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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 63/2009

SHRI HARI CHAND SAINI

..... Plaintiff

Through: Mr. Devinder Singh Khatana, Advocate.

versus

DELHI METRO RAIL

CORPORATION LTD. (DMRC)

..... Defendant

Through: Mr. Shiv Kumar, Advocate with
Mr. Puneet Garg, Law Officer.

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Date of Decision: 21st April, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for recovery of damages of Rs.34,24,205/- along with interest @ 18% per annum from the date of filing of the suit till date of realisation. Plaintiff alleges illegal dispossession and acquisition of land by Delhi Metro Rail Corporation Limited (hereinafter referred to as 'DMRC').

2. On 14th December, 2009, the following issues were framed:-

1. *Whether the plaintiff has any right, title or interest in the suit property? OPP.*
2. *Whether the plaintiff is entitled to recover a sum of*

Rs.34,24,205/- along with interest as claimed from defendant? OPP

3. *Whether the suit of the plaintiff was not maintainable in view of the decision of this Court in Writ Petition No.9980 of 2006 dated 12th October, 2006? OPD*
4. *Whether the defendant was allotted 31.90 Hact of land at Yamuna Khadir for the project of MRTS and plaintiff has any right to file the present suit in respect thereof? OPD.*
5. *Relief.”*

3. The present case has a chequered history inasmuch as numerous litigations were filed by the present plaintiff before filing the present suit.

4. A Writ petition filed by the plaintiff being W.P.(C) 9980/2006 was dismissed by a learned Single Judge of this Court vide judgment and order dated 12th October, 2007. The said judgment succinctly records the factual matrix of the present case. In fact, the contentions and submissions advanced by the plaintiff in the present case are identical to the contentions and submissions dealt with by the learned Single Judge in the said writ petition. The relevant paragraphs of the said judgment are reproduced hereinbelow:-

“2. Shri Hari Chand Saini has filed W.P.(C) No.9980/2006 praying for an order of restraint against the respondents from dispossessing him from the land measuring 36 bighas 2 biswas comprising in khasra no.50/68, (8 bighas 5 biswa) 50/74 (8 Bighas 10 biswas), 50/48 (7 bighas 17 biswas), 50/49 (2 Bighas 10 biswas), Khasra No.50 Min (4bighas) khasra no.50 min (5 bigha) situated in Chiragha Janubi (South), Delhi

3. As identical issues of law and fact rise in both the writ petitions the same are being taken up together for disposal.

Both the petitioners have placed reliance on an allotment made by the Government of India through the Ministry of Rehabilitation vide a letter dated 14th March, 1950 and the Chief Commissioner Delhi vide the letter dated 23rd March, 1950 allotting a parcel of land to the Jheel Kuranja Cooperative Milk Producers Society Limited on leasehold basis. No lease deed in terms of these letters has been placed on record. However by the reliance on these letters the petitioners admit that the land is owned by the respondents herein.

4. So far as the legal right of the petitioners is concerned there is not an iota of material placed before this Court to evidence allotment of the land to the petitioner either by the respondents or by the Jheel Kuranja Coopeative Milk Producers Society Limited. To support their allotment the petitioners placed reliance on certain receipts purportedly issued to them by the Jheel Kuranja Cooperative Milk Producers Society Limited for different dates. The petitioners have also claimed that their possession on the land is lawful and they have every right to continue and occupy the same. According to the petitioners, the Jheel Kuranja Cooperative Milk Produces Society Limited has made payments of lease money towards the subject land to the Delhi Development Authority. In this behalf copy of letter dated 21st September, 2005 addressed by the Jheel Kuranja Cooperative Milk Producers Society Limited to the DDA enclosing a challan of deposit of payment in the Central Bank has been relied upon.

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6. So far as the rights of the Jheel Kuranja Cooperative Milk Producers Society Limited are concerned it appears that in the year 1967 this society has apprehended dispossession and had filed a suit for injunction against the DDA. The trial court dismissed the suit as not being maintainable for want of a statutory notice under Section 53 B of the Delhi Development Act.

