, to say that the suit lands were the subject matter of legitimate exchange.

Since the erstwhile Board wished to align a canal, it took over DCM's property; the latter was offered land, evident from letters written on behalf of the Governor General of British India, contemporaneously in 1941-42, offering the suit lands in exchange. It was submitted that these letters were not produced by the DDA, but obtained from the official archives. These, and related documents established that DCM had been given the lands in exchange. Even though the Estate Officer did consider the matter, the fact remained that he could not have given a ruling in favour of the plaintiff, because of the limited nature of his mandate and jurisdiction, which was to decide whether the eviction notice had been issued in accordance with law. The question whether DDA or the government agency had title, or had acquired title or whether it continued with DCM, could not have been gone into by him. Counsel submitted that the learned single judge fell into error in giving primacy to Section 15 and holding that the determination by the Estate Officer constituted *res judicata.* That principle operated only when the decision is rendered by a competent court or tribunal; the Estate Officer could not be described as such.

8. Learned counsel relied on the judgment reported as *Govt. of A.P. V. Thummala Krishna Rao* AIR 1982 SC 1081, in which the Supreme Court, while elaborately considering the scope of a similar provision under Sections 6 and 7 of the A.P. Land Encroachment Act, 1905, held that:

> *"the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary*

*remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title."*

It was submitted that in the light of the above decision, the Estate Officer, who acted in terms of the Public Premises Act, could not possess jurisdiction or competence to decide whether the suit lands were the property of the DDA or the Central Government. As far as the decision in *Ashoka Marketing (supra)* was concerned, learned counsel submitted that the Supreme Court rejected the submission made that complicated questions relating to the termination of leases should be decided by civil courts. There was consequently, no blanket or authoritative ruling that the Estate Officer had jurisdiction to decide whether the premises were owned by the public authority or the Government.

9. Counsel for DDA argues that by virtue of Section 15(a) of the Public Premises Act, 1971, the jurisdiction of the Civil Court is barred with respect to issues that fall within the domain of the Estate Officer. Section 15(a) states that a civil Court will not have jurisdiction to entertain any suit or proceeding in respect of eviction of a person who is in unauthorized occupation of the public premises. The issue of eviction of anyone in unauthorized occupation of public premises will necessarily include a decision by the Estate Officer on the defence of an occupant who urges that he is not an unauthorized occupant of public premises. If the appellant's plea is accepted, then in all such defences, the eviction proceedings cannot continue before the Estate Officer on the ground that the individual is not in fact an unauthorized

occupant. Here, the appellant has argued this aspect before the Estate Officer which has been duly decided by him under the Public Premises Act. The judgment of the Estate Officer, subject to any decision in the appeal, will operate as *res judicata*. If there are certain issues which the present plaintiff ought to have raised, but did not raise, then the principles of constructive *res judicata* will apply against the plaintiff. Counsel submitted that the findings of the single judge on this aspect are unimpeachable.

10. DDA also argued that the suit land is Nazul Land, according to Ex DW-3/5, agreement through which the Government placed lands at the disposal of the Delhi Improvement Trust. It specified that the lands transferred to the Trust could be conveyed by it in the form of conveyance approved by the Government. On the other hand, argued learned Senior Counsel for the DDA, no Exchange deed or any other conveyance transferring the suit land through exchange had been proved. This belied DCM's contention that it was owner of the suit lands.

11. DDA's senior counsel relied on the observations of the Estate Officer that the Exchange document requires compulsory registration under Section 17 of the Indian Registration Act. The absence of any Exchange deed or any other conveyance deed in respect of the Nazul land, much less registered documents on record, also showed that no exchange of land took place. Oral exchange of land could not take place. It was argued that ownership of Khasra No.487-488 of DCM was not proved by it. It failed to prove its title in Khasra No.487; the

existence of mutation entries did not amount to proof of title. Counsel also argued that the Naib Tehsildar (Nazul) proved that the suit land was owned by DDA as Nazul land by proving *Jamabandi* and *Aks-Shajra* Ex DW-2/1 and DW-2/2 before the Estate Officer. In cross-examination, he proved that no re-alignment of *Daryai Nala* took place nor was there any entry of exchange of any land.

