

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

% *Judgment pronounced on: January 02, 2014*

+ **CM(M) 790/2013 & C.M. No.12123/2013**

MASONIC CLUB (REGD) Petitioner
Through Mr.Sudhir Nandrajog, Sr. Adv. with
Mr.Rajiv Vig, Adv.

versus

JAMNA LODGE & ANR Respondents
Through Mr.A.K.Tandon, Adv. with
Mr.Shivanshu Kumar, Adv. for R-1.
Mr.Jatan Singh, Adv. with Mr.S.
Qureshi, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 18th July, 2013 passed by the learned Civil Judge-15, Centre, Tis Hazari, Delhi in Ex. M. No.10/11 whereby the application of the petitioner under Section 151 CPC was dismissed in which the prayer was sought that it should be held that the decree dated 31st August, 1966 has become nullity and unexecutable due to the reasons stated in the application and the impugned order be set-aside as the Executing Court has no power/jurisdiction to execute the decree dated 31st August, 1966.

2. It is necessary to refer the brief facts/relevant dates and events which have happened in the previous litigations between the parties in order to decide the present petition. The same are:-

- (i) On 24th November, 1962 civil suit was filed by the secretary of the respondent no.1 seeking for permanent injunction for restraining the members of the club from entering the suit premises and in alternative for ejectment of the club and all its members from the suit premises, which was a government land and which the respondent No.1 claimed to have got from the Notified Area Committee in 1898 as a grant subject to certain conditions. The petitioner club was an unregistered body at the time of filing of the suit and was later registered as society under the provisions of Societies Registration Act, 1860 with the Registrar of Societies, Delhi.

The said suit was decreed on 31st August, 1966. The judgment and decree were passed by the Civil Judge restraining the members of the petitioner club from entering the suit premises holding that the club was a licensee and the license was revocable and was rightly revoked.

- (ii) That first and second appeal and LPA filed by the petitioner against the decree was dismissed. However, in the second appeal decided by this Court, it was held that the relief sought in the suit was in substance for mandatory injunction and also asked the parties to explore the possibilities of compromise as the club was using the premises for number of years. Thus, the compromise was arrived at by the parties and the execution proceedings were adjourned. The club was allowed to use suit property on enhanced charges. The petitioner has also carried out alterations/improvements and extension in the building.
- (iii) On 18th September, 1998 an order was passed by the Executing Court on the application under Order 23 of CPC to use suit property on

enhanced charges and during all these years carried out major alterations/improvements and extension in the building and an agreement was signed by both the parties granting sine die adjournment to the execution with the liberty to the respondent no.1 to take up the execution of the decree in case of default on behalf of the petitioner or after 31st March, 2001 as may be the case.

It was stated in the application and in the agreement that the decree dated 31st August, 1966 continued to be valid and binding on the petitioner. It was stated that in earlier executions filed by the respondent no.1 and on the request made by the petitioner for further time to comply with the decree, the execution applications were adjourned sine die with the respondent No.1 to have the said execution revived at any time. However, the last execution application was adjourned on September 1, 1995 by which on request of the petitioner and its statement being recorded, further time was granted upto March 31, 1997 to enable the petitioner to make alternative arrangements and to comply with the decree. Further, time upto March 31, 2001 was sought by the petitioner. It was further stated that all other terms and conditions as embodied in compromise filed on September 1, 1995 was to remain binding upon the parties. The liberty was also granted to the respondent No.1 to revive the execution at the appropriate stage.

- (iv) In the year 1997, L& DO issued a letter in which it was admitted that the petitioner building was made over to the local Masonic Fraternity to use as lodge on the aforesaid terms and conditions and that no ground rent was recoverable from freemasons in respect of Masonic Lodge.

