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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 21.10.2016

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W.P.(C) 9716/2016

SH. LT. SADHU RAM THROUGH HIS WIFE Petitioner

Through: Mr.Sandeep Khatri and Ms. Prabhkeen Kaur,
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through Mr.Sanjeev Sabharwal, Standing Counsel
for DDA.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

C.M. No.38847/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

W.P.(C) 9716/2016 & C.M. No.38848/2016

1 By way of this writ petition, petitioner seeks quashing of order dated 07.10.2014 passed by the District Judge qua 26 bighs 17 biswas of land bearing Khasra no.110 min. situated at Bela Estate, Delhi (hereinafter referred to as the suit property)

2 The facts which emanate from the petition disclose that petitioner was the member of the Delhi Peasants Cooperative Multipurpose Society Ltd.

(hereinafter referred to as the Society). In 1949, the Society was allotted agricultural land on either side of the river Yamuna being 13,344 on an yearly rent of Rs.59,863/- by the DDA. The appellant being peasant/agriculturist and the members of the society was allotted the suit property by the Society and is stated to be cultivating the land for more than 65 years. A lease was executed between the Delhi Improvement Trust (predecessor of the DDA) and the Society in the year 1949. The society had thereafter allotted this land to its members for cultivation. The lease was extended in 1956 and thereafter in 1961. The DDA sought cancellation of the lease deed (qua certain bighas of land on 06.10.1967 and 31.7.1967 respectively) qua the Society requiring them to hand over the possession of the land. On 30.4.1973 Resolution No.6 was passed by the DDA proposing to execute the lease deed with the individual cultivators. Demand letter was issued to the Society to clear all arrears of rent. Relevant would it be to note that this demand letter was issued to Society and not to the individual cultivator (like the present petitioner). This demand was met with by the Society. Lease money was paid by the Society to the DDA which amount was accepted by the DDA without any reservation.

3 Further averments in the petition disclose that thereafter notices under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the said Act) were issued by the Estate Officer of the DDA to the cultivator. Proceedings under the Public Premises Act were held and eviction orders were passed by the Estate Officer. This was on 24.3.2014. This order was challenged before the Appellate Body i.e. Court of learned District Judge. This was on 19.4.2014. The appeal was dismissed on 07.10.2014. This is the order now impugned.

4 At the outset this Court notes that the present petition has been filed on 17.10.2016 i.e. after a delay of almost or more than 1½ years respectively after 07.10.2014.

5 On a query put to the learned counsel for petitioner on this score he has no answer. His submission is that connected writ petitions were listed before another Bench of this Court and although some of those petitions have been dismissed by the Division Bench yet another Division Bench of this Court is seized of some of these petitions which are yet pending before it and those orders were being awaited.

6 This Court is not particularly happy with this explanation tendered by the learned counsel for the petitioner. A person aggrieved by an order has to

approach the Court to get his grievance addressed within a particular time frame. Although there is no specific period of limitation to prefer a writ petition against the order passed on 07.10.2014 yet this unjustifiable delay in approaching this Court (more than two years) for which again there appears to be no explanation; the obvious presumption being that the petitioner probably have no grievance as had they been aggrieved they would have rushed to the Court much earlier. This Court notes this delay in approaching this Court. However, since arguments have been addressed on merits this Court would not like to dismiss the petitions on the ground of laches.

7 On advance notice, counsel for the DDA has put in appearance and has assisted this Court.

8 Record shows that a bunch of connected petitions have been disposed of by one Division Bench of this Court on 17.11.2015. The Division Bench had upheld the order of the Single Judge dated 19.5.2015 which also related to similarly placed persons. They were also members of the Society i.e. the Delhi Peasants Cooperative Multi-purpose Society. On a query put to the learned counsel for petitioners as to how this petition is maintainable as similarly placed members of the Society have already being been denied relief by the Division Bench; submission is that question of jurisdiction had

not been considered before the Division Bench. Submission is that jurisdiction is an issue which goes to the root of the matter and all proceedings which are without the inherent jurisdiction of the Court are to be treated as void ab initio. Learned counsel for petitioners has placed reliance upon a judgment of the Apex Court in Jagmittar Sain Bhagat and Ors. Vs. Director, Health Services, Haryana and Ors. reported as (2013) 10 SCC 136 as also upon another judgment of the Apex Court in Band Box Private Limited Vs. Estate Officer, Punjab and Sind Bank and Another reported as (2014) 16 SCC 321 to support this submission. Argument being that a Court passing a decree having no jurisdiction in the matter would be a decree in nullity; such an issue can be raised at any stage of the proceedings; a Tribunal which lacks inherent jurisdiction, the Court cannot derive jurisdiction in such an eventuality. It is pointed out that the property in question is not covered under the said Act. The Supreme Court in Suhas H.Pophale Vs.Oriental Insurance Company Limited and Its Estate Officer (2014) 4 SCC 657 in para 59 had noted that for any premise to become a “public premises” within the meaning of the said Act the relevant date would be 16.9.1958; premises being occupied prior thereto would not come within the ambit of the said Act. Additional submission being that the petitioner

was never an “unauthorized occupant” within the meaning of the said Act. All proceedings culminating into the order passed by the District Judge on 07.10.2014 is thus without any jurisdiction and are to be treated as a nullity. For the same proposition reliance has also been placed upon (2012) 12 SCC Cantonment Board and Another Vs. Church of North India. Reliance has also been placed upon (2016) 7 SCC 572 Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass to support an argument that where the petitioner (as is so in the instant case) is a deemed tenant and is protected under a tenancy law, he cannot be evicted. Section 116 of the Transfer of Property Act, 1882 would confer legitimacy to the possession of a tenant even after the termination of his lease.