12. Learned counsel for DDA also relied on the decision of the Supreme Court in *Mandal Revenue Officer vs Goundla Venkaiah & Anr.* 2010 (2) SCC 461 to say that the Supreme Court had considered and distinguished the earlier judgment in *Thummala Krishna Rao* (supra) and held that in terms of the Special Act, to prevent land grabbing, the competent authority could decide questions of title. It was submitted that for these reasons, the appeal is without merits and should be dismissed.

13. It would be necessary, in view of the rival contentions, to first analyse relevant provisions of the Public Premises Act. The Act provides for the eviction of *"unauthorised occupants"* from *"public premises"*. Section 2(c) defines *"premises"* as *"any land or any part of a building and to include garden, grounds and outhouses appurtenant to the building or fittings affixed thereto"*. Section 2 (e) defines *"Public premises"*. The definition is in three parts. Section 2 (e) (1) takes in premises *belonging to*, or taken on lease or requisitioned by, or on behalf of, the Central Government, as well as premises placed by that Government under the control of either House of Parliament for providing residential accommodation to the members of the staff

of the Secretariat of either House of Parliament. Section 2 (e) (3) includes premises belonging to certain local authorities in the Union Territory of Delhi. Section 2 (e) (2) includes premises belonging to or taken on lease by, or on behalf of, various kinds of bodies, such as Universities, Institutes of Technology Board of Trustees of Major Port Trusts and the Bhakra Management Board. It takes in any premises belonging to or taken on lease by, or on behalf of, a government company or its subsidiary. It also takes in *"any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government"*.

14. The Act envisions appointment of an Estate Officer, who is a high ranking officer of the Government or of the relevant statutory authority, in respect of public premises controlled by that authority. The Act enables the Estate Officer to call upon *"unauthorised occupants"* of public premises (meaning persons occupying such premises without authority or continuing in occupation after the authority to do so has expired or has been determined for any reason) to show cause why they should not be evicted and to proceed to evict them, if need be, after considering the cause, if any, shown by the persons concerned in response to a notice served on them. It also contains powers to remove unauthorised constructions, demolish unauthorised constructions, dispose of property left on public premises by unauthorized occupants, require payment of rent or damages in respect of public premises and so on. Section 4 requires

the Estate Officer to issue show cause notice to the person concerned before ordering eviction. Section 5 requires him to take the evidence that may be adduced by the parties concerned, give them fair and reasonable opportunity of being heard and then pass an order in which reasons are required to be recorded in writing. Thirty days' time is required to be given before the order of eviction could be enforced. The procedure to be followed either by the Estate Officer or by the District Judge, while hearing an appeal, is not provided in the Act but is required to be provided under the Rules made by the Central Government under Section 13 of the Act. The rules show that while recording evidence, the Estate Officer is not bound to record the evidence verbatim but may record a mere summary of the evidence. An order passed by the Estate Officer, under the provisions of the Act, is appealable, the Appellate Authority being the District Judge or such other judicial officer of not less than 10 years experience as a District Judge, and subject to the above right of appeal, the orders passed by the Estate Officer are final. Section 15 bars the jurisdiction of courts to entertain any suits or proceedings in respect of, inter alia, the eviction of any person who is in unauthorised occupation of public premises. These are the broad contours of the provisions of the Public Premise Act.

15. The question which this Court has to address itself to is whether the impugned judgment, in concluding that by virtue of Section 15 of the Public Premises Act the jurisdiction of the Civil Court is barred, is erroneous. The provision reads as follows:

> *"15.* ***Bar of jurisdiction.*** *No court shall have jurisdiction to entertain any suit or proceeding in respect of--*
> *(a) the eviction of any person who is in unauthorised occupation of any public premises, or*
> *(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or*
> *(c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or*
> *(cc) the sealing of any erection or work or of any public premises under section 5C, or*
> *(d) the arrears of rent payable under sub- section (1) of section 7 or damages payable under sub- section (2), or interest payable under sub- section (2A), of that section, or*
> *(e) the recovery of--*
> *(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or*
> *(ii) expenses of demolition under section 5B, or*
> *(iii) costs awarded to the Central Government or statutory authority under sub- section (5) of section 9, or*
> *(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."*

16. Section 5 of the Act enables the Estate Officer, after issuing notice to an occupant, if he *is satisfied that the public premises are in unauthorised occupation,* to direct eviction through an order. The DDA argued – and the learned single judge accepted, that by virtue of the decision in *Ashoka Marketing (supra),* the jurisdiction to decide whether the premises were owned by the Government, or the concerned agency entitled to invoke the Act, was with the Estate Officer. This is on the premise that a submission in that regard had been rejected by the Supreme Court. The exact passage which dealt

with the contention is reproduced for convenience:

