

\$~

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

+ W.P.(C) 4687/2014

K.L. NARANG

..... Petitioner

Through

Mr. Vikas Singh, Senior Advocate with
Mr. Aman Panwar and
Ms. Deepika Kalia, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through

Mr. Sanjeev Sabharwal, Standing
Counsel.

Reserved on : 30th July, 2014

%

Date of Decision : 19th August, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the order dated 13th July, 2006 passed by the Estates Officer-1, DDA under Section 5 (1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [for short 'PP Act'] against the petitioner's predecessor-in-interest, namely, his deceased wife. The prayer clause in the writ petition is reproduced hereinbelow:-

- "a) *Quash the order dated 13.07.2006 passed by the DDA, which led to illegal demolition of the Petitioner's Property.*
- b) *Reinstate the Petitioner at the concerned property, from which he was illegally evicted by the DDA.*

- c) *Pass such other and further orders and/or directions as this Hon'ble Court may deem fit, just and proper in the facts of the present case."*

2. Mr. Vikas Singh, learned senior counsel for petitioner stated that when a person had selected his advocate, briefed him and paid his fee, he could remain confident that his lawyer would look after his interest and such an innocent party should not be made to suffer for inaction, deliberate omission or misdemeanor of his counsel.

3. Mr. Vikas Singh contended that the erroneous act of his counsel in withdrawing CM(M) 900/2008 could not completely block/choke the petitioner from seeking any legal recourse.

4. Mr. Vikas Singh further stated that despite petitioner being protected by National Capital Territory of Delhi Laws (Special Provisions) Act, 2007 [for short 'Act, 2007'], petitioner stood evicted under PP Act. He pointed out that in a similar matter, i.e., ***Khushi Seva Sanstha Vs. The State & Ors., W.P.(C) 2000/2012*** decided on ***16th January, 2003*** involving rights over the land in the same locality that means Arakpur Bagh Mochi, it had been held "*similarly, no action can be taken in respect of special areas as defined in Section 2(i) of the Act. No action for demolition of unauthorized construction or removal of encroachment in respect of unauthorized colony can be taken if such colony existed on 31.3.2002 and the construction took place on or before 8.2.2007.*"

5. It is pertinent to mention that the eviction order dated 13th July, 2006 was impugned by the petitioner's wife by way of a Civil Miscellaneous Main Petition being CM(M) 900/2008 before this Court. However, the same was dismissed as withdrawn. The order dated 29th September, 2008 dismissing the CM(M) as withdrawn is reproduced hereinbelow:-

"CM (M) 900/2008

Counsel for the Petitioner States that the Petitioner wants to withdraw the petition despite his advise that he has a strong case.

The petition is allowed to be withdrawn and dismissed as such."

(emphasis supplied)

6. Subsequently, a writ petition being W.P.(C) 7392/2008 was filed by the petitioner's wife challenging the very same order dated 13th July, 2006 passed by the Estate Officer-1, DDA. The said writ petition was also dismissed by another learned Single Judge of this Court with costs of Rs. 50,000/- on the ground of suppression and deliberate mis-statement.

7. The third writ petition being W.P.(C) 832/2009 challenging amongst others the very same eviction order dated 13th July, 2006, was also dismissed by a third learned Single Judge vide order dated 18th March, 2009. The relevant portion of the said order is reproduced hereineblow:-

"2. At the outset, counsel for the respondent states that the present writ petition is a gross abuse of the process of court for the reason that the petitioner had filed an earlier petition, registered as CM(M) No.900/2008, wherein she had assailed the order dated 13.7.2006 passed by the Estate Officer and the order dated 16.7.2008 passed by the learned ADJ under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. He further states that the aforesaid petition was withdrawn by the petitioner without seeking any leave from the Court for preferring a separate petition and without the Court grating any such leave. Subsequent thereto, the petitioner filed another writ petition, registered as WP(C)No.7392/2008 praying inter alia, amongst others, for the same relief i.e. for quashing the order dated 13.7.2006 passed by the Estate Officer and order dated 16.7.2008 passed by the learned ADJ, against the petitioner.