- (v) Two notices were issued by L & DO; one for eviction and another one for damages under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to the petitioner claiming to be the owner of the suit property, six tennis courts, vacant land and for damages for unauthorized use thereof. However, for the first time Masonic Hall was included in its notice by L & DO and no notice was sent to the respondent No.1. The petitioner stated on 12th June, 2000 before Estate Officer, L & DO that the said premises is not a public premises and that the said premises has been let out to by the respondent No.1. The petitioner contended that the respondent No.1 had the rights over the property and he had already lost the case against the respondent No.1 and thus, was paying damages. Despite knowledge neither the Estate Officer nor the L & DO chose to issue any notice to the respondent no.1 even at this stage.
- (vi) On 17th July, 2000 two orders one for eviction and another for damages passed by the Estate Officer, L & DO against the petitioner without giving any opportunity of being heard to the respondent no. 1 despite the fact that it was in knowledge of L&DO that the Masonic Hall belonged to respondent No.1.

The petitioner filed appeals against the said orders of Estate Officer, L & DO on July 25, 2000 under Section 9 of PP Act, wherein one of the ground taken by the petitioner to challenge the impugned order is *inter alia* to the effect that the said premises is not a public premises within the meaning of PP Act, 1971. In this appeal also, the respondent no.1 was not made a party.

The petitioner also filed a CWP 4534/2000 before this court on August 16, 2000 against the orders of Appellate Authority granting an

order of stay subject to payment of 10% of the damages wherein one of the ground taken by the petitioner to challenge the impugned order is *inter alia* to the effect that the said premises is not a public premises within the meaning of PP Act, 1971. In this petition, the respondent no.1 was not made a party.

- (vii) Subsequently on 12th September, 2000, CWP 5660/2000 filed by the respondent no.1 before this Court for quashing of aforesaid orders dated 17th July, 2000 on the ground that it was not made party to the proceedings before the Estate Officer, L & DO even when the order of eviction was passed against the petitioner which included a portion of the property belonging to respondent no.1. The abovesaid writ petition was disposed of on 25th September, 2000 with liberty to the respondent No.1 to move before ADJ & SJ for being impleaded in pending proceedings in the petitioner's appeals against order dated 7th July, 2000.
- (viii) In May 2001, an application on behalf of respondent no.1 under Section 151 of CPC before Executing Court for revival of execution adjourned sine die on 18th September, 1998 was filed. The petitioner filed the objections to the execution application of decree of the respondent no.1 along with the application for stay of execution was filed on 15th March, 2002. Reply of the respondent no.1 to the same was filed on 22nd May, 2003.
- (ix) By order of this court on 21st July, 2003 in CWP 4534/2000 against the orders of Estate Officer directed to raise all possible issues and pleas including the question of ownership of the premises before the appellate authority and the same to be decided by the authority. Admittedly, the respondent no.1 was not a party in the said petition.

- (x) The petitioner thereafter on 26th September, 2003 filed an application before the Executing Court under Section 151 of CPC for stay of the execution proceedings on the grounds that the decree being obtained by the respondent no.1 by fraud and decree is a nullity in the eyes of law in view of the orders of Estate Officer and the subsequent order of this court dated 21st July, 2003 was filed. Reply on behalf of the respondent no.1 to the aforesaid application was filed on 18th November, 2003.
- (xi) By order dated 10th September, 2005 the Learned ADJ allowed the application under Order 1 Rule 10 of CPC which was moved by the respondent no.1 who was accordingly made respondent no.3 in the appeals pending under PP Act in which the possession of the petitioner qua the suit property was protected by this court till the final disposal of all issues including that of ownership between the parties.
- (xii) In October 2005, another application under Section 151 of CPC moved by the petitioner before the Executing Court for dismissal of execution application of the respondent no.1 was filed. The execution application was revived as the petitioner defaulted the agreed terms and undertakings. The objections of the petitioner were dismissed and warrants of attachment against the moveable properties of the petitioner were ordered to be issued. The ground of nullity of the decree and jurisdiction of the court passing decree were discussed and dismissed by the Executing Court. The aforesaid application was dismissed vide order dated 14th October, 2005 passed by the Executing Court.
- (xiii) The petitioner thereafter filed CM (M) 2601/2005 impugning aforesaid order dated 14th October, 2005. The petition was admitted

on 26th October, 2005 and the said order dated 14th October, 2005 was stayed by this court. By order dated 18th November, 2005 adjourned the proceeding of Executing Court. The Counsel for the L & DO appeared before this court on 3rd March, 2006 and sought time to file certain documents.

