

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

% Decided on: 23rd August, 2016

+ **CRL.M.C. 3088/2010 & CrI.M.As. 15662 & 16022/2010**

JEETU SINGH

.... Petitioner

Represented by: Mr. Bhupesh Narula, Advocate.

versus

BHANNAMAL GULZARIMAL PVT LTD

..... Respondent

Represented by: Mr. Rajesh Khanna, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Brief background of the present case is that one Thakur Mal Singh was employed with the respondent Bhannamal Gulzarimal Pvt. Ltd. (in short 'the Company') as caretaker for property bearing No.10195/1, Jhandewalan, Delhi (in short 'the property') and in the course of employment he also resided in a portion therein. In the year 1986 one Nathu Ram trespassed in the property, thus Thakur Mal Singh got registered FIR No.579/1986 under Sections 448 IPC at PS Paharganj, Delhi. During the course of trial Thakur Mal Singh was examined as PW-1 and his son Kanwar Bajrang Singh as PW-2. Kanwar Bajrang Singh in his deposition before the learned Metropolitan Magistrate admitted that the property belonged to the Company of which his father PW-1 was an employee, his father was residing at the said property and looking after the same as a custodian.

2. Vide the judgment dated 7th November, 1998 Nathu Ram was convicted for offence punishable under Section 448 IPC however, the learned Metropolitan Magistrate directed restoration of the property to Thakur Mal Singh. On 5th December, 1998 the Company filed an application for correction of the judgment which was dismissed by the learned Metropolitan Magistrate on 27th February, 1999.

3. Challenging the judgment dated 7th November, 1998 and the order dated 27th February, 1999 the Company filed a petition before this Court being Crl.M.C. No. 9570/1999. Vide the judgment dated 8th August, 2000, this Court set aside the challenged portion of the judgment and directed restoration of the possession of the property to the Company. The order dated 8th August, 2000 passed by this Court was challenged by Thakur Mal Singh before the Supreme Court in SLP (Crl.) No.3074/2000 which was dismissed and a review application filed therein was also dismissed by the Supreme Court vide order dated 9th November, 2000.

4. During the pendency of the above noted proceedings the Company filed a complaint case under Section 630 of the Companies Act (in short 'the Act') on 7th April, 1999 against Thakur Mal Singh for usurpation of the property. As in the original complaint the property in dispute was noted as property No.10165/1, Chawri Bazar however this error was got corrected by the Company by filing an application. Vide judgment dated 16th November, 2005 Thakur Mal Singh was convicted and he was directed to hand over the property to the Company. Appeal filed by Thakur Mal Singh was dismissed by the learned Additional Sessions Judge and the revision filed before this Court being Crl. Rev. Petition No.105/2008 was also dismissed on 20th February, 2008.

5. Thereafter, Thakur Mal Singh filed a civil suit being Civil Suit No.394/2005 before the learned Civil Judge with an application under Order XXXIX Rule 1 and 2 CPC seeking to restrain the Company from dispossessing him from the property. The suit and the application under Order XXXIX Rule 1 and 2 CPC were dismissed vide order dated 7th April, 2006. The learned Civil Judge also noted that the suit and the application were filed on 23rd November, 2006, that is, after the judgment of conviction against Thakur Mal Singh was pronounced by the learned Metropolitan Magistrate on 16th November, 2005 and that the suit was filed by concealment of material facts.

6. Armed with the judgment in the complaint case under Section 630 of the Act and dismissal of the suit and application filed by Thakur Mal Singh, the Company filed an application seeking issuance of fresh warrants of possession against Thakur Mal Singh on 19th February, 2008 before the learned ACMM which was allowed vide order dated 3rd December, 2009. During the pendency of the proceedings seeking possession of the property, the petitioner herein, that is, Jeetu Singh claiming himself to be the tenant in a portion of the property filed an application before the learned ACMM on 20th September, 2010 raising objection to the warrant of possession that the possession of the entire property could not be handed over to the Company. The learned ACMM on 6th January, 2010 allowed the application and directed that the Company could not take possession of the portion which was outside the portion marked as red in the site plan. The Company filed a revision petition being Crl. Rev. No.52/2010 before the learned Additional Sessions Judge who vide order dated 30th August, 2010 allowed the petition

of the Company and directed that the Company was entitled to the entire property. Hence the present petition.

7. Challenging the order dated 30th August, 2010 whereby learned Additional Sessions Judge in the revision petition set aside the order dated 6th January, 2010, learned counsel for the petitioner contends that the learned Additional Sessions Judge could not have granted possession of the property to the company beyond what was claimed in the portion marked red in the site plan annexed with the complaint.

8. Learned Additional Sessions Judge vide the impugned order noted that the services of Thakur Mal Singh had been terminated and he was asked to vacate the premises which he failed to vacate. He has been held guilty and convicted for offence punishable under Section 630 of the Companies Act vide the judgment dated 16th November, 2005 and sentenced vide order dated 8th December, 2005 to pay a fine and hand over possession of the property on or before 9th January, 2006 failing which he had to undergo simple imprisonment for two years. In the appeal against the conviction and sentence, Thakur Mal Singh did not take the plea that the notice of acquisition was given only with regard to part of the property whereas he was directed to vacate the entire property. The judgment of conviction and order on sentence have been upheld by the appellate Court and revision against the same was also dismissed. Thus, now the petitioner who claims to be the tenant of son of Thakur Mal Singh and was impleaded as respondent No.2 in Crl. Rev. Pet. No.52/2010 before the learned Additional Sessions Judge cannot claim that the property was not an accommodation by virtue of the employment of Thakur Mal Singh with the Company and he cannot be forced to deliver the possession or that the company was entitled to a portion

of the property only. Noting the provisions of Section 630 of the Act, learned Additional Sessions Judge held that under the said provision, the Company was not required to prove ownership and the only essential ingredient required to be proved was that the property was given to the accused as employee of the complainant which he has wrongfully withheld. Setting aside the order passed by learned Metropolitan Magistrate, it was held that the Thakur Mal Singh was allotted the property by virtue of his employment with respondent No.1 and on cessation of his services, he failed to vacate the same and he has no legal right over the property. It was further held that respondent No.1 was entitled to obtain the property in question.

9. Before this Court, one of the contentions of learned counsel for the petitioner besides the one taken before the learned Additional Sessions Judge was that property belonged to one Kanwar Bajrang Singh for which FIR No.579/1986 under Section 448 IPC was registered at PS Pahar Ganj and on the deposition of Kanwar Bajrang Singh and Thakur Mal Singh, Nathuram Sharma was convicted. It may be noted that Kanwar Bajrang Singh is the son of Thakur Mal Singh and not an independent person. In his deposition in case FIR No.579/1986 under Section 448 IPC at PS Paharganj, Delhi Kanwar Bajrang Singh s/o Thakur Mal Singh admitted that the property belonged to the Company of which Thakur Mal Singh was an employee and his father has been residing at the said property and had been looking after the same as a custodian.

10. Thus the petitioner, Jeetu Singh cannot claim any right over the property in the garb that he was the tenant of Kanwar Bajrang Singh or that the Company is entitled to the possession of part of the property only.

11. Petition and applications are dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 23, 2016
‘v mittal’/‘vn’