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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 2263/2016 & C.M. Nos.9771/2016 & 9773/2016
RASHID AHMED & ORS.

..... Petitioners

Through Mr. S.A. Saud and Mr. H.R. Khan,
Advs.

versus

JAMIA MILIA ISLAMIA UNIVERSITY & ANR.

..... Respondents

Through Ms. Zeba Khair and Mr. Aditya
Shandilya, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **05.09.2016**

There are three petitioners before this Court. Their contention is that the order passed by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 dated 29.03.2006 is an order which was without jurisdiction. The Estate Officer has no jurisdiction to pass such an order. All proceedings subsequent thereto i.e. the order passed by the Appellate Body i.e. the Court of learned Additional District Judge dated 06.07.2007; subsequent order passed by the Single Judge of this Court in W.P. (C) No.4949/2007 on 22.01.2010 which had been endorsed in the LPA No. 117/2010 on 14.03.2011 as also the final order in SLP (C) No.9872/2011 dated 29.07.2011 would all amount to a nullity as the first order itself being without any jurisdiction, all subsequent orders would have no force of law.

Record shows that the Estate Officer had passed an order dated 29.03.2006 directing the eviction of the aforementioned three petitioners from the property i.e. khasra No. 68, PS Jamia Nagar, Okhla Village , New Delhi which were deemed to be public premises within the meaning of the aforementioned Statute. This order was passed under Section 5 of the aforementioned Act.

This order was impugned before the Appellate Body i.e. the Court of Additional District Judge who vide a subsequent order dated 06.07.2007 had endorsed this finding. Learned Additional District Judge had noted the evidence which had been led before the Court below of the parties inter-se and had rejected the plea of the petitioners who had set up a case of adverse and hostile possession qua the respondents. The contention of the petitioners that they had been in a long and settled possession and thus being the lawful owners of this property was rejected. The High Court in W.P. (C) Nos.4929/2007, 4930/2007 & 5292/2007 had dealt with the case of the petitioners. The contentions of the parties were again noted. Their submission that they had become owners was again rejected.

The order of the Single Judge was assailed in LPA No. 117/2010. On 14.03.2011, the order passed by the Single Judge was upheld. The claim for adverse possession and title by prescription had again been rejected.

The last Court in SLP (C) No.9872/2011 on 29.07.2011 had refused to interfere with the order of the High Court. All this is matter of record. The hierarchy of Courts right up to the Supreme Court on the case of the petitioners setting up a claim by adverse

possession had been rejected. At the cost of repetition, this litigation has progress from the year 2006 up to 2011 when the order was finally passed before the Supreme Court. The petitioners were not satisfied with this long drawn out process. They chose to file the present writ petition which was in March, 2016. In the course of these proceedings, the petitioners by way of C.M. No.21886/2016 informed this Court that the Executing Court had issued notice vide which the order of the Estate Officer was being sought to be executed and accordingly the said application was filed seeking a stay. Learned counsel for the petitioners at that stage had urged that his rights are protected under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013. This submission had been countered by the respondents. On the same day i.e. 31.05.2016 this application seeking interim stay wherein the argument of the petitioners was canvassed which was to the effect that the provision of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Act is applicable to them was accordingly withdrawn. Today the same argument has been canvassed before this Court. It is argued by the learned counsel for the petitioners that Section 24 (2) of the said Act comes to his aid.

This Court is not in agreement with this submission of the learned counsel for the petitioners. Apart from the fact that a clear and candid admission had been made by the petitioners on 31.05.2016 seeking permission of the Court to withdraw C.M.No.21886/2016 where this ground had been urged, even otherwise, this Court notes the stand of the Department which was to the effect that in W.P. (C)

Nos.4929/2007, 4930/2007 and 5292/2007, it was the case of the petitioners themselves that the land in question (in khasra No. 68) which had been notified earlier had been de-notified in the year 1999. If that was the position, the question of applicability of the Right to Fair Compensation and Transparency in Land Acquisition Act would not arise. That apart, at the cost of repetition, this plea was withdrawn voluntarily on 31.05.2016.

The argument which has vehemently been urged before this Court today is that the ground now taken which is the ground that the Estate Officer lacks jurisdiction had not been pleaded earlier made. Arguments have been addressed in detail and a large part of the precious time of this Court has been wasted in hearing and considering the submissions of the learned counsel for the petitioners.

This Court notes with pain that this aspect which is now sought to be pleaded is implicitly covered by his earlier round of litigation which had also challenged the order of Estate Officer dated 29.03.2006 and which at the cost of re-repetition was endorsed not only by the Additional District Judge, Single Judge of this Court, Division Bench of this Court but again by the Apex Court. This round of litigation has culminated in the year 2011. The second round of litigation has started in 2016 assailing the same order of the Estate Officer dated 29.03.2006. The principle of res-judicata and constructive res-judicata as contained in Section 11 (Explanation IV) of the Code of Civil Procedure is clearly applicable in the instant case. Section 11 clearly states that an argument which could have been raised and which was not raised at the relevant time is impliedly

barred. The principle of res-judicata is applicable in a Writ Court also.

This petition is nothing but an abuse of the process of the Court. It is a wastage of the precious time of this Court. Dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

SEPTEMBER 05, 2016

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