By order dated 17th August, 2009 passed by this court *inter alia* to the effect that in any event the matter would be taken up for hearing on the next date i.e. 17th December, 2009 even if the PP Act appeals were not decided till then.

- (xiv) In August 2010, CM 14124/2010 filed by the petitioner under Order 1 Rule 10 of CPC for impleadment of L & DO in CM (M) 2601/2005 before this court. It was stated that the said premises being public premises. The respondent No.1 had no right in the said premises and the said decree was a result of fraud and *non-est*. Reply of respondent No.1 to the aforesaid impleadment application of petitioner in CM (M) 2601/2005 was filed. Rejoinder of petitioner to the reply of the respondent No.1 was filed. The ground/ plea of decree being nullity in the eyes of law were again reiterated by the petitioner. By order dated 21st October, 2010 this court observed that this petition be kept pending and to be considered while hearing the main petition.
- (xv) The judgment was passed on 20th July, 2011 by this court dismissing the said CM (M) 2601/2005. The said judgment was neither assailed by the petitioner nor by the L & DO and therefore, it became final. Thereafter, the respondent No.1 in August 2011 filed revival application under Section 151 of CPC for execution of the decree before Executing Court. In October 2011, an application of L & DO was filed for seeking permission to file its objections to the execution

of the decree. Reply to the application by the petitioner dated 26th August, 2011 was filed. The stay of the execution proceedings was again urged till the disposal of PP Act appeals under Section 9 of the Act. On 9th December, 2011 L & DO before the Executing Court filed its objections to the execution of the decree wherein one of the objections to the execution of the said decree was nullity of the decree in view of the proceedings under PP Act and the premises being held as public premises by the Estate Officer.

- (xvi) By order dated 3rd February, 2012, the Executing Court allowed the application under Section 151 of the respondent no.1 for revival of execution of decree. The objections of the petitioner regarding inexcusability were dismissed and stay of execution proceedings in its reply to revival of application was not allowed. Review application was filed by the petitioner under Order 47 Rule 1 and Section 151 of CPC in Executing Court on 27th February, 2012 impugning the aforesaid order.
- (xvii) By order dated 15th January, 2013 the Executing Court dismissed L & DO objections including nullity and inexcusability of the decree and challenge to the jurisdiction of the civil court. RCA No. 22/2013 was filed by L & DO before ADJ against said order dismissing objections.
- (xviii) L & DO filed an application before Executing Court on 7th March, 2013 for postponing its execution proceedings. Another application by the petitioner under Order 47 Rule 1 and Rule 2 and Section 151 of CPC against the order dated 15th January, 2013 of the Executing Court dismissing the objections of L & DO to the execution of the decree. It was stated in the application dated 1st April, 2013 the ground of nullity of the decree on account of PP Act and jurisdiction of the court

passing decree. Application for condonation of delay under Section 5 of Limitation Act in filing the above review application under Order 47 Rule 1 & Rule 2 filed by the petitioner before Executing Court.

(xix) By order dated 1st May, 2013 passed by Executing Court dismissing review application and limitation application of the petitioner. Later, on respondent no.1 reply was filed on 24th May, 2013. An application under Section 151 of CPC was also filed on 1st April, 2013.

(xx) By the impugned order dated 18th July, 2013 the said application filed by the petitioner was dismissed.

3. The main case of the petitioner/judgment debtor is that the respondent No.1 had no right, title or interest in the premises. The decree has been obtained by the respondents by playing fraud on the court. It is well settled law that a decree obtained by playing fraud upon the court is a nullity and non-est in the eyes of law. It can be challenged at any stage even in the execution as well as collateral proceedings.

4. The reason stated by the petitioner is that the Estate Officer, L & DO, Nirman Bhawan, New Delhi, vide his order dated 17th July, 2000 passed under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ordering for the eviction of the petitioner from schedule property which also include the property of the subject matter of the execution proceedings and also by giving his finding that the premises in possession of the petitioner are Public Premises being Government Land and who refused to recognize the decree holder/respondents as owner of the premises in possession of the petitioner which also include the premises of subject matter of the present execution proceedings.