9 Arguments have been refuted. It is pointed out that the question of jurisdiction is a question which was never raised earlier before any Court; this wrong proposition has been latched upon only to buy time. Additionally, it is pointed out that the submission of the petitioner that he is a tenant under the Punjab Tenancy Act, 1887 was also never a ground taken by him before any court below. This argument has appeared for the first time before this Court. The submission of the petitioner that he is a deemed tenant under the provisions of the Punjab Tenancy Act, 1887 is an argument

not available to him as Section 1(2) of the said Act is applicable to that part of the Union Territory of Delhi which is described in Schedule A of the Delhi Laws Act of 1912. Attention has been drawn to Schedule A of Delhi Laws Act of 1912; 65 villages are enumerated therein. It is pointed out that none of the aforementioned villages (subject matter of these petitions) fall within Schedule A. Thus even on merits, the submission of the petitioner that he is protected under the Punjab Tenancy Act, 1887 is not available to him.

10 Arguments have been heard. Record has been perused.

11 Record discloses that even as per the case of the petitioner a lease deed had been entered into between the Trust (predecessor-in-interest of the DDA/respondent) and the Society. The Society was the lessee. The DDA vide its letters dated 06.10.1967 and 31.7.1967 had called upon the Society cancelling the lease which had even otherwise expired by efflux of time. The first lease (of the year 1949) between the Trust and the Society was for five years. The second lease was also for the same period. Thus even by efflux of time, the lease stood determined.

12 Resolution No.6 dated 30.4.1973 passed by the DDA was to the following effect:

“Resolved that pending decision in the case Jhil Khuranja Co-operative Society, the members of the Delhi Peasants multipurpose Co-operative Society may be charged rent on the old rates and lease extended provided they clear all the outstanding dues against them.”

13 The Estate Officer had considered the submission of the petitioner that Resolution No.6 had impliedly extended their lease. It was also noted that the original lease deed was for a period of five years. However, since this Resolution was never acted upon, the Estate Officer had concluded that Resolution No.6 did not confer any right, title or interest upon the petitioner. Moreover, as the wording of the resolution itself suggested that it appeared to be only an interim arrangement pending the decision in the case of Jhil Khuranja Milk Producers’ Co-operative Society Ltd.; in terms thereof Socierty may be charged rent at the old rates.

14 Admittedly, the land in question belongs to the DDA. It falls within the definition of “Public Premise” as contained in Section 2(e) of the said Act. There is no dispute to this proposition. In fact, learned counsel for the petitioner admits this factum. His vehement contention (as noted supra) is on the lack of jurisdiction on the part of the Estate Officer and the subsequent lack of jurisdiction qua the Appellate Body i.e. the District Judge

and as such both orders passed by the Estate Officer and the District Judge be declared a nullity.

15 At the cost of repetition, this Court notes that this question of jurisdiction (which has now sought to be raised) was never an issue before any other court. There is also no doubt to the settled legal proposition that jurisdiction is an issue which goes to the root of the matter. The connected argument on this score that the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 would not be applicable to the case of the petitioner and he is protected as a deemed tenant under the Punjab Tenancy Act, 1887' was also never an argument/submission before any fact finding court. It was never the case of the petitioner that he qualified as a tenant under the Punjab Tenancy Act, 1887. It has been admitted by the petitioner that this argument was never raised either before the Estate Officer or before the District Judge. There is a categorical denial by the respondent qua the protection sought by the petitioner under the Punjab Tenancy Act. This being a writ Court a new fact cannot be urged as it is not for the writ Court to allow the parties to lead evidence. This Court thus cannot allow this ground to be urged at this stage. Moreover, this Court also notes that these proceedings arise out of land falling in....., which villages do not fall within the 65 villages

enumerated in Schedule A of the Delhi Laws Act, 1915 to which alone the Punjab Tenancy Act, 1887 is applicable. Section 2(i) of the Punjab Tenancy Act clearly states that the said Act is applicable only to those areas/land which are mentioned in Schedule A of the Delhi Laws Act. Thus, even if this proposition is examined on merits it would be of no help to the petitioner as he would not be covered under the Punjab Tenancy Act.