> *"Another submission that has been urged by Shri Ganguli is that the question whether a lease has been determined or not involves complicated questions of law and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such question and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requires issuing of a notice to the person in unauthorised occupation of any Public Premises requiring him to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the estate officer. Section 8 provides that an estate officer, shall, for the purpose of holding any enquiry under the said Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring discovery and production of documents; and (c) any other matters which may be prescribed. Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the estate officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the estate officer and the said appeal has to be heard either by the district judge of the district in which the public premises*

*are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in that behalf. In shows that the final order that is passed is by a judicial officer in the rank of a district judge.*

*A similar contention was raised before this Court in Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay & Others, [1975] 1 SCR 1 wherein the validity of the provisions of Chapter VA of the Bombay Municipal Corporation Act,' 1888 and the Bombay Government Premises (Eviction) Act, 1955 were challenged before this Court and the said contention was negatived."*

17. It would be apparent from the above extract, that what was considered and rejected was the contention that a *"question whether a lease has been determined or not involves complicated questions of law and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such question".* The possibility of the respondent (in the Public Premises eviction proceeding) setting up a rival contention regarding title, did not engage the attention of the court. Furthermore, there is no provision in the Public Premises Act enabling an occupant to raise a counter claim seeking declaration that he is the true and lawful owner on substantive grounds, or even urging title by prescription or adverse possession. In these circumstances, it is held that mere issuance of a notice under Section 4 would not divest a civil court from exercising its jurisdiction. There could also be situations where even before a show cause notice is issued, the occupant might approach the court, seeking declaration of title, or seeking injunctive relief in respect of his

possession. In such cases, ousting jurisdiction of the civil court can be only on the ground that an Estate Officer issues notice under Section 4. The unreasonableness of such conclusion is highlighted because, then, the character of the premises, i.e whether it *belongs* to the concerned public agency, cannot be gone into. In other words, jurisdiction of the civil court to examine and decide on questions of title and incidental matters, is left to the contingency of issuance or otherwise of notice under Section 4.

18. In the light of the above discussion, it would now be necessary to discuss the case law relied on by the parties. In *Thummala Krishna Rao (supra)*, the Supreme Court had occasion to deal with Sections 6 and 7 of the A.P. Land Encroachment Act, 1905. Like the Public Premises Act, the Andhra Pradesh enactment provided for summary procedure to evict unauthorised occupants. The Supreme Court dealt with a contention similar to the one urged by DCM in the present appeal, and observed that:

> *"The summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". If there is a bona fide dispute regarding the title of the government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is not*

*the kind of legal process which is suited to an adjudication of complicated questions of title….*

*What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts, which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is hl occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law.*

*The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddio from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily."*

A similar issue arose in *State of Rajasthan v. Padmavati Devi and Ors* 1995 Supp. (2) SCC 290, where the Supreme Court dealt with provisions of the Rajasthan Land Revenue Act, 1956. The Court first noticed the relevant provision and then the facts:

> *"2. Under Section 91 of the Act a person in occupation of Government land without lawful authority is to be regarded as a trespasser and he can be summarily evicted from such land by the Tehsildar after serving on such person a notice requiring him to show cause why he should not be so evicted therefrom.*
>
> *3. In the instant case, Section 91 of the Act has been invoked on the basis that the land is recorded as "Sawai Chak" in the revenue records for the year Samvat 2015 (1958 A.D.) and that in the Parcha Khatani dated February 9, 1953 that was given to Praduman Ojha, the husband of respondent No. 1, there is no mention of this land…."*

The Court then concluded that the summary procedure available for the Government could not oust the jurisdiction of the civil court to examine questions pertaining to title, claimed by an alleged unauthorized occupant, in a civil suit:

> *"6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in Government of Andhra Pradesh v. Thummala Krishna Rao and Anr. 1982 (3) SCR 500, has laid down that the summary remedy for eviction provided by*

> *Section 6 of the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law."*

It is not without significance that the Constitution Bench judgment in *Ashoka Marketing* (supra) and the judgment in *Padmavati Devi* were authored on behalf of the Court, by the same learned judge, Mr. Justice S.C. Agarwal. Furthermore, *Padmavati Devi (supra)* was by a 3 judge Bench. The decision in *Thummala Krishna Rao* (supra) thus stood approved by a 3 member judgment, after *Ashoka Marketing (supra).*

