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

% *Date of decision:* 30.08.2016

+ CM(M) 639/2016 & C.M. No.23872/2016 (for stay)

MASJID NOOR AHMED WAKF & ORS Petitioners

Through: Mr. Rajinder Mathur, Advocate.

Versus

RAFIQ AHMED (D) THR HIS LRS & ORS..... Respondents

Through: Mr. Arvind K. Gupta, Advocate for R-2,
4 to 8.

Ms. Monica Kapoor, Advocate for R-3, 9
& 10.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition, the petitioners seek to impugn the order dated 11.2.2016. By the said order, the ARC in the execution petition directed that the evidence be recorded on the objections filed by the respondents claiming title to the said property.

2. The limited facts relevant for the present petition are that the petitioner filed an eviction petition in 1998 under Section 14 (1) (b) of the DRC Act in respect of the premises comprising of four shops on the ground floor of property No.326, Jamia Nagar, Main Market, Okhla, New Delhi against respondent No.1. On 24.8.1999, the predecessor-in-interest of respondent Nos.2 to 15, Rahimuddin, filed an application under Order I Rule 10 CPC for being impleaded as a party in the eviction petition claiming title to the property. Vide order dated 10.1.2001, the ARC impleaded the

predecessor-in-interest of respondent Nos.2 to 15 in the eviction petition. The ARC also declined to stay the proceedings to await the outcome of the civil suit. Against the said direction declining stay, the predecessor-in-interest of respondent Nos.2 to 15 filed a petition under Article 227 of the Constitution of India before this court which was dismissed on 14.7.2003. An SLP filed against the said order was also dismissed on 15.12.2003. In the meantime, the petitioners preferred an appeal against the order of the ARC dated 10.1.2001 impleading the predecessor-in-interest of respondent Nos.2 to 15 as a party. The Rent Controller vide order dated 22.7.2004 allowed the appeal of the petitioners and set aside the order of impleadment. The petition filed by the respondent against the said order under Article 227 of the Constitution was also dismissed by this court.

3. On 26.7.2012, the ARC passed an eviction order in favour of the petitioners and against the legal heirs of the deceased tenant, namely, respondent No.1. The petitioners sought to execute the said eviction order. On 9.4.2013, part execution of the eviction order took place. Now, respondent Nos.2 to 15 filed objections under Section 25 of the DRC Act opposing the aforesaid eviction petition.

4. By the impugned order, the executing court noted that dispute exists between the parties regarding title and in view of Section 25 of the DRC Act which provides protection against eviction in an execution of a decree if any person has an independent title, directed that the matter would require evidence.

5. I have heard the learned counsel for the parties. The learned counsel for the petitioner has stated that relief to respondent Nos.2 to 15 was declined at each stage. They have lost before the appellate court, before this court and before the Supreme Court and that the objections are nothing but a delaying tactic.

6. The learned counsel appearing for the respondent has relied upon the judgment of the full Bench of this court in the case of ***K.G. Malhotra vs. Vijay Malhotra; 1973 (9) DLT 267*** to contend that the ARC under Section 25 of the DRC Act would have to adjudicate upon the title of the property.

7. Some basic facts are that originally the property in question was bought on 16.8.1962 by two ladies Jamila Begum and Sayeeda Begum. They were the wives of Haji Syed Noor Ahmed. Jamila Begum died on 27.3.1969 after she bequeathed her share of the property to her husband Haji Syed Noor Ahmed. It is the contention of the petitioner that Haji Syed Noor Ahmed and Sayeeda Begum created the Trust i.e. petitioner trust and hence the Trust has title to the said property. In contrast, the case of respondent Nos.2 to 15 is that in 1993, after the death of Haji Syed Noor Ahmed, Sayeeda Begum and the sisters of Haji Syed Noor Ahmed sold the property to them and they entered into possession thereof.

8. In view of the above facts as pleaded by the respective parties, it is clear that there is a *bona fide* title dispute between the parties.

9. Section 25 of the DRC Act reads as follows:-

“25. Vacant possession to landlord. – Notwithstanding anything contained in any other law, where the interest of a tenant in any premises is determined for any reason whatsoever and any order is made by the Controller under this Act for the recovery of possession of such premises the order shall, subject to the provisions of Section 18, be binding on all persons who may be in occupation of the premises and vacant possession thereof shall be given to the landlord by evicting all such person therefrom:

Provided that nothing in this section shall apply to any persons who has an independent title to such premises.”

10. In view of the aforesaid provision, the eviction order is binding on all persons, who may be in occupation of the premises; however, this does not apply to any person who has an independent title to such premises.

11. The full Bench of this court in ***K.G. Malhotra’s case (supra)*** in para 23 held as follows:-

“23. The substantive part of Section 25 gives effect to the executability of order or decree for possession against all persons bound by it contained in Order XXI Rule 35 (3) Civil Procedure Code. Any person in occupation of the premises is, therefore, liable to be evicted in execution of the order for eviction on the presumption that he is claiming through the deceased tenant. His legal representatives would also be included in such proceedings. If, however, the legal representatives have an independent title, that is, a title to occupy the premises not through the tenant but

in their own right or through someone other than the deceased tenant, then they cannot be evicted in execution of the order for eviction in view of the proviso to Section 25. Section 50 (4) of the Act of 1958 also reserves the final decision on title to a civil court. The Controller has, therefore, to decide whether a person has an independent title to the premises. If his conclusion is in the affirmative, then he must refuse to evict that person. If his conclusion is in the negative, then he would proceed to evict such a person on the ground that such a person does not have independent title and is covered by the substantive part of Section 25. The said person would, however, have a right to challenge his decision in the civil court on the basis of his title in view of Section 50 (4) of the Act of 1958.”

12. Reference may also be had to the order of this court dated 29.5.2008 passed in CM (M) No.1142/2004 which was filed by the predecessor-in-interest of respondent Nos.2 to 15. By the said petition, the respondents had challenged the orders of the appellate court dismissing the application for being impleaded. This court noted that the eviction petition is not going to decide the title of the property. If the petitioners therein have an independent right or remedy after the eviction order is passed, the petitioners (respondent Nos.2 to 15 herein) would be free to have such recourse as may be permissible in law.

13. The respondent Nos.2 to 15 cannot be shut out if they have an independent claim/title to the property in question. Section 25 of

the Act would permit the ARC to adjudicate upon the claim of the said respondents of having an independent title.

14. In view of the above, there is no merit in the petition. Accordingly, the petition is dismissed. However, in order to resolve the dispute between the parties, the ARC is requested to expeditiously dispose of and deal with the objections by declining adjournments, unless in an emergent situation.

JAYANT NATH, J.

AUGUST 30, 2016

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