16 The Apex Court in AIR 2003 SC 2508 Ramesh Chand Ardawatiya Vs. Anil Panjwani while dealing with an objection to jurisdiction which had been raised at a later stage had inter alia held as follows:

“....An objection as to the exclusion of Civil Court’s jurisdiction for availability of alternative forum should be taken before the Trial Court and at the earliest failing which the higher Court may refuse to entertain the plea in the absence of proof of prejudice.....

.....An objection to the jurisdiction of the Trial Court was not taken before the High Court in any of the civil revisions. It will be too late in the day to permit such an objection being taken and urged at the hearing before this Court. The plea as to want to jurisdiction in the Trial Court is devoid of any merit and is, therefore, rejected.”

17 In the instant case a half baked plea on the lack of jurisdiction which has been set up at the conclusion of the proceedings leads the Court to

believe that this is nothing but a tactic to ward off an adverse order and to delay the proceedings; this would be of no benefit to the petitioner; to press and agitate the question of jurisdiction successfully the petitioner must establish that he had suffered a prejudice on this count which at the cost of repetition he has not been able to do so.

18 The judgment of Suhas H Pophale (heavily relied upon by the petitioner) in para 59 and 64 has inter alia noted as follows:

“59.....For any premises to become public premises, the relevant date will be 16.9.1958 or whichever is the later date on which the premises concerned become the public premises as belonging to or taken on lease by LIC or the nationalised banks or the general insurance companies concerned like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in “unauthorised occupation”. Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be restored to by taking steps under the Bombay Rent Act or the Maharashtra Rent Control Act, 1999. If the person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply.

64..... Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958 i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the premiss concerned belonging to a government corporation or a company, and are covered under a protective provisions of the State Rent Act, like the appellant herein, also get excluded.”

19 It are these particular paragraphs of the judgment which have been highlighted by the learned counsel for the petitioner to advance his argument that the Public Premises Act would be inapplicable to him as in his case the lease has been entered into prior to 1958.

20 This submission of the learned counsel for the petitioner is based on a fallacy. The petitioner in the case of Suhas H. Pophale (supra) had raised the contention of lack of jurisdiction right from the beginning; (reference may be made to para 8 of the said judgment where it has been noted that the appellant right from the inception stage of the proceedings was alleging that his occupation was protected under the Bombay Rent Act); this is not so in the instant situation. In the instant situation, after all proceedings have come to a foreclose i.e. the order passed by the Estate Officer as also by the District Judge, the question of jurisdiction has been raised. This is the clear

ploy on the part of the petitioner to bring this argument at this stage when the connected petitions (other members of the Society) have also been decided by the Division Bench of this Court. A single Judge of this Court in WP(C) No.4908/2015 titled Sukhpal Singh and Anr. Vs. Delhi Development Authority & Anr. (decided on 19.5.2015) had dealt with all these issues (now raised except the question of jurisdiction). It had dismissed the petition. The Division Bench in Brij Pal Vs. Delhi Development Authority and Anr. In LPA Nos.810/2015 (on 17.11.2015) had endorsed the orders of the Single Judge.

21 The petitioner before the Single Judge and the Division bench were other members of the Society i.e. the Delhi Peasants Co-operative Multipurpose Society. Their case is not different from the case of the present petitioner. This fact is not disputed. Those appeals were dismissed in limine on 17.11.2015. This Court has been informed that a review petition had also been filed against that judgment dated 17.11.2015 which was also dismissed on the ground of laches.

The only surviving argument of the petitioner based on the issue of jurisdiction premised on the judgment of Suhas H Pophale does not come to his aid. At the cost of repetition that case the case of the petitioner all

along was that he was a tenant and protected under the Bombay Rent Act. The Apex Court in para 60 (supra) had held that all those persons falling within the definition of tenant protected under a State Rent Act and occupying the premises prior to 16.9.1958 would not come within the ambit of the Public Premises Act, 1971 and therefore cannot be held to be in unauthorised occupation. It is not the case of the petitioner before any court below that he was a tenant under the Punjab Tenancy Act, 1887. This plea set is up before this writ Court which not being a fact finding Court; this plea cannot be set up for the first time at this stage. The judgment of Suhas H.Pophale (supra) does not come to his aid.

22 The petitioner is only buying time. He is not entitled to any relief. He is holding on to Government land since the last several years without any legal sanctity. The lease was even otherwise inter se the Government and the Society and never with petitioner. This is also not the case of petitioner. The lease granted to the Society had come to an end long back. It had expired by efflux of time. The DDA had asked the petitioner to vacate the said land. They did not do so. The possession of the petitioner after 16.10.1967 therefore became that of an unauthorized occupant within the

meaning of Section 2 of the said Act. The Estate Officer thus had a complete jurisdiction in the matter.

23 This petition is without any merit. The petitioner appears to be waiting orders of other Courts and after they had noted that similarly placed persons had been granted interim protection (this Court has been informed that certain writ petitions are now coming up before this Court on 29.11.2016), the petitioners have taken a chance before this Court also seeking an interim order in their favour. This appears to be a malafide exercise on their part. This writ petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

OCTOBER 21st, 2016
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