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

+ **W.P.(C) 6237/2013**

RAM PHAL (SINCE DECEASED) THROUGH HIS LRS & ORS.

..... Petitioners

Through Mr. Jay Savla, Mr. Prabhat. K.C and
Mr. Abhinav Sharma, Advocates
versus

MANAGING OFFICER, GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for R-1
Mr. Tarun Sharma, Advocate for R-2
and R-3

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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27.07.2016

Petitioner before this Court seeks quashing of the order passed by the Sub Divisional Magistrate (SDM) on 17.10.2012 pursuant to which on 19.10.2012 the petitioners were illegally and arbitrarily dispossessed from the disputed land. The prayer in the present petition is that the concerned respondent should be directed to hand over the possession of the aforementioned lands back to them.

Record evidences that the father of the petitioner Deva Singh was in cultivatory possession of the disputed land comprising of 15

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bighas and 14 biswas situated within the revenue estate of Village Jhatikr, Tehril-Najafgarh, New Delhi in part of Khasra No. 57. This was since the year 1950. On 27.12.1995 the name of the father of the petitioner was deleted from the records of Khasra-Girdwari although he allegedly continued to remain in cultivatory possession. The father of the petitioner expired on 27.08.2003. Petitioners came in cultivatory possession of the aforementioned land.

A suit was filed by the petitioner for declaration and permanent injunction bearing no. 321/2009. The plaint of the aforementioned suit has been perused. The prayers made in the aforementioned suit reads herein as under:

“It is therefore, respectfully prayed that this Hon’ble Court may please be pass a decree of declaration thereby declare that the plaintiffs are owners / occupants of land comprised in Khasra No. 57/6(1-2), 57/7/1(1-4), 57/14/2(2-8), 57/15(4-9), 57/16(4-5) and 57/17/1(2-6) total measuring 15 bighas 14 biswas situated within the revenue estate of Village Jhatikra, Tehsil Najafgarh, New Delhi in the interest of justice.

It is further prayed this Hon’ble Court may graciously be pleased to pass decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining the defendants, their servants, employees, agents from dispossessing the plaintiffs from dispossessing the plaintiffs from the suit property without due process of law, in the interest of justice.

Cost of the suit be also awarded in favour of the plaintiff and

against the defendants.

Such other or further orders be passed and relief granted as this Hon'ble Court deems fit and proper under the facts and circumstances of the case in favour of the petitioner and against the respondents."

Written statement was filed.

In the written statement the contention of the defendant that was that the name of the father of the petitioner was struck off by the Authorities as he was an encroacher upon Custodian land. The land in question belonged to the defendant/Custodian of evacuee properties. This suit came to be dismissed vide order dated 27.09.2011. The competent Court was of the view that the application filed by the legal representatives of deceased Deva Singh being much beyond the period of limitation, the suit of the plaintiff stood abated. The application under section 5 of the Limitation Act having been dismissed; as a necessary corollary the main suit was also dismissed. This order dated 27.09.2011 has become final. It has not been challenged. This is an admitted fact.

Counsel for the petitioner submits that respondent no. 2 is not a displaced person and the land allotted to her was thus incorrect. She does not come within the purview of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. His additional submission is that he is protected under the Administration of Evacuee Property Act, 1950 and for this purpose, the provisions of

section 18 of the said Act comes to the aid of the petitioner.

This Court is of the view that the petitioners have already availed of their remedy by filing the aforementioned suit. The specific prayer of declaration that the suit land be declared as their land and they be recorded as recorded owners in that suit land was dismissed. The subject matter of the present petition is the same suit land. This suit having been dismissed on 27.09.2011 and this order having become final the present writ petition on this ground seeking the same prayer is not maintainable. The stand of the respondent / Custodian of evacuee properties in the written statement filed by them (before Civil Judge) that this was their land and petitioners had no right title or interest in the said land and the name of the father of the petitioners was infact deleted way back on 27.12.1995 because he was in illegal possession of government land. The said land infact on verification was found to belong to the predecessor of respondent no. 2 i.e. Jamila Khatoon and although she was a non- evacuee but her property was wrongly declared as Evacuee Property. The land of which possession was taken over on 19.10.2012 was accordingly handed over to respondent no.2 as it belonged to her predecessor in interest. Out of 15 bighas and 14 biswas which was taken over on 19.10.2012 11 bighas and 16 biswas was handed over to respondent no. 2; remaining land was with the answering respondent i.e. with the Land and Building Department.

In view of the aforementioned position which has emerged and this

Court having returned a finding that the petitioners have already availed of their remedy by filing a suit which prayer was not answered in their favour and that being a final judgement writ petition on the same cause of action is not maintainable. It was way back on 27.12.1995 that the name of the father of the petitioners was deleted from the revenue records. The civil suit was filed qua that issue which at the cost of repetition now stands dismissed. Writ petition seeking similar prayer is not maintainable. The additional submission canvassed that the suit was dismissed in 2011 and the cause of action in the present suit relates to proceedings of October, 2012 is also an argument without merit as the order passed by the SDM on 17.10.2012 pursuant to which handing over proceedings were carried out on 19.10.2012 when proceedings culminating out of the suit in which the petitioner had to get the relief of ownership qua the same land which at the cost of repetition was denied to the petitioner.

Submission of learned counsel for the petitioner qua provisions of section 18 of the Administration of Evacuee Property Act, 1950 is incorrect. To get the protection under this Act he must fall under definition of “evacuee” as contained in 2(d) of the said Act. Careful perusal of definition of section 2(d) clearly shows that the petitioner does not fall under the said encompass. At this stage, he candidly admits that he does not come under the purview of the said provision. Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 also does not come to the aid of the

petitioner; even presuming that respondent no.2 is not a displaced person that will not be any ground for granting the prayers made by the petitioners in the present writ petition.

Petition is accordingly dismissed.

INDERMEET KAUR, J

JULY 27, 2016

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