3. In the aforesaid writ petition, vide order dated 20.10.2008, the learned Single Judge took note of the fact that the petitioner neither filed a copy of the CM(M) nor placed on record the order passed thereon. It was observed that the petitioner had made a deliberate misstatement to the effect that she had withdrawn CM(M) No.900/2008 on 29.9.2008 for filing a comprehensive writ petition to reduce multiplicity of litigation, whereas the factual position was otherwise. The Court therefore concluded that it was a case of suppression of relevant facts and information and a deliberate misstatement to mislead the court. As a result, the aforesaid writ petition was dismissed with costs of Rs.50,000/- to be paid to the Prime Minister's Relief Fund, by holding that the same was an abuse of the process of the court. It is pertinent to note that the aforesaid costs have not been paid by the petitioner till date. Rather, the petitioner has sought waiver of the costs, which issue is pending consideration in WP(C) No.7392/2008.

xxxx

xxxx

xxxx

xxxx

11. In view of the fact that the earlier writ petition preferred by the petitioner was dismissed as an abuse of the process of the court, the question of permitting the petitioner to re-agitate the same issue in the present writ petition does not arise.

xxxx

xxxx

xxxx

xxxx

13. In view of the aforesaid facts and circumstances, it is held that the present writ petition is not maintainable as the petitioner had sought identical relief in two earlier petitions preferred by her. When she withdrew CM(M) NO.900/2008, without reserving her right to file a fresh petition, did not seek review of the order dated 29.9.2008 passed therein, and went on to file a fresh petition, i.e. WP(C) No.7392/2008, which was dismissed with costs of Rs.50,000/- on the ground of deliberate concealment of material facts, which order has also attained finality, the petitioner could not have maintained a third petition on the same cause of action. This petition amounts to a gross abuse of the process of the Court and is liable to be dismissed with costs."

8. Even a letters patent appeal being LPA No. 247/2009 was dismissed by a Division Bench of this Court vide order dated 25th May, 2009. The relevant portion of the said order reads as under:-

"3. The learned single Judge has rightly held that the petition filed by the appellant amounts to gross abuse of the process of the court and was liable to be dismissed. We find no infirmity in the said order of the learned single Judge to warrant any interference. The appeal is accordingly, dismissed. All applications stand disposed of."

9. The primary ground for filing the present writ petition is that the petitioner's wife's counsel had erroneously withdrawn CM (M) 900/2008.

10. However, the order dated 29th September, 2008 passed in CM(M) 900/2008 clearly shows that the withdrawal was on the instruction of the petitioner's wife and contrary to the advice of the counsel.

11. It is pertinent to mention that the same counsel had continued to appear for the petitioner's wife in W.P.(C) 7392/2008, W.P.(C) 832/2009 and LPA 247/2009.

12. Consequently, petitioner's argument that CM(M) was erroneously or negligently withdrawn by the petitioner's wife's counsel, is contrary to facts.

13. Further, the petitioner's reliance on Act, 2007 is untenable in law as today the petitioner stands evicted and the Act, 2007 does not stipulate that where proceedings have concluded, evictees have to be put back in possession.

14. Keeping in view the aforesaid, this Court is of the opinion that present writ petition is not only bereft of any merit, but it also amounts to relitigation. This Court as well as the Apex Court have repeatedly held that relitigation is opposed to public policy and should be curbed with a heavy hand.

15. In *N.D. Qureshi Vs. Union of India, 2008 (13) DRJ 547*, a Division Bench of this Court of which the present Bench was a party has observed as under:-

“12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon’ble Supreme Court in K.K.Modi Vs. K.N.Modi and others, reported in (1998) 3 SCC 573 has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon’ble Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view, frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case.”

16. Keeping in view the aforesaid, present petition is dismissed, but with no order as to costs.

MANMOHAN, J

AUGUST 19, 2014

rn