

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

+ Ex. F.A No. 15/2014

% **7th November, 2014**

DEEPAK GUPTA & ORS. Appellants

Through: Mr. S.D.Dixit, Advocate.

VERSUS

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents

Through: Mr. Padam Kant Saxena, Adv. for R-
1.

Mr. Sandeep Sethi, Sr. Adv. with Mr.
Akhil Sibal, Mr. Dhruv Kapur, Mr.
Vijender Kumar, Mr. Vishal
Chaturvedi, Ms. M. Rashmi,
Advocates and Mr. Rajesh Dudhani
(AR)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. Challenge by means of this execution first appeal is to the order of the executing court dated 12.5.2014 by which the applications filed by the appellants /objectors to the execution filed by the DDA have been dismissed.

2. Though there is a long history with respect to the execution petition filed by respondent no.1/Delhi Development Authority (DDA), the

only important aspect to be noted is that DDA is not executing any judgment passed in any civil suit but is actually and only executing the judgment passed by the Supreme Court in the case of ***M.C.Mehta Vs. Union of India & Ors. AIR 1996 SC 3311*** and other subsequent or consequential orders passed by the Supreme Court. One relevant subsequent judgment passed by the Supreme Court after passing the judgment reported as ***AIR 1996 SC 3311***, is the judgment in the same case of ***M.C.Mehta Vs. Union of India and Ors.*** reported as ***AIR 2001 SC 1544***. Para 31(vi) of this 2001 judgment is relevant and which reads as under:-

“Re (vi).....So far as the sixth issue is concerned, it is apparent that the order of the closure was on the industries which were found injuries, irrespective of the fact whether it was being carried on by the owner of the land or the tenant. This being the position, the subsequent direction of surrender also is in relation to the land on which such industries were being carried on and were ordered to be closed down. Consequently, it is irrelevant where tenant after closing down the industries, handed over the premises to the owner. The owner in such case would be bound by the order for surrender, and will have to surrender.” (emphasis added)

3. A detailed reference will be made to the aforesaid para 31(vi) subsequently in the course of this judgment, but, one thing is very clear and which is that the entire object in the main judgment of the Supreme Court in the case of ***AIR 1996 SC 3311*** and various subsequent orders which were

passed was to ensure that DDA has been directed to give lung space to the denizens of Delhi by relocating/shifting the industries and that DDA was mandated to take away certain lands belonging to all the occupants, whether the occupants be the mill/industrial owners or they be the tenants, in order to implement the directions that lung space becomes available for the denizens of Delhi. Various orders which were passed by the Supreme Court after 1996 show that Supreme Court took a very strict view of either the DDA/respondent no.1 or one or the other occupants or the mill/industry owners trying to delay in handing over possession to DDA as was to be done pursuant to the judgment reported as ***AIR 1996 SC 3311***. I may note that different contentions were raised by different mill owners/occupants/other persons at different points of time but the Supreme Court heavily came down on such interlocutory applications and dismissed the same in no uncertain terms specifying that DDA should not unnecessarily delay in taking over possession of the lands so that the judgment of the Supreme Court reported as ***AIR 1996 SC 3311*** is complied with in letter and spirit.

4. The present appellants/objectors claim that they are the legal heirs of Sh. Kewal Ram who was inducted as a tenant in two quarters bearing no. 54-55, Old Birla Lines, P.O.Birla Lines, Sabzi Mandi, Delhi-7

and that since the contractual tenancy of Sh. Kewal Ram was never terminated during his life time as is being contended by the mill/industry/respondent no.2, therefore, after the death of Sh. Kewal Ram the appellants/objectors who are the second generation after Kewal Ram, continue to be statutory tenants under the Delhi Rent Control Act, 1958 of the respondent no.2 herein i.e M/s Birla Textiles. It was contended in the objections filed by the objectors/appellants herein to the execution petition of the DDA, that, Supreme Court in its judgment and orders in *M.C.Mehta's cases (supra)* did not affect the right of the tenants to continue to stay in the tenanted premises.

5. The executing court has dismissed the application/objections filed by the appellants in terms of the following observations made in paras 4 and 5 of the impugned order and which read as under:-

“4. It is not the case of the objectors that ‘the subject premises’ does not form part of the land surrendered by the respondent as per the approval plan of DDA. According to them, they could not be divested of their lawful tenancy rights in the said premises. Whether under the orders of the Hon’ble Supreme Court, which are sought to be executed by the DDA, any of the rights of any occupier are excepted to be not proceeded against, no plea or submission has however, come to be made. In this background, as pointed out by Sh. Khosla Id. Counsel for the respondent, the observations made by the Hon’ble Supreme Court in its order dated 19.2.2002 on the applications made by the Rashtrawadi Janhit Sabha and Govt. of

NCT, clinch the issue. Dealing with the application filed by Rashtrawadi Janhit Sabha, wherein, it was prayed for the worker colonies of any of the heavy/large/noxious industries ordered to be shifted/relocated/closed down, which were to be treated to be part of the land which industry was required to surrender/dedicate to the community and thereafter, the government may, upon framing a suitable scheme, be bestowed ownership rights of these premises upon the bonafide occupiers, the Hon'ble Supreme Court while rejecting the said application, observed as under:

“Having considered the application as well as the additional affidavit, we are unable to accede to this prayer made by the Rashtrawadi Janhit Sabha as in our opinion in the matter of surrender of land after the industry was shifted outside Delhi pursuant to the order of this Court, is a matter between the owner and the DDA and no right and/or public interest can be said to be involved to pass any order for framing a scheme and to confer any right or allow these people to continue in those quarters.”