5. The Estate Officer by another order passed under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 directed the petitioner to pay damages to the tune of ₹2,66,12,260/- to the Union of India.

6. The petitioner being aggrieved by the aforesaid orders filed two appeals against the aforesaid two orders of the Estate Officer, before the District Judge, Delhi, who by his orders dated 28th July, 2000 stayed the eviction order subject to the petitioner depositing 10% of the disputed amount till 17th August, 2000 with Union of India and further, keep on depositing ₹75,000/- per month by 17th of each succeeding month till the pendency of the appeal.

The petitioner being aggrieved by the aforesaid order of the learned ADJ, filed a Writ Petition before this Court which was disposed of by order dated 21st July, 2003, reported as 2003 (70) DRJ 282. It left all the issues especially the issue of ownership of the property under reference, open for the decision of the learned ADJ before whom the appeals filed by the petitioner pending where the decree holder has also now moved an application for impleadment/intervention.

The contention of the petitioner is that since the learned ADJ is seized of the issue/matter of ownership of the property in question which has a direct bearing upon the present proceedings, thus till the said issue is decided amongst all the concerned parties, the execution proceedings may be stayed.

7. Mr. Ajay K. Tandon, learned counsel for the respondent has made his submissions which are outlined as under:

- i) It is argued by Mr.Tandon that the suit instituted by the respondent/decreed holder for permanent injunction against the Masonic Club is neither expressly nor impliedly barred and exclusion of jurisdiction of the Civil Courts as mentioned in Section 15 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the decree does not fall within the ambit of P.P. Act which provides machinery to the Government for eviction of unauthorized occupants from public premises. It is submitted that the said Act was enacted retrospectively with effect from 16th September, 1958 and amended in 1968 and then in 1971 was as special procedure to government/bodies/authorities only for evicting unauthorized occupants from public premises. It does not apply to a suit filed by a private person/tenant/lessee/licensor against his Sub-Tenant/Lessee/Licensee. The remedy of DH/Jumna Lodge was/is only a Civil Suit under CPC and not under the PP Act. The DH/Jumna Lodge had in 1944 given on license part of its property to JD/Masonic Club. Even assuming though not admitting that the property in dispute is a Public Premises, as the PP Act did/does not provide for any remedy to private person against its licensee whose license stands terminated and a civil suit is the only remedy.
- ii) The decree does not fall within the scope and ambit of PP Act. The Act deal with evictions and damages, and not injunctions and a civil suit alone could/can have been filed in the present case. Pendency of the PP Act proceedings has no bearing upon the present proceedings.
- iii) His alternative argument is that even in case the premises in dispute is held to be Public Premises, the civil suit filed by the decree-

holder/Jamna Lodge against judgment-debtor/Masonic Club is still maintainable and it is the only remedy. Hence, the decree is valid and legal. The decree dated 31st August, 1966 is valid, binding and executable. Complex issues involving ownership have to be decided by Civil Court and not by a Quasi Judicial authority like Estate Officer.

- iv) His further submission is that an order of an Estate Officer, which at best is a quasi judicial authority, even within the meaning of Section 10 of the PP Act, cannot be compared with or override the decree of the Civil Court, which became final and binding after having been hotly contested even in 3 appeals, upto LPA in High Court.
- v) The next submission of Mr.Tandon is that all objections now sought to be raised before this Court have already been raised before the Executing Court and dealt/decided not only by the Executing Court vide order dated 14th October, 2005 but even by the High Court vide order dated 20th July, 2011 and again the Executing Court vide orders dated 3rd February, 2012, 15th January, 2013 (L&DO Objections), 1st May, 2013 and 18th July, 2013 and even if not earlier decided, all the present objections are now barred by the principles of constructive res-judicata. Since judgment debtor/Masonic Club has been litigating since 1962 and according to judgment debtor, objections of such kind had never been raised before they cannot be raised now for the first time at this belated stage. As per Explanation VII to Section 11 CPC, the provisions of Section 11 CPC apply to execution proceedings as well. It is argued by Mr.Tandon that as per Explanation V to Section 11 CPC, any relief claimed in the plaint, which is not expressly

granted by the decree/judgment, shall, for the purposes of res-judicata, be deemed to have been refused.