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8. However, the petitioner has also placed reliance before this court on certain orders passed by the trial court in a suit No.196/2003 dated 6th October, 2005 which was filed by Shri Hari Chand Saini (petitioner in W.P.(C) No.9980/2006) as well as judgment dated 15th February, 2005 passed in a suit No.231/2003 filed by Shri Kishan Kumar Sharma as well as Shri Hari Chand Saini. It appears that in the suit filed by Shri Hari Chand Saini the court noticed that the case of the DDA was that the plaintiffs were in possession of the land and consequently the DDA could evict the plaintiffs only by adopting due process of law. The judgment dated 6th October, 2005 is to the same effect.

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10. In the counter affidavit which has been filed by the DDA, it has been contended that the land in question was placed under the management and control of the DDA by virtue of a Nazul Agreement, 1937. Reliance has been placed on the record of rights contained in jamabandies of the subject land wherein the ownership of the land has been shown as that of the government. In this behalf even the revenue records relied upon by the petitioners reflect that the land was owned by the government.

11. According to the DDA the land was given to the Jheel Kuranja Cooperative Milk Produces Society Limited on a short term lease by a resolution dated 25th May, 1950. Such lease was cancelled on 16th October, 1967 and petitioner's claiming under such society would have no right, title and interest in the subject land.

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13. The order of eviction dated 8th December, 2000 has also noticed proceedings in a W.P.(C) No.3791/1991 entitled Smt.

Dhan Kaur Vs. DDA which was decided on 12th August, 1993. Smt. Dhan Kaur had set up a claim identical to that of the petitioners and had sought permission for use and occupation on the basis that the said society was a lessee. It appears that this contention was negated by this Court and it was held that the Jheel Kuranja Cooperative Milk Producers Society Limited did not have any subsisting right, title or interest in the subject land and therefore anyone claiming to be the society cannot legally continue to use and occupy the land. It was the eviction order which notices that the court had held that there was no trespassers and encroachers and for this reason the writ petition was dismissed.

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15. In view of the above there is no material before this court to show any legal right of the petitioner to continue to use and occupy the subject land.

16. Mr. Ajay Verma learned standing counsel for the DDA has submitted that action has been taken against the petitioner Shri Sri Chand Saini in accordance with law. It has further been submitted in the counter affidavit that the Delhi Development Authority has allotted land admeasuring 31.95 hectares to the Metro Rail Corporation Limited for alignment, station and yard at Yamuna Khadir on permanent basis in the khasra no.50 min being a national project of public importance which was approved by the Delhi Government. Possession of this land is to be handed over to the Delhi Metro Rail Corporation upon payment of the premium by it and that in the meantime in view of the importance of the project, permission for earth filling was given to the corporation on 5th September, 2005 in compliance with the minutes of the meeting held on 18th August, 2005. The writ petition is also opposed on grounds of public interest.

17. The grievance of the petitioners is that the respondents can take action against the petitioners only in accordance with

law. In the instant case, the respondents initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and have passed an order against the petitioners. Therefore it cannot possibly be contended or held that due process has not been followed against the petitioners.

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19. So far as Shri Hari Chand Saini is concerned I find that eviction order was passed by the estate officer against him on 15th May, 2006. In the rejoinder which has been filed the petitioner has submitted that he has assailed the same by an appeal filed under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Undoubtedly so far as this petitioner is concerned the validity of the eviction order which has been passed shall abide by the outcome of these proceedings.

20. Learned counsel for the petitioners places reliance on the pronouncement of this Court in 100 (2002) DLT 213 Rattan Lal Vs. Municipal Corporation of Delhi. This judgment laid down the principle that the true owner can obtain from another person in lawful possession only by due process of law.

In the instant case, the respondents have taken action against the petitioners in accordance with law under the applicable statute. As a result, no order can be passed in favour of the petitioner in the present proceedings.

The writ petitions are accordingly dismissed.”