Rejecting the application filed by the Government of NCT, the Hon'ble Supreme Court then observed as under:

“This is a similar application by NCT seeking the relief that the land occupied by the workers must be surrendered to the DDA so that government may frame appropriate scheme and allow the workers to continue over there. The surrender of land pursuant to the order is for a different purpose and not to settle the workers over there. We have today rejected a similar application filed on behalf of the Rashtrawadi Janhit Sabha. Consequently the application of NCT also stands rejected.”

The above-said observations of the Hon'ble Supreme Court by itself make it clear that any occupier of the land which forms part of the land surrendered by the respondent as per the approved plan of DDA, has any right to resist the execution of the orders passed by the Hon'ble Supreme Court.

5. In view of the foregoing, I do not find any merit in 'the said application' and the same is dismissed with costs of Rs.10,000/- to be deposited with DLSA (Central).”

6. In my opinion, the present execution first appeal will have to be dismissed, though not on the grounds which are stated in para 4 of the impugned judgment, but in view of the categorical direction given in para 31(vi) by the Supreme Court in the case of ***M.C.Mehta Vs. Union of India & Ors. AIR 2001 SC 1544*** . This direction of the Supreme Court contained in para 31(vi) of the judgment I have already reproduced above and which in my opinion leaves no ambiguity because the same makes it clear that whether the premises are in possession of the original owners namely the mill/industry owners or the premises are in possession of the tenants, all these premises/land/industry will have to be surrendered to the DDA. Putting it in another words, Supreme Court did not by its main judgment in the case of ***AIR 1996 SC 3311***, or in any subsequent order, much less in the judgment reported as ***AIR 2001 SC 1544*** as relied upon by the appellants/objectors protected the tenants against eviction in the execution petition which was to be filed by respondent no.1/DDA.

7. Learned counsel for the appellants/objectors before this Court relied upon para 31(ii) of the judgment reported as ***AIR 2001 SC 1544*** to

contend that tenancy amounts to encumbrance and this aspect of encumbrance in terms of para 31(ii) will go in favour of the appellants because appellants' tenancy will have to be continued and the respondent no.2/mill/industry will have to give some other land to DDA. This para 31(ii) reads as under:-

“31...

Re (ii)....So far as the second issue is concerned, if the owner has the land which is approachable from the road, then he must surrender with the approach so that the surrendered land can be utilised for the community. If, however, he is himself not the owner of the approach road, then question of his providing an approach road does not arise and as such surrender shall take effect on “as is where is basis”. On the question as to the land to be surrendered should be free from encumbrance, we are of the view, if the land is already encumbered, then a direction to release it from encumbrance and surrender will be a great burden. At the same time, such land will be of no use to the society unless released from encumbrance. In the circumstances we direct that the owner cannot utilise the land available to him by virtue of order of this Court dated 10-5-96, until he releases the surrendered land from encumbrance. Further if it is not made free from encumbrance within five years, then he will not get the benefit of the order dated 10-05-96 and after five years even the land which the owner was otherwise entitled to retain would stand vested with DDA for the use and the need of the society.”

8. The contention urged on behalf of the appellants is clearly misconceived inasmuch as the answer given by the Supreme Court in para

31(ii) has to be read with reference to the query which is given in para 12(ii) of the 2001 judgment and which para 12(ii) reads as under:-

“12(ii) Land offered for surrender should be directly approachable from the road, vacant and free from all encumbrances.”

9. It is therefore clear that observations which were made by the Supreme Court in para 31(ii) are only with respect to approach land and not with respect to tenants who were occupying the lands which were to be surrendered to the DDA and which is squarely dealt with in para 31(vi) reproduced above. I must go to the extent of saying that it is because of persons like the appellants/objectors, and other persons who repeatedly file interlocutory applications, that the impugned judgment in the case of ***AIR 1996 SC 3311*** till date remains partly unimplemented. The actions of the appellants therefore are to be highly deprecated.

10. In view of the above, I do not find any merit in the appeal and the impugned order is sustained, though for the reasons which I have given above, and this first appeal is dismissed with costs of Rs.50,000/- and which costs shall be paid to the DDA by the appellants within a period of six weeks from today, failing which DDA can execute the order with respect to costs

against the appellants. All pending applications, if any will stands disposed of in terms of the present order. The next date i.e 3.12.2014 stands cancelled.

VALMIKI J. MEHTA, J

NOVEMBER 07, 2014/ib