- vi) It is also argued by Mr. Tandon that the petitioner as well as L & DO are time and again re-agitating the same objection and filing the proceedings which are total abuse of due process of court and law and not allowing the respondent No.1 to execute the valid decree dated 31st August, 1966 despite of the admission made by them from time to time and undertaking given by them in court.
- vii) It is submitted by him that the arguments addressed by the petitioner in the present case are totally contradictory and contrary to the earlier stands taken by them before the Estate Officer and before this Court and learned Trial Court. He referred various paras of their pleadings which are supported by the affidavits of the petitioner. The petitioner having repeatedly confirmed the decree dated 31st August, 1966 and its validity, legal and binding, and having taken advantage of various agreements (including the last dated 1st November, 1997) with the DH/Jumna Lodge and orders of the Court (lastly vide order dated 18th September, 1998 for the period up to 31st March, 2001), in adjourning the execution *sine die* as unsatisfied (with the liberty to the DH to take up the execution of the decree in case of default on behalf of the JD Club or after 31st March, 2001 as may be the case) but they are arguing now contrary which is even not open to the petitioner to make such objection on any ground, whatsoever against the said decree dated 31st August, 1966.
- viii) It is argued that the said issue raised by the petitioner in the present case has already attained finality rejecting the objection of the

petitioner in the final judgment passed in CM(M) 2601/2005. The said findings are not challenged by the petitioner and L & DO and have binding effect upon them. In any case, the possession of the suit property is to be come to the respondent No.1 and in case the appeals are decided against the respondent No.1, L & DO is entitled to initiate the legal proceedings to take back the possession if they are entitled under the law.

- ix) It is stated that L & DO has got no role in this property. Present property comes within the jurisdiction of MCD in terms of Section 516(2)(d) of the Delhi Municipal Corporation Act, 1957 and the same is being argued by the DH in PP Act Appeals. The properties over which the L & DO is claiming rights are separate and distinct from the property of the Jumna Lodge. Further, on coming into force of the Delhi Municipal Corporation Act, 1957, as per Section 516(2)(d) all the rights of the bodies mentioned in second schedule of the Act including the Notified Area Committee, Civil Station vest in Municipal Corporation of Delhi and therefore the L&DO has no jurisdiction over the property in question. As per Section 516 of the Delhi Municipal Corporation Act, the area in which the Lodge is situated was handed over to the MCD and till date the MCD has not claimed any rights over the property.
- x) Mr.Tandon also argued that the supervisory jurisdiction under Article 227 of the Constitution of India has to be exercised sparingly by the High Court.

8. Before dealing with the other submissions of the parties, I must mention here that most of the points involved in the present case have been

discussed and decided by this Court in CM(M) No.2601/2005, titled as Mr.M.L. Dawar vs. Mr.M.L. Seth which was dismissed by judgment dated 20th July, 2011 wherein Mr.M.L. Dawar on behalf of the present petitioner impugned the order dated 14th October, 2005 when the objections filed by the judgment debtor against the judgment and decree dated 31st August, 2006 had been dismissed. It is also the admitted position that the said order has not been challenged by the judgment debtor and the said judgment passed by this Court has become final between the parties.

9. In the said judgment, learned Single Judge of this Court has recorded that the appeal is yet pending before the ADJ and the matter has not been decided despite of various directions are issued. At the time of hearing another request was made by learned counsel for the petitioner that matter be adjourned till the disposal of the appeals. However, later on counsel agreed for hearing and the same was proceeded with the consent of counsel for the parties. The matter was heard and decided by confirming the order by which the objections filed by judgment debtor before the executing Court had been dismissed.