19. The respondent DDA had relied on *Goundla Venkaiah* (supra) to say that the decision in *Thummala Krishna Rao* is no longer good law. It would be necessary to notice that in *Goundla Venkaiah,* the Supreme Court was concerned with provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 ("the Land Grabbing Act"). The Court pertinently noticed the facts:

*"This appeal is directed against order dated 20.6.2000 passed by the Division Bench of the Andhra Pradesh High Court whereby it allowed the writ petition filed by the respondents, quashed the orders passed by the Special Tribunal and the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter referred to as the `Land Grabbing Act') and declared that the respondents have acquired title over the schedule property by adverse possession."*

The Supreme Court then noticed provisions of the Land Grabbing Act:

*"The definition of expression `land grabbing' is very wide. It covers every activity of grabbing of any land belonging to Government, a local authority, a religious or charitable institution or endowment, including a wakf or even a private person, without any lawful entitlement and with a view to take illegal possession of such lands. The creation of illegal tenancies, lease andlicence agreements or any other illegal agreements in respect of or construction of unauthorized structures or sale or hire, etc. are also treated as acts of land grabbing. Section 3 declares land grabbing in any form as unlawful and makes any activity connected with or arising out of land grabbing an offence punishable under the Act. Section 4(1) lays down that no person shall commit or cause to be committed any land grabbing. Section 4(2) lays down that any person who, on or after the commencement of the Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment including a wakf, or other private person, shall be guilty of an offence under the Act. By Section 7(1), the State Government is empowered to constitute a Special Court for expeditiously holding an enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land*

*grabbed. Section 7-A(1) lays down that every Special Tribunal shall have power to try all cases of which cognizance has not been taken by the Special Court whether before or after the commencement of the Andhra Pradesh Land Grabbing (Prohibition) (Amendment) Act, 1987. Section 7-A(2) lays down that a Special Tribunal shall, save as otherwise provided in the Act, follow the procedure prescribed in the Code of Civil Procedure (CPC) in the trial of cases under the Act. Section 7-A(3) provides for an appeal against any judgment or order except an interlocutory order, to the Special Court on any question of law or of fact. By virtue of Section 8(1), the Special Court is empowered to either suo moto, or on an application made by any person, officer or authority, take cognizance of and try every case arising out of any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of, the land grabbed whether before or after the commencement of the Act and pass appropriate orders including by way of interim directions. Section 8(2) contains a non obstante clause and gives finality to the decision of the Special Court and the provisions of the CPC and the Code of Criminal Procedure (CrPC) shall, insofar as they are not inconsistent with the provisions of the Act, apply to the proceedings before the Special Court. By Section 9, the provisions of the CPC and Code of Criminal Procedure have been made applicable to the proceedings of the Special Court except insofar as they are not inconsistent with the provisions of the Act. This Section also declares that a Special Court shall be deemed to be a Civil Court or, as the case may be, as the Court of Sessions and shall have the powers of a Civil Court and a Court of Sessions. Section 10 contains special rule of burden of proof. It lays down that where there is an allegation of land grabbing and the land which is subject matter of grabbing is prima facie proved to be owned by the Government or by a private person, the Special Court/Special Tribunal shall presume that the person*

*who is alleged to have grabbed the land is a land grabber and it is for him to prove the contrary."*

The Court had pertinently observed in Para 15 of the above judgment, that:

*"15. The Land Grabbing Act is a self-contained code. It deals with various facets of land grabbing and provides for a comprehensive machinery for determination of various issues relating to land grabbing including the claim of the alleged land grabber that he has a right to occupy the land or that he has acquired title by adverse possession…"*

In the judgment, the Court noticed three previous decisions, in *Gouni Satya Reddi v. Govt. of A.P. and others* 2004 (7) SCC (where the Special Court's decision was quashed and the Court held that the occupant could not be called a land grabber, based on his assertion of title); *Mahalaxmi Motors Ltd. v. Mandal Revenue Officer and others* 2007 (11) SCC 714 (where the jurisdiction of the Special Court was upheld) and *N. Srinivasa Rao v. Special Court* 2006 (4) SCC 214. Thereafter, dealing with *Thummala Krishna Rao,* the Supreme Court held that:

*"In that case, the principal question, which arose for consideration, was as to whether the property in question which was in possession of the family of one Habibuddin for a long time and, thus, the same had not vested in the Government by reason of a land acquisition proceeding initiated for acquisition of the land for Osmania University. In that case, Osmania University filed a suit for possession which was dismissed on the premise that Habibuddin had perfected his title by adverse possession. Thereafter Osmania University requested the Government of Andhra Pradesh to take steps for summary eviction of the persons who were not in*

*authorised occupation of the said plots. The observations made therein must be held to have been made in the aforementioned factual matrix. It is one thing to say that a summary proceeding cannot be resorted to when a noticee resists a bona fide dispute involving complicated questions of title and his right to remain in possession of the land but it is another thing to say that although a Special Court and/or a Tribunal which has all the powers of a civil court would not be entitled to enter into such a contention. Krishna Rao, therefore, in our opinion has no application to the facts of the present case."*

20. It can be seen from the above discussion that though the Supreme Court distinguished *Thummala Krishna Rao,* that was on account of the provisions of the Land Grabbing Act. It provided a complete code, which included appointment of a Special Judge, who had jurisdiction to decide all matters pertaining to land grabbing, including those *"with respect to the ownership and title to, or lawful possession of"* the lands in question. Thus, the remedies provided were comprehensive, and enabled the Special Court to expressly act as a Court, take evidence in deposition, and also exercise criminal jurisdiction. The concerned party made subject to the Act could also urge and seek ruling on the question of title. Having regard to these facts, the Court does not see any change in the law. The basic proposition that having regard to the limited nature of jurisdiction of the Estate Officer, *bona fide* title disputes cannot be gone into under the Public Premises Act, remains unchanged.

21. This Court is supported in its view with regard to the civil court's possessing jurisdiction in cases where serious or *bona fide*

disputes of title exist, or have been raised which cannot be decided by the Estate Officer, by the views of the Madhya Pradesh High Court, Jharkhand High Court and Andhra Pradesh High Court ( *Madhya Pradesh Electricity Board v. Badri Prasad and Ors* AIR 2003 MP 256, *Shree Bajrang Hard Coke Manufacturing Corporation v Ramesh Prasad & Ors* AIR 2003 Jhar 17 and *Podduturi Vasantha Reddy v. Estate Officer, Airports Authority of India, N.A.D.,* AIR 2010 AP 46). In *Shree Bajrang Hard Coke*, a Division Bench of the Jharkhand High Court, while considering the scope of Section 5 of the Public Premises Act, 1971, held that:

> *"14. From what has been discussed and quoted above, it is abundantly clear that an authority under the aforementioned Act has a very limited jurisdiction and it has to determine only a dispute that may arise, vis-a-vis a public premises. Upon an application made before it, it has to proceed in a summary disposal thereto. The question, as to whether the area formed part of the Royal Tisra Colliery or not, consequently making it a public premise is a question that becomes the focal point of the instant case and it, therefore, obviously involve determination/finding of fact. Undoubtedly, while attempting to come to such finding, the authority may be faced with complicated question of title as is involved in the instant case. The authority in the aforementioned case cannot be said to have the jurisdiction to embark upon the domain of the Civil Court for the purposes of adjudicating on a question of a complicated title, which can only be done by a Civil Court. It would be extremely unreasonable to allow a Court vested with summary procedure to give a finding, which can only be arrived at by a Civil Court having the necessary judicial competence.*

> *19. ...Now, under Section 5 of the aforementioned Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it is clear that a Estate Officer after following the procedure required to be followed therein and after reaching to a conclusion that a person is in unauthorized occupation of a public premises, he may make an order of eviction. The catch words that cannot be lost track of in this provision are that, all that the Estate Officer is required to do is that he must come to a conclusion that a person is in occupation of an area which is already confirmed or which has already been declared to be a public premises. He cannot nor does he have the jurisdiction to identify a particular piece of property and then give a finding that, that piece of property is a public property. This power is vested only with a Court of competent civil jurisdiction and not in a statutory authority, such as Estate Officer, who has been conferred only with summary powers. If such Estate Officers are allowed to give such finding, it would amount to conferring them with the powers of adjudication and delivery of judgments within the meaning of Section 2(a) read with provisions of Order XIV of the Code of Civil Procedure and/or principles/provisions analogous thereto."*

