

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

+ Ex.SA 2/2015 & CMs. 5397-5400/2015

% Decided on: 8<sup>th</sup> April, 2015

ISHTIYAQ AHMED

..... Appellant

Through: Mr. Parvinder Chauhan with Mr.  
Nishant Prateek, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS.

..... Respondents

Through: None.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. A suit filed by Mohd. Ishaq against DDA and Abdul Qayum seeking a decree for perpetual and mandatory injunction and declaration regarding allotment of plot No.D-1/130, Rewari line Industrial Area, Phase-II, Mayapuri, New Delhi (hereinafter referred to as “the suit property”) in the name of Abdul Qayum as illegal, void and without jurisdiction and the entitlement of Mohd. Ishaq to an alternative site/plot as against Stall No.23 Motor Market, Kabari Bazar, Jama Masjid, Delhi was dismissed by learned Civil Judge on 11<sup>th</sup> August, 2009. During the pendency of the civil suit both Mohd. Ishaq and Abdul Qayum died, thus their legal heirs were brought on record.

2. On an appeal filed by L.Rs. of Mohd. Ishaq the learned ADJ vide the order dated 26<sup>th</sup> February, 2010 set aside the judgment and decree of the learned Civil Judge and granted decree with costs in favour of legal representatives of Mohd. Ishaq declaring allotment of the suit property in the

name of Abdul Qayum as illegal, void and without jurisdiction and that Mohd. Ishaq was entitled to allotment of alternative site/plot as against Stall No.23 Motor Market, Kabari Bazar, Jama Masjid, Delhi. A decree of mandatory and perpetual injunction was also passed in favour of Mohd. Ishaq.

3. In the execution petition filed, Ishtiaq Ahmed the petitioner herein filed objections before the learned Civil Judge which were dismissed vide order dated 9<sup>th</sup> November, 2012. Against the said order, Ishtiaq Ahmed filed an appeal before the learned ADJ which was dismissed vide the impugned judgment dated 15<sup>th</sup> November, 2014.

4. The contention raised by learned counsel of Ishtiaq Ahmed before this Court is that he was a bona fide purchaser of the suit property from Abdul Qayum in the year 1983 for a consideration of Rs.3,80,000/- of which Rs.2,95,000/- was paid and the vacant and peaceful possession of the suit property was handed over to Ishtiaq Ahmed. The balance amount of Rs.85,000/- have to be paid at the time of execution of the sale deed and it was assured that sale deed would be executed in his favour after obtaining necessary clearance from DDA. After the death of Abdul Qayum, his legal heirs represented that they would honour the words of Abdul Qayum and obtained Rs.85,000/ and executed a sale deed in respect of the suit property. So the title of Ishtiaq Ahmed was perfect. The property was mutated in MCD records in the name of Ishtiaq Ahmed and he has been in continuous and peaceful possession of the suit property since 1983. It is only on 22<sup>nd</sup> February, 2012 during the pendency of the execution petition, Ishtiaq Ahmed came to know about the fraud committed on him by Abdul Qayum and his

brother-in-law Mohd. Ishaq. Thus in view of lis-pendence and Ishtiaq Ahmed being the bona fide purchaser, he could not be evicted without due process of law.

5. Vide the impugned judgment, the learned ADJ noted the order of this Court in RSA 124/2010, CM No.11499/2010 and 11500/2010 wherein this court held that the allotment of the suit property was fraudulently obtained by Abdul Qayum and therefore the appeal filed by legal heirs of Abdul Qayum was dismissed vide order dated 9<sup>th</sup> February, 2011. This order has been upheld by the Hon'ble Supreme Court vide order dated 5<sup>th</sup> December, 2011 and consequently, the allotment has been cancelled vide letter dated 20<sup>th</sup> April, 2011. The suit property was sealed on 22<sup>nd</sup> February, 2012. Even as per Ishtiaq Ahmed, documents of sale i.e. agreement to sell, GPA etc. have been executed in his favour in the year 2004 whereas the suit was instituted in the year 1984 by Mohd. Ishaq. Thus, doctrine of lis-pendence would not apply in favour of Ishtiaq Ahmed since he purchased the suit property during the pendency of the suit and he would be bound by the judgment and decree. Further the documents, GPA, agreement to sell etc. do not confer any right, title and interest in the suit property in favour of Ishtiaq Ahmed and hence declined the objections.

6. I have heard learned counsel for the petitioner.

7. In Suraj Lamps and Industries Private Ltd. Vs. State of Haryana & another 2012(1) SCC 656 the Supreme Court observed that in the absence of proper sale deed duly stamped and registered, no right, title or interest is conferred on a party in respect of a property on mere execution of general power of attorney, agreement to sell etc. Thus, it cannot be held that Ishtiaq

Ahmed has a right or title in the suit property. Moreover as noted above, even the claim of Instiaq Ahmed is that agreement to sell, general power of attorney were executed in his favour in the year 2004 by the legal heirs of Ahdul Qayum and the suit was instituted in the year 1984. Thus, the plea of lis pendence would also not apply.

8. Further there is no merit in the plea of Ishtiaq Ahmed that he couldnot be evicted without filling a civil suit i.e. without process of law. In Maria Margarida Sequeira Fernandes (*supra*) while discussing the term “due process of law” the Supreme Court reiterated the decision of this Court in *Thomas Cook (India) Ltd. Vs. Hotel Imperial*, 18 (2006) 88 DRJ 545 and held that “due process”, “due course of law” and “recourse to law” have been interchangeably used in the decisions. However, “due process of law” would not mean a full-fledged trial. It simply means that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner. The said rights can be adjudicated merely on filing of written statement or by the pleadings of the parties itself. The Court further noted that it was not necessary that only if a suit for eviction was filed by the respondent claiming the suit premises then only orders of eviction can be passed. It was held:

*79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.*

80. *The High Court of Delhi in Thomas Cook (India) Ltd. v. Hotel Imperial*[(2006) 88 DRJ 545] held as under: (DRJ p. 566, para 28)

*“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejection from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.*

*Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the ‘bare minimum’ requirement of ‘due process’ or ‘due course’ of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case,*

*can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."*

*We approve the findings of the High Court of Delhi on this issue in the aforesaid case.*

9. The decree passed in favour of L.Rs. of Mohd. Ishaq has been upheld till the Hon'ble Supreme Court. Further Ishtiaq Ahmed has been afforded sufficient opportunity of hearing in the objections filed by him. Consequently, I find no merit in the petition. Petition and applications are dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**APRIL 08, 2015**  
**'v mittal'**