10. Most of the objections raised in the present matter were considered and decided by the court in the judgment dated 20th July, 2011 in CM (M) No.2601/2005. The said contention of the petitioner was recorded in para 9 to 15 of the judgment. The relevant extract of the same are reproduced as under :

“9.....First contention raised by learned counsel for the petitioner is that although the suit had been titled as a suit for permanent injunction yet it was a suit for mandatory injunction and this was clear from the observations made by the High Court while disposing of the Regular Second Appeal in its judgment and decree dated 05.03.1970. It is pointed out that

while disposing of the petition, the Court had noted that the relief claimed is in substance of relief for mandatory injunction; suit in the form in which it was filed was not maintainable. Execution filed after 12 years was time-barred. This argument has not been considered by the executing court. It has secondly been contended that a representative suit filed under Order 1 Rule 8 of the Code (which was so in the present case) is not binding upon the person who is not a party to the suit; M.L. Dawar the objector before the Court was admittedly not a party in the trial proceedings; decree dated 31.08.1966 was not binding upon him. To support this submission reliance has been placed upon a judgment of this Court reported in Vol. III 1967 DLT 459 Darshan Singh Vs. Hari Nath which in turn had also relied a judgment of the Madras High Court reported in AIR 1955 Madras 281 Kodia Goundar and another Vs. Velandi Goundar and other. Contention is that although a decree obtained in a suit instituted in accordance with the provisions of Order 1 Rule 8 of the Code will be binding on all the members that belong to the class who are sought to be represented, by operation of the principle of res-judicata as contained in Section 11, Explanation VI of the Code but the mere fact that such a decree would be binding as “res-judicata” on others who were sought to be represented cannot make such a decree enforceable as and by way of execution; such a decree cannot be executed. The third contention of learned counsel for the petitioner is that the role of the landlord has since changed; admittedly this was a lease hold property and the licensor was the L&DO who had granted the lease in favour of the judgment debtor; the superior lessor i.e. L& DO has now by an eviction order dated 17.08.2000 passed an eviction order against the Masonic Club/judgment debtor; the contention of the L& DO is that this is a Government land; Masonic Club is sitting in Government land; it does not belong to decree holder; there is thus no relationship of lessor and licensee between the plaintiff and the defendant i.e. between Jamna Lodge and Masonic Club. It is contended that the doctrine of estoppel as contained in Section 116 of the Evidence Act carves out an exception; exception being where there is a threat to the tenant of eviction by the paramount lessor; the tenant is not precluded from challenging the title of the landlord For this proposition reliance has been

placed upon AIR 1987 Supreme Court 2192 D. Satyanarayana Vs. P. Jagadish. It is submitted that these objections have not been considered by the executing court; the impugned order is liable to be set aside.

10 Arguments have been refuted. It is submitted that the impugned order suffers from no infirmity.

11 Arguments of learned counsel for the petitioner are bereft of force. The record shows that the RSA was disposed of on 05.03.1970. While disposing of that appeal, the Court had noted that the plaintiff in substance is seeking a relief of mandatory injunction; it had relied upon a judgment of the Punjab High Court reported as AIR 1962 Punjab 370 Delhi Gate Service Ltd. Vs. M/s Caltex (India) Ltd. to hold that a suit against a licensee on the termination of his license asking him to vacate his premises is maintainable; the present plaint asking the members of the Club to remove their moveable lying in the premises was well covered by the ratio of the aforementioned judgment; the suit was maintainable. This judgment had also noted that the objection raised by the defendant/judgment debtor that the suit as framed was not maintainable was never a defence taken in the pleadings in court below and therefore it could not be urged in a second appeal. This contention after having been noted had been rejected. Since this objection about the maintainability of the suit was dismissed in second appeal, the question of the judgment debtor raising it before the executing court again does not arise. His contention that the present suit is essentially to be treated as a suit for mandatory injunction for which there is a limitation of 12 years, a decree passed on 31.08.1966 can be executed only up to 12 years is thus an objection without any merit. The proviso of Article 136 of the Limitation Act, 1963 clearly prescribes that in a suit for perpetual injunction (which was the suit filed by the plaintiff) there is no period of limitation which is prescribed. This argument of learned counsel for the petitioner is rejected.