5. An LPA being LPA No.115/2008 filed by the plaintiff was dismissed as withdrawn with a liberty contained therein. The Order of the Division Bench dated 07th March, 2008 is reproduced hereinbelow:-

“ After some arguments, counsel appearing for the appellant seeks permission to withdraw this appeal with liberty to the appellant to seek remedy in appropriate forum in accordance with law with regard to the contentions that are

sought to be raised before us today, contending that the land for which he had filed writ petition is not the concerned land for which the eviction order was passed by the Estate Officer, which is upheld by the District Judge and which has become final and binding.

Permission is granted. LPA 115/2008 and CM Nos. 3401/08 & 3402/08 are accordingly dismissed as withdrawn with liberty as prayed for."

(emphasis supplied)

6. Learned counsel for plaintiff submits that the present suit is maintainable in view of the leave and liberty granted by the Division Bench in LPA 115/2008.

7. Undoubtedly, the plaintiff has been granted liberty by the Division Bench to file appropriate proceedings in accordance with law to contend that the land for which the writ petition was filed by the plaintiff is not the land for which eviction order was passed by the Estate Officer and which was upheld by the District Judge.

8. However, the order of the Division Bench states that the proceedings have to be filed in accordance with law. Secondly, it does not state that plaintiff has been dispossessed from the land which was not a part of the eviction order passed by the Estate Officer.

9. A certified copy of the order of the Estate Officer dated 26th April, 2006 has today been handed over in Court by learned counsel for plaintiff. The same is taken on record. The relevant portion of the said order reads as under:-

" In view of the above and considering the facts on records, statements, documents submitted by the parties, I hold that the society/Lessee/sub lessee/notices are in unauthorized

occupation of the Govt. land in Chiraga (South) Delhi and does not hold any right, title or interest over the land in dispute and the notice, is therefore, liable to be evicted. I therefore, in exercise of powers confirmed on me under Sect. 5(1) of the public premises Act 1971, order that the society/sub lessee Shri Hari Chand S/o Shri Kali Ram and any other persons claiming through the aforesaid society whosoever he/she may be is under unauthorized occupation of the said Govt. land or any part thereof, of the premises mentioned in the show cause notice dated 30.09.2005 and further order to vacate the said land/public premises within 15 days from the date of this order, failing which the notice/sub lessee and all other persons concerned be evicted from the said premises, if need be, by use of such force as may be necessary.”

(emphasis supplied)

10. The findings of the Estate Officer read in conjunction with paras 2, 8 and 19 clearly show that the plaintiff was to be dispossessed from the entire land measuring 36 bighas and 2 biswas in accordance with the said order.

11. Admittedly, the said order has been upheld by the District Judge. Consequently, the order passed by the Estate Officer has attained finality.

12. Further, the order of the Estate Officer as well as the learned Single Judge in W.P.(C) No.9980/2006 leave this Court in no doubt that the plaintiff had no right, title or interest in the suit property and that he was evicted from the entire land in accordance with the order passed by the Estate Officer.

13. It is also pertinent to mention that the learned Single Judge has recorded the statement of the learned counsel for DDA that possession of land was being sought by DDA and the same was to be handed over to DMRC by DDA upon payment of the entire premium. In fact, the said

statement has been reiterated by DW1 in his examination-in-chief filed by way of affidavit.

14. Though learned counsel for plaintiff pointed out that in cross-examination DW1 had stated that possession of land had been taken by DMRC on 13th October, 2007, yet this Court on a holistic reading of the examination-in-chief as well as the cross-examination and the orders passed by the learned Single Judge in W.P.(c) 9980/2006, is of the view that DMRC has received possession of the land from DDA and if the plaintiff had any grievance with regard to dispossession and acquisition, then the present suit should have been filed against DDA and not DMRC.

15. Consequently, present suit is also bad for non-joinder.

16. Accordingly, present suit of the plaintiff is dismissed as not maintainable in view of the decision of the learned Single Judge of this Court in W.P.(C) 9980/2006 dated 12th October, 2007 as well as on the ground of non-joinder of DDA and on the ground that plaintiff had no right, title and interest in the suit property. However, keeping in view the peculiar facts and circumstances of the present case, no cost is levied against the plaintiff.

MANMOHAN, J

APRIL 21, 2015

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