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

+ LPA 807/2015 & CM Nos. 26694-26698/2015

JAGDISH CHAND MISHRA & ORS. Appellant

Through: Mr. Abhijit Kumar Chattopadhyay,
Advocate alongwith Mr. Ashok
Kumar, Advocate.

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. R.A. Iyer, proxy counsel for Mr.
Gautam Narayan, ASC for
respondent/GNCTD.
Mr. Dhanesh Relan, Standing
Counsel, DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **06.01.2016**

The appellant is aggrieved by judgment and order of learned Single Judge dated 17.06.2015 dismissing the writ petition.

The facts are that the petitioners claim to belong to economically weaker sections and that they were residing in the suit property i.e. part of Khasra No. 183 admeasuring 1041 sq. yards and Khasra No. 168 admeasuring 235 sq. yards situated within the revenue estate of Village Siraspur, Delhi. The Delhi Government by a letter dated 04.02.1991 had declared constructions on the said suit land as unauthorized. The petitioners have approached the Civil Court by filing suit no. 256/2015 seeking permanent and mandatory injunction. The initial *exparte* injunction granted was later vacated.

The suit property-according to the revenue records - was part of

acquired land (award no. 8/1991-92) belonging to the Central Government. Apparently, the physical possession of the land was handed over to the Land and Building Department on 08.09.2004 and was later handed over to the Northern Division of the Delhi Development Authority (DDA) on 22.09.2004. A small fraction of the area i.e. 3 biswas was not covered being constructed area at that time. Demolition action was initiated since construction of flats for EWS category was taken up.

The learned Single Judge in impugned judgment noted that a Local Commissioner was appointed by a Civil Court who reported that there was no construction and that 24 petitioners were living in tents. The Civil Court declined injunction on the basis of the Supreme Court ruling in *Suraj Lamps Industries P. Ltd vs. State of Haryana* (2009) 7 SCC 363 stating that *prima facie* lawful possession was not indicated. The Single Judge also noted that in LPA No. 130/2011 *Kali Charan vs. Government of NCT of Delhi*, the possession of the said land was taken up by DDA and that 90% of the land was taken and was recorded. On the basis of these observations, learned Single Judge declined to exercise discretion and entertain a writ petition.

Learned counsel highlights that the petitioners have been for long in continuous possession so as to be characterised as settled occupants and that they could not have been dispossessed without prior notice. It is stated that petitioners are in possession of identification documents and are in fact paying electricity on the basis of actual consumption, in respect of the suit lands. The facts noted

previously would show that petitioners had approached the Civil Court. During the course of hearing, it was clearly stated that the civil suit filed before the Court was subsequently withdrawn and a writ petition was filed. The order of withdrawal has not been produced. Nor is there any statement to the effect that leave was sought and obtained from the Court, to preserve the right to approach the appropriate forum. In such circumstances, it has been held (refer ***Sarguja Transport Service vs. State Transport Appellate Tribunal***, AIR 1987 SC 88) that the petitioner is deemed to have abandoned the right to legal remedies in view of operation of constructive *res judicata* and the principles governing the Order 2 Rule 2 and Order 23 Rule 1 CPC.

That apart, this Court is of the opinion that the disputes sought to be urged relate to instances of lawful title and legal occupancy-all of which are intensely factual. Having chosen a forum for relief and abandoned it at the first hint of refusal of relief, the petitioners are now seeking to re-agitate the same issues. This Court cannot enter into realm of deciding disputed questions of fact, that too pertaining to title. Besides, the appellants' lawful possession has not even been established *prima facie*.

For the above reasons, this Court finds no merit in the appeal, Appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 06, 2016/sapna