12 The second contention of learned counsel for the petitioner that a suit under Order 1 Rule 8 of the Code which is a representative suit is binding upon the parties inter-se under the doctrine of res-judicata but it cannot be executed against a

non-party to the suit has also been set at rest by a judgment of the Apex Court relied upon by learned counsel for the respondent and reported in AIR 1996 Supreme Court 1211 Singhai Lal Chand Jain Vs. Rashtriya Swayam Sewak Sangh, Panna and other. In this context the following observations of the Apex Court are relevant:-

“Held further that the Sangh having been duly represented in the suit and the President, manager and Member had conducted the litigation on behalf of the Sangh bona fide, the decree of ejectment binds every member of the Sangh. No one on behalf of the Sangh could lay any objection in the execution nor plead nullity of the decree. The doctrine of res-judicata prohibits the members of the Sangh to obstruct the execution of the decree.”

13 This sets at rest this vehement argument of learned counsel for the petitioner. The decree dated 31.08.1966 was thus binding upon all the members of the Club and doctrine of res-judicata prohibited the members of the Club to obstruct the execution of the decree on this count. The second argument is also answered against the petitioner.

14 The last contention urged by learned counsel for the petitioner was based upon the judgment of Satyanarayan (Supra); contention being that judgment debtor/Masonic Club has an independent relationship with the L& DO who had passed an eviction order against him on 17.08.2000 and in view of the exception carved out by Section 116 of the Evidence Act nothing precluded the judgment debtor/Masonic Club from challenging the title of the landlord. This contention of the petitioner has been answered by the Apex Court in the judgment reported in JT 2002 (1) SC 97 Vasu Deo Vs. Bal Kishan; the judgment of the Satyanarayan was also considered in this judgment wherein it was noted that Satyanarayan was distinct on its peculiar facts. The Supreme Court while dealing with the defence raised by a tenant for eviction by the title paramount had laid down the following three conditions which must co-exist before this defence can be established. In this context the Supreme Court had noted as follows:-

“To constitute eviction by title paramount so as to discharge the obligation of the tenant to put his lessor into possession of the leased premises three conditions must be satisfied: (i) the party evicting must have a good and present title to the property; (ii) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event, such as a change in law or passing of decree by a competent court, which would dispense with the need of consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly; or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted. The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence.”

15 It is admitted by the plaintiff that these conditions do not co-exist; it is admitted by him that he has not attorned to the paramount title holder i.e. to the L & DO. This admission by itself throws out this defence set up by the petitioner. In this factual scenario, the petitioner is estopped from challenging the title of his landlord i.e. Jamna Lodge. Admittedly the L& DO had not come into the picture at all till the year 2000 when for the first time an eviction notice had been received by the judgment debtor/Masonic Club which was on 17.07.2000. Decree has been passed in this case on 31.08.1966; judgment debtor/Masonic Club has been held to be a licensee in the suit property. Challenge to the title of the plaintiff as landlord is now not a defence available to the petitioner. This argument is also bereft of any force.”

11. It is undisputed position that from time to time in executing courts, the petitioner and L & DO have been filing the objections and by filing of application challenging the validity of the decree. The issue of public

premises was also taken and considered by this Court. In fact they were requesting for postponement of execution proceedings till the decision of appeals pending before the ADJ.

12. However, it is not denied by the petitioner that directions were issued by the courts to decide the appeals in view of order passed on 21st July, 2003, but the said appeals were not decided. CM(M) No.2601/2005 was listed for hearing before court and the matter was decided with the consent of parties. The judgment was delivered in favour of respondent No.1 which was not challenged by the petitioner despite of finding arrived against them. The said judgment passed on 20th July, 2011 becomes final between the parties wherein most of issues raised in the present case were also decided.

13. It is apparent that the stand of petitioner before this Court and before Estate Officer is contrary to each other. Before this Court the stand of the petitioner is that the land in question belonging to Government and before Estate Office, specific statement was made that property in question belonging to respondent No.1 who is the lessor of the petitioner. No explanation has been given by the petitioner to the Court during the hearing of the present petition.

14. Mr. Tandon states that the petitioner here and L & DO are trying their best to drag the executing court and not allowing the Executing Court to execute the warrants of possession by filing of false, frivolous and similar type of application/objections which have been dismissed time and again. It is done by them in order to stall the proceedings. And at the same time, they were taking the adjournments and were not arguing the pending appeals. Under these circumstances this court ultimately had no option to hear the

matter i.e. CM (M) No.2601/2005 with the consent of the parties and finally decided in favour of respondent No.1.