22. For the above reasons, it is held that the impugned judgment, inasmuch as it holds that the Court was divested of jurisdiction by reason of Section 15 of the Public Premises Act, cannot be upheld. The next question is whether the decision of the Estate Officer can, in view of this finding, be held as *res judicata.* This court, on this score does not experience any difficulty in holding that the principle of *res judicata* would not stand in the way of independent adjudication of a *bona fide* dispute regarding title to the disputed suit lands. Once it is concluded, as the court has done earlier, in this judgment- that the Estate Officer was not competent to rule upon issues of title, or grant

declaration of title to an occupant, any determination by him would have to be deemed as having been made without jurisdiction. As to the finality of such decision, or whether it operates as a rule of preclusion, was pronounced upon by a five judge Bench of the Supreme Court, in *Gulabchand Chhotalal Parikh vs State Of Bombay* AIR 1965 SC 1153, where it was emphasized that *res judicata,* and constructive *res judicata* even vis-à-vis decisions of tribunals other than courts, are premised on their being competent to decide the issue:

> *"The Code was dealing with procedure of the civil Courts only and had therefore not to consider what would be the effect on the trial of suits in view of the provisions of other enactments or of general principles of res judicata or of any other kind. It had to restrict its provision about res judicata to the effect of decisions in a civil suit on a subsequent civil suit and therefore enacted s. 11 in the form in which we find it. It made one of the condition-, for the application of a previous decision to operate as res judicata to be that the previous decision is made not only by a Court competent to make it but by a Court which be competent to try the subsequent suit. This condition must have been considered necessary in view of the observations of the Privy Council in Misir Raghobardial's Case(1) on account of the hierachy of Courts under the various Acts constituting Courts of civil judicature and it could have been felt that a decision by a Court which is not competentto decide the subsequent suit be not treated of a binding nature. Such an exceptional procedure seems to have been provided as a matter of precaution as the Court not competent to try the subsequent suit must necessarily be a Court of inferior jurisdiction and therefore more liable to go wrong. Whatever the reason may be, the provisions of s. 1 1 will govern a previous decision in a suit barring a subsequent suit with respect to the same matter in*

*controversy and general principles of res judicata in such particular circumstances will neither be available to bar a subsequent suit nor will be needed."*

It is, therefore, held that the decision of the Estate Officer cannot act as *res judicata,* or *constructive res judicata,* because in the first place that officer did not possess the jurisdiction to decide upon the Appellant's plea of being lawful owner of the properties.

23. The last question which this court has to address itself to, is whether the Appellant indeed has pleaded a *bona fide* dispute. Whilst in a sense, this Court is conscious that having first decided that the Estate Officer could not have decided the question, the matter is no longer moot, yet, it would be wise to deal with the issue. There is, in the opinion of the court, some need for clarity as to what constitutes a *bona fide* dispute. The court can only give some illustrations such as long, peaceful and uninterrupted possession of the claimant; possible cases where hostile and adverse possession is set up; genuine interpretation of documents, etc. In this case, the appellant rests its claim to be owner of the suit lands, upon some correspondence, and urges that the suit lands were exchanged with its lands by the erstwhile Improvement Board. Those letters were summoned from Archives; their genuineness cannot be doubted. No doubt, there is no document evidencing exchange, in accordance with Section 118 of the Transfer of Property Act. As against this, the Appellant had countered that those provisions had not been brought into force in the territory of Delhi, at the relevant time. The character of possession claimed by the Appellant also requires to be gone into.

24. Having regard to the overall conspectus of circumstances, which includes the fact that earlier, the contention seeking rejection of the plaint on the ground that it is not maintainable by reason of Section 15 of the Public Premises Act, had not been accepted, and eventually, the Division Bench had restored the suit for trial, this Court is of the opinion that the learned single judge should not have – if one may so use the expression, with due respect- precipitously dismissed the suit (which was on the file of the court for well over 21 years) without granting the Appellant the opportunity to establish its claims in a full hearing. For these reasons, the impugned judgment is set aside. The respondent DDA is also directed not to give effect to the order of the Estate Officer till conclusion of the suit, and final judgment is rendered in it. The parties are directed to present themselves before the learned single judge, according to roster allocation, for appropriate directions towards further proceedings in the suit, on 2nd April, 2013. The Appeal is accordingly allowed in the above terms; however there shall be no order as to costs.

**S. RAVINDRA BHAT**
**(JUDGE)**

**SUDERSHAN KUMAR MISRA**
**(JUDGE)**

**MARCH 19, 2013**