15. Various decisions have been cited by both the parties. It is not necessary to discuss the said decisions as I feel that once the final judgment has been passed after argument of both parties and by considering the decision. The same issues cannot be allowed or re-considered in the present matter.

16. The present petition has been filed against the order passed in application filed by the petitioner of stay of execution proceedings by re-agitating the same issue of validity of issue to the effect that the decree passed by the court in 1966 is a nullity and non-est in the eyes of law and is not enforceable as the respondent No.1 is not the owner of the suit property despite of fact that not once in various proceedings the petitioner has specifically admitted validity of decree and undertaking given by them and the same objections have been considered and decided by many Courts. The question of re-agitating the same issue does not arise.

17. It is well settled principle of law that the High Court while exercising its power under Article 227 of the Constitution of India, cannot proceed to act as a Court of appeal by interfering in mere errors of finding fact which requires re-appreciation and re-weighing of evidence unless it results in manifest miscarriage of justice as a Court of appeal. The said power under Article 227 of the Constitution of India has to be exercised sparingly and circumspectly to ensure that decision making done by lower Court and tribunal below is within their bounds and limits.

18. The said power under Article 227 of the Constitution of India being supervisory in nature cannot be equated with the powers of appellate Court

and the jurisdiction under Article 227 could not be exercised as a cloak of an appeal in disguise.

19. Scope of interference in a petition under Article 227 of Constitution of India is discussed in the following judgments :

- i. In ***Waryam Singh and Another v. Amarnath and Anr.***, AIR 1954 SC 45, the court observed; “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in-“***Dalmia Jain Airways Ltd. V. Sukumar Mukherjee***”, AIR 1951 CAL 193 (SB) 1(B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”
- ii. In ***Mohammed Yusuf Vs. Faij Mohammad and Ors.***, 2009 (1) SCALE 71, Supreme Court held; “The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.
- iii. In ***State of West Bengal and Ors. Vs. Samar Kumar Sarkar***, JT 2009 (11) SC 258 Supreme Court held; “10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of

superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”

iv. In ***Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta***, AIR 1975 SC 1297 the Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

v. In ***Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives, JT 1995(7) SC 400***, Apex Court observed; “The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

vi. The Supreme Court in the case of ***Babhut Mal Raichand Oswal vs. Laxmi Bai R. Tarta*** reported in (1975) 1 SCC 858 approved the dictum of Morris L., J. in ***Res v. Northumberland Compensation Appellate Tribunal***, 1952 All England Reports 122.

20. In the case of ***State of Maharashtra vs. Milind & Ors.***, 2001 (1) SCC 4, the Supreme Court observed:

“The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's

conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.” (Emphasis supplied)

21. Again in the case of *State vs. Navjot Sandhu*, (2003) 6 SCC 641, the Supreme Court observed:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.” (Emphasis supplied)

22. The decisions of *Babhut Mal* (supra), *State vs. Navjot* (supra) and *State vs. Maharashtra* (supra) have been approved by Hon’ble Justice C.K. Thakkar as his Lordship then was in the case of *Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (D) By LRs. & Ors.*, 2008 (9) SCC 1.

23. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the Court ceased of the proceedings under Article 227 cannot act as a Court of appeal and should interfere with the decision of the inferior tribunal or Court only to keep the authorities and Courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors. The power under Article 227 is thus discretionary in nature and can be exercised in the cases where the lower Court ignores material piece of evidence or considers some evidence which it ought not to have considered resulting into injustice and not in cases where there are two views possible and the view adopted by lower Court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

24. In view of the facts and circumstances of the present case as well as the legal position with regard to the scope of interference under Article 227, I am of the considered opinion that once the issues in question have already been decided by this Court in the final judgment delivered on 20th July, 2011 which has become final between the parties, there is no question of any interference. Hence, the present petition is dismissed. Pending application also stand dismissed.

25. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 02, 2014